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'Private Family Arrangements' for Children in Ireland: The Informal Grey Space In-Between State Care and the Family Home

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Abstract

The literature on alternative care focuses overwhelmingly on formal, court-ordered placements; voluntary care placements are discussed less frequently. Least attention of all has been given to informal kinship care placements, where a child is cared for by relatives but is not formally in the legal care of state authorities. In Ireland, these placements, when facilitated by state authorities in lieu of a care order or voluntary care agreement, are known by professionals as 'private family arrangements'. This article explores evidence which shows that the use of such arrangements is motivated partly by a concern for subsidiarity, and partly by necessity: they provide a source of placements in cases where regulatory requirements and a lack of resources would otherwise make the placement challenging or impossible. However, this strategy carries significant risks. Private family arrangements receive less support and oversight from state authorities than formal care placements, and family members providing care under this model have no legal rights or responsibilities in respect of the child(ren). This places the child(ren) in a precarious position and raises concerns regarding a lack of equity of care. The article will illustrate the impact of these concerns and make recommendations for reform.

Keywords: child protection, children's rights, informal kinship care, kinship diversion,

private family arrangements

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Introduction

There are normally two decision-making pathways when states need to provide care for children out-of-home due to child protection or welfare concerns. The first—courts or court-like systems—usually involve courts or tribunals with independent decision-makers such as judges and/or lay and professional members (see Burns *et al.*, 2017). The second, lesser-researched pathway called voluntary care involves parents consenting to their child being placed in state care (usually by signing a form authorising the placement) (see, e.g. Corbett, 2018; Pösö *et al.*, 2018). In either case, once a child enters care in Ireland, legal responsibility for the care of the child shifts to the state for the duration of the care placement. Although in voluntary care placements in Ireland, parents retain decision-making rights over important issues like medical treatment (see O'Mahony *et al.*, 2020).

In recent decades, welfare states have shifted from reliance on informal care arrangements and congregated residential placements with low levels of state scrutiny to highly regulated, approved placements with intensive assessment of prospective carers, regulations and quality-assurance mechanisms (see Department of Health and Children, 2003; Health Information and Quality Authority, 2012, 2018; MacDonald *et al.*, 2018). In Ireland, the state has come to rely heavily on the family unit, through approved foster-care, to provide the majority of care placements for children (see Hill *et al.*, 2020). However, this reliance on the family unit goes beyond formal approved foster-care placements. This article presents new research relating to unexpected findings from the *Voluntary Care in Ireland Study* regarding reliance by social workers on informal, unapproved care placements with relatives, which are referred to by professionals as 'private family arrangements' (hereafter PFAs). The study data suggest that the dichotomy presented in the previous paragraph between court-ordered placements and formal voluntary care agreements provides an incomplete picture of pathways to out-of-home care in Ireland. It also suggests that many of the disadvantages experienced by children in voluntary care placements, when compared with the care experiences of children in court-ordered placements (Brennan *et al.*, 2020), may be amplified in PFAs. This is particularly evident where PFA cases are closed by the Child and Family Agency (Ireland's dedicated statutory body responsible for child protection and welfare,

also known as Tusla), resulting in access to oversight, resources and services for a child to be further diminished.

By PFAs participants meant informal, unregulated kinship care arrangements where children are facilitated by social workers to live with unapproved relative carers with the consent of a parent. Under such arrangements, these children *are not* in state care under the Child Care Act 1991; this has important legal and practical consequences relating to legal responsibility for the care of the children, oversight of the placement and support for the carers.

This paper aims to make three contributions: first, we present new data on child protection and welfare social workers' decision-making on an under-researched area of practice in many countries. Secondly, we examine the facilitative role played by social workers in setting up these arrangements, rather than placing children in formal state care placements. Thirdly, we reflect on what the data indicate about the Irish welfare state, the provision of childcare services and professionals' views on formal versus informal care. The guiding questions for the article are: What are PFAs? Why are they being used by social workers in the Child and Family Agency? What are the legal, policy and practice implications of the use of PFAs?

Private family arrangements in Ireland

MacDonald *et al.* (2018) noted that there is considerable lack of clarity on terminology and definitions in the literature on informal kinship care. By PFAs, we mean arrangements where children are cared for full-time by kinship carers (family/relative) who are not parents or legal guardians. The child is *not* in state care under the Child Care Act 1991 pursuant to either a care order under Section 18 or a formal voluntary care agreement under Section 4. The carers are not recognised or assessed as foster-carers by Tusla, but social workers play a facilitative role in setting up the arrangement.

In the international kinship care literature, the terms 'informal kinship care placements' (MacDonald *et al.*, 2018) and 'kinship diversion' (Annie E. Casey Foundation, 2013) are used. These arrangements sit in the middle of Geen's (2004) continuum of formal and informal placements, whereby child welfare agencies facilitate these arrangements, but they are not formalised through a care order or voluntary care agreement (see Figure 1).

In the Irish context, PFAs must also be distinguished from 'private foster care' placements notified to the state under Part IVB of the Child Care Act 1991 (as inserted into Section 16 of the Children Act 2001). Private foster-care placements are similar to PFAs in that the state does not have a legal responsibility to assess the family carers; there are no

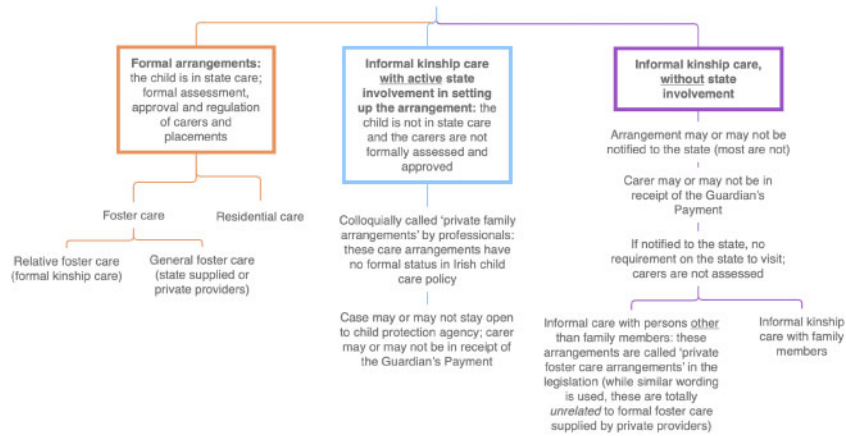

Figure 1: Formal and informal care continuum in Ireland

fostering payments from the state to support the carer, and there is no obligation to visit and monitor the child's circumstances, unless there are child protection concerns. Part IVB does empower the Child and Family Agency to enter premises and private dwellings to investigate the care and attention that the child is receiving in a private foster-care placement; however, even this minimal power does not apply to PFAs. This is by virtue of the fact that PFAs, according to the data presented below, invariably involve placements with family members, but Part IVB defines private foster-care as placing a child in the full-time care of 'a person other than his or her parent or guardian, a person cohabiting with a parent or guardian or a relative' (with relative being defined as 'a grandparent, brother, sister, uncle or aunt, whether of the whole blood, half blood or by affinity'). As such, a private placement with a family member does not qualify as a private foster-care placement under the Act, and Part IVB in its entirety is inapplicable.

PFAs are also distinct from guardianship. With the enactment of the Children and Families Relationships Act 2015, it became possible for a person other than a parent to apply to the court to become a guardian if:

i. he or she has provided for the child's day-to-day care for a continuous period of more than twelve months and
ii. the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship in respect of the child.

The granting of guardianship rights does not extinguish the existing rights of a parent, but it gives any guardian appointed in this way the

right and responsibility to care for the child and take decisions regarding crucial aspects of the child's upbringing. The court will decide on guardianship applications according to what is in the best interests of the child. A court may grant full or partial guardianship rights to the applicant and may resolve any disputes that arise as between guardians as a matter of private family law. A carer in a private family arrangement may apply to the court after twelve months to become a legal guardian, at which point the child would be legally in their care and custody. However, unless and until the carer is appointed a guardian, or becomes a formal foster-carer as part of a care order or voluntary care agreement, he or she has no legal right or responsibility to care for the child.

A carer in a private family arrangement can apply for a social welfare payment called a 'Guardian's Payment' of €186 a week (and does not need to be a guardian to access this payment, in spite of its title). Notably, this rate is significantly lower than the official fostering rates of €325 a week for children aged 0–11 years and €352 for children aged 12+. Such a significant difference in rates is important for two reasons. First, international studies of informal kinship care have noted a concerning relationship between kinship care and poverty (MacDonald *et al.*, 2018; Daly, forthcoming). Secondly, care work in families falls disproportionally on women (see Tarrant *et al.*, 2017). As the qualitative data below will show, the 2015 legislation and the availability of a social insurance payment are significant in social workers' decision-making.

Strengths of private family arrangements in safeguarding children's rights

It is arguable that PFAs have numerous positive aspects. They operationalise the principle of subsidiarity by providing care at local level, with minimal or no state intervention. They are consistent with family first policies; keep children within their communities and social networks; are more likely to be in the child's best interest as children are placed with family and therefore have increased contact with parents and wider kin; and stigma is reduced for children as they are not in state care. Moreover, PFAs are cost-effective for the state: the number of children in state care is reduced, thus relieving pressure on overstretched child protection resources.

Weaknesses of private family arrangements in safeguarding children's rights

As against this, PFAs have a questionable legal foundation. At most, facilitating the arrangement might be seen as part of Tusla's obligation

under Section 3 of the Act to promote the welfare of children; but since both the Agency and the child's parents have concluded that the child should not remain at home, it would appear that the Act requires Tusla to either take the child into care under a voluntary agreement (Section 4) or to make an application for a care order (Section 16). Moreover, Article 42 A.2 of the Irish Constitution stipulates that when parents 'fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected', it is the obligation of the State to 'endeavour to supply the place of the parents' as provided by law. By creating a situation where children are cared for neither by their own parents/guardians or by the State, PFAs raise questions about the discharge of this constitutional obligation.

Due to the absence of a solid legal foundation, PFAs are potentially precarious. The child is placed in a legal twilight zone, where the person(s) with legal responsibility for the child are not caring for the child, and the persons who are caring for the child have no legal responsibility for the child (and therefore no formal right to have custody of or make decisions for the child). There is a lack of legal foundation for contact arrangements with parents and siblings, and an ever-present risk that a parent who is unable to care for the child re-asserts their right to custody with no state oversight. Costs and related burdens shift from the state to the family. There is no formal structure for oversight and review of the care arrangements, which generates a risk that care placements are unsuitable. Access to supports, advice, services and advocacy are at a lower level than for formal state care placements. In the absence of proper supports and oversight, reliance by state authorities on PFAs as an alternative to a formal care placement abdicates the state's responsibility under Article 8 of the European Convention on Human Rights (ECHR) and related case law to put in place measures that will support the possibility of reunification of the child with his or her natural parent(s). Finally, young people turning eighteen in such placements have no entitlement to aftercare supports under the Child Care (Amendment) Act 2015 as they are not in state care.

An illustrative example of what can go wrong in PFAs can be found in the case of *PG v Child and Family Agency* (Tusla) [2018] IEHC 812. In this case, the applicant took care of three of her grandchildren pursuant to a private family arrangement set up by the Child and Family Agency when her daughter was deemed to be unable to look after the children. No care order or voluntary care agreement was in place under the Child Care Act 1991. An initial care conference took place five months into the placement; but thereafter, no formal review of the child's care arrangements took place for the following four years prior to the High Court judgement. (In contrast, foster-care regulations require that formal foster-care placements under the Child Care Act 1991 be reviewed within two months of the initial placement; at least once

every six months in the first two years of the placement; and thereafter not less than once in each calendar year.)

A dispute arose between the applicant and her daughter about access arrangements and other issues, which generated proceedings in the District Court and an appeal to the Circuit Court. The Circuit Court judge expressed concern at the precarious situation, both legally and financially, which the applicant was in whilst caring for the three children. Ultimately, the applicant brought judicial review proceedings in the High Court in which she argued that the children had significant individual care needs that required to be addressed by the Child and Family Agency by way of an application for a care order. She also submitted to the Court that in the absence of court orders, there was no legal basis for the three children to be in her custody, care and control; she was gravely concerned that either her daughter or her daughter's partner may take the children and that she would not be in a legal position to prevent this. Strikingly, the Child and Family Agency responded to the application by stating that the case was closed to the Agency as it had no child protection and welfare concerns in relation to the children whilst they were in their grandmother's care.

Meenan J in the High Court noted that the history of court applications in this case 'underlines the vulnerable legal situation which the applicant is in. Such cannot be of any benefit to the three children involved who themselves have significant childcare demands.' As such, he was satisfied that there was a basis for a care order to be sought by the Child and Family Agency. Meenan J noted that it was difficult to see how the Agency could have concluded that there were no child protection and welfare concerns in relation to the children given that it had not reviewed their case for four years, and in fact had not replied to child protection concerns raised in letters written by the applicant's solicitor. He held that the applicant was entitled to succeed in her claim that the Agency was required to make an application for a care order in respect of the children.

The *PG* case illustrates how PFAs which are not working well can place children at risk. The person who was caring for the children (the grandmother) had no legal right or responsibility to do so. The person with legal responsibility for the children (the mother) was disputing access arrangements and could legally have removed the children at any time, notwithstanding her own inability to care for them. Finally, the Child and Family Agency appeared to have abdicated its responsibility to promote the welfare of the children by failing to review their placement and resisting the grandmother's requests for the Agency to apply for a care order. Ultimately, the grandmother had to seize the initiative by way of judicial review proceedings compelling the Agency to act. This cannot be considered a satisfactory approach to child protection. The case raises questions as to the suitability of some PFAs as a form of

out-of-home care; but the absence of any empirical data on PFAs has made a robust assessment of this issue impossible to date. This article will fill that gap by presenting the first empirical data collected on PFAs in Ireland.

Research design

The *Voluntary Care in Ireland Study* employed a mixed-methods approach, combining large-scale quantitative data collected from social workers with semi-structured qualitative interviews and focus groups with social workers, solicitors and children's advocates. Scoping interviews and an exploratory survey with a small number of professionals and parents were undertaken to prepare for the main data collection phases. A national voluntary care survey of social workers and managers in the Child and Family Agency was circulated through their internal email system with a maximum possible sample of c.1,300–1,400 eligible staff. There were 243 responses (c.18 per cent participation rate; 85 per cent female, 13 per cent male and 2 per cent other).

The qualitative phase concentrated on seven counties between 2019 and 2020. Six focus groups with twenty-six social workers and social work managers were undertaken with twenty female and six male participants. Twenty solicitors (nine males and eleven females, representing 80–100 per cent of the possible sample of legal practitioners in each county) took part in interviews. Ten of the solicitors worked for the Legal Aid Board, seven worked in private law firms representing the Child and Family Agency and three worked in private practices with experience of representing both parents and/or guardians *ad litem*. Due to Coronavirus disease (COVID-19), six interviews were undertaken with children's advocates online using Microsoft Teams. A thematic analysis of the qualitative and open questions survey data was undertaken using NVivo 12 software.

Permission to undertake the study was provided by relevant managers in the Child and Family Agency, Empowering People in Care (EPIC) and the Legal Aid Board. Solicitors in private practice sought permission from a senior partner, and each participant participated in an informed consent process. Ethical approvals were provided by the ethics committees of the Child and Family Agency's and at the authors' institution. Ongoing phases of our study involve collecting data from parents whose children entered state care through voluntary care agreements and interviews with care leavers (age more than eighteeen).

Findings

Use of and support for private family arrangements

Of the seven counties that featured in our study, the use of PFAs as a pathway to out-of-home care was commonplace in six. In Counties A and G, social workers reported that PFAs are increasingly common. They are regularly used in County B, more common than voluntary care in County C, and social workers in Counties E and F advised that it is their first option when a child is in need of care. Only in County D did social workers say that PFAs were uncommon. None of the participants could provide exact statistics for such arrangements as they are not officially reported by teams. Our qualitative data indicate that PFAs are used in preference to formal voluntary care arrangements in some cases:

> I would have very little experience with Section 4 [voluntary care] actually. It's mostly a [private] family arrangement, I would say, around here anyway. (Solicitor 12, Legal Aid Board, County C)
>
> … that [PFAs] certainly would be something that I would come across more than an actual voluntary care agreement … (Solicitor 13, County A)

There was some data from solicitors on the breakdown of private family care arrangements and children transitioning into state care:

> … sometimes a private arrangement has been in put in place. It's done for a particular reason. There's a collaborative approach at the start and maybe after a period of time something has gone wrong and something has changed and next thing there's an application in to me— 'Can you please lodge an interim care order application.' And when I read the social work report I'm always a little bit concerned that—why wasn't I involved in this six months ago? (Solicitor 9 (Tusla), County C)

A significant number of participants in the study expressed positive views in support of the use of PFAs. Practitioners referred to a long history of informal kinship care in Ireland (O'Brien, 2015) and a culture of subsidiarity with care being provided at local level in communities and families, without state involvement. Ireland is not unique: the historical use of such arrangements can be found in other countries also (United Nations, 2010; Annie E. Casey Foundation, 2013; Hunt, 2020). For some practitioners, PFAs are the first and best option:

> I think for years that kind of arrangement has existed and it hasn't been formalised. It's always been there. It's in probably in every culture … that arrangement is part of our culture. So, I think it definitely should remain. (Solicitor 7, Legal Aid Board, County C)
>
> They should be more common than they are. They're actually the best-case scenario really in a lot of ways … Like I had a case … we were then assessing her parents, which is the little boy's grandparents, as

> foster parents … then I said, listen, hold on a second, this is just crazy. We're going to pay these people—and it's not about money—we'll pay these people to look after their grandson? (Social Worker Focus Group 3, County D)

Additionally, study participants argued that voluntary care can allow resources that would otherwise be spent on expensive court proceedings to be channelled into early intervention that might prevent children coming into care in the first place. In the case of PFAs, public expenditure is significantly reduced through limited or no state involvement.

Concerns around the use of private family arrangements

A minority of legal and social work professionals expressed reservations about the use of PFAs:

> I don't think because you're a granny or you're the uncle or the auntie that you should be told that's grand, you can go off there now and look after that child and we don't have to worry about you now anymore. Because the child is being taken out of care and put into the care of somebody else … I think that's wrong. I think it's wrong that people say no, private family arrangements are fine. I don't think they are. I think they're great provided they get the same assistance as everybody else (Social Worker Focus Group 3, County D).

> … and while they might be absolutely perfect and appropriate carers, financially they would struggle … to care for another child on their own with no financial assistance from ourselves or no backing when you do have volatile parents and they know exactly where the child is and who's with them and where they live and—it's just I suppose having that [voluntary] care agreement puts a bit of structure on the plan, whereas the private arrangements it's very difficult to put any stipulations involved because there's like no obligation to actually adhere to them … (Social Worker Focus Group 4, County B).

These participants emphasised the 'burden' shifting from the state to families for the care of children in need of protection, safety and stability. Of particular note is that children in PFAs are likely to have similar complex psycho-social and educational needs to children in state care (as seen in the *PG* case, discussed above). Moreover, as a child in a private family arrangement is not in formal state care, the usual legal safeguards are absent, which leaves the informal kinship carer isolated and without supports in situations where relationships between family members can be fractious.

Five of the six children's advocates interviewed raised significant concerns regarding the use of PFAs:

> I've had other private care arrangements where it's caused a lot of difficulties in terms of: are they entitled to aftercare, aren't they entitled

> to aftercare? If the private care arrangement breaks down, it can be very messy and you know there can be a lot of issues around money … For me, I think there needs to be clear cut plans in place. If a child is in a placement it needs to be an assessed, vetted placement to ensure that the child doesn't go from the frying pan into the fire. So, I wouldn't be pro private arrangements at all (EPIC Advocacy Officer 2).

Concerns raised by children's advocates included children's challenges with accessing resources; lack of oversight; ineligibility for aftercare supports; the need to use assessed and vetted placements; a lack of a stable platform to make decisions as the child is not in state care; difficulties in helping children access their rights due to a lack of 'status'; 'drift'; and payments to carers being insufficient to cover costs. Many of these concerns were also expressed in relation to formal voluntary care placements but identified as being further compounded in PFAs. At the same time, there was some recognition by children's advocates that children and young people may sometimes be happier with these arrangements due to, for example, 'not having the stigma of being in care' (EPIC Advocacy Officer 2). One advocate stated that the issue '…is conflicting for me because I know the young person might be happy with it' (EPIC Advocacy Officer 4). Overall, the negatives of PFAs appear to outweigh the positives for these advocates. One advocate questioned whose interests these arrangements serve:

> … is it out of good will that the young person isn't brought into care? … if it is that it was just easier than bringing them into care, then you're looking at they are not getting the support that should be available to them. (EPIC Advocacy Officer 6)

The data from our study found that the ability of parents in Ireland to revoke consent to formal voluntary care agreements at any time and demand the immediate return of their child was a concerning factor for social workers and solicitors (Brennan *et al.*, 2020). Again, the risk that this may place a child in an unstable and precarious position is heightened in PFAs, where there is no formalised arrangement for monitoring revocation of consent, parental access or family reunification. This is arguably a breach of international human rights law (including Articles 3 and 8 of the ECHR and Article 19 of the Convention on the Rights of the Child), which clearly requires states to take measures to ensure that children are not allowed to remain or to be returned to the care of their parents in circumstances where their parents are not capable of adequately caring for them.

Social workers' decision-making: selecting a care option

In the survey data, some participants noted that PFAs exist as a practical solution to a supply shortage of formal foster-care placements.

Furthermore, some kinship carers who would heretofore would have been assessed and approved as formal foster-carers no longer meet the increasingly strict approval criteria for foster-care, health and safety guidelines and Garda (police) vetting. It was clear from our data that there are differences across social work teams in the use of such arrangements and differences of opinion as to whether such arrangements ought to be facilitated:

> [The] fostering department tell us we cannot place children in private family arrangements. We just can't do it. We're not allowed to do it as far as they're concerned. Legally their legal department said no, there's no foundation for it, there's no grounds for it, therefore you can't do it and the risks are too big. We do it anyway (Social Worker Focus Group 5, Counties E and F).

> The only reason that it's a private arrangement is that our requirement for vetting has changed, whereas if that was three years ago that would have been a relative foster assessment (Social Worker Focus Group 2, County A).

Whilst there is no formal Tusla policy on PFAs, social workers in one focus group in County A indicated that their decision-making was influenced by the Agency's implementation of the Signs of Safety (Turnell and Murphy, 2017) practice model. They suggested that the model was partly responsible for a move away from receiving children into formal care through voluntary care agreements:

> Participant 2: Yeah, like I have, as I said, no experience of voluntary care. But with Signs of Safety, with some of the children on my caseload we have gone for private arrangements instead of going for voluntary care perhaps ...

> Participant 3: Then Signs of Safety wasn't in three years ago either and I think the Signs of Safety is moving it that way... or natural response on a Friday night at a door is 'Nana, can you take him?' or 'is there an auntie who can take him?' And then, look, let's do that. We'll kick off a family assessment on Monday, we'll get that ball rolling, and we're happy that they're safe and secure. You're actually doing exactly the same thing. The only difference on this point is that our fostering departments are saying that's not a safe way to go, so we're not going to stand over it. But we're doing it anyway.

> Moderator: And how do you feel about that?

> Participant 4: Well, I feel, you know, I feel, I would be concerned that this is down to money. And I think that's—pardon my phrase—that's chicken shit, you know. We're, you know, we're going down this road because—why are we going down this road? We haven't actually changed anything apart from the money...

> Participant 1: We're going down that road because SOS is telling us that that's what we should be doing.

> Participant 4: Yeah. I'd be worried about that. I think we're taking a cheap way out here (Social Worker Focus Group 2, County A).

Two aspects of this exchange merit highlighting. First, in Signs of Safety, developing a safety and support network around the child is a fundamental aspect of the model (Turnell and Murphy, 2017). Secondly, foster-care payments and related costs for children in care come out of Tusla's budget, whereas a child in a private family arrangement is not financially supported by the Agency. Further to Participant 1's comment, there is no obvious policy embedded in Tusla's Signs of Safety implementation that sets a target to reduce the numbers of children in care (Tusla, Child and Family Agency, 2017), although all child protections systems seek to ensure that only children that need to be in care are admitted. However, one participant expressed a contrary position, suggesting that the Signs of Safety mapping promoted a move away from a private family arrangement towards formalising care due to the 'unregulated' nature of the arrangement:

> Participant 5: I have a private arrangement. It's very grey. I don't like it. I think it's—yeah, I'm not—we did the Signs of Safety mapping on this case, which is where the two boys are in private arrangement, and we looked more towards care in the mapping … We should be looking at care … it's very unregulated … (Social Worker Focus Group 2, County A)

This view was in clear contrast to the views quoted earlier and may be more reflective of the practitioner's preference and views on PFAs rather than due to the Signs of Safety model as such. A review of five Signs of Safety pilots in the UK surprisingly found that Signs of Safety 'reduced the probability of kinship care compared with non-kinship care, contrary to the aims of the programme' (Baginsky *et al.*, 2020, p. 11).

Discussion

This article examined data collected on PFAs as part of a wider study on voluntary care in Ireland. The initial data indicate internal differences in usage and support for PFAs. Some social work teams in Tusla see PFAs as largely positive; some are adamantly opposed to its usage; and others may not want to use these arrangements, but may have no choice due to an insufficient supply of formal foster-care placements. There was a good level of support amongst front-line practitioners for PFAs, but this was also accompanied by clear unease on issues that mirror key themes in the international research (Tarrant *et al.*, 2017; MacDonald, 2018). Participants' concerns in relation to voluntary care, namely, the lack of independent oversight to ensure adequate resources and services for a child, and that care placements can 'drift' for lengthy periods of

time where permanence and security may not be achieved, are likely to be amplified in a private family arrangement context.

The exploratory data in this article have demonstrated that PFAs are a part of the formal-informal care continuum for children in Ireland who are cared for out-of-home. The evidence indicates that social workers are facilitating an unknown, but seemingly not an insignificant number of placements of children with kinship carers under informal arrangements that are neither recognised nor regulated by the Child Care Act 1991. There is no formal Tusla policy supporting this practice (see Tusla, Child and Family Agency, forthcoming), although some study participants indicated that the implementation of Signs of Safety may be partly influencing social workers' decision-making. The qualitative data further suggest that some levels of 'street level' decision-making and policy formation by front-line practitioners, coupled with issues related to the supply of formal care placements and regulatory requirements governing qualification to act as a foster-carer, are contributing to social workers' decisions to facilitate PFAs.

Whilst the regulatory side of the welfare state has significantly developed in Ireland through the development of child-care policy and legislation (see, e.g. Burns and McGregor, 2019), the service provision side of the welfare state does not appear to have kept pace through investment. For example, Ireland only has one social worker per 1,000 children compared with 4.4 per 1,000 in Northern Ireland. As outlined above, PFAs receive minimal levels of state support by comparison with formal foster-care placements and thus shift a significant burden in caring for children from the state to families providing kinship care. Thus, the overall comparatively lower level of investment in service provision may partially account for Tusla social workers' reliance on the less resource-intensive option of PFAs rather than formal foster-care placements, although this hypothesis articulated by some participants requires further research.

By facilitating such arrangements, the state, intentionally or unintentionally, is shifting the financial, emotional and care burden from the state to families. Given what we know about the gendered nature of care labour, such arrangements are likely to increase the existing care load on female kinships carers, especially grandmothers (see Tarrant *et al.*, 2017). The state acts a facilitator in setting up both formal and informal care arrangements (see O'Leary and Butler, 2015), and as a result engages in differential treatment of formal and informal carers and of the children they care for. This differential treatment is heighted by the fact that that there are clear differences between team-level policies and practices associated with PFAs, meaning that children receive different services and interventions depending on their postcode.

Further research is required to examine the lived experiences of children, young people, carers and parents involved in private family

arrangements in Ireland. Such research should include the collection of statistical data on the use of such arrangements by social work teams, an examination of outcomes for children and young people in these arrangements, and an in-depth examination of the contribution of Signs of Safety in the utilisation of PFAs. Nonetheless, even on the limited evidence available to date, it is possible to conclude that the existing *ad hoc* approach to PFAs raises considerable concerns. The minimal level of resourcing and oversight associated with such placements when compared with formal foster-care placements means that children are at risk of discrimination by virtue of their placement type. The *PG* case in particular illustrates how PFAs can place children in a precarious and vulnerable position that places their welfare at risk. Kinship carers providing care under private family relationships are equally placed in an unenviable position: having selflessly agreed to the placement, they are charged with the care of children who may have significant needs but are given neither the legal responsibility nor the supports they need to properly perform this task.

The drawbacks of the current usage pattern of PFAs suggest that reliance on such arrangements in their current form should be discontinued. Both the Irish Constitution and the Child Care Act 1991 provide that where parents fail to provide adequate care for their children, the state has a legal obligation to act as the default parent. This responsibility should not be abdicated behind a smokescreen of subsidiarity. The existing pathways to formal kinship foster placements can facilitate a degree of subsidiarity whilst balancing this against the discharge of the state's obligation to vindicate the rights and ensure the welfare of children.

We acknowledge that professional and family members who facilitate these arrangements believe that they are acting in the child's best interests. Furthermore, we recognise that some family members may object to the regularisation of such placements and may baulk at such state intrusion. However, at a minimum, it is a risk for professionals to set-up such arrangements without a policy framework, guidance on what types of cases are most suitable for these arrangements (see Annie E. Casey Foundation, 2013), and a clear structure for the provision of ongoing supports for these children and their carers. More importantly, all children placed in foster-care placements that are arranged or facilitated by the state should benefit from the same level of regulation, oversight and support. To the extent that a lack of resources militates against this, the solution is not to place some children in more poorly resourced placements: it is to advocate for additional resources to be provided so that all children in foster-care can benefit from equity of care. Regulatory barriers relating to the qualifications to become a foster-carer can also be overcome. For example, one issue of concern is that the blanket requirement that all foster-carers must be vetted before a child is placed with them can preclude children being placed with relatives in

emergency cases due to the timeframe involved in completing a vetting application. Again, the solution to this difficulty is not to circumvent the law by placing children in an informal and unregulated foster placement: it is to adapt the law so that the vetting requirements can allow for formal foster placements with relatives in emergency cases, with some level of interim checks put in place whilst an expedited vetting process is concluded.

Finally, any argument that PFAs could be adapted to overcome the disadvantages set out above relating to regulation, oversight and resourcing in unconvincing. Any adaptations aimed at equalising oversight arrangements and resourcing would render PFAs essentially indistinguishable from existing formally recognised kinship foster placements. Since formal kinship care arrangements are a well-established feature of the Irish foster-care system (26 per cent of all formal care placements), we suggest that—notwithstanding the support amongst some practitioners for the use of PFAs—the better solution is to bring all kinship placements under this heading in the existing model and to discontinue reliance on *ad hoc*, unregulated PFAs. This should be coupled with enhanced support for formal kinship carers, in line with previous recommendations (see McClurg Riel and Shuman, 2019). Voluntary care agreements could provide a framework to regularise these care arrangements.

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