
ISSUES FOR THOSE WORKING WITH UNDERAGE PARENTS



National federation of services for unmarried parents and their children

Founded in 1976, Treoir is a membership organisation which promotes the rights and welfare of unmarried parents and their children in Ireland.

Membership of Treoir is open to professional agencies providing services to unmarried parents. They are a combination of statutory and non-statutory bodies, including specialist agencies, the HSE, maternity hospitals, adoption agencies and self-help groups.

Treoir is a non-governmental organisation funded by the HSE, Citizens Information Board and the HSE Crisis Pregnancy Programme.

Treoir principles

- *Treoir recognises the diversity of family life in Ireland*
- *Treoir recognises that all families, including unmarried families, have the same rights to respect, care, support, protection and recognition*
- *Treoir supports and promotes the rights of all children as outlined in the United Nations Convention on the Rights of the Child*
- *Treoir believes that all children have a right to know, be loved and cared for by both parents.*

Introduction	3
Current legislation / guidance	3
Concerns among Treoir members	5
Concern with putting the Guidance on a legislative footing	7
Conclusion	8

Treoir works to achieve its aim by –

- providing a specialist, free, confidential National Information Service to
 - unmarried parents – mothers and fathers living together
 - living apart
 - opposite and same sex
 - grandparents and other relatives
 - professionals working with unmarried parents
- providing a range of publications for unmarried parents and those involved with them
- offering workshops on shared parenting, legal issues, social welfare entitlements etc.
- promoting change at every level to improve services and attitudes to unmarried parents

Introduction

The Irish Study of Sexual Health and Relationships (2006)¹ reveals that in the 18 to 24 age group over 33% of boys and 22% of girls were under 17 years of age at first sexual intercourse. A UNICEF study² published in 2010 revealed that of those young people surveyed 20% of respondents reported being 15 or under when they first had sexual intercourse and 25% of 16 year olds.. In a survey published in 2005³ (and updated in 2007), among 41 countries surveyed on average age of first sex, the highest was India at 19.8 years and the lowest was Iceland at 15.6 years. Ireland's average age of first sex is given as 17.3 roughly midway in the 41 countries surveyed.

These studies indicate that there is a considerable amount of sexual activity taking place among under 17 year olds in Ireland. This sexual activity results in a small number of births to under 17 year olds – 172 in 2010. In addition there were 311 babies born to 17 year olds, a significant number of whom would have been conceived when the mother was under 17 years of age. More worryingly the number of STIs recorded for those under 19 have leapt from 521 in 2000 to 1,380 in 2009⁴. Almost all of the underage sexual activity that becomes known to Treoir members, particularly the Teen Parents Support Programme (TPSP), is consensual and does not generally raise child protection issues.

Current legislation/Guidance

The Sexual Offences Act of 2006 states that any person who engages in a sexual act with a child who is under the age of 17 years shall be guilty of an offence⁵.

The 2006 Act also states that a female child under the age of 17 years shall not be guilty of an offence under this Act by reason only of her engaging in an act of sexual intercourse⁶.

These two sections taken together mean that only a young man under 17 can be prosecuted for underage sexual activity.

Children First: National Guidance for the Protection and Welfare of Children,⁷ a practical handbook for front-line practitioners, states:

¹ Layte, Dr. Richard et al: *Irish Study of Sexual Health and Relationships*. Summary Report. Department of Health and Children and the Crisis Pregnancy Agency, Dublin 2006.

² NICEF: *Changing the Future - experiencing adolescence in contemporary Ireland*. Report 4 Sexual Health and Behaviour. Unicef, Dublin 2010.

³ http://www.data360.org/report_slides.aspx?Print_Group_Id=93

⁴ *Trends in Sexually Transmitted Infection (STI) Notifications, 1995 – 2009*, Health Protection surveillance Centre, Dublin 2011

⁵ Section 3 of the *Criminal Law (Sex Offences) Act 2006* as amended by Section 5 of the *Criminal Law (Sexual Offences) (Amendment) Act 2007*

⁶ Section 5 of the *Criminal Law (Sex Offences) Act 2006*

Age of consent

7.16.3 In cases where abuse is not suspected or alleged but the boy or girl is underage, consultation must be held between the HSE and An Garda Síochána, and all aspects of the case will be examined. Both agencies must acknowledge the sensitivity required in order to facilitate vulnerable young people in availing of all necessary services, while at the same time satisfying relevant legal requirements.

While this paragraph states that consultation must be held between the HSE and An Garda Síochána it does not state that workers or volunteers outside of these two organisations are required to report to them.

Underage pregnancy

7.16.4 When a pregnant girl under 17 years presents to a health service, a health professional will attempt to establish whether there is any cause for concern regarding child sexual abuse. Where concerns exist, the health professional will refer the case to the HSE Children and Family Services.

Which workers come within the definition of “a health professional”? Does it include agencies funded, but not directly employed, by the HSE? Does it include volunteers working with these agencies. Does it include agencies not funded by the HSE?

This paragraph implies that where concerns do not exist there is no requirement to report the young woman to the HSE Children and Family Services.

7.16.5 Where such abuse is suspected or alleged and the designated person within the HSE has been so informed, then An Garda Síochána must be notified by the designated person within the HSE using the Standard Notification Form (see Appendix 4).

All Treoir member agencies fully agree with this.

7.16.6 In cases where abuse is not suspected or alleged, HSE procedures should be in place to provide guidance on consultation with An Garda Síochána to examine all aspects of such cases. Both agencies must acknowledge the sensitivity required in order to facilitate vulnerable young girls to avail of medical or therapeutic services, while at the same time satisfying relevant legal requirements.

Are these procedures in place?

⁷ *Children First: National Guidance for the Protection and Welfare of Children*, Department of Children and Youth Affairs, Government Stationery Office, Dublin, 2011

*The Child Protection and Welfare Practice Handbook*⁸ does not mention underage sexual activity or pregnancy.

It would appear that the Guidelines and Handbook were written for the HSE and An Garda Síochána, but the Minister in her Foreword to the Guidelines states that the 2011 National Guidance (which includes the Child Protection and Welfare Practice Handbook) is a practical handbook to key actions for front-line practitioners⁹.

These uncertainties have presented difficulties and dilemmas for those working in member agencies of Treoir who work with underage pregnant women and parents, as it has never been clear what the correct procedure is.

There are four main issues arising from the above:

- 1. Who is required to report knowledge of sexual activity and pregnancy to the HSE or An Garda Síochána?**
- 2. Who decides whether the sexual activity is consensual or not?**
- 3. Where the sexual activity is consensual is there a requirement to report to the HSE or An Garda Síochána?**
- 4. If there is a requirement to report, does this requirement relate only to young men, given Section 5 of the 2006 Act?**

Are there procedures in place to provide guidance on consultation between the HSE and An Garda Síochána where abuse is not suspected or alleged?

Concerns among Treoir members

In the experience of member agencies of Treoir, and in particular of the TPSP, the legal age of consent has no effect on the sexual behaviour of young people. Private sexual activity among minors (unlike, say, the sale of tobacco or alcohol to minors) cannot realistically be policed and for the most part only becomes an issue for state agencies when a pregnancy occurs.

There is a wide range of differing practices among member agencies of Treoir when working with young people who are experiencing an underage pregnancy. Some Treoir members state

⁸ *Child Protection and Welfare Practice Handbook*, HSE, Dublin, 2011

⁹ *Children First: National Guidance for the Protection and Welfare of Children*, Ministers' Foreword, Department of Children and Youth Affairs, Government Stationery Office, Dublin, 2011

that they do not report what they deem to be consensual sexual activity between underage young people while other members report every underage pregnancy to the HSE.

In trying to determine the correct procedure some members have had extensive discussions at the Children First Implementation Forum and with Children First Implementation officers. One has been told that she (and her colleagues) are not qualified to determine if there is abuse in a situation where an under 17 year old becomes pregnant. Others have been informed that social workers do not want to be inundated with reports of what is, in fact, consensual sexual activity between young people, but when assessing a situation to be particularly alert where there is a significant age difference or where 'grooming' might have taken place.

There are many concerns regarding reporting to the HSE where the pregnancy has occurred following sexual activity between two consenting teenagers:

1. Despite the publication of Children First there is inconsistency in the way different geographic areas within the HSE deal with reports of underage sexual activity/pregnancy. Social workers in some local health areas refer all cases to An Garda Síochána while others do not. For example a secondary school whose catchment area includes two HSE Local Health Offices report that the response from the HSE staff varies from one LHO area to another.
2. There is a worry among workers that reporting the underage pregnancy may result in a social worker or a member of An Garda Síochána visiting the young father and/or mother. This can result in the young mother withdrawing from the support agency, as she feels trust has been breached possibly resulting in the needs of the young woman not being met. There is also concern among workers with young parents of the ripple effect on other young people who could perceive that contacting a support agency would result in an unwelcome visit from the HSE or An Garda Síochána. This might result in concealed pregnancies or delay in seeking antenatal care.
3. There is a further worry among workers that young women may refuse to name the fathers of their children or involve them in the lives of their babies for fear of prosecution of the young father. This would mean the father's name would not be entered on his child's birth certificate thus causing identity issues for the child. This is contrary to the UN Convention on the Rights of the Child¹⁰, which Ireland has ratified, which specifically states that every child has a right to her/his identity:
"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." Article 7.
4. It has come to our attention that some young fathers have been advised by solicitors not to enter their names in the Register of Births or apply to become the child's legal guardian, as they

¹⁰ UNICEF, *United Nations Convention on the Rights of the Child, UN General Assembly, 1989.*

have committed a criminal offence. There is a fear that where there is written evidence of the age of the father at the time of conception that, at any time in the future proceedings could be instituted against him. In a recent case where a young father's family was caring for the child, (the mother was in care) he wished to apply for joint guardianship rights in respect of his child, the family had a serious concern that as the young mother was only 15 the young father's application could result in the prosecution of the young father. To criminalise young fathers (young mothers shall not be guilty of an offence¹¹) is a serious impediment to young fathers being part of the lives of their children.

5. The rights of children to have the names of their fathers on their birth certificates and to have relationships with their fathers could be seriously affected where young fathers are inhibited from putting their names on birth certificates and applying for joint guardianship rights in respect of their children.

Concern with putting the Guidance on a legislative footing

The Minister for Children and Youth Affairs has stated her intention of putting Children First on a legislative footing. Our understanding at present is that this would require every case of underage sexual activity and underage pregnancy to be reported to the HSE/An Garda Síochána regardless of whether there is a concern about abuse. This will inevitably result in HSE social workers and An Garda Síochána being overwhelmed with reports of underage sexual activity/pregnancy and the young men being investigated (needlessly) by the authorities.

Dr. John Kehoe, in a letter to The Irish Times¹² says:

Little consideration has been given to the problem of a general practitioner like myself, where an underage girl presents for treatment in pregnancy. If there is mandatory reporting, will I have to report this case to the Garda? Or if an underage girl seeks the morning-after pill or pregnancy counselling, will the doctor or pharmacist or counsellor have to report a crime? Whether or not the girl has consented, it is a case of statutory rape, ie child sex abuse. In such a case, there is absolutely no doubt but that a crime has been committed. And it is by no means a rare occurrence.

In The Irish Times of 10th September 2011¹³ the former minister for Justice and Attorney General Michael McDowell has questioned the Government's proposals on mandatory reporting of child sex abuse.

If a mother discovered her 17 year old son had been carrying on with a 15 year old girl, would she be obliged to report him to the gardaí?

¹¹ *Criminal Law (Sex Offences) Act 2006*, Section 5

¹² Irish Times 14 September 2011, letters

¹³ Irish Times, September 10 2011, *McDowell queries mandatory abuse reporting*, Carol Coulter and Steven Carroll.

Conclusion

The area of underage sexual activity will always be problematical from the point of view of the criminal law.

The primary concern of Treoir is that children be fully protected from sexual abuse and manipulation. It is also our concern that legislation on underage sexual activity be relevant to the lives of young people and that the fear of criminalisation be removed where there is no child protection issue. One of the biggest challenges will be how to protect children from sexual abuse and exploitation without criminalising young people involved in consensual sexual activity.

In addressing this issue care needs to be taken to ensure that:

- 1. young pregnant women will not delay accessing ante-natal care or other services, especially crisis pregnancy counselling services, due to fear of being reported to An Garda Síochana.**
- 2. young mothers and fathers are fully supported in being involved in the lives of their children with no fear of criminal prosecution, either at this point or in the future**
- 3. children will not be deprived of having their fathers' names on their birth certificates or of having a relationship with both their parents**
- 4. there is a consistent system within the HSE as to how the issue of underage sexual activity/pregnancy is dealt with**
- 5. there is clarity about the procedures for those working with young parents.**

treoir
14 Gandon House, IFSC, Dublin 1

The National Federation of Services for
01-6700 120 / 1890 252 084
Inmánuis, Ombudsman, Children

info@treoir.ie www.treoir.ie

February 2012