

Council of Irish Adoption Agencies

Submission on Birth Information and Tracing Bill 2021

The Council of Irish Adoption Agencies (CIAA) warmly welcomes the General Scheme of this new Bill and the efforts that have been made to address the legal difficulties that have been hampering the enactment of such a long-awaited piece of legislation. As CIAA represents all adoption social work practitioners throughout the country, we were one of the two stakeholders with whom Minister Zappone held a last consultation to try to finalise this legislation in 2019. We very much appreciated the efforts that were made at that time to try to reconcile difficulties that arose and bring forward legislation.

The right of adopted people to their original birth certificates and birth information has been advocated by our organisation for over two decades. We are acutely aware that without legislation there remains a deep void which continues to cause anguish and distress for so many people. In the absence of a statutory based Information and Tracing Service social workers have been struggling to provide this service under increasingly difficult and limiting circumstances. This has recently been acknowledged in the Commission's Report on Mother & Baby Homes.

This new Bill addresses many of the issues that have been of serious concern namely:

- The need to balance the rights of the adopted person to identifying information and the birth mothers right to privacy which has always been a matter of contention as this is not required in other jurisdictions. This Bill goes a long way towards balancing these rights in favour of the adopted person and does provide unconditional access to birth certificates and birth information.
- The Bill proposes to balance the adopted person's rights with the birth mother's right to privacy through a national/international awareness campaign along with the option of registration on a new statutory Contract Preference Register with provision being put in place to advise the adopted person of a no contact preference. While in principle this is a much more manageable and practical way for service providers to ensure the birth mother's right to privacy than previously was proposed, it is discriminatory.
- The restrictions of rights and obligations under GDPR regulations to address Data Protection concerns have been reviewed to enable adopted people to have access to their birth related information. As the current interpretation of GDPR regulations has been severely limiting the service social workers are providing, this is very helpful to those seeking early life information.
- For the first time an Information and Tracing Service, will be put on a statutory basis as will the currently known National Contact Preference Register which provides information for guidance as to contact and the release of information. These provisions will now eventually put the services on a legal footing which social workers have been

providing on a non-statutory basis for many years and where they have developed considerable expertise.

- The Bill also recognises the need for the availability of support/ counselling for some service user groups who are seeking their early life and background information and may be negotiating contacting birth relatives or require help in coming to terms with their birth identity. Again, this is an important principle to be enshrined in legislation but limits the groups and circumstances where this should be provided.
- There is also provision for the rectification of the register of births and a Register of Acknowledged Identity following social workers making contact to advise those people where there has been a falsification of their original birth records and a recognition of the additional supports they may require. This is a useful addition to previous legislative proposals where these illegal birth registrations had not been identified. It provides for social workers to help to address issues that arise as to whether those affected wish to continue with the identity they have used all their lives. This is potentially a very vulnerable group and it is very positive that the need for additional social work support has been recognised.
- The importance of medical information has also been identified in this new proposed legislation with provision for the immediate release to the adopted person of their own medical information. There is also further provision for the release of relevant medical information relating to a birth relative to the adopted person's nominated G.P without identifying the birth parent or family member. It is very helpful that this is being addressed. Further clarification is needed as to the protocols that will have to be put in place for this to become operational and determining the release of this information.

While CIAA is fully supportive of the core principles behind this Bill there are a number of aspects that need to be fleshed out further from the perspective of social work practitioners before this becomes legislation.

Attendance at an Information Session

Head 5 states that where a birth parent has registered a no contact preference the adopted person must attend an information session prior to the release of their original birth certificate. We understand that this requirement is being incorporated to protect the right of the birth mother to privacy and are cognisant that this provision is not going to the lengths of consultation that was proposed under the previous Bill.

However, CIAA does not agree with this proposal which is discriminatory as it treats one cohort of people differently from the others. It is also in contradiction to the spirit of the Bill which is to give automatic rights to information to everyone.

A social worker's role is to provide support and counselling to people throughout the process of receiving information and the preparation for and making contact with birth relatives. Therefore, to suggest a mandatory/ compulsory session with a social worker where the main purpose is only to discuss negative information and advise people to 'respect' the wishes of the birth mother would only serve to undermine this supportive role and portray social work contact and intervention in a negative light.

It is CIAA's recommendation that, in place of this session, an information meeting could be **offered** on a group or individual basis to all applicants who make an enquiry to obtain their early birth information and/or original birth certificate. The purpose of this meeting would be to provide a service to adopted people and not to ensure compliance. This meeting could include the following information:

- The process involved.
- The nature of the records.
- The accuracy of the information.
- The differing quality and quantity of records held which includes medical information.
- The purpose of the awareness campaign.
- The NCPR and the issues which may arise from this including the registration of a no contact preference.
- Privacy issues.
- What steps they may wish to take should they wish to trace once they have their information.

Further to this CIAA recommends that optional support and counselling sessions should also be offered when personal information is being released for all who wish to avail of it. This is in recognition that many people may need/wish to have this additional support.

NB: Rather than an information session to highlight a no contact preference each person should receive the outcome of the search of the NCPR in writing. This contains the details of the birth mother's contact preference which enables the relevant body to record that this information has been disclosed.

No Contact Preference

Further clarification will be needed regarding the circumstances and requirements for registering a no contact preference and its lifespan. A review should be built into the register to offer support and check if the person has had a change of mind. Also if there are other relatives who may request contact who need to be considered and included.

Extension of statutory provision of social work role to provide support and counselling

At present Head 3 of the Bill is the only section which covers a meeting with a social work and acknowledges the need for support/counselling provision in some circumstances. CIAA proposes that this should be extended and there should be a statutory duty to provide for support/counselling if it is requested rather than be limited to specific groups. Support/counselling should be available to anyone (birth family, adopted people, those affected by illegal registrations and those boarded out) who requests support during the receiving and processing of background information, the tracing process, and the reunion phase.

There are many aspects in the process of relaying background information that impact people that cannot be foreseen. Some of these have already been alluded to and include wrong information, perceptions which has been conveyed by the adoptive family, expectations about the birth family and the quantity and quality of information that will be available. The direct

access to a file may also raise concerns for those who have been given no understanding of the historical context in which adoptions took place in the past. There is a need for social workers to provide this role at the initial stages when information is being released. At the time when the person's information is released the option should be available to them to have the support of a social worker. This could be achieved by the adoption service operating a duty system.

A counselling and supportive role is the core function of the social work task. Social workers working in adoption are supported in carrying out their role by availing of ongoing training and supervision in all relevant areas. Continued ongoing training in attachment and trauma can also be provided by CIAA to ensure all social workers have the skills to provide this role efficiently. The social work service should continue to be backed up by the possibility of referral to other services such as Barnardo's which provide therapeutic intervention at a more in-depth level than is possible in a social work setting and other psychological/therapeutic services where it is indicated.

Awareness Campaign

We understand the period of three months has been proposed to avoid unnecessary delay and address the continued urgency for this legislation to be put in place. It is also noted that there will be a further delay from its enactment to commencement. Despite this we believe that three months is too short a period for a successful national and international awareness campaign and to give sufficient time to enable those who wish to register a preference. We recommend a period **no longer than six months** to achieve this successfully. We would further recommend that this would involve a media campaign which would include social media. There should also be a national leaflet distribution as with the original launching of the NCPD which could be prepared in advance of the legislation along with a helpline/s for those who need advice on how to avail of this effectively.

NB: It should be borne in mind that many people who wish to register may not be technologically competent and will not be able to rely on the support of other family members/friends to assist them.

Protocols to be developed between Tusla & AAI

Procedures and mechanisms by which services will be delivered will need further consideration. There is a need for carefully worked out protocols to enable the two agencies work together collaboratively as both will be providing an Information and Tracing Service. If possible, this should involve a separating out of their roles which have become somewhat blurred with Tusla becoming the main provider of a tracing service and the AAI managing and maintaining the Contact Preference Register.

The suggestion of the creation of a new agency and starting with a clean sheet would create even further time delays and take too much time to coordinate and require the transfer of files. Considerable expertise has been developed by the social workers who provide the current

adoption information and tracing services which could not be easily replaced. This expertise, and the role of social workers in service provision, is often not understood by those who are opposed to social workers delivering this service. As referred to previously service delivery has been hampered by lack of legislation and the impact of GDPR. However, for the right climate to be created for this service to be delivered efficiently it must, for the first time, be resourced properly.

Resources

Information and Tracing has always been less well funded than other adoption services and other childcare services within Tusla as it has not been on a statutory basis. For this Bill to fulfil its expectations of being 'ground-breaking' and providing 'a robust and comprehensive Tracing Service' additional resources will need to be put in place. It is one of the key concerns of social work practitioners that there will be an avalanche of requests once the Bill is enacted and an expectation that these will be dealt with immediately following the making of an application.

There are presently long delays and waiting lists for those who wish to avail of an Information and Tracing Service. In the case of Tusla, waiting lists can be up to 2 years or more. There is therefore a need to scope out resources so that service delivery can be in a timely manner and there are no longer lengthy delays and long waiting lists. In the past delays through lack of resources have impacted negatively on the public perception of the social workers role and competence which has led to unjustified criticism. There is concern among social work practitioners that they will be set up to fail if the necessary resources are not put in place in advance of this proposed legislation.

While there has been a commitment within Tusla for some increase in social work resources these will still not be adequate to ensure the provision of a robust delivery service and the removal of waiting lists where it is anticipated that further demands will be put on a service following the enactment of this legislation. There is also the need for additional resources to put the necessary management structures and other staffing in place to provide a national coordinated service. Ideally there should also be resources made available for the digitisation of all files and records which would make the accessing of information much more efficient.

CIAA welcomes the provision in the Bill giving access to government (including Client Identity Services) and church records which have been limiting the options available when undertaking searches since the introduction of GDPR regulations. However some of the pressures on social work resources are because social workers are being asked to perform tracing tasks which could be supported by other professionals. While social workers have developed expertise in this area, this role could be complimented by the availability of genealogist services and researchers. The resources to provide these back up services should therefore be factored into the overall provision of a comprehensive service. This would contribute to a more efficient and effective use of social work resources.

Use of other professionals/Individuals in the handing over of information

It is recognised that in some circumstances information will be handed over by professionals other than social workers. When questions arise in relation to the information been given, the person should be referred to a social worker who has the expertise to address any concerns they may have.

Where will people apply to get their information and how will the process work:

If the intention of the application process is for the person to make several applications to different bodies to get their information, we would recommend that this should not be the case and an applicant should only have to make one application. A dedicated team should be established whose sole purpose is to gather and disseminate the information. The team will need to have the expert knowledge of the records, identify each location of information for everyone, compile the information together and give it to the person making the request.

Disclosing information and Access to Birth Certificates to 16 – 18-year-olds

This recommendation reads that the minimum age for access to information doesn't arise until 16 years whereas in recent times adoptive parents have been expected to play a key role in the relaying of information from the time of the adoption placement.

The child's right to identity as recognised under the international law of Human rights has informed good adoption social work practice for many years. As a result, adoption social workers have been providing background information to adoptive parents to be passed on to their children from birth onwards. We have promoted communicative openness for adoptive parents to provide information age appropriately to their children throughout their childhood and into adulthood.

Adoption is no longer practiced as a "clean break". Provision of post adoption contact, including letterbox and direct face to face contact, (often referred to as open adoption) has been the reality for very many families for over two decades.

The releasing of the original birth certificate at 16 years old is a different issue as this opens up the possibility of direct contact with the birth parent (in cases where there has been no contact). This would be at a time when teenagers are struggling with their identity and may not yet be psychologically mature enough to deal with the possible scenarios they may encounter. If there are negative experiences substantial damage could be done to their self-esteem at a time when identity formation is crucial. The age for the release of the original birth certificate is 18 years in other jurisdictions which are also subject to European Law, and we see no reason why legislation introduced in Ireland should be different.

Inclusion of Children adopted from Abroad

Children adopted from abroad are a huge cohort of adopted people living in Ireland. This group of adopted people may also wish/need to avail of support and counselling to access and work through the information they receive and to trace their birth relatives. Provision should also therefore be put in place to include this group under the new legislation.

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