

From Foster Care to Adoption:

An Examination of Critical Issues

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Workshop Aims

- Share wisdom and deliberate on issues
- Collectively benefit from knowledge, skills and value-base of all attendees
- Debate lessons learnt from past experience and discuss key issues for future
- Reflect on how ideological positions shape our feelings about adoption from care

Exploring this relationship is complex because at its core, consensual and **specifically non-consensual adoption**, is a practice that is disputed.

Adoption (Amendment) Bill 2016 permits

- **Consensual adoption for children of married parents** – Predicted that take up will be limited
- **Non-consensual adoption** – **Focus of this paper**
- Adoption of children by civil partners and co-habiting couples
- Step parent adoption

Adoption Bill, 2016 – Non Consensual Adoption

Section 54 (2) before making an order: (our italics)

- the child has been in care continuously for a period of 36 months
- there are no reasonable prospects that the parents will be able to care for the child
- the adoption is a 'proportionate' means by which to supply the parents.
- order is granted only if the child has had a home with the applicants for not less than 18 months preceding that time
- The views of the child will be given due weight *having regard to the age and maturity of the child.*

Proposed Legislative Changes

Pre-42A -1988 Act.

- Criteria was too high – impractical?
- Emphasis on abandonment and parental failure
- Proof of abandonment up until age of 18 years of age
- Children left in legal limbo

Post-42A: -Adoption Bill 2016

- Emphasis and focus shifted away from parental failure with focus on children's rights and best interests / proportionate
- Threshold of proof of parental abandonment reduced
- Paves the way for period of time where child may be eligible for adoption to be reduced

(McCaughren and Parkes 2016)

Adoption Reform Implications

- Adoption moved from periphery position to adjunct to the care system
- Shorter timeline for abandonment
- Adoption without parental consent
- Service delivery pathway different for children currently in care and future children entering care
- The vulnerability of the child within the court system
- TUSLA post-adopt families (case studies)

(O'Brien and Palmer, 2015; O'Brien and Palmer, 2016b)

A Glance at where Ireland is Compared to Other Child Welfare Systems

Permanency

Removal of Parental Rights /
Adoption

Permanency : Family
Preservation,
Reunification /
Guardianship

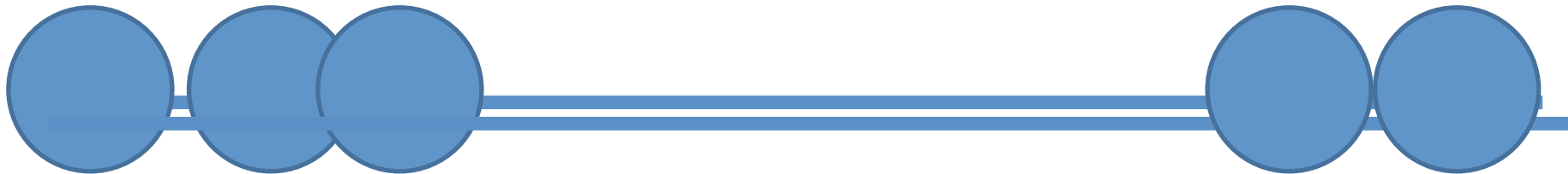
USA

UK

NSW

New Zealand

Nordic



IRELAND?



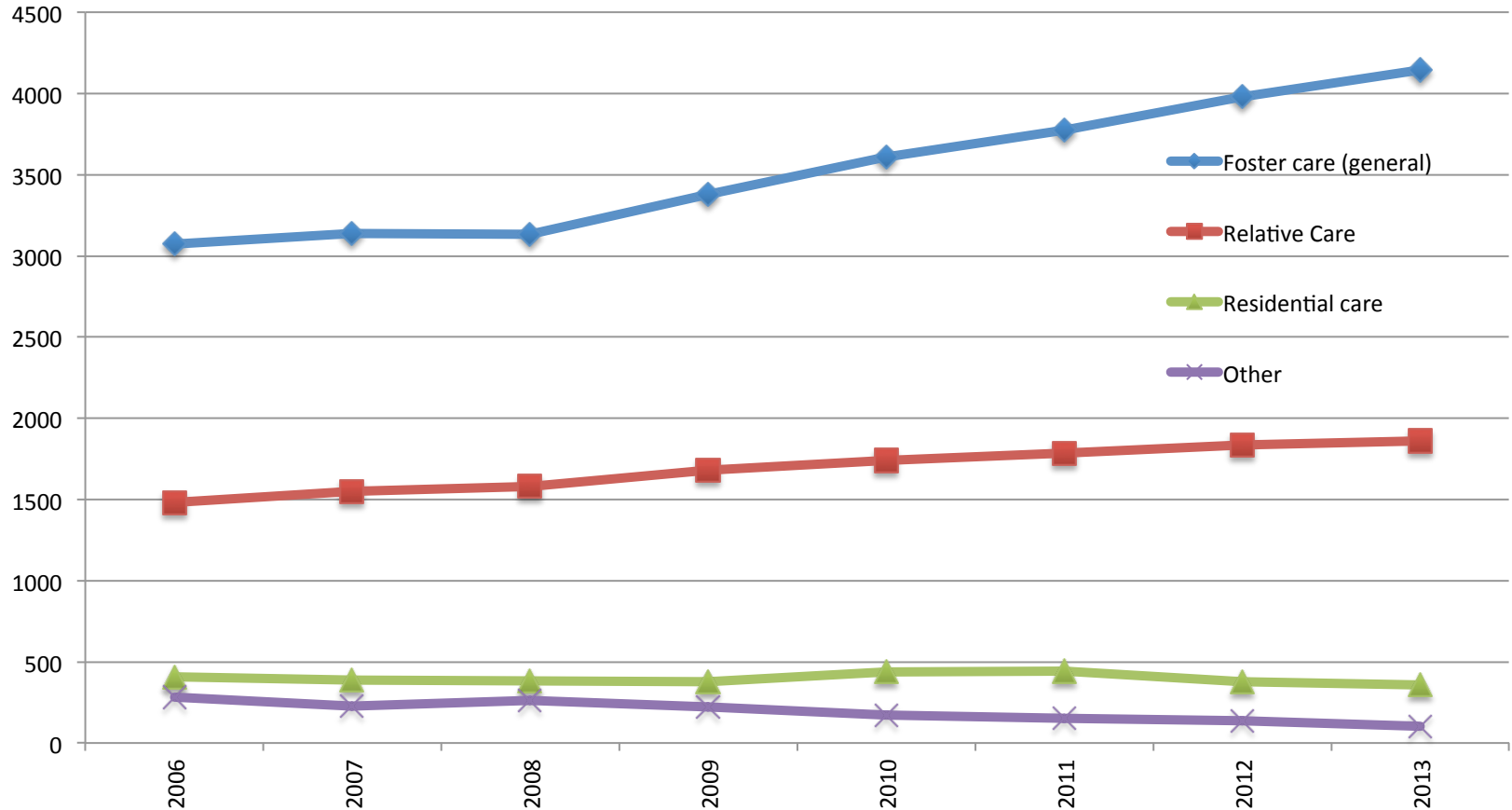
Debate

- Is it adoption primarily that is needed to
 - Address permanency for children in care
 - To target poor outcomes for children
 - Tackle drift and delay in the care system
 - Does this need to be done within defined timelines
 - Balance between legalism; managerialism and best practice as drivers?
- What is the place of LTFC?

Trends in Irish Care System

**Within Which Proposed Change is
Occurring**

Trends in the Number of Children in Foster Care, Relative Care & Residential Care, 2006 to 2013.



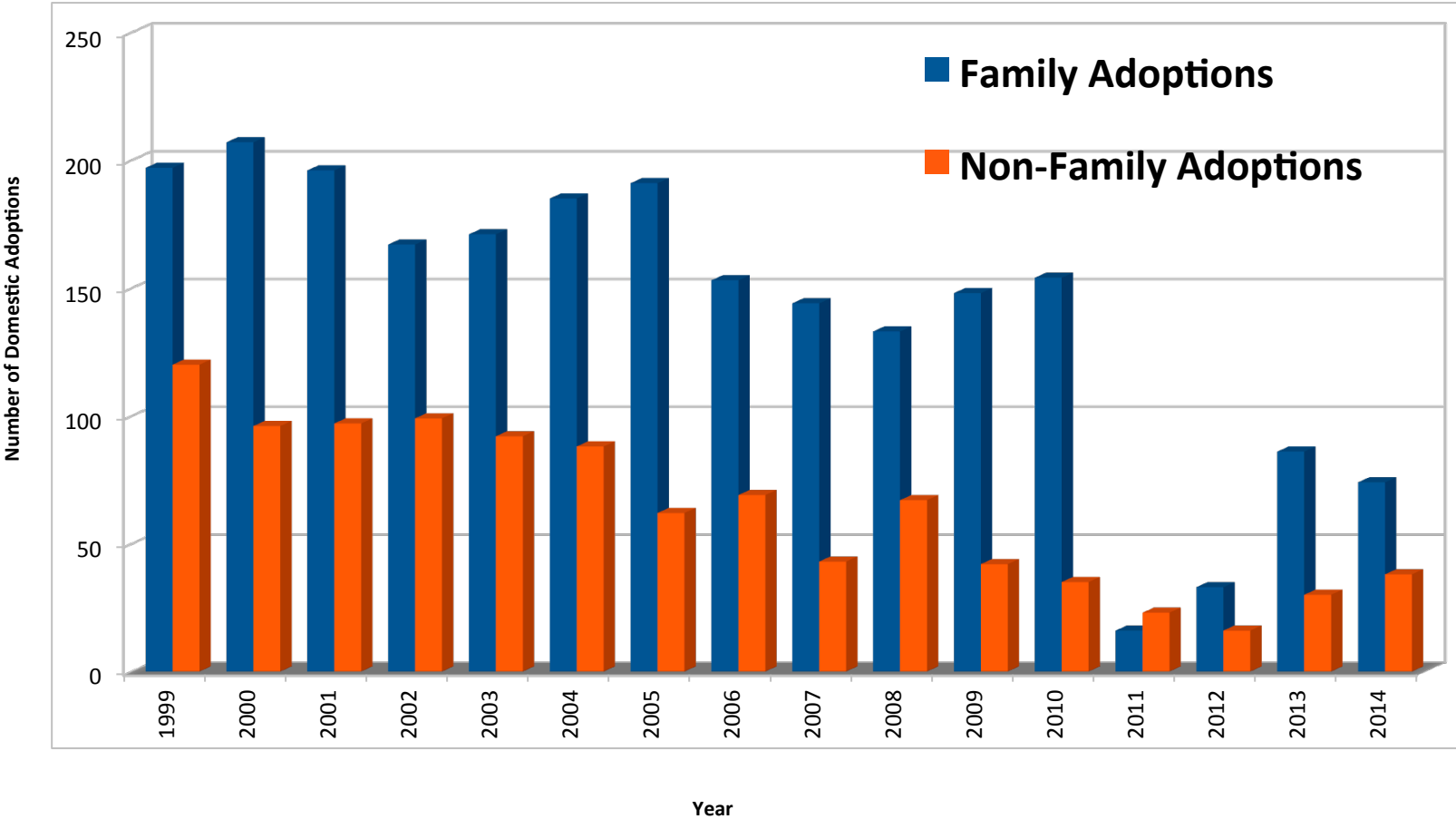
(TUSLA Review of Adequacy Report, 2012 & 2013)

No and % of Children in Care according to Length of Time

At the end of 2014, 38% of children in care were in care for more than 5 years.

Year	No & % of CIC < 1 year	No & % of CIC 1 - 5 years	No & % of CIC > 5 years	Total CIC
2014	14% (934)	48% (3,078)	38% (2,442)	6,454

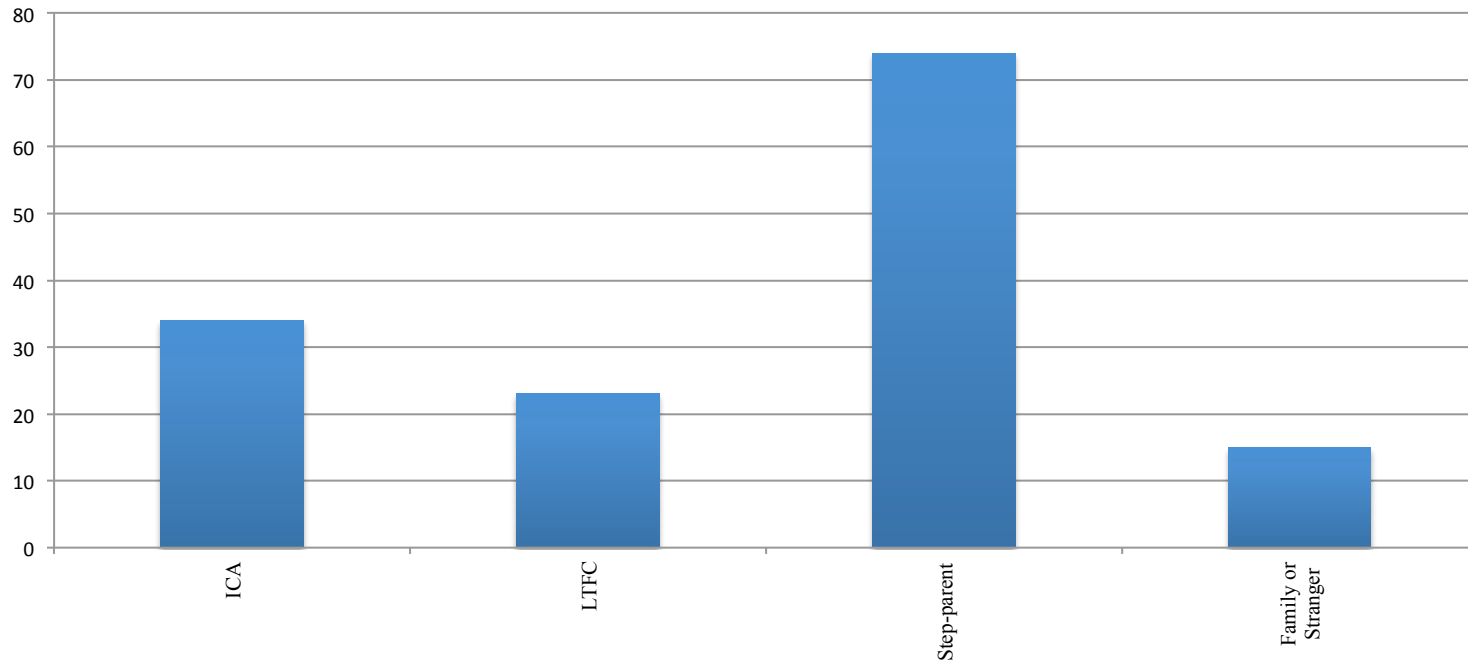
Domestic Adoption Orders Granted in Ireland, 1999-2014



(Adoption Board and Adoption Authority of Ireland Annual Reports, 1999 to 2014)

Profile of Adoption Out of Care System in Ireland

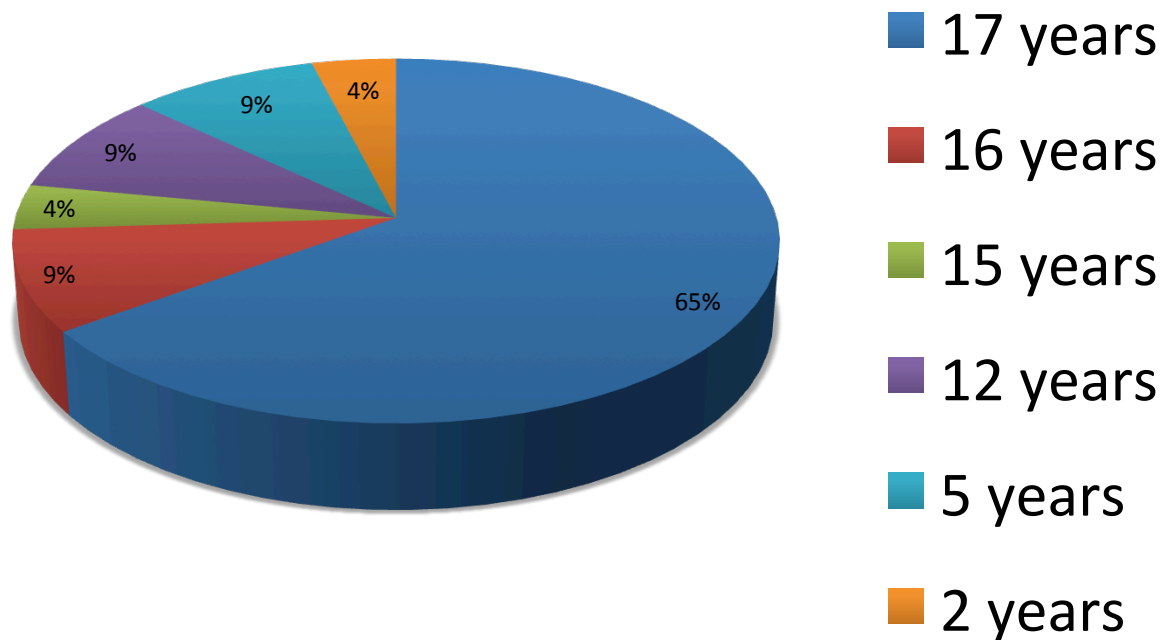
Different Strands of ICA and Domestic Adoptions in Ireland in 2014



Note: There is no breakdown separating family and stranger adoptions in the 2014 official statistics. It is likely that the majority of adoptions in this category are stranger as the bulk of family adoptions are contained in the step parent category.

(AAI Annual Report, 2014)

Percentages shown for Age-range of adoptions from LTFC in 2014



(Adoption Authority of Ireland)

A Tusla Perspective

(Burke 2015

Paper presented at UCD / SWIFC-
IASW Conference)

Adoption is?

- Adoption is a service for children
- Adoption is not for all children
- Adoption is not for all Foster Families
- Adoption may not seem a proportionate response to the Birth family situation. Balancing this with the child needs for a permanent home is paramount.

(Burke, 2015)

Fostering to Adoption within Tusla (Burke 2015)

Number of children *fostering to adoption* in

- 2013 = 17
- 2014 = 23
- 2015 = 13

Challenges for TUSLA (Burke 2015)

- No legal framework to facilitate an “open” adoption – but currently practiced.
- Working together across agencies and professions to ensure the best interest of each child on a case by case basis.
- Cultural shift.
- In a time of limited resources, the challenge of prioritising a needs led service over a resource led continues.

Tusla Response (Burke 2015)

- Greater recognition that small infants and children have a greater urgency to have a care plan that will support their developmental need for stability and permanency.
- Fostering to Adoption Handbook entitled “A Child’s Journey to Permanency” –open to various forms of permanency.
- Permanency planning policy document being drafted
- Concurrent policy hand in hand with permanency policy as a way of avoiding drift in care.

Profile of Current *Fostering to Adoption* in Tusla (Burke 2015)

- **What type of child?**
- Placed in foster care at a young age
- Good relationship between foster carers and child
- Child wants the adoption aged 16/17 yrs
- Child has some contact with the birth parent/s but usually not satisfactory
- Birth parents have not parented for considerable length of time. No possibility of them parenting in the future
- Child often approaching 18 years of age
- Child led, not care plan led

Experiences and Major Discussion Points

Best Interest of the Child

Derives from Article 3 of the (UN) *Convention on the Rights of the Child*.

How is it defined? First –paramount?

Who is involved in the definitions?

How do changing contexts impact? eg time and culture

Evidence base used and accepted?

Proportionality

- What is a proportionate response?
 - What needs to be in place?
 - What are the thresholds?
 - Who decides and in whose interests?
- Article 8 European Court of Human Rights requires that any intervention of the state between parents and child should be proportionate to the legitimate aim for the protection of family life.

Proportionality

- More central now in judicial proceedings.
- Need to balance the rights of all the participants involved and arrive at a result which is in the best interest of children, while proportionate to the legitimate aims of other stakeholders in the process.

Permanency Planning

- Planning for permanence focuses on the long term goals for looked after children and the extent to which **non-consensual adoption** is now being considered as part of permanency planning within the Irish Child and Family
- Agency is a matter that warrants exploration.

Decision Making Context

- decision makers must ensure that as limited interference as possible with the family, while still providing the requisite protection for the child;
- working in partnership with parents and families in preserving the child's familiar relationships.
- We in Ireland have a lot of experience with this balancing. Case law in Ireland - in the future will determine practice.

Adoption as a 'Proportionate Response' *(Kelly, 2015)*

- Child has suffered or is likely to suffer extensive abuse or neglect and **where evidence has been rigorously examined** by the courts;
- **Efforts have been made & opportunities given** to overcome the difficulties in the child's family;
- There is **no prospect in the foreseeable future** of the child returning to its birth family;

Soares de Melo V Portugal

- This is a recent case brought to the European Court of Human Rights earlier this year, where the ECHR highlighted the potential for discrimination (in this case on the grounds of poverty) that can arise in adoption cases.
- It found that the Portuguese Govt. had violated Art 8 of the ECHR.

Adoption and the *Best Interest of the Child*

- Implications for the *loss of social worker support, advice and guidance* once adoption is finalized?
- How to manage *birth family contact*, the *child's identity* post-adoption?
- Will *LTFC remain as a legitimate option* within care system for children with strong birth family connections? (case-by-case basis)
- Does *open adoption* provide a good balance in rights of child and birth/adoptive families? (U.S. model)
- Does *concurrent planning* place the best interest of the child as central? (U.S. and U.K models)
- What is the *ideology behind relationships in foster care* : ownership and forever : shared and sustainable /changing ?

Some Arguments FOR and AGAINST CHANGE to Extend Adoption as Part of the Care System.

For Adoption

Alternatives fail to provide security

Adopters available / untapped cohort

Openness / Concurrent planning mitigate risks

Properly resourced, it works and outcomes good

Children's right

Against Adoption

LTFC is permanent option

Increases stigma of care

Destabilise LTFC system : carers/children

State termination of parental rights – human rights

Research evidence patchy /value driven

**An examination of the Issues
Involved from the Perspective of
Foster Carers and Social Workers**

Crehan's Key Questions are ...

- Is adoption by their foster carers a viable care option for children in *long term foster* care?
- If so – then which children?
- And – what are the views of foster carers in relation to adopting their foster children?

Foster Carer's Views

- **Lack of information** regarding adoption among foster carers and social workers
- **Fear of overstepping role** as foster carer
- **Fear of jeopardizing the placement** (vulnerable position of foster carers)
- **Impact of frequent change of social worker on the care plan**
- Adoption can be **disservice to child with strong birth family connections**
- Worry that **child might regret adoption**
- **Loss of services and support** after adoption
- **Can put strain on good relations** with birth family in a way LTFC does not

(Cregan, forthcoming)

Discussion Questions:

(Based on research study findings: *Palmer - Phd Forthcoming*)

- **Competence of existing legal framework?**
- **Impact of adoption without parental consent** on balance between parental rights versus children's rights? (family-based support versus adoption)
- How can the **vulnerability of the child be protected** within the court system?
- **Lack of legal clarity** concerning post-adoption services?
- Should there be a **legal stipulations for post adoption contact?**
- How will adoption reform **change social work involvement in judicial process?**

(Palmer, PhD Thesis, forthcoming)

Discussion Questions:

(Based on two research study findings: *Adoption Reform and Social Work Perspectives and Challenges*) Palmer, 2016a; McCarthy, 2015)

- Adoption changes **from periphery position to adjunct to care system.**
 - Is there an ideological division within the social work profession between adoption and foster care social workers?
- Adoption reform presents the need for reflection and examination of **ideological positions within social work practice?** (legacy of past, pride in family-based care)
 - What are the challenges in terms of change in nature of care planning and available resources? (foster and adoptive parent assessment, involvement in judicial process, etc)
- **Huge wealth of experience within social work** and here is a need for inclusive debate, for engagement at practice level.
 - Who are the **key opinion formers** : BAAF, CWLA, Assoc of SW and is their value position explicit?

(Palmer, 2016a; McCarthy, 2015)

Central Issues - Future of Child Welfare

- **Permanence** : broadening out of legislative provision
 - One size cannot fit all
- Can adoption in Ireland become really **open** : legislative lag?
- Business and corporate world **influences** : what happens when 'means' loses sight of the end?
- Multiple ways forward : '**draconian / punitive influence in service provision : another way?**
- What does '**best interest of child mean**'? Accepted by all as a 'good thing'. Lack of def.
- Making **visible the 'invisible processes'** – concurrent planning

The Future....

- **Differences in use of Adoption for children in care now and children entering in the future?**
 - **NO** easy answers / NO simple solutions
- What are the other legal mechanisms that could be used alongside adoption : Expand Guardianship?
- It is a Value Laden Practice
 - Impact of OWN VALUES /own experiences of family life and childhood
- Practice Dilemmas – Need to Research Social Workers Positioning re the Proposals

Questions, Questions, Questions

- What are the questions the audience would now like to deliberate on?

For Small Groups Discussion

- What are the issues that you think will be beneficial in the proposed change and why?
- What are the reservations that you have and why?
- What are the changes that you would like to see happen
 - Critical changes needed
 - Changes that would be useful

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