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SCHOOL OF LAW
QUALITY REVIEW
2020

GOOD PRACTICE CASE-STUDY



*THE CHILD LAW CLINIC AND
REDRESS FOR SURVIVORS OF CHILD SEXUAL ABUSE*

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Section One: Contextualisation of the Initiative: Origins and Overview

The Child Law Clinic was established in 2010 as a vehicle for research-led experiential learning for students which would impact on society by enhancing the quality of litigation, advocacy and law reform in the broad area of child law. The Clinic undertakes research tasks at the request of practicing lawyers or civil society groups to assist in their litigation and advocacy work; and it authors its own submissions and *amicus* briefs to various courts and committees on matters of interest.

The Clinic brings together staff and students working in the area of child law and children's rights. It has been directed by Professor Ursula Kilkelly (2010-2018) and Dr Conor O'Mahony (2018-present). Students from the LLM in Children's Rights and Family Law and the PhD programme provide research assistance under the guidance of the academic staff. Work on research briefs or submissions begins with brainstorming meetings. The project is then divided into discrete tasks and allocated among the group, who work alone or in small groups to prepare draft sections. Feedback is provided and these are re-drafted, before one of the Clinic directors takes over the final stage of collating the sections and producing a complete document.

For the first years of its existence, the Clinic operated as a voluntary activity for interested students. Since 2014-15, students undertake the work as a 5-credit module in the LLM in Children's Rights and Family Law (LW6615 Child Law Clinic - 12 hours of seminars plus associated research and writing).

Although it engages in a variety of project work, the Clinic is best known for its work in securing redress for survivors of sexual abuse in National Schools. This was the project that prompted its inception, and which has been ongoing ever since. This case study will focus in particular on that work. A brief introduction is in order to contextualise what will follow.

In 2009, the Irish Supreme Court ruled in *O'Keeffe v Hickey* that the State had no liability for sexual abuse committed by a school principal, as the principal was an employee of the school and not the State.¹ The legal team representing Louise O'Keeffe wished to explore an application to the European Court of Human Rights (ECtHR), but had no experience of this forum or body of law. Contact was made with Professor Kilkelly and Dr O'Mahony, who had both published on the topic of the State's child protection obligations under the ECHR. Between 2010-2013, a detailed collaboration ensued in which the Child Law Clinic (including multiple cohorts of students) contributed extensively to the drafting of numerous written submissions to the ECtHR.

In January 2014, the Grand Chamber of the ECtHR ruled in favour of Louise O'Keeffe,² holding that the Irish State had a positive obligation to protect against foreseeable risks of child abuse in primary schools, and had failed to discharge this obligation when it ceded control of primary schools to the churches without putting in place adequate child protection mechanisms to control against that risk. This constituted a violation of Article 3 of the ECHR, and the failure to provide Louise O'Keeffe with a remedy in Irish law constituted a separate violation of Article 13.

The Clinic's practical contribution to advocating for redress for abuse survivors did not end with the *O'Keeffe* judgment. The State's response to the judgment fell short of full implementation, in that the State sought to limit the number of abuse victims who would qualify for redress. The Clinic prepared

¹ [2009] 2 IR 303, available at <https://www.bailii.org/ie/cases/IESC/2008/S72.html>.

² *O'Keeffe v Ireland*, 35810/09, 28 January 2014, available at <http://hudoc.echr.coe.int/eng?i=001-140235>.

multiple submissions to the Committee of Ministers of the Council of Europe and to the Independent Assessor established by the Government to review applications rejected by the redress scheme. It also supported a further application to the European Court of Human Rights in *Allen v Ireland* in 2018. In July 2019, the Independent Assessor ruled that the “prior complaint” condition was incompatible with the ECtHR judgment in *O’Keeffe*, accepting the submissions made by the Child Law Clinic.³ The ruling stated that the condition was “an inherent inversion of logic and a fundamental unfairness to applicants”, and was “inconsistent with the core reasoning of the judgment of the ECtHR in the Louise O’Keeffe case”.

Section Two: Purpose

The Clinic’s work on securing redress for survivors of redress for child sexual abuse began as an informal collaboration between local solicitors and Prof Kilkelly and Dr O’Mahony. As the collaboration developed, it was clear that the involvement of students could be beneficial to all, and that a more formal structure could be put in place that could apply the same approach to other projects. The aim of establishing the Clinic was twofold:

- 1) To improve the quality of children’s rights advocacy in such cases, and therefore to improve the quality of children’s rights law by establishing better precedents; and
- 2) To expose students to the benefits of clinical legal education through exposure to real cases.

This was motivated by a desire to see Irish legal academia replicate some of the success and impact of clinical legal education as operated in the US, UK and elsewhere. As will be explained in the next section, clinical legal education provides valuable opportunities for community engagement and impact that align closely with key goals later adopted by UCC in its Academic Strategy 2018-2022 and its Civic and Community Engagement Plan 2017-2022.

Section Three: Design

The US and UK model of clinical legal education involves students directly representing clients under the supervision of a faculty member who is also a registered legal practitioner. It allows for significant educational impact for the students (through exposure to real case work) and social impact for the clients and for society more generally (by providing *pro bono* legal services to people who might otherwise not be able to access them). However, this model is resource intensive for the university, and is not well adapted to Ireland’s regulatory environment for legal services. Consequently, a bespoke model was developed whereby the Child Law Clinic would not work directly with clients, but would instead support lawyers who are working on cases involving children.

The prior involvement of a solicitor or barrister overcomes the regulatory barriers that would otherwise arise, and does so without the need for the university to employ a registered legal practitioner. The arrangement is mutually beneficial: the lawyer benefits from *pro bono* research assistance from students and academics who are specialised in children’s rights, bringing additional expertise and capacity to the case that would not otherwise be available. The students and academics

³ The decision is available at <https://www.education.ie/en/Learners/Information/Former-Residents-of-Industrial-Schools/ECHR-OKeeffe-v-Ireland/independent-assessment-process/okeeffe-v-ireland-decision-of-the-independent-assessor.pdf>.

benefit from exposure to real case work, litigation strategy and practice and procedure issues that often do not arise in the academic study of law.

The Clinic's work on redress for survivors of sexual abuse has exposed approximately 25-20 postgraduate students over a period of 10 years to experiential learning that combines elements of independent research and collaborative work as part of the Clinic team. It provided a perfect way to develop graduate attributes prioritised in UCC's Academic Strategy 2018-2022, including *independent and creative thinking* and *social responsibility*. This approach prepared the students for their future by combining academic research with professional activity, and was thus an example of the *Connected Curriculum* in action. By offering direct exposure to an issue that has involved the State asserting its power in opposition to a vulnerable and marginalised group, the work spoke to all of the core values of UCC's Academic Strategy, including:

- *Respect and compassion* for the abuse survivors;
- *Ambition* to successfully take on intransigent State authorities;
- *Resilience* during a prolonged, multi-year campaign; and
- *Integrity* in upholding fundamental human rights values.

Section Four: Implementation

The implementation of the initiative involved two elements. Legal submissions to courts or related bodies were drafted as a collaboration between students, the Clinic Directors and legal practitioners. Following brainstorming meetings, students were assigned tasks to research; draft material was fed into research briefs which were collated and edited by the Clinic Directors. These were shared with the legal practitioners and, following further editing, the finalised documents were submitted. Academic outputs and media work were handled solely by the Clinic Directors.

To date, the Clinic's work on securing redress for survivors of child sexual abuse has generated the following outputs:

- Five written submissions to the European Court of Human Rights
- Three written submissions to the Independent Assessor
- Two written submissions to the Committee of Ministers
- Two positive rulings
- 20 survivors compensated (€84,000 each)
- 340 other survivors in line for compensation when the redress scheme review is completed
- Three academic papers
- Six authored op-ed and analysis articles in newspapers and online publications
- Quoted or referenced in at least 14 other newspaper articles
- Quoted or referenced in at least six separate Dáil Debates
- Four television interviews
- 11 radio interviews

Section Five: Review/Evaluation

The experience of the Clinic's work on securing redress for survivors of child sexual abuse has been overwhelmingly positive from a teaching, research and community outreach perspective. In her acceptance speech at the 2014 People of the Year Awards, Louise O'Keeffe singled out the involvement of UCC students as one of the key turning points in her 15-year long legal battle. Barrister Alan Keating, who had been part of Louise O'Keeffe's legal team during the ECHR proceedings, sent the following message to the Clinic Directors following the Court's ruling:

"I am slightly envious of the students' experience. Imagine playing such an important role, at such an early stage, in a case such as this and, indeed, being able to persuade 11 judicial minds from diverse legal, cultural and social backgrounds! They truly saw justice at work and were instrumental in persuading the court that Louise's convention rights had been infringed. They should be proud. Lawyers, whether practical or academic, can make a difference ... They should never forget the difference that they have made."

In Leaders' Questions in the Dáil on 9 July 2019 following the Assessor's ruling, the Leader of the Opposition, Micheál Martin TD stated:



A very generous acknowledgement of our work in Leaders' Questions in the Dáil yesterday. It must be said that @MichealMartinTD and his colleagues have consistently pursued this issue on a political level for several years now.

@LawUCC @UCC



"The decision of Mr. Justice Iarfhlaith O'Neill also vindicates the vital and professional work of Dr. Conor O'Mahony and the Child Law Clinic in University College Cork who has advocated on behalf of the victims for so long and exposed the illogicality and cruelty of the Government's position in the past four years. Much of the argument put forward by Dr. O'Mahony has essentially been upheld by the judge in his assessment."

(Video of this statement can be viewed [here](#))

The work was not without its challenges. The project has spanned over 10 years, but students rotate every year. This means that we were constantly going back to the start with the students; and on occasion, it was not time-efficient to do so. Conscious of this and of the stakes involved in the case, certain tasks were completed by the Clinic Directors without student involvement, while the students were allocated other Clinic projects instead. On reflection, a greater effort to bring students up to speed and maintain their involvement at all stages of this particular high-profile work would have been worthwhile.

This relates to a further challenge involved with the Clinic – namely, the fact that a 5-credit module does not allow sufficient time and engagement with work of this nature. Each year, it feels like the students are just getting to the level they need to be at when they move on and are replaced by the next year’s cohort. The structure of the LLM in Children’s Rights and Family Law currently only allows space for a 5 credit module, but this is something to be reflected upon if the Clinic is to be taken to a higher level as a student experience.

Section Six: Conclusion

As part of the Quality Review process in 2020, the Clinic surveyed various clients who have made use of the Clinic’s services over the years. Feedback on the quality of service provided was universally positive; but there was also a clear message that the Clinic needs to do more to make potential clients aware of its existence and activities, as many practitioners are not familiar with it and do not seek out its services. A new website was developed in 2019, and the School of Law also appointed a Communications and Marketing Officer. This provides an opportunity to raise the profile of the Clinic’s work among potential stakeholders.

Succeeding in this endeavour carries a risk that the Clinic is overwhelmed by requests for assistance, and so there is a balance to be struck. Our capacity is limited by the relatively small numbers involved (on average, 6 students per year register for the module) and the various other time commitments of both the students and the Clinic Directors. As alluded to above, expanding the module from 5 credits to 10 credits would be one way to generate additional capacity, and this would bring additional pedagogical benefits as students would have more opportunity to hone their skills in research and brief writing. At the same time, there would be a risk factor: the flow of requests for assistance is impossible to control, and, if it were to fall below a certain level, a 10-credit module may be difficult to sustain. This would generate pressure to drum up work for the Clinic.

A further issue identified during the course of the Quality Review process was the need to develop the professional skills of students (including, but not limited to, writing for clients) in addition to their academic skills and subject knowledge. Significant effort is expended in the Clinic’s work in bringing draft material produced by students up to a standard where it is “client ready”. The School of Law’s new strategic plan for 2020-2023 has prioritised the embedding of professional skills into the curriculum on all Law programmes; this should help to ensure that students commence the Clinic module at a higher base level in this skills. It is aimed to achieve this goal in 2021-22.

Bearing these factors in mind, the short- to medium-term plan is to proceed cautiously and aim to develop the Clinic’s work in an incremental and organic fashion. We will seek to strike a balance between our research capacity (as determined by numbers of registered students and the time commitment required of them within the programme) and client demand. Neither of these elements is entirely predictable, and so concrete targets have not been identified. In broad terms, we will aim to sustainably increase both the quality (and, when feasible, the quantity of the work), so as to improve the educational impact on our students and the contribution of the Clinic to securing positive children’s rights outcomes for the community.