

GUARDIANSHIP RIGHTS OF UNMARRIED FATHERS

The recent tragic case of the very ill baby boy born in a Dublin maternity hospital highlights the lack of rights afforded to unmarried fathers. Where a child is born to unmarried parents, only the mother has automatic guardianship rights and consequently is the only one who can make major decisions in relation to her child, such as giving consent to medical treatment, leaving the country, choice of religion, school etc.

Where a child is born to married parents, both parents automatically have joint guardianship rights in respect of their children. And if the parents of this baby boy had been married to each other, then the father would have had the right to make the decision as to the baby's treatment. In this case, because the father was not married to the mother, he had no right to make this decision in respect of his baby boy.

Treoir operates the National Specialist Information Service for unmarried parents, single or cohabiting, their extended families and those who work with them. We give information on the legal rights of unmarried parents, which are different from those of married parents.

We have received a number of calls from worried pregnant women who are concerned as a result of this tragedy. We are recommending that the mother make a Will, while pregnant, to appoint the father, or indeed any other appropriate person, for example a grandparent, to be a Testamentary Guardian of her child in the event of her death during labour.

From calls received in our Information Service we know that many unmarried parents are seriously misinformed about guardianship rights. It is generally assumed where the father's name is on the child's birth certificate that he is a joint guardian of the child with the mother. This is not so. Often cohabiting parents assume because they are living together that the father has guardianship rights in respect of their child. This is also not so.

Unmarried fathers must act in order to get their guardianship rights and this can be done in two ways:

1. Where the mother agrees to the father becoming a guardian they both can sign a Guardianship of Children [Statutory Declaration](#) in front of a peace commissioner or commissioner for oaths which would give the unmarried father joint guardianship rights with the mother.
2. Where the mother does not agree, the unmarried father can apply to the local District Court to be appointed a guardian of his child.

Minister for Justice, Alan Shatter, T.D., has published a [Children and Family Relationships Bill briefing note \(PDF - 56KB\)](#) which, if the provisions are enacted, would give automatic guardianship rights to unmarried fathers who are living with the mother for at least a year before the birth of a child.

Treoir proposes a further improvement: that when unmarried parents are registering the birth of their babies their attention should be drawn to the fact that having the father's name on his child's birth certificate does not give the father any guardianship rights whatsoever. It could then be possible for the parents to sign the Guardianship of Children Statutory Declaration there and then.

Our Information Service in Treoir receives a large number of requests for the Guardianship of Children Statutory Declaration and this is also available to download from our website www.treoir.ie. Because Declarations are not registered in any central register we do not know how many fathers have their guardianship by way of signing the Declaration. Treoir has been campaigning for many years for the establishment of a Central Register of Guardianship Declarations where these Declarations can be recorded and referred to.

We have great sympathy for the baby's father, grandmother, and extended family members in this heartrending situation. Unmarried parents and their extended families can contact Treoir for specialist information on the legal rights and responsibilities of unmarried parents, living together or not. To speak in confidence to an information officer call 1890 252 084 or you can email us on info@treoir.ie. Visit our information website and keep up to date with information by following us on www.facebook.com/treoir and www.twitter.com/treoir

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