



In summary

A court welfare system is urgently required to provide necessary assessments and reports to Courts so they can make informed decisions in the best interests of children. Child Contact Centres need to be seriously considered as part of the ancillary services to users of family law courts along with counselling, mediation, post-separation family supports, DNA testing and section 47 reports. Courts should not be under-resourced with appropriate information to make decisions in children's best interest as a result of the inability of parents to pay privately for these services.

Introduction:

One Family is Ireland's leading organisation for one-parent families, having been established in 1972 as Cherish. We hold a broad and inclusive view of family life and we work with people who parent alone, people who share parenting of their children as well as families who are in transition e.g. going through the process of separation or becoming a step or blended family. Children are at the centre of what we do and we hold and actively promote the child's best interest principle as well as working from a human-rights based approach.

One Family offers a wide range of specialist and expert family support services to one-parent families, which forms the basis of our Professional Development Service and our practice to policy and advocacy work.

The opinions and recommendations in this submission are made based on our day to day work with the lived reality for families who live in challenging and diverse situations. Also our work is based on national and international best practice evidence, as well as socio-legal research.

We share a set of principles with other leading organisations working to support diverse families. This informs and influences our work and critical thinking in relation to the Children & Family Relationships Bill¹ .

Our recommendations and concerns draws from our direct work with families across all our services including our national helpline askonefamily; our Counselling Service including play therapy for children; our specialist parenting programmes for one-parent families: *Positive Parenting - Building Strong Relationships and Managing Difficult Behaviour*; and *Family Communications: Coping with Family Life and Communication with Teenagers*; our Parent Mentoring and Mediated Parenting Plan services; the successful and highly regarded pilot Child Contact Centre services we

¹ http://www.onefamily.ie/wp-content/uploads/Children-and-Family-Relationships-Bill_Joint-Principles-6.13.pdf



delivered for the past two years in association with Barnardos in north and south Dublin. We will particularly draw from the independent external evaluation of the Child Contact Centre, which will be launched and widely disseminated in March 2014.

For background purposes please see One Family's submission to the LRC² and original research on the need for Child Contact Centres in Ireland by One Family³.

² <http://www.onefamily.ie/wp-content/uploads/One-Family-Submission-to-LRC-re-Family-Relationships-for-research-reports-2.pdf>

³ <http://www.onefamily.ie/wp-content/uploads/Contact-Centre-Full-Report-31-M-20101.pdf>



Head 6: Presumptions of Paternity

An enhanced flexible and realistic approach to the presumption of paternity particularly in the cases of separated married people is welcome. However, clear guidelines as to how a person should prove separation or cohabitation will need to be developed: these must be non-onerous for a new parent to achieve within the timelines required for birth registration. A comprehensive civic information campaign is required to accompany all the changes in relation to birth registration and guardianship. Each new parent will benefit from clear written material on same, preferably coordinated between relevant Government departments e.g. Dept of Justice & Equality; Dept of Social Protection. Such information should be in clear English (and other languages as appropriate), proofed and endorsed by relevant organisations.

Head 10: Parentage in cases of assisted reproduction other than surrogacy

Clarification of parentage in these instances is most welcome and provides both comfort and certainty to families using assisted human reproduction services. However, history has shown that it is extremely important for children to have age-appropriate knowledge and understanding of their biological and genetic history. Parallels exist for children between those adopted who are unable to trace their birth parents; those who were told incorrectly their mother's partner was their biological father; and those children who in the future may discover that their parents are not both their genetic parents.

A legislative framework is urgently required to deal and manage comprehensively Assisted Human Reproduction with all accompanying services of donor records, donor tracing and support for parents in disclosing origins to their children.

One Family appreciates that this is outside the scope of this Heads of Bill; we believe that the relevant Oireachtas Committees must be aware of these issues and the urgency involved. Many thousands of children have been created through the use of donor gametes and this is not apparent where there are two heterosexual parents and we believe that many parents in this situation do not disclose genetic origins to their children. One Family is aware of a small number of cases where this issue has only arisen when the marriage ends. Where single women or same-sex couples avail of assisted human reproductive services this is far more visible to all including the child.

Head 25: Direction for the use of DNA tests

Where a person has incurred costs for DNA testing as ordered by the court and the claim of parentage or denial of parentage was vexatious, such costs should be awarded against



the person making the vexatious claim. There should be a provision for low income parents to be able to access DNA testing services.

Head 31: Definitions (in relation to guardianship, custody and access)

In future language must be modified to reflect that recommended by the Law Reform Commission ie contact instead of access; parental responsibility instead of guardianship; and custody instead of day to day care.

One Family welcomes the definition of access but expresses concern and questions whether courts have full information and are competent to determine those real situations that exist where 'where such access is not in the best interests of the child'. One Family welcomes the explicit definition of a 'best interests' approach for a child, however, we are aware that it can be challenging at times for a court to fully determine this in the absence of quality, impartial, expert information through a robust family assessment, risk assessment, parenting capacity assessment, child protection investigation or other investigations as appropriate.

We welcome the comprehensive definitions of appropriate relatives of a child who may wish to have access to them. It is common for non-marital families to form strong relationships between the non-marital partner of a legal parent and a child; as well as between children, who may not be legal step-siblings. A presumption of cohabitation or a broad and inclusive view of family life which refers to ECHR should be adopted to enable this.

Head 32: Best interests of the child

The explicit focus on the best interests of the child is extremely welcome. However, One Family has a serious concern as to how courts can be systematically and professionally resourced with the relevant background information in order to determine the best interests of the child: given the comprehensive and appropriate list of factors to be considered in subhead 3. Our experience in working with courts through the Child Contact Centres can be summarised as the courts being frequently under-resourced with relevant impartial information particularly where the parents are not in cooperation or in agreement about plans for the child's care.

Subheads 4-5 in relation to family violence (domestic abuse) are welcome and we strongly urge that courts look at all issues relating to a family in the round, preferably in one sitting by the same judge, to ensure consistency and that decisions are made in the best interests of the child. Family violence is not only limited to physical harm, sexual abuse or fearing for safety. A comprehensive definition must be adopted to include



emotional, physical and sexual control, harm, threats of harm, bullying and persistent and consistent erosion of self confidence/esteem.

One Family's work through the Child Contact Centres found that some children did not wish to have contact with their parents when supported to give their views through assessment. During the pilot the team also made recommendations in a small number of cases that parents should not have access with their children due to safety concerns, even in supervised situations. This type of recommendation could only be arrived at following thorough assessments of relevant family members and risk assessment where appropriate.

One Family, based on our evidence-informed experience, recommends that where allegations of domestic abuse are made, the court will benefit from referring these families for assessment to a professional service such as a Child Contact Centre or a suitable family welfare service.

One Family is aware that the Gardaí do not routinely retain full records of violations of safety or barring orders. Therefore, this type of evidence is not always available to victims of domestic abuse and the court hearing the case.

We fully appreciate the intention behind subhead 6 in limiting relevant information so as not to provide opportunities just to air grievances but there must be caution against this in instances of alleged or proven domestic abuse. This is because abuse or violence directed at a parent with care or another family member can have severe longterm negative impacts on children (Buckley, Holt, Whelan, 2006)⁴.

From our research into Child Contact Centres⁵, we know there is a correlation between domestic abuse and childhood sexual abuse. Hester and Pearson (1998)⁶ found that in 69% of cases of child sexual abuse, the perpetrator who was either the father or father figure was also the perpetrator of domestic abuse in the house.

In relation to some of the challenges of quality information being available to the courts we are mindful of the delicate intersection between private family law cases and public responsibility in child protection cases. However, cognisance of this must be recognised. In **subhead 7** the intention to hear the voice and views of the child is important and is welcome. Consideration must be given as to how this can be achieved in a fair, child-centred and mutually productive way. Working with children is specialised, particularly where they have experienced trauma. A court welfare system and infrastructure with

⁴ 'Listen To Me' Children's Experience of Domestic Violence Helen Buckley Stephanie Holt Sadhbh Whelan, Children's Research Centre Trinity College, Mayo Women's Support Services 2006.

⁵ <http://onefamily.ie/wp-content/uploads/Contact-Centre-Full-Report-31-M-20101.pdf>

⁶ Hester, M. & Pearson, C. (1998) From Periphery to Centre: Domestic Violence in Work with Abused Children, Policy Press.



specifically skilled and competent professionals in an appropriate environment is required to secure and to hear the voice of the child. The views of children are routinely heard and recorded in the assessments undertaken through our Child Contact Centres methodology, particularly in high conflict families and this approach proved beneficial.

Head 36: Guardians to act jointly

It is common that guardians are unable to act jointly and may need referral to appropriate support services to assist them to do so. Therefore, an appropriate support infrastructure must be in place.

Head 39: Court appointments of guardians

Subhead 3 outlining the ability of people with day to day care of a child by virtue of a legal or cohabiting relationship with the parent of a child to achieve guardianship is critical in securing the safety of children and the families they live in. It is very common for children to live long-term with adults who are not their parents and who could not become guardians. This has made everyday and emergency situations extremely challenging for those children and families. It is important that children can have two legal parents (who generally do not live together) and an additional guardian as appropriate to need.

Consideration must be given to balancing the rights and responsibilities of parents and guardians with the best interests of children where situations might arise that there could be three or more adults involved in the raising of children. Whilst informal arrangements like this exist in Ireland, this will be the first time these relationships are legally commodified and crystallised. In our evidence-informed experience some families benefit greatly from expert information and services such as mediation or counselling to work through the dynamics and develop appropriate workable parenting plans.

Head 41: Power of guardian parent to appoint substitute guardians

This is a welcome initiative that will assist the safety and care of children. This is particularly advantageous in those one-parent families where there may be only one guardian of the child.

Head 43: Powers and duties of guardians

Whilst acknowledging that this Head refers generally to property and estate of the child, it should also be framed in a child's best interest. The phrase "be entitled to the custody



of the child and shall be entitled to take proceedings for the restoration of his custody of the child against any person who wrongfully takes away or detains the child” implies that there are no circumstances in which a guardian can be removed or not have access to or custody of their child contrary to previous heads. This must reflect, assert and crystallise the best interests of the child

Head 46: Applications to court by child’s parents concerning custody and access

Subhead 1 dealing with custody and right of access to the child must always be considered in the best interests of the child with full knowledge of relevant family information including investigations into allegations of domestic abuse.

Head 47: Application to a court for custody by relative of child or person acting in loco parentis

One Family particularly welcomes the ability of informal step-parents/partners of legal parents to apply for custody of a child with whom they have a significant relationship, subject to being in the best interests of the child.

Head 48: Application to court for access by relative of a child or person acting in loco parentis

One Family welcomes this approach. However, where there is conflict again robust impartial information may be needed by the court in determining what is in the best interest of the child particularly where there has been a history of familial conflict supported by the wider family members. Therefore, clarity on the meaning of ‘relative’ must be given and we consideration of significant but not legal sibling type relationships is urged.

Head 49: Additional powers of the court in relation to applications under this Part

In relation to **subhead 1**, the court may find it challenging to identify desirable locations and conditions of access to satisfy their concerns. There are occasions where a parent does not know their child and does not have a relationship or they may benefit from some basic parenting supports and skills. Courts may find it helpful to have relationships with a resourced set of local specialist service provides to assist with these issues.



In other instances there may be a more serious concern about a child's safety during access and in the current absence of Child Contact Centres, courts may not have suitable places to send parents. This should not lead to unsafe or unsuitable access. One Family recommends that courts must err on the side of safety concerns for the child.

Head 50: Making of interim custody or access orders

One Family recognises the dangers in parents losing contact with their children due to court waiting lists. However, the making of interim orders must be balanced with the need for full information in conflictual or potentially dangerous situations: the safety of the child must be of primary concern and paramount

Head 53: Safeguards to ensure applicant's awareness of alternatives to custody, access and guardianship proceedings and to assist attempts at agreement

If legislators wish to acutely support parents to reach agreements outside the court through alternative dispute resolution methods this section of the Bill needs to be strengthened. It is hard to see how legal practitioners in private practice can hold responsibility for attempting to divert applicants to counselling and/or mediation. In certain cases this may run counter to their interest as private businesses. Systematic statutory support is required here for all applicants to family courts building on the Dolphin House model of mediation co-located with the courts. This is a cost effective and impactful measure for parents.

Head 54: Safeguards to ensure respondent's awareness of alternatives to custody, access and guardianship proceedings and to assist attempts at agreement

As above.

Head 55: Adjournment of proceedings to assist agreement on custody or guardianship of or access to children

Pending publication of the evaluation of the pilot Child Contact Centres, this will highlight that this remedy was used positively by courts when advising parents to attend the pilot Child Contact Centre service.

Head 58: Procuring by court of report on question affecting the welfare of a child



Whilst, welcoming the expanded ability of the District Court to order section 47 reports, the ability to pay for such reports by parents/guardians on low and/or fixed incomes is questionable. If the court requires such a report, which is necessary to make reasonable decisions as to the best interest and safety of the child then these should be available whether the parents are in a position to pay or not. It will be helpful to recommend a register of persons qualified to complete such reports with appropriate skills, experience and accreditations. Parents frequently do not have information in plain English on what the reports are for and the person undertaking them. Courts should secure agreement between parents on who will be used for such a report and be satisfied with their qualifications, at the moment this issue can be misused on the basis of who has the economic power in the relationship.

A court welfare system is urgently required. Previously, retired Probation & Welfare officers undertook some family assessments which were welcomed and used positively by courts but this was discontinued in recent years due to cutbacks.

Head 60: Power to appoint a guardian *ad litem*

One Family recognises that there are very appropriate situations for the appointment and use of a guardian *ad litem*. We critically recommend that they should not be used routinely or as the default decision to hear the voice of the child, to consult with the child and/or determine what is in the child's best interest. There are a range of other appropriate services that tend to be more cost-effective and best value such as family assessments by suitably qualified persons as have been achieved in the Child Contact Centres or by Probation & Welfare as above. Whilst GAL services may be a vital support to children in some situations it may also be an unnecessary burden as they are being asked to express a choice in relation to parents.

We are also concerned about the cost of this service and its inaccessibility to many parents with whom One Family works on a daily basis.

Head 61: Cost of mediation or counselling services

Whilst flexibility in terms of awarding costs is to be welcomed, for some families they are simply unable to pay privately for these services and waiting lists for statutory or voluntary sector services can be unhelpfully long.

One Family recommends the widespread provision of accessible mediation and counselling services. This will assist in decreasing legal costs in other areas and prove to be cost-effective and provide enhanced services for both parent and child.



Part 9 Making Parenting Orders Work

In the supplementary document to the draft Heads of Bill, the Policy Rationale, it is stated that “the provisions do not apply in situations of abuse or domestic violence”. This is not in the legislation wording in any of the heads in part 9. Consideration must be given to the level of information and evidence a court requires to manage parenting orders, enforcement orders and attendant consequences for non-compliance in cases of alleged or proven abuse or domestic violence. Additionally, an outline and/or a guideline of what a reasonable excuse may be will be helpful. One Family recommends that orders must not be in place in the first place where there has been abuse or domestic violence.

Head 62: Definitions

One Family welcomes clarification in a number of these definitions:

‘compensatory time’ – it is also the case that non-resident parents do not use their access time even when available for vexatious reasons as well as in reasonable circumstances. There are cases where non-resident parents have been taken to court by the resident parent to attempt to ensure an ongoing relationship for their child. This action must be recognised.

‘family counselling’ – it is helpful to clarify and define what is meant by family counsellor. As an organisation that has an expert and accredited Counselling Service, we recommend that the morphology of ‘family counsellor’ reflects and means qualified counsellor or therapist who is a member of a reputable national or international accreditation body. If the term ‘family counselling’ also applies to individual counselling this does not necessarily require a specific family counselling credential. For those working with children they must require a play or creative therapy or child specific qualification/credential.

‘post-separation parenting programme’ – whilst this is acknowledged to encompass group-based discussion, activities or counselling services this is very limited wording. One Family recommends that ‘post-separation family supports’ as a broader, more appropriate term. Indeed we must recognise that in some instances there is no significant adult relationship to speak of and so strictly speaking the parents are not in a post-separation situation but are learning how to share parenting as relative strangers. A programme implies a group-based programme with a specific curriculum. This might be appropriate for some parents but our extensive work in this area has shown us that this is wholly unsuitable and inappropriate for parents who are unwilling or unable to



participate in this way. This applies particularly to people in high-conflict situations and those who are involved in addiction, mental health or domestic abuse.

Court-ordered parenting supports can be helpful where parents are motivated, are able to focus on their children's needs with some support and benefit from skills and reflection. They are not helpful where parents do not want to participate or are unwilling or unable to reflect and self analyse. This is particularly true for high conflict families⁷. One Family's experience in working with high conflict families in Child Contact Centres and particularly with a parent who is a perpetrator of domestic abuse is that there is extremely low motivation to participate in court-ordered parenting supports. This is because frequently the parent continues to have access with their child. There is some evidence that where there is a consequence for abusive behaviour such as access being stopped if the parent does not take up support, the wish to have contact with children may encourage parent to comply.⁸ However it should also be noted that other research indicates that the only highly effective perpetrator programmes are those with a possible sanction of incarceration.⁹

Our evidence-informed work in Child Contact Centres services shows that for high conflict families they tend to participate better in individual parent mentoring or counselling supports where they do engage.

It is not guaranteed that participation in services will work or be effective and if services are provided by endorsed organisations as designated in this Bill then they will need to be resourced to provide reports to courts.

One Family strongly recommends that Child Contact Centres form part of the court-ordered family support services to make parenting work. Extensive research exists on the need for such centres for high conflict families and the benefits of same¹⁰.

Head 63: Enforcement orders

One Family welcomes the intention to provide the court with a range of options to sanction non-compliance with custody or access orders. However we have the following informed comments to make:

In relation to compensatory time (**subhead 2b**), this must be provided in and for the child's best interest. In relation to directions to have one or both parents participate in parenting support programmes or counselling, One Family has extensive expert

⁷ http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/2004_1/p5.html

⁸ Child Abuse Review Vol. 21; 264 274 (2012). This is Fathers and Domestic Violence : Build Motivation for Change through Perpetrator Programmes,

⁹ <http://www.theduluthmodel.org/>

¹⁰ <http://onefamily.ie/wp-content/uploads/Contact-Centre-Full-Report-31-M-20101.pdf>



experience in this area. Therefore, we opine that in most cases joint work will not be possible where it has reached the level where a court is making an order. What will be of greater benefit is for families to undergo a brief yet robust assessment by a court welfare system or other suitable organisation/ qualified professional to determine what will work best to support the parents in sharing parenting for the well-being of their child(ren) post-separation.

In relation to a person who does not use their access or custody time, One Family recommends that the court is able to consider this in making future orders and those penalties should not be limited just to financial costs. A non-resident parent not using access time is common and can be inconvenient for the whole of the family and traumatic for children. The impact of this must be recognised and appropriate remedies put in place.

It is also the experience of One Family that excessive use of the court systems especially in relation to access may be a perpetration of on-going domestic abuse of the other parent and children.

Supplementary enforcement orders should be considered in cases of non-compliance in relation to maintenance as severe hardship can occur for children and the resident parent in these cases due to long court and social welfare delays.

A joint approach from government departments would be very welcome in supporting parents who are seeking maintenance from a liable relative when they cannot get an address for them or do not know their whereabouts. Other government bodies may have this information but it cannot be sought by the parent seeking maintenance.

Head 68: Interpretation

One Family welcomes the commitment to gaining financial support from all liable relatives in supporting the child(ren) post-separation.

Head 74: Amendment of Part 5, Maintenance

One Family welcomes all Heads that provide parity for civil partners and their dependent children in relation to maintenance, family home, etc. We are aware through our services delivered to parents of small numbers of same sex couples (both cohabitants and civil partners) who are separating and whose children require the same legal protection and support as other children.



Head 75: Amendment of Part 12, Dissolution of civil partnership

One Family welcomes the parity provided for the dissolution of civil partnerships and in particular to dependent family members.

Head 89: Costs

As previously outlined, costs of some services are prohibitive for low-income families and free or low cost services are subject to long waiting lists and funding cuts.

Head 91: Regulations

One Family welcomes the regulation of various professional services associated with this Bill including guardian *ad litem*; and relevant organisations.

Ends