



The National Federation of Services for
Unmarried Parents and their Children

General Scheme of the Family Court Bill

**Submission to the
Joint Committee on Justice**

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Introduction

Founded in 1976, Treoir is the national federation of services for unmarried parents and their children. Treoir, in partnership with its member agencies, promotes the rights and best interests of unmarried parents.

Treoir works to achieve this aim by:

- providing a National Specialist Information Service to unmarried parents, their extended families and those working with them through answering queries, information website, publications, and outreach workshops;
- co-ordinating the Teen Parents Support Programme;
- promoting change at every level to achieve constitutional and legal equality for unmarried parents, and to improve services and attitudes to unmarried parents;
- hosting Kinship Care Ireland
- promoting and supporting shared parenting
- promoting/undertaking research to better understand the situation of unmarried parents and their children in Ireland;
- collaborating with other agencies to promote our aim through the federation of Treoir and agencies outside of it.

Treoir recognises the diversity of family life in Ireland and that all families, including unmarried families, have the same rights to respect, care, support, and protection. In addition, Treoir supports and promotes the rights of all children as outlined in the Irish Constitution and in the United Nations Convention on the Rights of the Child.

Every year Treoir's National Specialist Information Service responds to thousands of calls, a significant number of which are from lone parents, unmarried fathers, extended family, and professionals. The recommendations in this submission are based on the experiences of those contacting Treoir's National Specialist Information Service and on input from our members.

PART 2

Establishment of a Family Court

Head 5 Guiding Principles

3. (a) *encouraging and facilitating as far as possible the resolution of issues in dispute by means of alternative resolution methods, such as mediation.*

Treoir welcomes the emphasis on alternative dispute resolution (ADR) as a possible means of reducing conflict. The enactment of the Mediation Act 2017 means that mediation has the potential to offer an alternative to adversarial court proceedings and to provide a forum for people to propose and explore recommendations and solutions to their specific needs and issues.

International evidence suggests mediation and alternative dispute resolution approaches can lead to more amicable and long-lasting arrangements, with the attention of parents more likely to be on children's needs.

In the Irish context however, for mediation and alternative dispute resolution to work as envisaged in the Bill, requires substantial investment in services. Currently the National Mediation Service is grossly underfunded and has long waiting lists. Depending on where they live a person may have to wait up to ten months for an appointment. For example, in Galway waiting time is nine months, Limerick eight months, Mayo ten months, Tallaght ten months, and in Cork six months.

RECOMMENDATIONS

- The introduction of 'compulsory' ADR should not happen in isolation and requires significant investment, and professional oversight. Investment is required to address lengthy waiting times and to ensure any new service is adequately staffed.
- ADR and mediation should not be an end, in-and-of-itself. Within the general context of reform of the state's family court system, ADR must be part (albeit an important one) of a broader project. This includes state investment in shared parenting, and access to a range of specialist supports and services that meet the needs of citizens.
- ADR must be properly regulated and operate within the limits of the law. There should be professional oversight of the service and recognised accredited training for all practitioners.
- ADR is not a panacea for every situation and people should retain a legal right not to engage in it if they so wish, and this should not be used against them in court proceedings.
- The state should conduct a public information campaign on family law regarding rights and responsibilities, and to inform people about how to access legal aid, ADR and other support services.

3. (c) conducting proceedings in a manner which—

- (i) is as far as possible user-friendly for the parties,*
- (ii) identifies the issues in dispute,*
- (iii) minimises as far as possible conflict between the parties,*
- (iv) is just, expeditious and likely to minimise costs of those proceedings,*

People who find themselves in the family law system are often at a very vulnerable stage in their lives. They may have a range of other issues to contend with such as unemployment, access to housing, homelessness, affordable childcare, and limited financial means. All these pressures are compounded when people are unable to access legal aid, have literacy issues, are intellectually challenged, if English is not their first language, or if they are members of an ethnic minority, including the Traveller Community.

A properly functioning legal aid system is essential in providing access to justice, which itself is a cornerstone of a functioning democracy. Treoir acknowledges the work of the Legal Aid Board and its efforts to meet an ever-increasing need with a very limited budget. Ireland's current legal aid system, which is critical to the administration of justice, is beset by long waiting lists, it is significantly under-resourced, operates within outdated means-test thresholds and excludes important areas of law to do with breach of access, variation orders and housing.

There is no such thing as free legal aid in Ireland and a woman living in rented and insecure accommodation with young children can easily find herself over the legal aid threshold if she is in receipt of Housing Assistance Payment.

RECOMMENDATIONS

- To ensure a truly user-friendly system a specialised state funded family court advocacy service should be established to assist those who may need very specific and additional assistance when dealing with family law issues.
- The Bill should be framed and implemented in accordance with the state's obligations under the UN Convention on the Rights of Persons with a Disability.
- The Guiding Principles should include a defined role for advocates, and a requirement that all key stakeholders cooperate with them as part of family law proceedings.
- The Mediation Act 2017 states that before entering mediation or ADR a person should seek legal advice. However, if the role of ADR and mediation as envisaged in the Bill is to be realized then significant investment in a reformed legal aid system that is fit for purpose and properly funded by central government, is a prerequisite.

3. (d) *in any family law proceedings in which a child is involved or likely to be affected by the outcome—*

(i) ensuring that the best interests of each such child are a primary consideration in those proceedings,

(ii) in respect of any such child who is capable of forming his or her own views, ensuring as far as practicable that the views of the child are ascertained and given due weight having regard to the age and maturity of the child.

Despite the introduction of Article 42A of the Constitution in 2015 the voice of the child continues to be absent in any meaningful way from family law proceedings. There are several reasons for this, one is a lack of legislative clarity and the other is the absence of state investment in services to vindicate the aforementioned constitutional right.

Regarding the latter, legislation is silent as to what should happen when a court decides not to appoint an expert. The Children and Family Relationship Act 2015 is not prescriptive when it comes to which methods should be used to ascertain the voice of the child during proceedings. In relation to other provisions such as the *guardian ad litem* provision and the procurement of expert reports, these too lack legal specificity and are inconsistently implemented.

RECOMMENDATIONS

- Treoir supports the recommendations of the Joint Committee on Justice and Equality *Report on Reform of the Family Law System* (October 2019) that a review be carried out to amend legislation in this area and that specific guidelines are given on how to ensure the views of the child are adequately and fairly ascertained.
- Legislative clarity is also needed in relation to the criteria for appointing an expert this is particularly important when it comes to issues to do with accountability, qualification, and membership of a professional body, and how the expert is to be resourced.
- We welcome the proposed alignment of Section 24 of the Child Care Act 1991 with Article 42A of the Irish Constitution. It is of the utmost importance that provision is made in the legislation to ensure the voice of the child is independently heard, not just in the context of proceedings, but also in child protection measures that are not subject to the supervision of the courts such as voluntary care arrangements.
- Treoir believes that to truly vindicate the Constitutional right of the child to be heard, the state should establish and fund a panel of experts who would be available to the courts to produce reports within a reasonable timeframe.

- State investment in such a service would ensure all children, irrespective of social class, ethnic background and/or ability, would have their voices heard in family law proceedings. Alternatively, a national body such as the Guardian *ad litem* service in Northern Ireland could be setup and used in both public and private law proceedings.

Head 6 Establishment of a District Family Court

Provide that:

(4) *A person shall not be assigned to be a judge of the District Family Court unless—*

(a) he or she is a District Court judge, and

(b) he or she is, by reason of his or her training or experience and temperament, a suitable person to deal with matters of family law.

Genuine reform of the family law system requires that designated family court judges be knowledgeable regarding family law but also that there is sensitivity and awareness training about socio-economic and ethnic/racial bias, gender bias, sexual orientation, and that the needs and interests of people with limited levels of literacy, and those with intellectual disabilities, are addressed and protected.

(6) With the prior agreement of the Principal Judge of the District Family Court and the President of the District Court, a judge of the District Family Court may leave that assignment in order to fill a vacancy as a District Court judge but not before completing a 3- year term of assignment.

Treoir welcomes the establishment of specialist District Family Courts and the appointment of Judges for terms not less than three years. This should assist in ensuring greater efficiency and consistency in decision making.

(8) A judge of the District Family Court shall take such course or courses of training or education, or both, as may be required by the Judicial Studies Committee established by the Judicial Council.

The Committee for Judicial Studies was established in 1995 under the Court and Court Officers Act. Under the Act its task was to organise training and seminar events for members of the judiciary, which tended to be of a general nature.

RECOMMENDATIONS

- Genuine reform of the family law system requires the Bill to specify the exact type of training to be undertaken, the nature of its content and the areas it will cover, and how often it will take place. The wording, while specific, should be broad enough to incorporate training on unforeseen societal changes that may impinge on family law, and should be ongoing.

Head 7 - Creation and alteration of District Family Court Districts

Provide that:

(2) *The Courts Service, after consultation with the Principal Judge of the District Family Court and the President of the District Court, may by order —*

(a) divide the circuits referred to in Head 12 into convenient geographical areas (in this Act referred to as “District Family Court Districts”) for the purposes of the District Family Court, and (b) attach to each such district a name by which it shall be known.

(3) *The Courts Service, following consultation with the Principal Judge of the District Family Court and the President of the District Court, may by order—*

(a) alter the composition of a District Family Court District by adding or removing areas;

RECOMMENDATIONS

- While Treoir welcomes the establishment of specific District Family Court Districts we believe the creation of such Districts should be vested in the government, after the Courts Service have consulted with the Principal Judge of the District Court and the President of the District Court, and that this should be specified in the Bill.
- The logic behind the selection of districts (be it population density or other criteria) should be specified in the Bill, as should a commitment to regional balance.
- Rurality and/or distance from a designated district will impact people differently depending on their means, access to transport, mobility, etc. The Bill needs to take account of this, and a designated fund established to ensure geographical distance does not impede people who maybe economically marginalised or vulnerable from access to justice. The fund could be managed and operated by the Legal Aid Bord.

Head 10 – Proceedings in the District Family Court

Provide that:

(2) (a) *Subject to paragraph (b), an application to the District Family Court to commence family law proceedings shall state—*

(ii) whether or not mediation under the Mediation Act 2017 has been attempted,

Paragraph (a)(ii) shall not apply to the commencement of proceedings under the Child Care Acts 1991 to 2015 and the Domestic Violence Act 2018.

RECOMMENDATION

- Treoir welcomes the recognition in the Heads of Bill that mediation is not suitable in cases of domestic violence. However there needs to be recognition in the legislation that it is also not suitable in instances where coercion, or harassment are present. As stated earlier, we believe people should have a choice when it comes to mediation, and that it should not be compulsory.

Head 15 – Proceedings in Circuit Family Court

Provide that:

(2) (a) An application to the Circuit Family Court to commence family law proceedings shall state—

(ii) whether or not mediation under the Mediation Act 2017 has been attempted,

As above.

Head 18 -Family Law Rules Committee

In the Bill we note the Family Law Rules Committee shall consist of 3 ex-officio members and 7 nominated members. The ex-officio members being (a) the Principal Judge of the Family High Court; (b) the Principal Judge of the Circuit Family Court, and (c) the Principal Judge of the District Family Court.

The nominated members shall be a barrister with experience and relevant expertise in family law nominated by the Bar Council of Ireland; and a solicitor with experience and relevant expertise in family law nominated by the Law Society of Ireland.

It is also proposed a County Registrar, a Clerk of the District Court, a Clerk of the Circuit Court, the Chief Executive of the Courts Service, or a member of the staff of the Courts Service to whom the Chief Executive has delegated his or her membership in writing and a representative of the Attorney General, sit on the Rules Committee.

The Rules Committee is of critical importance when it comes to the reform, functioning, evolution, and development of the state's family law system. It is in this context that we note the complete absence of relevant civil society organisations and office holders. The Bill proposes that the Rules Committee shall, with the concurrence of the Minister, make rules prescribing documentation required for the commencement of proceedings; regulate pleadings, practice, and procedure; decide remedies and costs of proceedings; regulate the form and execution of any process, and provide for such matters, as appear to the Committee to be necessary or expedient for the purposes of this Act.

While responsible to the Minister for Children and Youth Affairs the Special Rapporteur on Child Protection is entitled to consult with Departments of Government and the Ombudsman for Children about any legislative initiatives designed to enhance child protection. The Terms of Reference, effective from July 2016, are as follows:

- 1) *Review and report on specific national and international legal developments for the protection of children*
- 2) *Examine the scope and application of specific existing or proposed legislative provisions and to make comments/recommendations as appropriate*
- 3) *Report on specific developments in legislation or litigation in relevant jurisdictions.*
- 4) *And to report on relevant litigation in national courts and assess the impact, if any, such litigation will have on child protection.*

The presence of the Special Rapporteur on the Rules Committee is in keeping with the terms of reference for the role, and it has the potential to bring a truly child centred perspective to the new family law system.

RECOMMENDATIONS

- We propose that considering the centrality of ‘the best interests of the child’ in the Constitution and to the operation of the new family law system, that the Special Rapporteur on Child Protection or his/her predecessor sit on the Rules Committee.
- We believe two additional seats on the Rules Committee should be reserved for representatives from civil society groups.

PART 3 **Jurisdiction**

Head 20 – Amendment of the Guardianship of Infants Act 1964

Despite the removal of the status of illegitimacy in the Status of Children Act 1987 and changes in the law permitting a father who is not married to his child’s mother to become a guardian by way of application to the courts, a statutory declaration, or through the cohabitation clause in the Children and Family Relationship Act 2015, he still has no automatic right to be guardian of his child.

Considering recent changes in Irish society which are reflected in the introduction of a suite of progressive pieces of legislation, why the unmarried father should continue to be ‘marked out for special treatment’ is a cause of concern. This is even though the 1994 Law Reform Commission Report and the Oireachtas Justice Committee Report on Reform of the Family Law System (2019), both recommended the issue be revisited.

Treoir works with parents of children who are not married to each other and understands the complexities of this issue and the concerns around the safety of women and children. However, in the context of recent reports on the treatment of unmarried mothers and their children, it is simply no longer acceptable to deny a parent of a child a right, based solely on their marital status. Reform of the family law system give us an opportunity to address this historical and outdated imbalance.

RECOMMENDATION

Treoir recommends the law be amended to give all parents equal rights to guardianship of their children. This could be done by extending automatic guardian rights to fathers whose names are registered on the child's birth certificate. This practice, which has been in force in Northern Ireland since 2002 would mean there was legal uniformity on the issue across the island and fulfil our obligations under the Good Friday Agreement.

PART 4

Protection of Parties to Proceedings

Head 37 – Prohibition on publication or broadcast of certain matters

Access to justice is a key pillar of the modern democratic state. Therefore, in theory at least, it is in the interest of everyone, not just citizens, that justice is *seen* to done. In family law cases reporting on the administration of justice has been the subject of legislative change with the Child Care Amendment Act 2007 and again in 2013 when the press could attend and report on proceeding, but with significant restrictions.

Treoir believes that the collection of specific and accurate data about the outcome of cases to do with access and custody applications, applications for guardianship, whether a person has legal representation, childcare cases, and the logic behind decision making and judgements, is of critical importance and should be in the public domain. While the anonymity of parties should continue to be protected, it should no longer be an either-or-case when it comes to reporting on family law proceedings.

RECOMMENDATION

- Treoir recommends the establishment of a dedicated family law reporting body that is staffed and funded by the state. This would ensure important information about the administration of justice is in the public domain and assist in the formation of public policy and the allocation of resources.
- The family law reporting body would produce an annual report (and other specific reports as required), and the proposed Rules Committee would be required to factor in this data and research, into its decision-making process.

