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Topic: Domestic Partnerships
Submission to: Department of Justice, Equality and Law
Reform's Working Group
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Background

Progressing the work of Cherish, established in 1972, One Family provides voice, support and action for one-parent families through membership, professional services and campaigning. Our aim is to affect positive change and achieve equality and social inclusion for all one-parent families in Ireland.

We work to achieve our aims through

Voice we are the national membership organisation of one-parent families, supporting organisations and others concerned with the issues facing one-parent families.

Support we offer a comprehensive range of professional services to one-parent families, to those experiencing a crisis pregnancy and to those working with one-parent families.

Action we campaign with and on behalf of our members to affect positive change for one-parent families.

One Family works with all types and all members of one-parent families, respecting the realities of family life in Ireland.

Introduction

Progressing the work of Cherish, established in 1972, One Family provides voice, support and action for one-parent families through membership, professional services and campaigning. Our aim is to affect positive change and achieve equality and social inclusion for all one-parent families in Ireland. Further information is available on our website- www.onefamily.ie

One Family welcomes this opportunity to submit our proposals to the Department of Justice, Equality and Law Reform's Working Group on Domestic Partnership

One Family's Principles

One Family's policy positions are guided by our core principles. These are:

- The needs of children must be at the centre of all relevant policy developments and the needs of children in one-parent families must be overtly addressed.
- The need to ensure real choice for lone-parents in terms of participation in the paid labour market and in terms of their parenting role.
- Recognition that many lone-parents are involved in a range of caring roles, including childcare, eldercare and care of family members with disabilities and these roles must be recognised and supported.
- Recognition that individual lone-parents have different needs and requirements at different stages of the lifecycle and that supports must be in place to effectively manage transitions in and out of the labour market, as well as to access a wide range of options to pursue viable part-time employment, education and training.
- The need to ensure that actions to move more lone-parents into employment do not result in lower incomes for one-parent families and are geared towards broadening career options and related developmental opportunities
- The need to work to ensure that planned policy changes and related funding are focussed on those most at risk of poverty and social exclusion i.e. those on low income and other disadvantaged groups, including families and children living in poverty.

The Position of the Family in the Constitution

One Family's first policy objective under our current strategic plan is to

'work for a constitution which affords equal rights to all families'. Despite the very disappointing response to this aim in the recent APOCC report, our preferred response to issues affecting non-marital families is to change the constitution.

As the recent Law Reform Commission report states, and as expressed recently by the Minister for Justice, Equality and Law Reform at the launch of the IHRC report on 'The Rights of Defacto Couples' (Walsh and Ryan, May 2006) under the current constitution, the extent of legal change that is possible is limited by the Irish constitution which recognises the unique position of the family based on marriage.

As stated above One Family works from the basis that the needs of children must be at the centre of all relevant policy developments and that the needs of children in one-parent families must be overtly addressed. Here again our preferred solution is to insert into the constitution a firm guarantee that the rights of children must be considered paramount in all deliberations concerning children and we are working with other NGOs and to achieve this aim.

We would also stress that laws that disadvantage the families from which children hail clearly serve to disadvantage children also. A good example is the Family Home Protection Act under which children in non-marital families enjoy less protection under this Act than do their marital counterparts.

It is in the context of this position that we present our submission to the Working Group.

Role of One Family

One Family works with all types of one-parent families as well as with new and blended families. Much of our work revolves around issues related to the formation and ending of family relationships. In all cases our primary concern is the impact of such situations on the child, on ensuring the availability of adequate supports for children and on supporting legal frameworks that overtly address the best interests of the child.

We therefore focus our recommendations to the Working Group with this priority in mind.

Some Background Information

In developing policy and legislation that affects one-parent families (OPF) and their children it is important to be aware of current

realities. While statistics and research are patchy, we know that:

- The majority of one-parent families are widowed, separated or divorced. Almost a quarter are single. (CSO)
- Births to unmarried women under 20 are only 3% of total births (CSO)

- The majority of lone-parents are in the labour market, including those on the OPFP (CSO, DSFA)
- The majority of mothers including lone-parents at work are working part time (CSO)
- OPFs? dependent on social welfare are generally concentrated in low paid, part-time and insecure employment (DSFA)
- OPFs? face some of the highest levels of poverty and deprivation in the country (EU-SILC)
- Lone-parents face very significant poverty traps when going into full time employment (EAPN/OPEN research shows that such working arrangements currently result in a lower net income for OPF.)
- Many developmental opportunities are inaccessible to lone-parents because they are only provided and supported on a full-time basis (NESF)
- Progression from CE and other initiatives, that take into account OPFs needs, into mainstream training and education, that do not, is very low (FAS)
- Participation in skills based training results in much higher placement rates than participation in employment schemes (ESRI)
- Almost half of lone-parents only have primary education (NESF, 1996)
- Most lone-parents are not in a financial position to avail of work life balance options that lead to a reduction in income (e.g. unpaid parental leave) (DTI, UK)
- A high proportion of lone-parents are located in sectors where availability of work life balance options is low (DTI,UK)
- Childcare and child development supports, particularly after school care is not in place to provide the necessary level of support to address childcare, child development or child poverty issues among one-parent families. (NWCI, CPA, End Child Poverty Coalition)

Recommendations

Overall Recommendations

We would ask the Working Group to ensure that all their recommendations explicitly take into account their impact on children and that the interests of children are paramount when different options are being considered. Thus the Working Group's recommendations should take into account the rights of the child as stated in the UN Convention on the Rights of the Child which Ireland has ratified.

In effect this would mean 'child proofing' the Working Group's recommendations. In this regard, a key concern of the recommendations should be to ensure that they serve to enhance the position of the child in non-marital family units. At a minimum, the Working Group should be mindful that its recommendations do not result in a loss to the child in terms of income, access to services, protection of property rights, as well as to the rights of children to have access to both parents.

Even where children ostensibly enjoy equal rights, differentiation between families based on marital status inevitably impacts negatively on the children in such families. The Status of Children Act, 1987 effectively aimed to place the non-marital child on an equal footing with their marital counterparts. Nonetheless, the continued failure to recognise non-marital families for all but a few purposes serves, we believe, effectively to place the children in such families at a distinct and unfair disadvantage.

Specific sub-groups of Lone-parents

We would ask the Working Group to also take into account and reflect on the diverse issues affecting sub groups of lone-parents e.g. immigrant families. In such cases some lone-parents may be parenting alone due to an inability to rely on family reunification procedures where the parents aren't married. Children in lone-parent families could be denied access to their parent(s) due to the lack of flexibility in the immigration system when it comes to parents of children who are not married to each other/divorced etc.

Legislation and Social

Policy

Cohabitees are treated as single persons for the purposes of taxation but as spouses for the purposes of social welfare. In both cases, they are treated in the manner which is most beneficial to the State. In the complex interplay between the legal status of relationships and social policy again the interests of the child should be paramount. The income of children should not be reduced because of the legal status of the parents/partners or by their labour

market/ dependency status. Neither should the presumption be that the income of everyone in the household/ partnership is being utilised to support the child.

Father's Rights/ Maintenance

Unmarried fathers are not automatically guardians of their children regardless of the level of involvement or the length or the subsistence of the cohabitation and cohabiting couples cannot claim maintenance in respect of each other.

Many children in one-parent families are denied their rights in relation to their fathers due to this regime. This needs to be reconsidered by the Working Group from the perspective of children's rights.

As noted above, the adult members in non-marital families are not entitled to maintenance inter se on the breakup of a relationship. Although children are entitled maintenance in their own right (regardless of the marital status of their parents), the failure to permit access to maintenance for the adult partners effectively serves to diminish the income streams available to a non-marital one-parent family when compared with marital families.

Property Rights

Cohabiting couples do not have the benefit of the Family Home Protection Act 1976 which protects the sale of the family home without the consent of the other spouse. This means that it is easier for a non-marital partner to sell the home of his or her partner and children without the safeguard of the 'spousal veto' afforded by the 1976 Act.

Furthermore, the court may, in a dispute over a home in which cohabitees have resided, take into account direct financial contributions or monies paid into a family fund but cannot take into account non-financial contributions within the home. AIM Family Services, among others, have pointed to the fact that the partition acts which govern this area are approximately 150 years old and were in fact designed to deal with the distribution of assets of business partners. The right of a child to a home should be to the forefront in the design of any new legislation; this right should not depend on the marital status of the child's parents.

Non-marital families are also denied the facility of property adjustment

orders and orders in respect of the family home that serve to protect divorced and separated spouses on marital breakdown. The range of remedies available under the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996 do not extend to non-marital couples.

Inheritance and Pension Rights

One-parent families are often created out of cohabitation arrangements which break down - the lack of proper protection for the inheritance rights of lone-parents arising out of these situations is problematic and should be addressed. Although marital and non-marital children are equally protected insofar as their personal inheritance rights are concerned, the failure to provide inheritance rights on intestacy in respect of a deceased non-marital partner may serve to impact negatively on the income of the surviving family as a whole.

Pension rights are also a concern in this regard. Non-marital partners often face significant difficulties in accessing pension funds on the death of a partner. This is acutely problematic in the case of public sector pensions, which do not recognise non-marital partners. Despite the fact that a person may contribute to the 'spouses and children' fund, as required of all civil and public servants, his or her non-marital partner

Non-marital partners are also denied access to pension adjustment orders on the breakdown of relationships, a facility afforded to separating and divorced spouses.

Health and Personal Safety

In the case of a barring order affecting non-marital families, a court is not entitled to make such an order where the respondent has a greater legal share or equitable interest in the property than the applicant. This needs to be re-considered and addressed from the point of view of children in the relationship.

Significant difficulties may also arise in the case of a non-marital partner confined to hospital or in need of medical treatment, current law not recognising his or her partner as 'next of kin'.

Participation & Empowerment

The development of new legislation in the area of family law in Ireland should, in our view, involve the active participation of the families and individuals concerned, including children. This requires research on the realities of children's life experiences and also the hearing of children's voices. This in turn involves recognising and working from a position that children have their own valid perspective and are not merely the appendages of their parents.

Supports

A key issue for families involved in relationship breakdown relates to the lack of access to supports and to alternatives to the legal process. One Family strongly believes that such supports should be available for adults and children which could be used to address many of the issues raised here without access to adversarial legal proceedings. We would encourage the Working Group to make a strong call for resources to be allocated to the provision of such supports in the interests of all concerned, especially children.

Final Comment - Child Poverty

A key driving force for both legislative and social policy change in Ireland, in our view must be to address the very high level of child poverty in Ireland. It is reckoned that one in seven children in Ireland live in poverty (Barnardo's). Child poverty rates are much higher among one-parent families (CSO). In this regard we would like to reiterate the point that even where children ostensibly are treated as equals, any disadvantage or differentiation accorded to the families inevitably impacts on the children in such families. The Working Group is in a strong position to ensure that proposed developments in family law clearly address child poverty. We would encourage the Working Group to respond to this challenge.

Further Information

If you require any further information please do not hesitate to contact us. See details below.

This submission is made on behalf of One Family – voice, support and action for one-parent families. Queries should be directed to Candy Murphy, Policy & Campaigns Manager, and T: 01 662 9212 F:

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