

ORIGINAL ARTICLE

The role of the courts in protecting children's rights in the context of police questioning in Ireland and New Zealand

Louise Forde 

Lecturer in Law, Brunel Law School,
Brunel University London

Correspondence

Louise Forde, Lecturer in Law, Brunel
Law School, Brunel University London.
Email: louise.forde@brunel.ac.uk

Funding information

Irish Research Council
Government of Ireland
Postgraduate Scholarship:
[irce818caea5d4292dc92bbd752fd5f8ddc](https://doi.org/10.1111/hojo.12472)

Abstract

Ensuring safeguards are in place from the earliest stages of criminal investigation is essential to ensure that children's rights in the youth justice system are adequately protected. The rights of children in conflict with the law are protected under the UN Convention on the Rights of the Child (UNCRC), and in situations where these rights are breached, children must have access to an effective remedy. National courts have a role to play in ensuring that children's rights are protected and in providing necessary remedies. This article explores the role the courts have played in upholding children's rights in the police questioning process in Ireland and in New Zealand.

KEYWORDS

children's rights, courts, Ireland, New Zealand, police questioning, youth justice

1 | INTRODUCTION

Like adults, children suspected or accused of committing criminal offences are entitled to legal safeguards in the course of the investigation process. Ensuring safeguards are in place from the earliest stages of criminal investigation is essential to adequately protect and vindicate children's rights. The rights to which children in conflict with the law are entitled are protected under the

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UN Convention on the Rights of the Child (UNCRC), and where these rights are breached, children must have access to an effective remedy (UN Committee on the Rights of the Child, 2003). National courts have a central role to play in ensuring that children's rights are protected in practice and in providing remedies for any breaches; this is also a fundamental part of securing children's access to justice in a broader sense (Liefwaard, 2019).

States parties to the UNCRC undertake a binding obligation in international law to implement its provisions effectively in national law (UN Committee on the Rights of the Child, 2003), and while states have taken different approaches to achieving this (see Kilkelly, Lundy & Byrne, 2021), judges have a significant amount of power to activate and advance these legal rights in circumstances where other authorities may have fallen short (Stalford & Hollingsworth, 2017). The judiciary has a central role to play not only in making sure that children's UNCRC rights are 'respected' in a basic manner in national law, but in ensuring that they are truly 'realised'. This implies that rights are going to be interpreted in a manner that is child-centred and cognisant of the many issues specific to children who are trying to exercise their rights in the context of a police interrogation.

National courts therefore have a central role to play in protecting and upholding children's rights principles. However, the extent to which this can be done is often dependent on a range of other factors, including the approach taken to incorporation of the UNCRC at the domestic level, the extent to which national statute law reflects international children's rights principles, and the extent to which knowledge about issues specific to children that can arise in the police questioning context have been disseminated among professionals. This article seeks to explore the role that national courts have played in interpreting statutory safeguards and upholding children's rights in the police questioning process in two jurisdictions: Ireland and New Zealand.

Comparative research in youth justice can be a complex exercise, with many issues relating to national context, history and culture impacting the evaluation of particular approaches and policies in different contexts (see further, Field, 2019; Goldson, 2019; Nelken, 2019); it is, nonetheless, a valuable tool for comparing the broad policy directions taken in different youth justice systems as well as state responses to issues of concern (see, e.g., Cunneen, 2020; Goldson, 2019; Goldson et al., 2021; Hamilton, Fitzgibbon & Carr, 2016; Leenknecht, Put & Veeckmans, 2020; Muncie, 2011). While Ireland and New Zealand take different approaches to youth justice, there are a number of similarities in the youth justice systems and wider penal culture that make a comparison useful (Forde, 2021; see further Hamilton, 2013). The approach to youth justice in both countries can be characterised as broadly progressive in outlook, with an increasing focus on children's rights being a particular characteristic of law and policy development in the two countries in recent years (Forde, 2021). It is also significant that the New Zealand system of youth justice provided inspiration for aspects of the Irish Children Act 2001 (Kilkelly, 2014; Lynch, 2012).

This article arises from a broader comparative study of the youth justice systems of Ireland, New Zealand and Scotland. A comparison between the judicial approach taken in Ireland and New Zealand to the issue of children's rights in police questioning is particularly constructive in teasing out the extent to which the children's rights principles under the UNCRC have been reflected in the national courts, and the factors which have influenced this in each jurisdiction. This article considers the applicable statutory frameworks in place in both Ireland and New Zealand, and the legal challenges that have been brought before the domestic courts, and focuses particularly on three issues of importance for children's procedural rights during the police questioning process: access to a lawyer; access to assistance from a parent, guardian or other adult; and the way information is provided to children.

The article begins by setting out in broad terms the key provisions under the UNCRC that relate to children's procedural rights when they are being questioned by the police. This will provide an overview of key issues which are developed further in the substantive discussion of how these rights have been interpreted by the national courts in the jurisdictions under consideration. This is followed by a brief overview of the relevant national law relating to children's procedural rights in Ireland and New Zealand and of the avenues through which children can seek remedies for breaches. The discussion will then examine the case law from the courts in Ireland and New Zealand in relation to the right to legal advice, the right to assistance from a parent or appropriate adult, and the right to information. The article concludes with some reflections on the insights that this comparative analysis can provide on the protection of children's rights in police questioning through the courts.

2 | CHILDREN'S RIGHTS IN POLICE QUESTIONING

The rights to which children are entitled in the investigation process are protected under Article 40 of the UNCRC. The European Court of Human Rights (ECtHR) has also been clear that breaches of children's rights during police questioning can lead to a violation of Article 6 of the European Convention on Human Rights (ECHR) (*Martin v. Estonia* (Case No. 35985/09 (First Section), 30 May 2013); *Salduz v. Turkey* ((2000) 49 EHRR 19)). A particularly important concept for ensuring that children's fair trial rights under Article 6 are protected is that of effective participation, a concept established by the ECtHR (*S.C. v. the United Kingdom* ([2004] ECHR 263); *T. & V. v. the United Kingdom* ((1999) 30 EHRR 121)), and which has since been adopted by the UN Committee on the Rights of the Child (2019).

Specific provisions under Article 40 of the UNCRC highlight the importance of the safeguards which must be in place to adequately protect children's procedural rights. Article 40(2) sets out a list of procedural safeguards that must be in place when children are the subject of criminal investigation. They include the right to prompt and direct information about the charges, the right to legal or other appropriate assistance, the right to assistance from an interpreter, and the right to have his or her privacy respected throughout the proceedings. Children also have the right to appropriate assistance from their parents under the terms of Article 40(2); a child's parent or guardian should also be informed promptly of the charges, and the parents or legal guardians should be involved in the proceedings, unless it is not considered to be in the child's best interests. The Committee on the Rights of the Child has provided further guidance on how each of these rights is to be implemented, and they have been particularly clear that states have positive obligations to enact legislation and to ensure practices are in place to safeguard children's rights from the first moment of contact with the youth justice system, including any interactions with police (Committee on the Rights of the Child, 2019, para. 41).

The guidance issued by the Committee in General Comment No. 24 makes it clear that the child's effective participation is a fundamental aspect of the fair trial guarantees set out under Article 40(2), and further that this requires the state to take active steps to ensure that the child can, in fact, participate in a meaningful way. These steps include ensuring that child-friendly language is used at all times, that adaptations are made to the physical environment of interview spaces, and that children have the support of all practitioners, access to a legal representative and support from appropriate adults (Committee on the Rights of the Child, 2019, para. 46). These entitlements to information that is comprehensible and usable, access to effective legal representation, and the maximum support of parents, guardians or other relatives are particularly strong features of the

Committee's guidance on the proper implementation of Article 40(2); the specific guidance will be discussed further during the more detailed discussion of these issues later in this article. What is particularly striking is that the Committee is clear that these are minimum standards, and that states should strive to implement higher standards (Committee on the Rights of the Child, 2019, para. 38).

Despite the development of this significant body of standards at international level (see also UN Committee on the Rights of the Child (2019); Council of Europe guidelines on child-friendly justice; EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings), children continue to experience real difficulties in exercising their rights effectively when being questioned by the police. Children in conflict with the law are at a developmental stage characterised by significant changes in the brain, and children's psychological capacities can influence how they respond to questioning (Grisso et al., 2003; Monahan, Steinberg & Piquero, 2015).

Children can face difficulties in understanding the information given to them or the questions they are being asked (Rogers et al., 2014), they tend to be less mature than adults and more focused on short-term outcomes (Cleary, 2017, p.122; Schmidt, Reppucci & Woolard, 2003), may be more suggestible (McLachlan, Roesch & Douglas, 2011; Redlich & Goodman, 2003), and may not fully appreciate the potential consequences of being questioned (Grisso et al., 2003; Kohlman, 2012, p.1636). A number of studies have also documented the difficulties children experience in exercising their right to access legal advice (e.g., Cleary, 2014; Kemp, 2013; Kemp, Pleasence & Balmer, 2011), and in determining the role of either a parent or another 'appropriate adult' (see, e.g., Cleary, 2014; Dehagani, 2017; Dehagani & Newman, 2019; Peterson-Badali & Broeking, 2010; Pierpoint, 2006).

In addition, research has found that a significant proportion of children in conflict with the law experience communication difficulties (Johnston et al., 2016; Winstanley, Webb & Conti-Ramsden, 2019), which can have an adverse effect on their ability to participate effectively. While children also experience difficulties in exercising their procedural rights during trial (O'Leary, O'Toole & Watt, 2013; Rap, 2016), the context of police questioning is particularly important given the implications that it can have for the rest of the criminal justice process (Gooch & von Berg, 2019; Lynch, 2018). As this body of research demonstrates, ensuring adequate protection for these rights in practice is a particularly complex issue when children are suspects; when these issues come before the courts, the question of the extent to which these child-specific issues are taken into account can significantly impact the level of protection provided.

3 | PROTECTION FOR CHILDREN'S RIGHTS IN DOMESTIC LAW IN IRELAND AND NEW ZEALAND

Both Ireland and New Zealand are parties to the UNCRC, and so have a legal obligation to ensure that the rights within it are fully implemented (UN Committee on the Rights of the Child, 2003). In addition, Ireland is party to the ECHR, and therefore also has an obligation to ensure that children's fair trial rights under Article 6 are protected.

The primary legislation governing the youth justice system in Ireland is the Children Act 2001, and the majority of cases involving children are heard by the Children Court. In New Zealand, the Oranga Tamariki Act 1989 provides the legislative framework for the operation of the youth justice system, and cases involving children are primarily heard before the Youth Court. While it is beyond the scope of this article to explore the differences in each country's youth justice system

in detail, it is relevant that there is an increasing focus on the implementation of children's rights under the UNCRC in both jurisdictions (Forde, 2021).

In Ireland, Part 6 of the Children Act 2001 governs the treatment of child suspects in Garda Síochána (police) stations, and sets out the procedural steps that must be followed. The Treatment of Persons in Custody in Garda Síochána Stations Regulations are also important, and a Code of Practice issued in 2015 sets out additional guidance relating to access to a solicitor. Section 55 of the Children Act contains the key provision concerning the treatment of children in Garda custody; it requires that Gardaí 'shall act with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability, while complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime and the protection and vindication of the personal rights of other persons'. In New Zealand, the Oranga Tamiriki Act 1989 is the primary legislative framework for youth justice. Section 5 and Section 208 contain a number of guiding principles that must be taken into account in the interpretation and implementation of the provisions set out under the legislation. In the investigation of offences, Section 208(h) is particularly important, and requires that 'the vulnerability of children and young persons entitles a child or young person to special protection during any investigation'. Both pieces of legislation, then, contain important statements that recognise the special vulnerability of children in criminal investigations, and recognise the need for special protections, and the special needs of children. Specific provisions in relation to access to information, access to legal advice, and the role of parents can also be found under both statutes.

Children who experience breaches of their rights can seek remedies at national level in a number of ways. In Ireland, first, children can seek remedies for breaches of their statutory rights under the Children Act 2001. The second avenue by which children in conflict with the law can seek recognition of, and vindication of, their rights is through alleging a breach of their rights under the Irish Constitution. Article 38, which guarantees that '[n]o person shall be tried on any criminal charge save in due course of law' is of special significance in this regard. Third, children in conflict with the law in Ireland are entitled to bring challenges based on alleged breaches of their rights under the ECHR under the European Convention on Human Rights Act 2003. Given the fact that ECtHR jurisprudence increasingly cites the UNCRC as an important interpretative aid in understanding the scope and meaning of ECHR rights in cases involving children (Kilkelly, 2001; Liefwaard, 2016; Lyon, 2007), the possibility of bringing a case at national level alleging a breach of ECtHR rights can have particular significance for children seeking to vindicate their rights before the domestic courts.

In New Zealand, children can also seek remedies where the provisions of the Oranga Tamariki Act are breached. It is especially significant that stronger steps have been taken towards legal incorporation of the UNCRC, and since 2019, Section 5 of the Oranga Tamariki Act has required all those exercising functions under the Act to respect and uphold the rights of the child, including those set out under the UNCRC. This provides scope for children to argue that their rights under this statutory framework should be interpreted in accordance with the UNCRC. The New Zealand Bill of Rights Act 1990 (NZBORA) is a further piece of legislation on the domestic level which is of relevance to the situation of children in conflict with the law. The rights of citizens in the criminal process are set out in Sections 21–27 of NZBORA, and apply equally to adults and children; unlike Ireland, however, this does not have the same status in law as a Constitution. This makes the Section 5 requirement to interpret the Oranga Tamariki Act in line with the UNCRC all the more significant, as the provisions of statutory law must now be interpreted and

evaluated through the lens of international children's rights law. In both countries, therefore, a number of avenues exist for children to seek a remedy when their rights have been breached.

The remainder of this article examines how children have sought remedies for breaches of their procedural rights before the domestic courts in Ireland and New Zealand, through the lens of available published case law, with a specific focus on the right to information, the right of access to a lawyer, and the right to support from a parent or guardian. In doing so, it aims to consider the extent to which children's rights can be supported and advanced by the courts, and some of the factors which may be significant in considering how best to advance children's rights in this way.

It is important that an analysis of the publicly-available decisions inevitably leaves us with a partial picture of how these issues are playing out more broadly in each jurisdiction. Other issues may be arising before the courts in their day-to-day business, and the published judgments do not give a full sense of whether these issues are arising, and if so, how they are being dealt with. Nonetheless, this focus remains valuable as it provides important insight into the types of challenges which are being brought and the issues which are being raised before the appellate courts. This is a particular issue in the Irish context, where, to the author's knowledge, only three court decisions (which are all discussed in this article) have been issued which deal with children's rights when they are being questioned by police since the Children Act 2001 came into force in 2006. While recent research has shed some light on the process of questioning children by members of an Garda Síochána (the Irish police) and highlighted a number of issues for children's rights (Kilkelly & Forde, 2021), it is unclear how often legal challenges based on issues relating to police questioning are being raised before the courts. By contrast, a greater number of published cases available from the New Zealand courts give attention to the type of procedural safeguards that must be in place to ensure that children can participate effectively in the investigation process. In addition, and unlike in Ireland, a number of cases from the New Zealand Youth Court are also publicly available; in Ireland, while some decisions of the Children Court can be published at the discretion of the presiding judge, they are not routinely available. As the vast majority of cases involving children at the day-to-day level will be dealt with by the Children Court, this means we do not have a clear picture of how the issues discussed in this article are dealt with at a day-to-day level. While this point about the types of legal challenges that are brought and the availability of court judgments will be revisited in the final part of this piece, the remainder of the article will consider how the decisions which are available have provided protection to children's rights in relation to the right to support from a parent or guardian, the right of access to a lawyer, and the right to information.

4 | THE APPROACH OF NATIONAL COURTS IN IRELAND AND NEW ZEALAND IN UPHOLDING CHILDREN'S RIGHTS IN THE INVESTIGATION OF OFFENCES

4.1 | The right to support from a parent or guardian

The right to have the support of a parent or guardian is a key right set out under Article 40(2)(b) of the UNCRC. Parents or guardians should be present throughout the proceedings, and states should legislate for the maximum possible involvement of parents and guardians to provide psychological and emotional assistance to the child and to promote effective outcomes. Where it is not possible for a parent or guardian to be present, the Committee recommends that a relative or other caregiver should be allowed by law to provide this assistance (Committee on the Rights of

the Child, 2019, para. 57). Research studies have also noted the importance of the presence of a parent or guardian for children, given that they can be an important source of emotional support (Broeking & Peterson-Badali, 2010; Quinn & Jackson, 2007, 244). Not having this type of support can increase children's anxieties and stress levels (Cleary, 2017, p.121).

Despite these benefits, the presence of a parent or guardian during police questioning is not always uncomplicated. Parents may be unable to attend a police station for a variety of reasons (Broeking & Peterson-Badali, 2010). Moreover, there can be significant difficulties in determining the nature of the role that a parent or guardian is expected to play in these situations; this is compounded in many jurisdictions by a lack of a clear definition of what the role encompasses (Broeking & Peterson-Badali, 2010; Quinn & Jackson, 2007). There are often significant contradictions in the roles that parents are expected to play in this context, in particular in relation to balancing their role in protecting children's legal interest with potential urges to encourage children to be truthful or to accept responsibility for wrongdoing (Burke et al., 2014; Cavanagh & Cauffman, 2017; Cleary & Warner, 2017; Cohen, 2020).

Parents can also misunderstand aspects of police procedures around interrogation and the rights to which children are entitled in this situation (Cavanagh & Cauffman, 2017; Cleary & Warner, 2017). Parents themselves may be feeling stressed or anxious, may have limited knowledge of the potential consequences of the questioning process or of their children's legal rights (Cohen, 2020). All of these issues impact the nature of parental involvement in the police questioning process, the role they are expected to fulfil, and consequently on the rights of the children concerned.

Where a parent cannot attend a police interview, another adult – who is known as an 'appropriate adult' in some jurisdictions, including England and Wales – may be asked to attend. However, as is the case in relation to the parental role, the duties that the appropriate adult is expected to discharge, and who is best suited to fulfil this role, is the subject of much debate in the literature (see Broeking & Peterson-Badali, 2010; Dehagani, 2017; Dehagani & Newman, 2019; Pierpoint, 2000, 2006).

In Ireland, the Children Act 2001 requires that the parent or guardian of a child who is being questioned by the Gardaí must be informed 'as soon as practicable', and must be informed of the child's entitlement to consult with a solicitor and of how that can be availed of (Section 58, Children Act 2001). Section 61 provides that no child should either be questioned or asked to make a written statement in the absence of either a parent or guardian or 'another adult'. There are two issues of note in relation to the presence of 'another adult' under Section 61. First, the other adult who is to be present in the absence of a parent or guardian is, by statute, to be nominated by the Garda in charge of the station. While children may be given a choice in practice about who should attend in the absence of their parent (Kilkelly & Forde, 2021), this is not a legal entitlement. Second, the provision lacks any detail on what the role of the adult might be, nor does it require that the adult should be 'appropriate', or that they should have any specific qualifications or duties. This is a particular issue given the potential complexity of the role that they may be required to play, and the significant debate in the literature on the subject about the appropriate scope of the role and the qualifications needed for the role (Dehaghani & Newman, 2019; Kemp, Pleasence & Balmer, 2011; Mergaerts & Dehaghani, 2020; Parry, 2006).

The two cases that have arisen before the Irish courts demonstrate the difficulties that can arise. In the 2007 case of *D.P.P. v. Onumwere* ([2007] IECCA 48), the applicant challenged the lawfulness of his detention in Garda custody on the basis that statutory provisions requiring a parent or other appropriate adult be informed, and the entitlement to have a parent or appropriate adult present with the child when asked to make a written statement had been breached. The applicant was

17 years old, and during his detention had been given access to an interpreter arranged by the Gardaí and had visits from his 18-year-old girlfriend. However, he argued that a social worker assigned to him in the context of the asylum process should have been contacted, as per his request, to fulfil the role of the 'other adult'. However, the Court ultimately held that his access to the interpreter and to his adult girlfriend had satisfied the legislative requirements of Section 58. While the Court affirmed that the statutory right to have a parent or appropriate adult informed of a child's arrest could not be complied with by 'some mechanistic process of empty formula', it is unclear how this provision was applied in a substantive or meaningful way in this case, particularly given that his preference to have his social worker present was not accommodated. While emphasis was placed on the fact that the applicant in this case had been living independently, there was little consideration given to the precise role expected to be played by the accompanying adult, and how well this role had been fulfilled in this case.

However, a different approach was adopted in the 2016 case of *D.P.P. v. K.D.* ([2016] IECA 341). Here, the applicant had been accompanied to the Garda station by his father, who was excluded from the interview room on the basis that he may have been a witness. A peace commissioner was appointed to accompany K.D. during the course of three interviews, during which K.D. made significant admissions. The responsible adult did not interject at any point during the course of the interviews, nor did he suggest that the applicant consult a lawyer. Later, he indicated that he saw his role as being to protect the interviewee's rights, and to ensure he was not interfered with by the Gardaí in any way, but did not see it as his function to suggest that the child access legal advice. While under Section 60 of the Act, a parent, guardian or other adult has a right to seek legal advice on behalf of a child, this is not an explicit duty of an adult acting in this role. In the circumstances, the Court stated that '[c]onsideration might well have been given by the responsible adult, alert to his responsibility in this respect, to requesting at that point that a solicitor should attend so that the child could be afforded the opportunity to consult with and obtain professional advice before being interviewed further' (para. 28). In quashing the applicant's conviction, the Court held that the responsible adult:

... undoubtedly had the right to seek a solicitor on behalf of the appellant at any stage during the interviewing process. The fact that he did not consider it to be his place to make such a request because of his assumption that the option to request a solicitor had been canvassed prior to the commencement of the interviewing process rendered him in this Court's view incapable of fulfilling the role of responsible adult as contemplated by, and provided for in, s. 60 of the Act of 2001. (para. 30)

While the Court in this case ultimately acknowledged that the role of the adult can extend to a duty to at least suggest that the child may want to consult a solicitor in certain circumstances, many questions remain unanswered.

While the judgment indicates that something more than mere presence is required, the legal basis of the Court's conclusion is elusive. The term 'responsible adult' is not found in the legislation. The Court did not make reference to the fact that the role of the adult in this situation is not clearly set out under the Children Act. Submissions relating to the child's rights under the Irish Constitution, or the ECHR do not appear to have been raised in this case. Therefore, while the ultimate conclusion reached in the *K.D.* case was clearly more in line with the spirit of the international guarantees – and particularly the comments of the Committee on the Rights of the Child in relation to the importance of the support to be provided by parents or other adults acting in this role – than that given in *Onumwere*, it is clear that the lack of more detailed

provisions in the legislation itself which set out the parameters of this role and the obligations attached to it is problematic. In the absence of elucidation of solid legal principles in relation to the rights of the child being questioned in relation to an offence, or to the role of the accompanying adult, the legal basis for ensuring that these protections lead to effective protections for children's rights in this context remains tenuous.

The issue of the role expected to be played by the 'nominated person' – who may be a parent or guardian – has also been the subject of discussion before the New Zealand courts. There are a number of important differences in the legislative scheme relating to nominated persons that are significant. Sections 229–331 of the Oranga Tamariki Act relate to a nominated person, and place a duty on police to inform the nominated person (as well as the parent or guardian, if another person is fulfilling this role) when a child is to be questioned. Where a child or young person refuses or fails to nominate someone, then the police may appoint an independent nominated person. The nominated person must be informed of the child's statutory rights, and has an entitlement to consult privately with them, under Section 229 of the Act. Section 222(4) and Section 231(4) detail the duties of a nominated person; these duties include to take reasonable steps to ensure that the child or young person understands the rights that have been explained to them, and to support the child before and during questioning of the making of an official statement.

Although this provision setting out the duties of a nominated person is not exceptionally detailed, it does contain a number of important elements which have been considered by the New Zealand courts on a number of occasions. The role of the nominated person was explained in the case of *S. v. Police* ((14 March 2006), HC, Auckland, CRI 2004-404-515), and some of the limitations of the role were also considered. The Court held that the role of the nominated person was to ensure that the police carried out their statutory duty to provide explanations, and to provide the child with a sense of security during the interview itself, but did not include a requirement to intervene during the interview as a lawyer may have done.

This issue was also discussed in the case of *Riley Campbell v. R* ([2015] NZCA 452), where the nominated person – the father – had been passive during the interview, and had provided little assistance. He had not sought to engage a lawyer for his son, even when key admissions were made, and volunteered a DNA sample from his son without any prompting by the police. However, the Court here held that a comprehensive enquiry into the quality of the support provided by the nominated person is not required by the legislation, and, further, that the role of the nominated person under Section 222(4) is to ensure that the child understands his or her rights. The role of the nominated person, then, appears to be limited to ensuring that the child understands his or her rights, but does not extend to intervening to ensure that legal advice is sought. It is submitted that a clear duty on the part of the nominated person to ensure that the child understands their rights is an important support to ensure that information is given to children in a language they can understand.

However, in more recent cases, it appears that additional scrutiny is being given by the New Zealand courts to the role of the nominated person and the type of assistance being offered. One of the key issues that has arisen is the entitlement of the nominated person to consult privately with the child, and the quality of that consultation. This initial consultation is considered particularly important in light of the nominated person's role in ensuring that the child understands his or her rights. In the 2017 case of *New Zealand Police v. HC* ([2017] NZYC 375), the Youth Court found that the nominated person had failed to discharge their duties adequately. In coming to this conclusion, the Court pointed to the short amount of time (five minutes) that the nominated person spent in consultation with the child, the failure of the nominated person to interject during the interview to make sure that the child understood their rights, and the absence of any intervention

to ask the child if they wanted a lawyer present in addition to the nominated person. This type of enquiry indicates a more robust judicial examination of the role being played by the nominated person.

Further scrutiny was also given to the way in which the role of the nominated person was carried out in the 2020 case of *New Zealand Police v. FG* ([2020] NZYC 328). In this case, the child had been questioned at home, with his mother acting as the nominated person. However, during the interview, the mother's attention was divided between the police interview and other household duties, including the care of a young child present in the house, and the issue of whether a lawyer should be present was not discussed. The Court held that in these circumstances the nominated person had not been able to adequately carry out her duties, and further questioned whether a parent could adequately fulfil the role assigned to them under the legislation. Noting the provisions of the UNCRC, which must be respected under Section 5 of the Oranga Tamariki Act, the Court commented that it was 'unrealistic' to expect that a parent could both provide psychological and emotional support and also ensure that the child understands his or her legal rights, particularly where a parent may not fully understand those rights themselves. Ultimately, the Court held that a lawyer should have been present to adequately protect the child's interests (this aspect of the judgment is discussed further in the next section).

Both in Ireland and New Zealand, then, a lack of detail in the legislative provisions have led to issues arising before the courts. In New Zealand, until recently this has taken the form of limits on the role of the nominated person in relation to requesting legal advice; in Ireland, the lack of detail in the Children Act 2001 on the role and duties of the parent, guardian or 'other adult' has led to contradictory case law and uncertain legal protection for applicants who claim that their rights have been breached because of inadequate support. Both the international research and the guidance from the Committee on the Rights of the Child on the way in which the provisions relating to parental support under Article 40(2) of the UNCRC should be implemented highlight the importance for children of having the emotional support of parents or other trusted adults. The Committee has further recommended that states should legislate for the 'maximum possible involvement' of parents. While far from perfect, a greater degree of legislative elucidation of the role of the nominated person in the New Zealand context has led to increased clarity about their duties; this appears to have been bolstered in recent years by the inclusion of the duty to protect and uphold the child's rights under the UNCRC under Section 5 of the Oranga Tamariki Act. Cases like *FG* highlight the potential for increased judicial consideration of how the rights of the child under the UNCRC can be realised in practice when domestic legislative requirements are interpreted by the courts with reference to these standards.

4.2 | Access to a lawyer

Access to legal advice is a fundamental aspect of a child's right to a fair trial. The right to 'legal or other appropriate assistance' is set out under Article 40(2)(b)(ii) of the UNCRC, and the Committee on the Rights of the Child has made it clear that any child who may face criminal charges should have free and effective legal representation from the outset of proceedings (Committee on the Rights of the Child, 2019, paras 49–51). The right to legal assistance is a core element of the right to due process in the criminal justice system, and is also protected under Article 6 of the ECHR. The ECtHR has been particularly insistent that the right of access to a lawyer must be adhered to in cases involving children to uphold their right to effective participation (Radic,

2018), and have emphasised that a child who is being questioned by the police must have access to legal advice from the earliest stages of the proceedings (*Martin v. Estonia*; *Salduz v. Turkey*).

Lawyers play an important role in helping children to access their rights and to navigate the questioning process (Gleason, 2019). Research has demonstrated that children often benefit greatly when they exercise their right to legal advice, and feel as though they are better supported (Kilkelly & Forde, 2021; Quinn & Jackson, 2007, pp.242–244). Availing of this assistance also has the potential to increase understanding of their rights and of the potential consequences of the questioning process (Viljoen & Roesch, 2005). Despite these benefits, studies undertaken in a range of jurisdictions have demonstrated that a significant number of children choose not to exercise their right to access legal advice (Schmidt, Reppucci & Woolard, 2003; Viljoen, Klaver & Roesch, 2005); a number of issues, including the potential for delay, can impact children's decision making in this regard (A'Court & Arthur, 2020; Kemp, 2013). This safeguard is protected in a number of ways at domestic level. In Ireland, access to legal representation is a well-established right under the Irish Constitution (*D.P.P. v. Healy* ([1990] 2 I.R. 73); O'Malley, 2009, pp.226–227), and children in conflict with the law have a statutory right to be informed of this entitlement under Sections 57–58 of the Children Act 2001. The Act further guarantees that where a solicitor has been requested by either the child or his or her parent or guardian, the Gardaí will not ask the child to make a statement until a reasonable time to allow for the attendance of a solicitor has elapsed. Similarly, in New Zealand, Section 227 of the Oranga Tamariki Act 1989 sets out the right of the child to consult with a solicitor or barrister. Further, the legislation requires that an explanation be given to the child of their rights (this is explored further in the following section), including their right to consult with a lawyer and to have a lawyer present during police interviews.

The right to have a lawyer present during police interviews can be distinguished from a more limited right to consult a lawyer prior to police questioning; this has historically been a particular issue in the Irish context. While in more recent years, the Irish courts have raised the possibility of moving away from this position in future cases (*D.P.P. v. Doyle* ([2017] IESC 1)), historically the right to legal advice under the Irish Constitution has been confined to the right to access to a solicitor prior to being interviewed, and does not extend to permitting the presence of a solicitor during interviews (*D.P.P. v. Gormley and D.P.P. v. White* ([2014] IESC 17); *Lavery v. Member in Charge, Carickmacross Garda Station* ([1999] 2 I.R. 390)). The Children Act 2001 makes no specific provision for the presence of a lawyer during the questioning process. It is noteworthy that while Garda policy has now changed to allow the presence of a solicitor if a person who is being questioned requests it (An Garda Síochána, 2015), this is a matter of policy and is not at present a legal right. While recent research has suggested that – as a matter of practice – solicitors are routinely allowed to be present while a child is being questioned (Kilkelly & Forde, 2021), the fact that this is not a legal entitlement remains problematic. The absence of a statutory entitlement to the presence of a lawyer is out of line with the spirit of the international standards in this area, and has the potential to limit the extent to which children can exercise their right to effective participation.

The problematic nature of this lack of an explicit legal entitlement has arisen before the Irish courts. In 2013 – before the change of Garda policy introduced in 2015 – a challenge was brought before the Irish courts on the basis of a refusal to allow a solicitor's presence during a Garda interview. In *J.M. (a minor) v. Member in charge in Coolock Garda Station* ([2013] 2 IR 175), the High Court considered whether the detention of a child with severe learning and intellectual disabilities and serious mental health difficulties had been rendered unlawful by virtue of the Gardaí's refusal to allow his solicitor to be present while he was being questioned. Highlighting the potential consequences of the questioning process, the complex nature of the issues being raised, and the difficulties that J.M. would have in understanding and navigating these issues

given his personal characteristics, counsel for the applicant argued that 'it was necessary for him to have his solicitor present during Garda interviews in order to ensure that his right of reasonable access to a solicitor was effective and meaningful', and further that the refusal had amounted to a breach of his rights under Article 6 of the ECHR.

Despite particular difficulties experienced by the child in this case, the Court held that no unfairness had been established as a result of the failure to allow the applicant's solicitor to be present. In coming to this conclusion, the Court placed particular emphasis on the fact that he had had an opportunity to consult a solicitor prior to the interview. It is worth noting that no submission appears to have been made during the course of the case about the broader impact of this refusal on J.M.'s right to a fair trial under Article 38.1 of the Constitution, nor was there any consideration of whether the child's right to participate effectively had been vindicated in light of the obligations set out in the ECHR. Overall, the absence of any substantive consideration of what constitutes meaningful realisation of the right to legal assistance is notable, particularly in light of J.M.'s vulnerabilities. While this may be an isolated case, it nonetheless highlights the problematic nature of a lack of explicit legislative provision for a child to be accompanied by a lawyer during police questioning.

In the case of *Riley Campbell v. R.*, the 16-year-old defendant submitted that it should have been made clear to him that he was entitled to *both* a support person *and* a lawyer present with him during his interview, rather than simply one or the other. The Court here held that while it was not a requirement of the statutory scheme that the role of a lawyer be explained to the child in detail, it is desirable that this should occur. It was further held that while it would be good practice for the police to ask the child directly whether they wished to have a lawyer, this was also not prescribed under the statutory scheme. While the Court in this case held that there had been no breach of the defendant's rights on the facts, they encouraged the use of simpler language to avoid any ambiguities.

In more recent cases such as *New Zealand Police Prosecutor v. Q.J.* ([2016] NZYC 625), however, evidence that children who had been questioned did not fully understand the role of a lawyer and how a lawyer may help during the questioning process was considered to be a relevant factor, in combination with other issues, in the Court's determination that the child's procedural rights had not been adequately upheld. Moreover, the absence of a lawyer meant that 'care was required when it came to ensuring [the applicant] was able to exercise [their] rights' (para. 50).

Other cases have similarly emphasised the importance of having legal advice during the police interview, and shed light on the benefits inherent in incorporation of the UNCRC into domestic statutory law. In the 2020 case of *New Zealand Police v. F.G.*, the child had a communication disorder that impacted his ability to participate in the police interview. In examining whether the child's rights under the UNCRC had been adequately vindicated, as required by Section 5 of the Oranga Tamariki Act, the Court came to the conclusion that in the circumstances of this case, a lawyer should have been present at two police interviews in addition to the applicant's mother. The Court went on to express the view, echoing the recent comments of the Committee on the Rights of the Child in General Comment No. 24 that this right could only be waived 'if he expressed it unequivocally after all reasonable steps were taken to ensure that he was fully aware of his rights'.

Taken as a whole, these cases demonstrate both some of the challenges that arise in protecting children's rights before the domestic courts as well as some of the potential opportunities. The importance of the nature of the statutory provision is particularly evident; in both Ireland and New Zealand, where legislative provisions lack sufficient detail, it has led to more limited protection of children's rights. In contrast, the recent case of *New Zealand Police v. F.G.* highlights the benefits from a children's rights perspective of the statutory provision in Section 5 of the Oranga Tamariki

Act to respect and uphold the rights of the child under the UNCRC. This enabled the judge in this case to look both to the text of the UNCRC and to General Comment No. 24, and led to a far stronger statement about the importance of meaningful and effective legal assistance for children in this situation.

4.3 | Information

Article 40(2)(b)(ii) of the UNCRC requires that children are informed promptly and directly of the charges they are facing. While the provision of this information is *prima facie* a relatively straightforward requirement, ensuring that children are given this information in a way that they can fully understand makes this issue complex. Ensuring that children receive adequate and appropriate information about their rights is a necessary prerequisite to ensure that their other procedural rights are properly upheld (Radic, 2018), and is the starting point for children to exercise their right to meaningful participation (Stalford, Cairns & Marshall, 2017, p.210). The UN Committee on the Rights of the Child has emphasised that it is the responsibility of state authorities to ensure that the child fully understands the charge and the process involved, and stresses the need for assistance to be provided in understanding in order to protect children's procedural rights including the right to participate effectively (UN Committee on the Rights of the Child, 2019, paras 46–48).

This is a particularly important issue in light of the difficulties children often experience in understanding and navigating the questioning process. When children are questioned by police, significant demands are placed on their communication skills, both in relation to understanding the information given and the questions asked, and in deciding if or how they will respond (Lount et al., 2018; Quinn & Jackson, 2007). Research has illustrated that children often have poor understanding of their rights, which can be partly attributed to factors related to their cognitive and psychosocial development (Cleary, 2017, p.123; Rogers et al., 2014; Viljoen & Roesch, 2005; Zelle, Romaine & Goldstein, 2015). This can have a significant impact on how children choose to exercise their rights. For example, studies have demonstrated that children often do not understand how a lawyer might be able to help them during police questioning (Kemp, Pleasence & Balmer, 2011; Peterson-Badali et al., 1999). Understanding the process can be particularly difficult for children in contact with the youth justice system for the first time (Winstanley, Webb & Conti-Ramsden, 2019). The stress and pressure children experience when they are questioned can also impact their ability to communicate effectively; this can have consequences for how children are perceived by adults, particularly where a lack of ability to communicate is perceived as oppositional or defiant behaviour (Johnston et al., 2016, pp.811–812; Lount et al., 2018; O'Leary, O'Toole & Watt, 2013).

While understanding the information provided and the rights to which they are entitled can be difficult for all children, the issue of understanding can present particular problems for young children or those with intellectual difficulties (McLachlan, Roesch & Douglas, 2011). International studies have indicated that children with communication difficulties are significantly over-represented in the youth justice system (Anderson, Hawes & Snow, 2016; Howard, McCann & Dudley, 2020), and children with foetal alcohol spectrum disorder (FASD) can experience further difficulties with functioning competently within legal contexts (Blagg, Tulich & May, 2019; McLachlan et al., 2014; Watt, O'Leary & O'Toole, 2017); while no official data exist, it is noteworthy in the context of this discussion that it is estimated that Ireland has a particularly high prevalence of FASD (Lange et al., 2017).

In Ireland, the Children Act 2001 contains specific provisions in relation to information, and the procedure to be followed during questioning. As well as a general requirement that children

are treated with respect for their age and any vulnerabilities they may have, Section 57 of the Act requires that information should be given to a child on his or her arrest that sets out the alleged offence, as well as their entitlement to consult a solicitor. The Act also provides that this should be given 'in a manner and in language that is appropriate to the age and level of understanding of the child', and should include information about how to go about accessing legal advice. While these standards in relation to the provision of information are broadly reflective of UNCRC requirements that information be presented in a way that is appropriate to the child's level of understanding, a greater level of protection would be afforded if the legislation placed an explicit statutory responsibility on Gardaí to take steps to ensure that the child does in fact understand the information he or she has been given.

While the broad nature of the legislative requirements can be noted, it is unfortunately not possible to consider how these provisions have been interpreted by the courts in practice, as to date, no published case law exists which considers the way information has been imparted to a child, or how this impacts their understanding. While it is possible that these issues are being considered before the Children Court, because these judgments are not routinely published, it is difficult to gain any meaningful understanding of how the law in this area is interpreted and applied in practice. Within the published judgments, it is notable that the Irish courts have not yet had the occasion to give substantive consideration to right to 'effective participation' of children in conflict with the law, either in the context of Article 38.1 of the Constitution, in light of the ECtHR jurisprudence, or under the legislative framework set out by the Children Act 2001.

On a separate but related matter, Section 66 of the Children Act 2001 provides that a failure by Gardaí to observe the procedural requirements set out in Sections 56–63 will not affect the lawfulness of the detention of the child, nor will it affect the admissibility of evidence obtained in breach of these rules, although individual Gardaí may be liable to disciplinary proceedings. This lack of significant statutory remedies for the child for breach of the procedural safeguards fundamental to the effective realisation of the right to participation seriously lessens the protections provided by these provisions, and arguably impacts on the child's right of access to justice (Liefwaard, 2020).

By way of contrast, the legislative scheme in New Zealand sets out much more stringent provisions in relation to the provision of information to children, and of the types of explanations required in order to satisfy these requirements. Sections 215–220 of the Oranga Tamariki Act require police to give detailed explanations of their entitlements to children before questioning begins. Section 215 sets out the specific rights that children must be advised of, and Sections 217–218 require explanations (as distinct from information only) to be given to children about their rights in a manner and language appropriate to their age and understanding. The requirement for explanations as well as information is a particularly important protection to ensure that children understand their procedural rights and can exercise them effectively. Further, a breach of these requirements may result in the evidence being inadmissible, although this is subject to an assessment of 'reasonable compliance'.

In practice, the New Zealand courts have emphasised the importance of these provisions and have accorded them a high level of protection. In cases such as *R v. Z* ([2008] 3 NZLR 342), the Court stressed that the explanations given by police must ensure that children understand the meaning and significance of these rights. In its assessment of whether the child's right to have explanations given had been complied with, the Court referred to the guiding principle set out under Section 208(h) of the Oranga Tamariki Act that children are entitled to special protections during investigation. In particular, it was held that Section 215 'requires police officers to explain a child or young person's rights in a manner that ensures that the particular child or young person understands the various rights and how to exercise them' (para. 35); any particular characteristics

of the child that could impact on their understanding should be taken into account. The importance of the guiding principles as an aid to judicial interpretation of key statutory provisions is clear in this case; here, the Section 208 principle that guaranteed special protections to children during the investigation process was used in order to ensure that the statutory protections were interpreted in a way that made them meaningful for the children involved.

Published cases from the New Zealand Youth Court in recent years demonstrate the level of inquiry routinely undertaken into the nature of the child's understanding of the information that has been given to them. For example, in *New Zealand Police v. HC*, it was noted that the responses by the child during the course of the interview indicated that she had not understood the information given to her. The Court also emphasised that the presence of a nominated person did not release the police officer from their duty to explain the rights in a language that was appropriate to the age and level of understanding of the child (para. 39). Similarly, in *New Zealand Police v. FG*, it was emphasised that police officers are required to ensure not only that the child understands their rights, but also understands how they can exercise them in practice (para. 92).

In the available New Zealand case law relating to the right to information it is clear that strong judicial protection has been accorded to these principles, in a way that acknowledges the particular issues that impact children (Lynch, 2008). Both the explicit statutory requirement for police officers to explain the meaning and significance of their rights to children and the emphasis placed by the court on the importance of the guiding principles contained in Section 208 of the Oranga Tamariki Act as an aid to judicial interpretation of key statutory provisions are clear in these cases.

In contrast, it is perhaps surprising that, to date, the higher courts in Ireland have not had the opportunity to consider the concept of effective participation in relation to the rights of the child, particularly in light of potential difficulties arising in relation to children being able to understand the nature and significance of their rights. If and when such a case does come before the court, it remains to be seen how the less detailed legislative requirements will be interpreted, or whether the requirement relating to effective participation under Article 6 of the ECHR will fill this gap. It is equally unfortunate that there is no way of considering how these issues are dealt with in the Children Court, given that these judgments are not routinely published; this frustrates attempts to assess the full picture of how children's rights are protected before the courts in Ireland.

5 | ENHANCING THE PROTECTION OF CHILDREN'S RIGHTS THROUGH THE COURTS: INSIGHTS FROM IRELAND AND NEW ZEALAND

Significant attention is needed to ensure that the procedural rights to which children are entitled under the UNCRC are adequately protected in domestic law. The provision of minimum safeguards is an important first step for states seeking to ensure that they are implementing their Convention obligations; however, a truly Convention-compliant approach requires more than minimal safeguards. Indeed, the Committee has emphasised that the rights set out in Article 40(2) of the Convention 'are minimum standards. States parties can and should try to establish and observe higher standards' (UN Committee on the Rights of the Child, 2019, para. 38). This is particularly necessary when considering the child's right to effective participation, which requires an inquiry into both the quality of the child's understanding and the ways in which they are supported to exercise their rights (Rap, 2016).

Both the legislature and the judiciary have important roles to play in ensuring that children's rights are both respected and effectively realised. The relationship between the legislature in

setting out appropriate statutory provisions and the role of the judiciary in protecting statutory rights is crucial (Jones, 2011). The courts have a fundamental role to play in ensuring that children have access to an effective remedy – and ultimately access to justice – when their rights are breached (Liefwaard, 2019). The comparison between the cases which have considered children's procedural rights in the courts of Ireland and New Zealand is instructive in thinking about the elements which may help advance the protection of the rights of children. The cases discussed in this article highlight gaps in the legislative protection of children's rights in both jurisdictions. There is also potential, given the more detailed statutory provisions and greater level of judicial consideration of these issues by the New Zealand courts, to think about how these lessons can enhance the legal protection of children's rights in Ireland. This article proposes that there are four core pieces of learning which can be taken from this analysis in relation to ways in which respect for children's rights can be enhanced.

First, the importance of detailed statutory provisions which protect children's rights emerges strongly from this analysis. Legislation matters. The statutory framework will ultimately be interpreted and applied by the courts, and consequently, the level of detail contained within these provisions is particularly important to uphold children's rights in the questioning process. In both Ireland and New Zealand, lack of detail in the statutory provisions setting out the rights of children has limited the level of judicial protection accorded to important rights in some cases, such as the right to legal advice. In contrast, more detailed provisions in the Oranga Tamariki Act around the requirement to provide explanations to children, in particular, has resulted in a higher level of judicial protection.

The legislature, therefore, bears significant responsibility in ensuring that proper safeguards are in place, and to 'enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system', including the questioning process (UN Committee on the Rights of the Child, 2019, para. 41). This is an important prerequisite for ensuring that children can seek effective protection for their rights before national courts.

Second, both international human rights law and statutory guiding principles can act as important interpretative tools for the judiciary in interpreting national law. Given that both Ireland and New Zealand are dualist legal systems, the level of incorporation of the UNCRC in domestic law is significant (Kilkelly, Lundy & Byrne, 2021). Although children's rights principles have become increasingly embedded in a number of areas of Irish law and policy in recent years (Forde & Kilkelly, 2021), similar progress has not been made in the context of the investigation of offences involving child suspects. The lack of incorporation of children's rights principles relating to children's procedural rights into domestic law limits the extent to which applicants before the Irish courts can seek to base their arguments on these principles. Equally problematic is the fact that Ireland has opted out of EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

By contrast, the incorporation of explicit reference to the need to respect and uphold children's rights under the UNCRC in Section 5 of the Oranga Tamariki Act means that statutory provisions are being interpreted in light of these international obligations in cases such as *FG*, which has resulted in greater emphasis being placed on rights such as the right of access to a lawyer than had been the case previously.

It is important that in the Irish context, the possibility exists of advancing arguments based on breaches of children's ECHR rights, as well as their statutory rights, before the national courts. The usefulness of the ECHR as a means by which children can assert their rights before national courts has been noted and Lyon has argued that as a result this deserves greater attention by those working to advance children's rights (Lyon, 2007). However, it appears from available

published judgments that this has not been given significant judicial consideration to date. Given the increased protections which can be offered through incorporation of the UNCRC in domestic legal provisions (Lundy, Kilkelly & Byrne, 2013), it is clear that stronger steps towards UNCRC incorporation can provide opportunities for national courts to give greater consideration to these principles in the interpretation and application of domestic law.

Third, the complexity of the children's rights issues that arise in the context of police questioning emphasise the importance of specialised training for the judiciary and legal professionals about children's rights and issues affecting children. While calls for additional training are a common refrain in children's rights literature, the importance of this measure cannot be easily understated. Ensuring that the fair trial guarantees set out in Article 40(2) of the UNCRC are meaningful for children in conflict with the law requires 'continuous and systematic training of professionals in the child justice system', which incorporates training about the 'physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalised children' (UN Committee on the Rights of the Child, 2019, para. 39). This high degree of specialisation and knowledge among the judiciary is essential to ensure that decision making is fair, just and appropriate to the child's age and stage of development (Monahan, Steinberg & Piquero, 2015), particularly in light of the fact that new scientific evidence around children's development and brain development provides a cogent argument for the contention that children should be treated differently than adults (Liefwaard, 2020).

Increasing lawyers' capacities is also necessary (Schmit, Reppucci & Woolard, 2003). It is only where legal challenges alleging breaches of children's rights are brought that a court can make a determination on these issues. While it is not possible to determine precisely why the Irish courts have not had the occasion to consider the child's right to effective participation to date, one possibility is that these legal arguments have simply not been advanced before the courts. Ensuring the knowledge and capacity of legal professionals exists to advance these arguments, as well as ensuring that the judiciary is aware of the specific issues impacting children, are important steps in enhancing the protection of children's rights.

Finally, in order to adequately assess the legal protection afforded to children's rights in the questioning process through the courts, it is necessary to be able to examine the decisions taken through the publication of judgments. In seeking to uphold children's participation rights, there is a need to focus on examples of good practice, as well as on areas where difficulties arise in upholding children's rights (McMellon & Tisdall, 2020). In order to build on examples of good practice, however, there is a need for transparency. One of the difficulties in analysing the available case law in the Irish context is its limited availability. While appeals heard in the superior courts are readily available, judgments handed down in the Children Court or in the Circuit Court are not routinely published. This inhibits full understanding of how issues relating to children's rights in the questioning process are being handled before the Irish courts. While it may be the case that the judiciary is addressing important issues related to children's participation on a regular basis at this level, if so, the information is not publicly available. Increased visibility of the decisions being made at Children Court and Circuit Court level would enhance the ability to assess how children's rights are being protected in practice, and to identify both challenges for the protection of children's rights and examples of good practice.

The protection of children's rights in the context of police questioning is challenging, and raises a number of complex questions. National courts play a particularly important role in ensuring that children's rights are protected in practice, and in ensuring that children have access to an effective remedy when their rights are breached. While problems clearly exist for the protection of children's rights in both Ireland and New Zealand, comparative analysis of the published court

decisions in these jurisdictions enables important insights to be gained about how we might enhance the protection of children's rights at a national level to ensure they are meaningful for children. As noted by Stalford and Hollingsworth (2017), the judiciary and the courts have significant potential to promote, advance and enhance the protection of the rights of children. Considering the approach taken at domestic level by national judiciaries can help to take a small step further in understanding the factors that support these efforts.

ACKNOWLEDGEMENTS

This research was based on PhD research undertaken at University College Cork, supervised by Professor Ursula Kilkelly, and funded by the Irish Research Council Government of Ireland Post-graduate Scholarship. Particular thanks are owed to Professor Kilkelly, as well as to the anonymous peer reviewers. Any errors remain the author's own.

ORCID

Louise Forde  <https://orcid.org/0000-0003-1826-5616>

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How to cite this article: Forde, L. (2022) The role of the courts in protecting children’s rights in the context of police questioning in Ireland and New Zealand. *The Howard Journal of Crime and Justice*, 61:240–260. <https://doi.org/10.1111/hojo.12472>