

Opening Statement to the Joint Oireachtas Committee on Justice and Equality on the Reform of the Family Law System

6 March 2019



The National Federation of Services for
Unmarried Parents and their Children

Founded in 1976, Treoir unites 19 member organisations working together to ensure the best outcomes for unmarried parents and their children. Our aim is an Ireland where all families, irrespective of marital status, are respected and protected in the Ireland's laws, policies and services. Some of our members and associate members include:

Aislinn
Barnardos
Anew Support Services
Clarecare
Doras Buí
Famlibase Youth Centre
Here2Help
St. Catherine's Community Services Centre
Sligo Social Service Council

Carr's Child and Family Services
Bessborough Centre
Coombe Women's Hospital
Foróige
Rotunda Hospital
Home Start
Limerick Social Service Council
National Maternity Hospital
St. Anne's Day Nursery

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Opening Statement

Treoir, the National Federation of Services for Unmarried Parents and their Children welcomes the opportunity to address the Joint Oireachtas Committee on Justice and Equality on reform of the family law system. Treoir unites its members to work together to improve the lives of unmarried parents and their children. We advocate for changes to the law to ensure their rights and welfare are acknowledged and protected in legislation, policy, and in access to services. Treoir provides legal information to parents and their extended families; and to professionals through our information service and by way of nationwide outreach. We make submissions to government and produce position papers on rights and entitlements.

Treoir welcomes the examination of the family law system by the Joint Oireachtas Committee. We note the far-reaching legislative changes to family law which have taken place in Ireland over the past five years.

Nonetheless, despite changes to the law, which Treoir welcomes, significant deficiencies exist in terms of how the legal system and family court structure operates. Treoir and other organisations deal with the fallout from this on a daily basis. Through our information service we repeatedly respond to questions to do with the rights of unmarried parents especially regarding guardianship, access, and maintenance.

This brings to the fore two key issues in terms of the operation of the family court system. One is the lack of information in the public domain among unmarried parents, social workers, Gardaí, the legal profession and society at large around the rights, or lack thereof, of unmarried parents. The second issue concerns access to legal advice and representation, and the question of economic inequality. The discussion that follows is grounded in the premise that the court and the family law system does not operate in a vacuum, but that it is very much a part of the society in which it operates.

This presentation talks about both issues and suggests remedies to improve the operation of the family court system.

A System in Crisis

A 1994 Law Reform Commission Report on the family law system notes that while family law has undergone a transformation, the structures for the mediation and resolution of family conflict are inadequate in the extreme.¹ Fast forward to 2019 and the family mediation service remains grossly under resourced. The service is characterised by long waiting lists with people waiting from twelve to twenty-six weeks for an appointment. This is part of a broader issue where not enough is being done to ensure Alternative Dispute Resolution (ADR) is properly resourced and available for parents in dispute. This is important, as in terms of establishing and sustaining shared parenting, Ireland lags far behind other countries. Treoir believes all children have a right to know, be loved and cared for by both parents, where possible. Shared parenting gives children the possibility of a nurturing relationship with both parents and their extended families and works well if it is child-focused, rather than adult-focused. The essential element is the goodwill and determination of both parents to make it work. When parents support their child's

¹ The Law Reform Commission: Consultation Paper on Family Courts, March 1994.

relationship with the other parent, they are promoting their child's right to an independent and meaningful relationship with each parent.

In Ireland, conflict between unmarried parents is often exacerbated by the fact that unmarried fathers do not have automatic guardianship rights. When a child is born in the Republic of Ireland having his name on the child's birth certificate does not give an unmarried father any rights in respect of his child. At the outset, this creates inequality in terms of parental rights and responsibilities which often results in the parents going to court. The adversarial route clogs up the courts and leads to tension between the parents. The child is caught in this maelstrom with the result that their right to have a relationship with both parents is put under pressure.

Twenty-five years have passed since the 1994 Law Reform Commission Report identified the grossly inadequate nature of family mediation and resolution structures. This remains the case in- spite of international evidence strongly supporting Alternative Dispute Resolution as the most successful default route for couples who need assistance. ²

Treoir is calling on the Oireachtas Committee to recommend to the Minister that automatic guardianship rights be extended to unmarried fathers whose names are registered on the child's birth certificate. This practice has been in force in Northern Ireland since 2002.

Unrepresented Parties and the Voice of the Child

The 1994 Report describes the courts as buckling under the pressure of inadequate facilities; it notes Judges dealing with family disputes do not always have the necessary experience or aptitude; and that too many litigants go to court unrepresented. Alarmingly, it warned, "an unhealthy two-tier system of family justice had developed".

In 2019 people on low incomes remain at clear disadvantage when it comes to the Family Law System. For example, those who qualify for Legal Aid must make a minimum contribution of €130, a large amount of money if you are dependent on welfare or a low paid worker.

In the current two-tier system those who are less well- off and from working class backgrounds often end up representing themselves in family law hearings. This delays the entire process and places huge pressure on an already struggling Court System, while also increasing tension between the parties.

Inequality between those who have the financial where-with-all to hire legal representation and those who do not is replicated yet again, when it comes to the voice of the child. Article 42A .4.2 of the Constitution enshrined the right of children to have their views heard in guardianship, adoption, custody and access proceedings. The Children and Family Relationship Act 2015 was commenced on 18 January 2016. Under the Act, the court in

² In Australia, mandatory mediation and expanded support services are credited with increasing shared parenting and reducing conflict between parties while research from Canada and Sweden shows that enhanced community based supports and properly resourced pre- court services can minimise the role of the courts in parental disputes. See *Unmarried Father's in Ireland: An Examination of the Barriers to Shared Parenting* (Treoir 2018).

deciding an application may give such directions as it thinks proper for the purpose of procuring from an expert a report in writing on any question affecting the welfare of the child; or appoint an expert to determine and convey the child's views, or do both. A fundamental flaw of this provision is that the parties, regardless of their financial means, must pay for report.

People entitled to legal aid get 50% of the expert report covered by the Legal Aid Board, but if you are already struggling the costs can be quite onerous. Treoir is concerned that many parents, especially those on low incomes are not able to afford this, with the result that the constitutional right of the child to be heard is compromised.

Taken together these factors i.e., the lack of legal representation, the cost of the expert report, and the socio-economic position of the parent(s) has a huge impact in determining their ability to access, in full, the Family Law System.

The Information Deficit

A recurring theme emerging from Treoir's information service is the lack of knowledge about the Family Law System amongst professionals and the general public. There is confusion about the meaning of guardianship and the extent or limits of people's rights concerning access, custody and maintenance. People are intimidated by the thought of going to court and worry about their lack of legal representation, or if in receipt of legal aid about the limited nature of it.

Treoir has identified a significant gap in knowledge around family law amongst members of the Gardaí, the legal profession, social workers, and the Judiciary themselves. This is compounded by a pronounced geographical variation in how the Family Law System operates, which is perhaps best exemplified by the haphazard use of the critically important document, the Statement of Arrangement for a Child.³ To this end we urge the Committee to recommend that a circular be sent to all Circuit and District Court Judges emphasizing the importance of the Statement of Arrangement Form and insisting it be used

Finally, Treoir urges the Minister to introduce a national public information campaign on these issues. In a major review of family law in Australia the Australian government introduced such a campaign which has since proved to be hugely successful.

Recommendations

1. Extend guardianship rights to fathers whose names are registered on the child's birth certificate.

³ The Children and Family Relationships Act 2015 commenced on 18 January 2016. The Statement of Arrangements for Child is a critical component of the Act as it gives a fuller picture of the child's broader familial environment with regard to care arrangements, domestic violence, maintenance, criminality, and the involvement of state agencies such as Tusla. See Appendix 1 for a copy of the form.

2. Ensure the National Mediation Service is properly resourced and a system of Alternative Dispute Resolution is introduced.
3. That a circular be sent to all District Court Judges emphasizing the importance of the Statement for Arrangements for a Child form and insisting that it be used for all hearings.
4. That the Minister introduce a national public information campaign on key issues to do with, access, custody, guardianship, birth registration and maintenance.

Thank you for your attention, we are happy to take any questions you may have.