
Submission

to the

**Family Law Court Development Committee of
the Court Services Board**

June 2012



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INTRODUCTION

Founded in 1976, Treoir is the national federation of agencies which provide services to unmarried parents and their children.

The main aim of Treoir is to promote equity for 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 societies and self-help groups.

The following are the core principles under which Treoir operates:

- *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.*

Treoir works to achieve its aim by –

- providing a specialist National Information Service to unmarried parents, their extended families and those working with them through answering queries made by phone/email, publications, website, outreach workshops etc.
- Working with workers who work with young parents
- Collaborating with other agencies to promote our aim through the federation of Treoir and agencies outside Treoir
- promoting change at every level to improve services and attitudes to unmarried parents
- promoting/undertaking research to better understand the situation of unmarried parents and their children in Ireland.

In order to develop and improve the services available in the family law area Treoir suggests the following:

1. The establishment of a Central Register for Joint Guardianship Agreements

It is essential that the out-of-court legal procedure whereby an unmarried father obtains his legal rights in relation to his child by signing the Statutory Instrument (No 5 of 1998) with the mother, is recorded in a Central Register. If this document is lost or destroyed there is no evidence of the fact that the father has guardianship rights. It is also important that where consent issues in relation to the child can arise, public bodies have access to this central register.

Fathers and their children deserve to have guardianship taken seriously and the initiation of a Central Register for Joint Guardianship Agreements is a way of affirming the seriousness of guardianship.

Currently statistics are available on the number of court orders for guardianship but it is not possible to ascertain how many fathers have guardianship by agreement with the mother. Thus there is a major lacuna in our knowledge of the legal structure of unmarried families in Ireland.

Treoir concurs with the Committee's recommendation in its Report of the Family Law Reporting Project Committee to the Board of the Courts Service that the Government give consideration to an amendment of the Civil Registration Act 2004 (No 3 of 2004) so that such a register could be created and maintained by An tArd Chlaraitheoir.

2. Regional family law courts

Only Judges who have a special interest and have been specifically trained in family law should be appointed to deal with family law cases which should be heard in dedicated family law courts. These specialised judges should remain in the area of family law for a set period of years and an efficient transition system should be put in place in order to avoid losing the

expertise required for these sensitive cases. This would also have the effect of ensuring that there are more consistent judgments. An example of one of these inconsistencies, which has come to the attention of Treoir, is whereby some judges are granting guardianship to grandparents where both unmarried parents of the child are still living. While Treoir supports grandparents being appointed guardians in certain circumstances, to our knowledge there is no provision in the Guardianship of Infants Act 1964 allowing for the appointment of any other guardians where both parents are still living.

The waiting time for cases to be heard in some regions is unacceptable

Treoir also recommends that law clerks should have specific training in the area of family law and that they should remain in this area for number of years so the expertise is not lost. In some regions Treoir's clients are being informed by the local law clerk that it is not possible for them to represent themselves in court where they wish to do so and that it is a requirement that they have a solicitor. Many of our clients cannot afford to pay for a private solicitor and though they may be eligible for legal aid, due to the often very long waiting lists for legal aid they may wish to represent themselves. The court's own website clearly states that representing yourself in court is an option and Treoir has suggested to our clients that where this issue arises to refer the court clerk to their own website, courts.ie.

3. In camera rule

It should always be made clear to those accessing the courts for family law matters that these cases are held in private and are not open to the public. In-camera should always mean in-camera and other parties not relevant to the case before the court should be asked to leave the court. We have been informed that in one area where the court sits in a hotel, members of the public can watch from the gallery.

4. Accommodation

Family law courts should always be held in suitable premises. Reports from those accessing the Family Law Court in Dolphin House is that it is, in general, chaotic and overcrowded. We have been told that the situation is similar in Limerick District Court. There is a need for separate morning and afternoon call-overs. Currently clients may be in the court for the entire day and with very poor basic facilities, e.g. refreshments, children's facilities etc. We accept that the court is not a place for children but there are occasions when a client is being summonsed again and again to court and cannot always have childminding in place, e.g. a mother will regularly be accompanied by her own mother, who is also her childminder, as moral support.

It is not appropriate to have all parties to a family dispute in the same waiting room or indeed to have others accessing courts on cases other than the family law courts in the same waiting area. This can be intimidating and upsetting for clients.

There is a lack of consulting rooms in Dolphin House. Consulting rooms are particularly required where Legal Aid solicitors may not have had consultation with their clients prior to the court date.

5. Family Law Reporting Service

Treoir very much welcomed the appointment of Carol Coulter to provide a Family Law Reporting Service and the very informative reports that she produced.

Treoir recommends that this reporting system should continue to be maintained by the Court Services. This would ensure that the reporting is independent and may lead to consistency of judgement and certainty, both for professionals and families. Specific information could be obtained from the outcome of family law cases to gain clarity on issues, such as:

- In what per cent of cases is paternity of a child disputed? How often does the court order that DNA testing be carried out? Who is ordered to cover the cost of testing? Where there is a refusal by a client to undergo testing how often is an inference made by that refusal?
- The Civil Partnership and Certain Rights and Obligations for Cohabitants Act 2010 introduced a redress scheme. How many cases are coming before the courts under the redress scheme? What are the outcomes of these cases? How is this relatively new Act being interpreted and applied by the Courts?
- How often are children consulted? Generally at what age? Where children are consulted what mechanisms are used?

6. Accessing the Court by minors.

We cannot find any requirement in any of the family law/children acts in relation to a minimum age at which parents may sue for e.g. maintenance, custody, access or guardianship. It appears to be a general principle that a minor may sue in court, but usually must do so through a 'next friend'. The District Court Rules 1997 (order 7 rule 2) stipulates that generally in civil proceedings a minor may sue by his or her next friend, and may defend any proceeding by his or her guardian ad litem. The next friend must sign a form consenting to act as such, but otherwise the minor is perfectly entitled to proceed. Usually the next friend is a close relative, typically a parent. The question arises in circumstances where there is not a close relative or parent available, or interested. In this situation who can be a 'next friend'? In speaking to workers working with young parents we have been told that often the worker can act as a next friend but there does not appear to be consistency in this around the country. Treoir recommends that there is clarification and consistency around who can be a 'next friend' in making applications to the courts on behalf of a minor who is also a parent.

Conclusion

Treoir welcomes this opportunity to make a submission to the Family Law Court Development Committee of the Court Services Board. It is important that the people for whom the courts are intended receive the best possible service.

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