DÁIL ÉIREANN

AN COMHCHOISTE UM MÁTHAIRIONADAÍOCHT

JOINT COMMITTEE ON INTERNATIONAL SURROGACY

Déardaoin, 21 Aibreán 2022

Thursday, 21 April 2022

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Patrick Costello,	Sharon Keogan,
Jennifer Murnane O'Connor.	Erin McGreehan,
	Lynn Ruane,
	Mary Seery Kearney.

Teachta / Deputy Kathleen Funchion sa Chathaoir / in the Chair.

Business of Joint Committee

Clerk to the Committee: In the unavoidable absence of the Cathaoirleach, I invite nominations for a temporary Cathaoirleach.

Senator Lynn Ruane: I nominate Deputy Kathleen Funchion.

Senator Mary Seery Kearney: I second the nomination.

Clerk to the Committee: I declare Deputy Kathleen Funchion duly elected as temporary Cathaoirleach.

Deputy Kathleen Funchion took the Chair.

Acting Chairman (Deputy Kathleen Funchion): I propose we suspend for a moment to allow the witnesses to take their seats.

Sitting suspended at 9:37 a.m. and resumed at 9:40 a.m.

Surrogacy in Ireland and in Irish and International Law: Assisted Human Reproduction Coalition

Acting Chairman (Deputy Kathleen Funchion): Apologies have been received from Deputies Higgins and Whitmore.

The purpose of today's meeting is to resume our engagement on international surrogacy and to examine how best to provide a route to parental recognition for intending parents in international surrogacy arrangements as well as issues arising from delayed parental recognition.

On behalf of the committee, I welcome the representatives from the Assisted Human Reproduction Coalition. We are joined by Ms Elaine Cohalan, its chairperson, as well as representatives from its various groups. From Irish Gay Dads, I welcome Mr. Gearóid Kenny Moore. From LGBT Ireland, I welcome Ms Claire O'Connell. From Irish Families Through Surrogacy, I welcome Ms Ciara Merrigan. From Equality for Children, I welcome Ms Ranae von Meding. I apologise if I have mispronounced any of your names. Please, correct me as we go through the discussion. I also welcome Ms Selina Bonnie from Independent Living Movement Ireland, ILMI, who is joining us via Microsoft Teams.

Before we begin, I need to go through some housekeeping matters and the note on parliamentary privilege. Witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that may be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in respect of an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. For witnesses attending remotely from outside the Leinster House campus, there are some limitations to parliamentary privilege and, as such, they may not benefit from the same level of immunity from legal proceedings as a witness who is physically present does. Witnesses participating in this meeting from a jurisdiction outside the State are advised that they should also be mindful of their domestic law and how it may apply to the evidence they give.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind members of the constitutional requirement that they must be physically present within the confines of the Leinster House complex to participate in public meetings. I cannot permit a member to participate where he or she is not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts of Leinster House will be asked to leave the meeting. I ask any member participating via Microsoft Teams to confirm prior to making his or her contribution that he or she is on the grounds of the Leinster House campus.

I wish to remind everyone about personal responsibility as regards mask wearing when not speaking.

We can now move on to the discussion. I am glad all of the witnesses have been able to join us. Some of them attended the children's committee virtually, so it is great to see people in real life for a change. I call Ms Cohalan.

Ms Elaine Cohalan: On behalf of the Assisted Human Reproduction Coalition, I thank the committee for the opportunity to present to it on international surrogacy, routes to parental recognition and issues arising from delayed parental recognition. I am a founding member and chairperson of Equality for Children. I am a member of the LGBTQ+ community. Most importantly, my wife, Jenny, and I are parents to our three-year-old daughter, Cate, who was conceived using assisted human reproduction, AHR. She likes to say, "Mommy, I am three, but I am a little bit four."

As many members of the committee will know, the desire to have children is indescribable. It is a feeling deep inside. It is a story of love, hope, joy and possibility. It is also a story of sacrifice, vulnerability and selflessness. It is an innate human desire to want to have a family, to raise a child and create a higher meaning in life. Many of us grow up dreaming of becoming parents. It is part of the fabric of who we are. It is a dream that cannot be forgotten, replaced or put aside, no matter our fertility, abilities or disabilities, sexuality or medical history.

For the majority of the population, the desire to have children and the decision to have them is their own. They do not require medical, legal or governmental intervention or permission in their journey towards becoming parents. Their pathway is clear and without barriers. However, an increasing population do require assistance to make their dreams come true. Irish relationships and families are no longer being created in the traditional chronological order of yesterday, when one would meet someone, marry, buy a home and create a family. Men and women are meeting and coupling later in life. More and more women are entering the workforce and focusing on their careers, as is their right, aiding in the country's economic, social and cultural development. The new chronology of creating a family is multifaceted. As such, we are going to see a continuing rise in the population looking to AHR solutions in creating families. If someone is single, has a disability, experiences infertility, is a member of the LGBTQ+ community, has a medical condition or has any combination of these circumstances, he or she may require AHR to have a child.

The Assisted Human Reproduction Coalition was formed in 2020 by a number of organisations representing and supporting people who required AHR to have a child. Our member organisations include LGBT Ireland, which provides national front-line services to the LGBT community and advocates for policy and practice change to improve the lives of LGBT people and their family members; Irish Families Through Surrogacy, a campaign for equal rights for

Irish children born through surrogacy and legal recognition of their Irish mothers; Equality for Children, which campaigns for equality for children born to LGBTQ+ parents; Independent Living Movement Ireland, which supports disabled people to achieve independent living, choice and control over their lives and full participation in society as equal citizens; Irish Gay Dads, a support network for current and prospective gay dads in Ireland; and the National Infertility Support and Information Group, which offers support and guidance to empower people in their infertility journey.

We represent a broad range of people who, because of their circumstances, cannot make their dreams of bringing a child into the world come true on their own. We are fortunate to live in a time when advances in medicine have made the previously impossible possible. Our members no longer have to accept our fate and live through a life of loss and grief for what might have been, as many did before. Our wish to raise a family is not an expectation but a shared hope for healthy, happy and rewarding lives.

The well-being of our children is our central and enduring priority. We believe children need the secure, loving and nurturing environment of family to flourish. Laws and regulations should be designed as the invisible protector and enabler of children's well-being and their rights to family life and citizenship. We want a society where people who raise a family are supported and cherished, free of prejudice and discrimination. Our current laws and rules are rooted in the past and represent simplistic and, in some cases, regressive concepts of lineage, citizenship and parentage.

Regulation and recognition of different forms of conception, pregnancy and surrogacy vary around the world. The first human was born through IVF 44 years ago in 1978. In 1986, the first human being was born through gestational surrogacy. These advances in medicine have opened up a whole new world of opportunity and have aided in the creation of thousands of children and families throughout the world.

We need to adapt to new methods and approaches to conception, pregnancy, birth and family in a way that represents Irish values and ethics. We want to do this in a way that sets the highest standards for the protection and well-being of children, women and parents. We believe that, regardless of conception method, no child should be left behind or outside the law when it comes to his or her rights to family life, equality before the law, social security, status and protection by the State. The absence of legislation on surrogacy in Ireland, as well as the lack of recognition of international surrogacy, has left surrogate mothers, children, and their intended parents, in a precarious legal limbo. The lack of legislation affects the daily lives of children, surrogates and the intended parents in many ways including birth registration, citizenship entitlements, healthcare access, and financially in terms of tax and inheritance. The current system, where the surrogate mother is recognised as the legal mother of the child, even if not genetically linked to the child, where a biological father, through a court process, can be declared a parent of a child born through surrogacy after birth, and where the second intended parent, whether biologically linked to the child or not, has to wait for two years before they can begin the process of applying to become the guardian of the child, which expires at age 18, is simply unacceptable in modern society. We can do better for these children and these families.

We need a system where all parties are treated with dignity and respect. That is a system where the surrogate mother and the intended parents receive independent legal and medical advice and enter into the arrangement freely with informed consent and receive counselling and support throughout the process. The welfare and best interests of the surrogate mother must be at the heart of the system. The surrogate mother must have full bodily autonomy throughout the process, not bear legal, social or financial responsibility for the child once they are born and be protected and safeguarded throughout the process. The best interests of the child must also be protected. Children must have access to information on their genetic history and conception, be able to access citizenship entitlements from their intended parents and have their family unit protected, recognised and safeguarded by the State. In addition, the intended parents must take on the legal, social and financial responsibility for the child as soon as they are born.

Unnecessary barriers and delays in providing legal pathways to recognise our families serve no one but harm many. Our children are children, deserving of the same recognition, support and protection as all children. They should not be labelled, categorised or treated differently because of the method of their conception or gestation. Our families are families - not different but equal.

Today, we will outline the significant negative impact the lack of legislation in this area has on the lives of our children and other children born through assisted human reproduction as well as the negative impact on surrogates and intended parents. I will now introduce representatives who will give a short outline of the impact the lack of legislation in this area has on their members. I thank members for their time, and I welcome their comments and questions.

Ms Ciara Merrigan: I am chairperson of Irish Families Through Surrogacy, which was established in October 2020. Our committee consists of 11 members - nine mothers and two fathers. Collectively, we are the parents of 17 children through surrogacy and we represent hundreds of families created through surrogacy who are living in every county across Ireland. We are campaigning for our children and future children born through surrogacy to have the protection and benefits of a legally recognised relationship with both their parents.

I am a nurse by profession but the most important role in my life is being a mammy to my three-year old twins, Clara and Matthew, who were born through international surrogacy. An incredible surrogate mother gave birth to them, the most precious gift in our family's life. To this day, and with her consent, we are still in contact with each other. We both share our families' experiences and photographs on a weekly basis. I personally value our relationship and I feel it is very important we maintain a relationship for Clara's and Matthew's future sense of identity.

Irish Families Through Surrogacy believe it is paramount to share our children's birth story with them, age-appropriately, and we encourage all families through surrogacy to do this. Under Irish law, the surrogate is seen as our twins' mother, although she is not genetically related to them nor does she live in the State.

There are many life-altering medical reasons which result in couples pursuing surrogacy. These include cancer, which was the case with me, endometriosis, cystic fibrosis, post-organ transplant, Mayer-Rokitansky-Küster-Hauser, MRKH, syndrome, multiple miscarriages, congenital heart conditions, stillbirth and unexplained infertility.

We, as a group, acknowledge the complexities and we understand that in Ireland we cannot legislate for what happens in another jurisdiction, but we can guide all stakeholders to make ethical and safer choices. What we can legislate for are the safeguards and protections expected for the surrogate mother, children and intended parents. A big gap in the proposed legislation is that there is not a mechanism in law to create the legal parent relationship for children born through surrogacy so that the child has a legal link with both parents. We have learned from other jurisdictions how this can be overcome and, in addition, we are asking for the creation of a route to parenthood for all existing children born through surrogacy, as recommended by Professor Conor O'Mahony.

This is Ireland's opportunity to be a world leader, to recognise the diverse and evolving nature of modern families and to legislate appropriately. Effectively, as it stands, our children only have one parent, their father, in the State, who can provide legal protection and stability. The current process to allow the father to assign the parental rights can take up to five years, depending on where in the country the court proceedings are taking place. This can effectively leave the child stateless and parentless until such time as the father can be granted the parental order. Additionally, without a second parentage, we as their mammies are seen as legal strangers to our children.

On a daily basis the lack of legislation affects our children and our ability to parent and protect them. This includes such areas as healthcare, education, finance, travel and psychological well-being. In terms of healthcare, one of our members from County Carlow prepared for her son's six-week check-up with her public health nurse. She was told that the check-up could not be completed because the child's father was not present. A number of members have had to bring their children's father to their newborn and Covid-19 vaccination appointments as the children's mother was unable to consent to the administration of vaccines. Several members have been unable to accompany their children in hospital for investigations or surgery. If our children are hospitalised, we cannot legally give medical consent for their care. Due to Covid-19 public health restrictions, only one parent could accompany their child. This separation has been extremely distressing for both our members and their children. Mothers have spent their time being forced to sit in hospital car parks as they await news of their children, desperate to comfort them.

As their mother, I cannot enrol my children in a crèche or in school. Their father has to sign these forms. Our members report that it can be difficult to share children's birth stories with these institutions. Some of our members have not been able to give their children permission to go on school trips. It is the simple things. We cannot sign for assessment of need applications if it is required for our children to access further resources in school or crèche. I have personally had this experience in recent weeks, and I had to ask my husband to sign the forms. I have also had to ask my husband to sign the permission form for the crèche to administer Calpol to Clara and Matthew should the need arise.

In the area of finance, one of our members from Donegal was turned away when trying to set up a bank account for her daughter. This was an extremely embarrassing and distressing incident for the child's mother. There is no entitlement to maternity leave benefit afforded to the intended mother. In terms of inheritance, children born through surrogacy are disadvantaged due to what parents can gift or they can inherit from their mother or maternal grandparents. This can leave them liable to incur tax penalties. If the surrogate mother is in the State, her children would also be entitled to inheritance from her should the situation occur. Most members have to take out loans or remortgage their homes to be able to pursue surrogacy, which is life-altering.

As mothers, we cannot apply for our children's passport. The father applies for the passport as a single father. We, as their mothers, cannot travel alone abroad with our children without showing proof from the father. A number of our members have experience of being questioned at passport control. Members have reported a lack of opportunity to bond with their child as a result of not being able to take maternity leave. I am happy to report that, of late, there have been very good examples within industry of supporting parents of children born through surrogacy, for example, in Vodafone, Three Ireland and Diageo. In my own case, at the time of birth I worked in one of the big Dublin academic teaching hospitals that is very near here. It fully supported my application for leave, which proves it can be done. Our children's grandparents, aunties, uncles and cousins on the maternal side have no legal link to them. When I recently completed the census form, I found it very difficult as there was no category for me to tick. Should I tick the "mother" box, or am I just considered as an "other"?

Our members feel our children are vulnerable as they were not born in a conventional method, leaving them open to bullying and ridicule in the school playground as their mammy is not considered their legal mammy. We worry about their awareness that we are not really their mothers in Irish law. As they grow older and more aware, this may affect their future sense of identity and well-being. Our members also report daily feelings of being an imposter as mothers. We, as mothers, require permission from our children's father to apply for guardianship status. If there was a marriage break-up, the wife would be left in a vulnerable position in terms of rights over her children, which could be used against her in an exploitative way.

Our children were created by us, albeit in a non-traditional manner. We are their constant and their advocates. We are their mammies and their family. They have no other parents other than us. Our children's needs are paramount. They need stability and certainty from having the benefit of two legally recognised parents. Our Irish children deserve respect, dignity and equality. They need their family unit to be protected and to have a parent for a lifetime, not just until they are 18 years of age. We are the voice of our children - our children who are here, living, breathing citizens of Ireland. We trust, believe and hope the committee will acknowledge and respect our children's existence and rights. We thank our Government for the establishment of this Joint Committee for International Surrogacy, and we trust the committee will put forward recommendations that will include a statutory regulatory framework for international surrogacy to be included in the proposed assisted human reproduction legislation.

Ms Ranae von Meding: I am the CEO and co-founder of Equality for Children, a not-for-profit, volunteer-led organisation that represents hundreds of LGBTQ+ families throughout Ireland. We were formed in 2019 with the intention of fighting for equal protection of children born to LGBTQ+ families in Ireland through donor-assisted conception and surrogacy. I am also, and more importantly, a proud same-sex parent to two daughters with my wife, Audrey. Ava is five and Arya is three. I am here very publicly to tell my story of how I conceived and had children with my wife, something most people present and those watching will never have to do. Most people have the right to privacy in their family life, but I and my colleagues here today have given up that right to promote change. I have told this deeply personal story to many strangers over the past six years, my hope being that, by doing so, my children will not go through the pain of having their family treated as less than.

I met my wife almost 14 years ago, and we immediately spoke about having children. For us, it was never a case of if; it was only a matter of when. We knew we would need the assistance of a donor to conceive and counted ourselves very fortunate that we potentially had some options. As we discussed it more and more, we found an amazing procedure called reciprocal IVF, which meant that one of us would carry our child while the other would give the eggs to be used to create our embryos and future children. I will not bore the members with the story of our IVF journey, but suffice it to say it was not without its heartaches and setbacks, not least of which was the realisation that Ireland, at that time, did not allow reciprocal IVF. In a similar situation to some of my friends here today, we were forced to seek medical and fertility treatment abroad to grow our family, with all of the financial, physical and emotional implications of that. We were very lucky in that we only had one early loss before I became pregnant in late 2015. It happened in the wake of marriage equality, and we could not have been happier to be starting our family in what we believed was an equal Ireland. I was five months pregnant when we got married in March 2016. We were blissfully unaware, for the majority of our pregnancy, of the legal situation our new family was in and would be in once our child arrived.

I will never forget the moment of having to register Ava's birth. For most new parents, the birth registration is a beautiful and memorable moment, but for most parents present as witnesses today, it is a painful reminder of how our child was, and is, being treated differently because of the sex of their parents or the method of their conception and birth. I would not wish on anyone this experience or any of the pain our family has endured over the past six years. I would not wish any of the members to have to sign a legal affidavit disowning their child's other parent to obtain a passport, to have to write a will in the hope that if the very worst were to happen to them, their children would be allowed to remain in the care of their other parent, or to have to make a decision of whether to have another child because they would not be legally connected to both the member and their partner. Much of the pain my family has endured was avoidable and was caused directly by the lack of appropriate legislation. However, I would go through every moment of it again to ensure my children were protected. For every single person present and those we represent, the safety and well-being of our children is paramount to everything we do. Knowing the pain that is caused by the lack of legislation is why I am here today and why Equality for Children campaigns for all children who are left out of any current legislation, whether that is due to gaps in existing laws or, indeed, because they were born through international surrogacy, as we are here today to consider.

Most same-sex couples who want to have children require assisted human reproduction to conceive a child. Because of the circumstance of their conception or birth, most Irish children of LGBTQ+ parents are prevented from having a legal relationship with both of their parents. In turn, the security, status and protection of this relationship are simply not available to our children. Children who do not have access to legal parent-child relationships with both of their intended parents, who love and care for them every day, face many avoidable issues as they grow up, including problems with citizenship entitlements, difficulties in accessing child benefit, issues when accessing medical treatment, difficulty in obtaining a passport and when travelling, and issues with school enrolment and inheritance.

As many of the members will be aware, the Children and Family Relationships Act 2015 allowed, for the first time, some children born to same-sex female couples the right to a legal connection with both of their parents. However, a large majority of LGBTQ+ led families fall outside of the parameters of this Act, meaning only one parent can be listed on their child's birth certificate and in turn can make all of the day-to-day decisions any parent needs to make for his or her child. The gaps in this Act are significant for our families, and they include children born to male same-sex parents who are born through surrogacy; children of same-sex couples born outside of Ireland; children of same-sex female couples conceived outside of Ireland after May 2020; children conceived by same-sex couples in a non-clinical setting; and children conceived by same-sex couples using a known donor prior to May 2020.

The practical ramifications for our families being caused by the lack of legislation are far-reaching and complex. Furthermore, the emotional distress of having our children othered, as it is called, because of the sex of their parents and method of conception is hard to put into words. It is quite simply one of the worst things any parent could imagine. The impacts on our children as they grow older and realise their family is not treated in the same way is a heartbreaking reality for so many families as the years go on and LGBTQ+ families continue to live in a grey area of the law.

Ireland led the way in 2015, showing itself as a country that values equality, fairness and family. I believe that Ireland is ready. We believe we can pave the way for an equal future for all children born through donor-assisted conception, assisted reproduction and surrogacy. We now need to finish what we started and ensure the equality we voted for almost seven years ago extends to children born into all LGBTQ+ families no matter how they were formed. In terms of assisted human reproduction, in particular international surrogacy, Equality for Children advocates for a legislative model that protects the rights of the child, the surrogate and the intended parents. We urge the committee to consider the well-being of children of all LGBTQ+ families and move to legislate to protect them and allow them the basic human right of a legal connection with both of their parents who love and care for them daily.

Ms Selina Bonnie: I thank the committee for the opportunity to speak to it on behalf of Independent Living Movement Ireland, ILMI, to highlight why assisted human reproduction and international surrogacy are relevant to the lives and dreams of disabled persons. My statement is based on my experience as a disabled person, mother and reproductive justice activist. I am vice chair of the ILMI, a member of the Assisted Human Reproduction Coalition and a regional ambassador for the NUI Galway centre for disability law and policy's Re(al) Productive Justice initiative. I am also a survivor,and I do not use that word lightly, of the assisted human reproduction system in Ireland.

The aim of the ILMI is to support disabled people to achieve independent living, choice and control over our lives and full participation in society as equal citizens. As a national representative disabled persons' organisation, the ILMI promotes the philosophy of independent living and works to build a truly inclusive society. The ILMI is a member of the Assisted Human Reproduction Coalition in response to the glaring absence of voices and experiences of people identifying as disabled in the oral and written submissions to the pre-legislative scrutiny of the assisted human reproduction Bill in 2017. We believe joining with like-minded reproductive justice groups and working in an intersectional way will be the most effective way to achieve rights-based assisted human reproduction legislation and services in Ireland.

I do not intend to detail recommendations regarding international surrogacy in my statement because I believe my colleagues here this morning have provided, or will provide, that expertise borne from their lived or professional experience. I stress the ILMI is in complete agreement with the contributions being made by the coalition members. The purpose of my statement is to put the voice of a disabled person who has lived experience of infertility, and the need for inclusive access to assisted human reproduction, an important component of reproductive justice, on record. I stress the importance of the committee's deliberations and recommendations being underpinned by an understanding of intersectionality.

Reproductive justice is the ability to make decisions and have choices respected around becoming a parent or not. This includes fertility; contraception, including assisted human reproduction, abortion, pregnancy and birth; and parenting, including fostering and adoption. The Re(al) Productive Justice project has identified discrimination for disabled people on these issues in many forms. These include ableist attitudes among assisted human reproduction, maternity and parenting service staff, a lack of accessible information across all stages of reproductive decision-making, and increased interventions and monitoring of disabled parents that is disproportionate to non-disabled parents.

The narrative around disabled persons can be very one-dimensional and an intersectional approach is required. Intersectionality is a framework for understanding how social identities such as gender, race, ethnicity, social class, religion, sexual orientation, ability, and gender identity overlap with one another. Understanding intersectionality with regard to disability is essential for the creation of appropriate laws and policies and the design and delivery of accessible inclusive services. What makes disability unique is that anyone, regardless of age, ethnicity, sexual orientation, gender identity or socioeconomic status, can become a disabled person at any stage in his or her life. This fundamental fact should underpin the work of committee members on this committee and in their individual responsibilities and Departments to ensure disability does not continue to be a separate section or action within mainstream strategies and laws, if included at all.

According to the census in 2016, 13.5% of the population are disabled persons. Almost half are disabled women. Disabled people with genetic or hereditary impairments, particularly disabled women, because the female body is the primary site of most assisted human reproduction treatments, often meet significant resistance from the medical profession when attempting to access assisted fertility services. I and my non-disabled husband, through his association with me, have experienced this discrimination. My journey to motherhood took 15 years and involved two miscarriages, one pre-term daughter who lived for one hour, one failed IVF treatment and, finally, in 2007, the birth of our precious daughter. Our journey also included exclusion from intercountry adoption due to my being considered incapable of being a mother due to being a disabled woman. Based on my personal experience and my experience as an activist and academic in the area of reproductive justice for disabled people, I have significant concerns about the Health (Assisted Human Reproduction) Bill 2022 and its potentially negative impact on the rights of disabled people to access assisted human reproduction services. I am especially concerned that the sections addressing the welfare of the child, pre-implantation genetic diagnosis and criteria regarding approval of intending parents will not be informed by a rights-based understanding of the abilities of disabled persons.

The purpose of the UN Convention on the Rights of Persons with Disabilities, UNCRPD, is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. Article 23 of the convention is concerned with respect for home and the family, including the right of disabled persons to found a family. Ireland ratified the UNCRPD in 2018 and the impending legislation should be cognisant of this.

Every individual has the power to effect change. The members of the Oireachtas Joint Committee on International Surrogacy have a greater power and, therefore, a greater responsibility to use their power, individually and collectively, to effect change. Throughout their deliberations regarding international surrogacy I ask them to remember intersectionality. Disabled people are more than just disabled people. We are everywhere. Anyone can become a disabled person at any stage in life and we have a right to have our needs considered and met with dignity and in ways that are sensitive to the diversity of our experiences, backgrounds and family composition. I thank the committee.

Ms Claire O’Connell: I appear today on behalf of LGBT Ireland as a board member. I am also the chairperson of the Assisted Human Reproduction Coalition’s medico-legal subgroup and have been carrying out a PhD in this area of law for six years. Therefore, while I am, unfortunately, unable to contribute to the very personal and moving stories and lived experiences of the other members of the coalition today, I hope I will be able to answer any of the more legal questions that may arise in the course of the morning.

My primary aim today, however, is to give the committee an understanding of the specific challenges facing same-sex parents and their children in the absence of a clear framework for international and retrospective surrogacy. However, I am also conscious the 2022 Bill is an opportunity to remedy some of the other issues that affect our membership, specifically in the context of donor-assisted human reproduction, DAHR. Therefore, I intend to set out some of the issues, together with issues arising from the current proposals contained in the 2022 Bill and will be happy to elaborate on them further throughout the meeting.

In 2014, the Supreme Court recognised the wide-ranging discretion afforded to the Oireachtas in determining parentage in circumstances where the gestational and genetic motherhood is split. Soon thereafter, the Children and Family Relationships Act 2015 was enacted. This Act states the woman who gives birth to the child is the legal mother of that child. As a result, we have created a pathway for parentage for intending parents who do not have a genetic link to the child born through donor-assisted reproduction. However, we did not create a pathway where there is no gestational link to the child within the intending parent relationship, and that is what the 2022 Bill was supposed to remedy through the regulation of surrogacy.

That is not to say all couples with a gestational element between them were recognised or given a pathway to parentage in the 2015 Act. The 2015 Act excluded all male couples having a child together, retrospective declarations of parentage in respect of same-sex female couples who used a known donor, any level of self or assisted insemination that took place outside of a fertility clinic, a presumption of parentage in respect of female couples given this presumption still arises primarily by virtue of biological connection, children conceived through DAHR not born in Ireland, both retrospectively and prospectively, and children conceived outside Ireland to an Irish couple but born in Ireland prospectively. In addition, where a same-sex female partner falls outside the criteria of the 2015 Act, there is no mechanism to establish the parental connection between the child and the person who provides the day-to-day care and love for that child, and guardianship is only available after a period of two years. Primarily, this results in a situation in Irish law whereby children are being treated differently depending on the sexual orientation of their parents and the circumstances of their conception in matters of legal status, social status and especially inheritance and citizenship.

The same issue arises in respect of every person who is excluded from a pathway to parentage under the 2022 Bill which, if enacted in its current form, excludes anyone who is engaged in a surrogacy agreement that has already taken place, those that will take place until the commencement of the 2022 Bill, and those that take place after commencement where the surrogacy agreement is entered into internationally or outside of the framework proposed. This will primarily impact couples or individuals experiencing infertility and countless male couples who wish to parent a child together. There are also a number of further issues with the framework as proposed for domestic surrogacy in the 2022 Bill. Section 16 provides for the AHR treatment provider to carry out assessments of the attendant parents as to the potential significant risk of harm or neglect to any child that may be born from the AHR treatment or any other child. This is not applied to any persons engaging in natural conception, which is out of reach of same-sex couples, nor does it apply to donor-assisted reproduction under the 2015 Act. This section imposes a presumption of risk we deem inappropriate.

We are grateful to see section 38 proposing to allow gamete storage for children undergoing medical treatment that is likely to cause a significant impairment to a child's fertility. However, we would like to see this provision explicitly include transgender children who are starting hormone therapy or undergoing surgery to remove or alter their reproductive organs.

We would like to see an equality audit of the proposed legislation. This would include a review of the terminology. For example, it defines a gamete as "a human sperm ... formed in the body of ... a man, or ... a human egg ... formed in the body of ... a woman". Part 4 on posthumous AHR appears to presuppose at least one of the couple will be female and that the surviving partner must be female. This seems to exclude all posthumous AHR involving male couples where, for example, the surviving male partner may experience infertility and have relied on the use of an embryo formed before the death of his partner. The requirement for a genetic link excludes all individuals who experience infertility regardless of sexual orientation and is particularly unwarranted in light of the availability of double donation in DAHR under the 2015 Act.

In addition to the requirement for a genetic link, the gamete in AHR treatment must also be successfully screened in line with the 2006 regulations. Schedule 3 to regulation 11 of same sets out that a person providing a gamete must be negative for HIV 1 and 2. This applies to any donation other than partner donation. In this regard, I note HIV Ireland sets out that gay men are the group most affected by HIV in Ireland and accounted for 56% of diagnoses in 2018. It would be useful if clarification could be provided on whether, in the context of surrogacy, the surrogate and the person who provided the gamete and tests positive for HIV 1 or 2 are considered partners in this context or whether such persons would be excluded. This is in the context of a recent French study involving 5,000 people that reports HIV transmission between the pregnant person and the child is reduced to 0% where the pregnant person was taking HIV treatment at the time of conception, had an undetectable viral load at childbirth and did not breastfeed.

There is no pathway to guardianship for a non-biological parent at the point of birth without the consent of the surrogate mother and therefore no pathway to legal custody of the child despite the requirement the child must be living with the intended parent or parents in order for the parental order to be granted. We do not believe the post-birth model to parentage is appropriate and we believe it is in the best interests of the child to have legal certainty from birth. This can be achieved through a pre-conception preliminary approval process coupled with a pre-birth court model. Ultimately, we suggest the best approach is a system of regulation whereby the rights of the child, surrogate and intending parents are balanced equally. The assignment of parentage should be adjudicated upon case by case having regard to a set list of principles. These principles should include the best interests of the child and the right to his or her origins, the bodily autonomy and agency of the surrogate, and the right to respect for family life of the intending parents.

As a final point, no framework should directly or indirectly cause a system of discrimination against LGBTI+ individuals based on previous understandings of what constitutes a sufficient basis for parentage, whether that be biological connection marriage or the consent of the mother. I am grateful for members' time and would be happy to answer any questions they may have.

Mr. Gearóid Kenny Moore: I thank members for giving me the opportunity to address the committee. I am here on behalf of the Irish Gay Dads organisation. Irish Gay Dads was formed seven years ago and today we have more than 1,000 members and followers. Our group was formed to give gay men and those interested in becoming parents, or those who are parents already, the opportunity to exchange ideas, information and build friendships. The options for

Irish gay male couples who wish to become parents are very limited. As members know, the placement of children for adoption in Ireland is rare and the main international locations accessed by many Irish-based adoptive parents will not work with gay male couples. Many of the well-known international surrogacy locations also decline our applications, meaning most of our membership who have become parents have done so through gestational surrogacy in the United States, Canada and the United Kingdom.

I am one of the lucky ones. Together with my husband, Seamus, we are the parents of three amazing humans. Mary and Sean are aged three and a half years - that half is really important to them right now - and our baby daughter Anne was born nine months ago. Our journey to parenthood was long. It was stressful. It was emotionally and financially draining but ultimately we got here. Seamus and I started to speak about having children shortly after we met in 2009 but we genuinely did not know where to start. We knew we could not do it here in Ireland because there was no legislation in place to support the IVF clinics, so we started our journey through the Canadian system. We chose that system for lots of reasons, including that the rights and responsibilities of everyone, namely, those of the donor, the surrogate mother and the intended parents, are clearly defined and understood under Canadian law. Each party to a journey in Canada must receive independent legal, psychological and medical support. The Canadian system is both child- and surrogate-centric. The surrogate mother retains full bodily integrity throughout the process, including the right to terminate. However, parental rights are transferred to the intended parents before conception, thus removing for the intended parents what is a major source of stress in a typical surrogacy journey. By 2014, Seamus and I had saved the money needed to start this life-changing journey. We were very naive. We assumed that, given all the parties in our journey had no underlying health issues, this would work for us and work quickly. How wrong we were. Four unsuccessful embryo transfers later, we were left childless. Our hopes for a life as parents were gone, with no clear understanding of why this was the case. Our IVF clinic simply could not explain it. After this setback, we had to take a significant step away. We were broke, both emotionally and financially.

However, having begged, borrowed and sold over a period of about 18 months, we started again, at a clinic in the United States because Irish clinics were still unable to help couples like us due to the lack of long-promised legislation. This time, a friend of ours living in the UK offered to act as the surrogate mother. I cannot adequately explain her decision to do this for us, despite having spoken to her several times on the issue. However, I know she was and is happy about and proud of that decision. She continues to be part of our children's lives, with regular phone calls, photographs and face-to-face meet-ups. For some reason, things were different on this journey. Our first embryo transfer worked. After seven years of talking and thinking about it, we finally had a positive pregnancy test. Our twins, Sean and Mary, were born in England in 2018. They were followed by baby Anne in June last year.

Despite the lucky position I find myself in, as the committee has heard from other speakers today, parents like us face significant, avoidable issues as we work through normal family life. Our issues began as soon as we returned to Ireland, when we attempted to access child benefit for our newborn twins. As the committee may know, this payment is traditionally made to a child's mother. In the case of a family like mine, where no mother is present in the daily life of our children, requesting that the payment be made to the father is considered an exceptional situation by the Department of Social Protection. Due to the lack of legislation existing today, no uniform policy can be put in place by the Department for applications from families like ours. As a result, how the application is received and processed depends on factors such as the experience, skills and attitude of the person one meets in the local welfare office. When we attempted to secure child benefit for the twins, our application was referred to head office for further analysis and scrutiny. This resulted in us being required to write a letter supporting our application and to engage in an interview regarding the circumstances of our child's conception, birth and family life in order for the application to be approved.

As previous speakers have outlined, these difficulties continue for the Kenny Moores as we progress through normal family life. Issues like vaccinations, passport applications and crèche enrolment all require us to find workarounds. I am tired of inventing workarounds. We need legislation.

Even once guardianship is granted to the non-biological parent, the problems do not go away. Guardianship can only be sought once the child reaches two and it ceases at 18. I genuinely dread the moment when our children blow out the candles on their 18th birthday cake. Once that happens, our family foundations will be shattered. From the State's perspective, from that moment on, our relationship will be classified as adults who happen to live at the same address.

The final issue I want to highlight is more difficult to quantify and qualify. It is the emotional and psychological issues that arise for parents and their children when their family unit is not adequately recognised and protected. I am proud of how much Irish society has matured and, in my opinion, progressed, over the past 30 years. I am proud that, together with my husband, Seamus, we knocked on the doors of all of our neighbours in 2015 to get their permission to marry each other and to become a legal family of two happy husbands. However, now that we have added three children, genetically linked to each other and to one of us, our family of five is not recognised. That frustrates me, to say the least, and it confuses me.

Growing up in the midlands as a gay person in the 1970s, 1980s and early 1990s was not easy. It was a crime. However, I grew up knowing that I was a good person from a good family and a good community, and that I lived a life based on good values. However, the sense of being treated in an inferior way simply because of my sexuality did damage to me. For many gay people like me, the label attached to them by the State and the resulting treatment by broader society has hugely inhibited their life experiences, career choices and, in too many cases, their life expectancy. When the State or important institution within it labels people in an inferior way because of the circumstances of their birth and how they love, it damages them. Today, I believe that similar treatment is being applied to my family and my children. It is my opinion that those in authority with power have looked at my family and have so far concluded that because of how and where our children were conceived and born and because of how their parents love each other and them, their family does not meet the standard.

I do not yet know what precise damage that will do to our children, but my lived experience tells me some damage will occur. A couple of years in the future, when they are in the early days of primary school or some other social setting, a bully might tell them their family is not a proper one, though the words he or she would use would probably be much more hurtful and direct. While Seamus and I will give them the understanding and language needed to deal with this, unless appropriate legislation is passed to address the legal issues faced by families like ours, I feel the State will be complicit in validating prejudices expressed by that bully against our children and my family.

The legislation we are asking for and need has been spoken about at Government level for a long time. I ask the committee members to please use the positions given to them to act on my behalf and on behalf of mammies like Ciara and Ranae, whose stories they have heard today, and on behalf of the thousands of children already born and yet to be born through international surrogacy. Finally, I ask on behalf of the many families like Elaine's who have been ignored so far by the provisions of the Children and Family Relationships Act. I thank the committee for its time.

Acting Chairman (Deputy Kathleen Funchion): I thank Mr. Kenny Moore. All of the contributions were extremely powerful. I am glad we had that time this morning to be able to go through everything and listen without having to rush anybody. I acknowledge what Ms von Meding said in her own contribution, that people are coming in to tell very personal stories. In general, many of us take our private lives for granted and do not have to go through that. We acknowledge it is not easy or fair. It helps immensely in the task the committee has been given. It is broadcast publicly and it is great for people to be able to see all the various experiences and things nobody thinks about, such as going for a vaccine or passport. When most of us go for a passport, we just wonder what the waiting time is. We do not think of all the other matters. Many people do not think of the element raised in Ms Bonnie's contribution at all. We will open up to questions from members. We genuinely appreciate witnesses' contributions and that nobody is in an easy position when coming in and telling their story publicly. I will call Deputy Murnane O'Connor first.

Deputy Jennifer Murnane O'Connor: It is important that people hear the witnesses' stories. That is how to make change. They should tell their stories because there are people out there with similar stories who are not telling them. I firmly believe the only way to make change is by increasing awareness. That is not easy though. The stories we have heard today have been emotional - we have all been affected by them - and truthful. There has been a respect at this meeting for surrogacy, working together and communicating. We have attended many meetings, but today's has been mind-blowing.

Issues like the children's allowance, maternity benefits, medical needs and so on have been discussed. Dealing with them will be part of moving forward. I have four children. They are reared at this stage, but there was a cost to it every day. We need to address this issue. Where will solutions be found or where do the witnesses believe we can change the legislation on maternity benefits, medical benefits and other benefits that are a child's entitlement? We are talking about babies that are entitled to these benefits. That is their given right and we as a society cannot stand over them not getting something. We need to address this matter and ensure no child is not part of our community, the school community or society just because the child feels he or she comes from a different family. This is the change we need to make. What change do the witnesses feel is required, even if it is just a small one? Something all of us have discovered down the years is that it is not until we are faced with these realities that we learn a great deal and make that change. I am a firm believer in this.

The issue of counselling has arisen at a few of our meetings. It will play a significant role for children and adults as they reach different parts of their lives. Perhaps the witnesses might suggest solutions in this respect. We are here today to regulate, to ensure there is a law and to get this through for the children who need us.

The issue of passports has been raised. There is a considerable delay in processing passport applications, particularly for children's passports. For people who have gone to Ukraine or another country, we need to find a solution. Witnesses appearing before us yesterday spoke about the regulation of surrogacy in England. One of them mentioned that the surrogate would go on the birth certificate first, after which a parental order would be made to put the intending mother on the certificate as well.

I am all for there being communication, photographs, telephone calls and meetings, and I compliment today's witnesses on making that point. Having all of that is important. There has to be communication on all sides. I believe England has a register. Do the witnesses believe we should consider having a register as well? We cannot say there will be no point of contact. There will always be contact. That is important for everyone.

I cannot let this opportunity go without mentioning Ms Merrigan, whom I know. We have spoken about Carlow, which I am proud to say is my own area. As anyone and everyone knows, I am a Carlow woman. I know some of the families involved personally, especially that lady. I will not mention her name, but she rang me on the day she brought her son for his six-week check-up because she was not allowed to go in with him. She was devastated. She was crying when she rang me. Her mother is my best friend. I could not believe it and was floored. She is an excellent mother and has the most beautiful son you will ever come across, like the witnesses' own children. I can see how proud they all are when speaking about their children. Another friend of mine, Sarah, had to stay outside in a car park when her child was sick. Her husband went into the hospital, but she could not go in and sit with her child. It is not right. This is why we must ensure we have proper legislation that is fair and inclusive, which is what the witnesses are seeking.

As Ms Bonnie stated, it is great to see people who think alike and are in the same situation. I thank Ms Bonnie. We have heard from her before, and she was excellent. Something that moved me today was that each of the witnesses had his or her own story and family unit, each story was personal, and the witnesses were fighting to protect what they had. That is honourable, so well done. Perhaps they will revert to me with answers.

Acting Chairman (Deputy Kathleen Funchion): I should have said that members should direct their questions, given we have a large number of witnesses. Perhaps not every witness needs to respond to every question.

Ms Elaine Cohalan: I will field the questions first before passing over to my colleagues. I thank Deputy Murnane O'Connor for her questions and observations on our testimony. As to her first question on what legislators can do, public policy and departmental operations are all informed by legislation. If the legislation is not there, Departments cannot do something. They lean on legislation. In terms of the children's allowance, maternity benefits, medical needs and so on, the change has to start with legislation. As Mr. Kenny Moore mentioned, there are workarounds in some Departments but not others. Sometimes, it is dependent on the attitudes and compassion of public servants.

Regarding a national register, the Children and Family Relationships Act 2015 set a precedent with the national donor register. There is a proposal for a surrogacy register in the AHR Bill. We are all in agreement with that proposal and that children born through AHR should have access to their genetic heritage and identifiable information where possible. There is no member of our body here who would not agree with that.

I will let some of my colleagues speak about the particular challenges presented by passport and medical issues.

The Deputy asked what legislators could do in terms of counselling. It is important to recognise there are lifelong impacts for people. A public funding model for medical treatment and counselling would be welcomed across the board.

I will make a final point about the situations the Deputy described, for example, her constituent in the car park. We hear and experience those stories every day. People and their families are in vulnerable situations and relying not only on the kindness and compassion of professionals but on professionals taking professional risks. They are not protected by legislation if they vaccinate someone's child or allow that person to go through border control with his or her child to travel on holidays when that person is not technically deemed the child's legal parent. In the majority of cases, people are kind and compassionate, but we are left in incredibly vulnerable situations fearing one of those situations could quickly turn into a very negative experience, for example, being denied a medical intervention or permission to travel or a child being taken away. These situations can escalate in that way without the kindness and compassion of, and professional risks taken by, those public servants. As such, I would also ask legislators to protect and support public servants who are being compassionate and kind.

I will now hand over to my colleague, Ms O'Connell, who wishes to address some of the Deputy's points.

Ms Claire O'Connell: I thank the Deputy for the question. The first point concerned how to apply this to all the various areas, such as medical treatment, social welfare and that kind of thing. A very simple solution would be that once a person is named a parent and there is a pathway to being a parent, there would be a provision like what is currently in draft legislation. Essentially, an enactment referring to a mother, a father or a parent would include persons named in that parental order. It is kind of a wide sweep to include anybody. It is kind of a simple enough solution.

I will mention counselling, which is so important. It goes to the ethical nature of surrogacy and it is something that comes across in the 2022 Bill. The child's right to identity is so important but something that is lacking very much is counselling for the child when notified. The origins of the child would be disclosed to the child by the parent, first and foremost, and they are the doorway, I suppose. The provisions in the 2015 Act and 2022 Bill, as it is now, are that a child may apply for a birth certificate at some point, and at that point the child would be notified that there is an entry about him or her in the national surrogacy register. That is how these children find out. It comes from an office and it may be via letter or something. There is no provision for inserting or ensuring counselling is available to the child, or that it would be promoted, or that a referral mechanism would be included in the process of notifying the child.

There is also the question of passports and the wait is a problem. Again, a reference to a parent is to be inserted into the Passports Act 2008. What is concerning, particularly in the area of international surrogacy, is that a child would not be registered in the Irish registry of births but rather the foreign births register. There is a backlog and the website indicates it is two years long. It is a considerable problem that must be tackled in some way.

Mr. Gearóid Kenny Moore: I have a brief contribution on the question around counselling. As I mentioned, we undertook our initial surrogacy journey in Canada, where counselling is required for all participants, including the donor, the surrogate and the intended parents. There is a prescribed set of sessions that must take place for each of the parties and they deal with the key issues that arise. For example, for the intended parents there would be discussion of how they will work through IVF and the stress and strain that would cause for a relationship. There would be discussion of how to cope with telling friends and families about the child that might be about to arrive or how to cope with introducing your child to the community where you live. For the surrogate there is a similar set of core sessions that must take place, and depending on what is unearthed in those sessions, further sessions may be arranged.

As Ms O'Connell touched on, as children go through life, they will be treated or looked at in a different way, especially or potentially if they have same-sex parents. As parents, we are thinking about or working through what kind of counselling may be needed for them. To summarise, counselling and advice, whether it is psychological or medical advice for all parties, is vital. We thought we knew loads about being parents before the kids were born, but the counselling sessions unearthed or initiated for us so many conversations between us and our surrogate mother. They were absolutely vital.

There was a question about contact with the surrogate. Our experience in Canada was that we were required to create a legally binding contract with the surrogate mother and discuss all matters pertaining to the journey pre-conception, during pregnancy and post-birth. The level of contact agreed between parties was written into the contract. When we went to the UK, it was a personal arrangement and we had no requirement to make a contract. In fact, we were not allowed to do so under UK law because the surrogate mother was the legal mother and we did not have any right to create a contract that would contradict that. We created a written agreement with her, and although she was a friend, we wanted to discuss all the permutations and combinations. We inserted in the agreement what contact would look like post-birth. With the agreement of all parties, we have gone beyond the terms of the contract by doing lots more than we ever envisaged in terms of meeting and having her involved with our children's life and story.

Acting Chairman (Deputy Kathleen Funchion): There will be time for people to come in again and there may be time for a second round of questions.

Senator Sharon Keogan: I am sorry I missed Ms Cohalan's statement this morning as I was late coming in due to a hospital appointment. I thank the delegations for sharing their personal journeys and statements with us. The evidence given today has been compassionate and heartbreaking. I appreciate them sharing it.

I am probably one of the dissenters and I wholeheartedly object to the commercialisation of the human child and the regulation of women to the status of simply incubators or wombs for hire. Irrespective of whether a person is heterosexual, single, lesbian, gay or transgender, surrogacy is harmful, exploitative and unethical. I do not believe it is everyone's right to have a child. It is a privilege to give birth and it can be dangerous, even for those with the best medical attention.

I have a couple of questions. Why do most European countries not allow commercial surrogacy? Why has the Spanish High Court very recently indicated that commercial surrogacy constitutes unacceptable exploitation of both child and biological mother? The same court indicates commercial surrogacy is against international treaties like the UN Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

Some may say that mothers do not identify as mothers to these children, but do the witnesses agree it is vital these women be recognised on the birth certificates in some way? Is it not in the best interests of the child born through surrogacy? Is it not better to include or acknowledge on the birth certificate the surrogate mother to honour the entirety of the identity of the child? We should not whitewash or airbrush birth mothers out of the process.

This is about regulation. Have we learned anything from the mother and baby homes matter, where people were literally trying to find out who they were and from where they came? They could not do it. Believe me when I say I want this regulated, but it is so important we do not airbrush or whitewash the birth mother from the process. Will the witnesses answer some of those queries?

Acting Chairman (Deputy Kathleen Funchion): Ms Cohalan might reply to those questions. I am conscious Ms Bonnie is not in the room so she might indicate if she wishes to speak by raising a hand through Microsoft Teams or giving me a wave.

Ms Elaine Cohalan: Before I get to answering the questions, I will make a contribution on use of language and its impact. It is really important committee members think about their responsibility to lead the debate around surrogacy in a respectful, dignified way. Inflammatory language and using undefined terms do not benefit the debate. Our members are ordinary people who have in some cases been through harrowing experiences. We are doing our best to be good parents to our much-loved children. We are Irish citizens, the constituents of committee members and those members are our representatives.

Having lived through and experienced Ireland's journey towards marriage equality in 2015 as a member of the LGBT+ community, I can tell the committee that words matter. The words of committee members here matter and have impact. I celebrated when Ireland said "Yes" but I also suffered what that referendum campaign and words brought. There were public debates and discourse with inflammatory language on whether people like me were worthy, whether we mattered and whether we could be trusted. There were speeches, articles, poster campaigns and advertisements displaying families like mine as something to be feared and something that was wrong and shameful. Inflammatory language stokes fear and mistrust.

I am thankful that I am living a wonderful life with my wife and daughter. I am thankful that Ireland said "Yes", but I bear the scars of that debate. The people here today, listening today, and engaging in this wider discourse will bear the scars of that language. Members will have noticed today and in the past couple of weeks heightened discourse around the prejudice that the LGBT community faces. Hate crimes-----

Senator Sharon Keogan: Will Ms Cohalan answer the question, please?

Ms Elaine Cohalan: I will, of course.

Senator Sharon Keogan: Thank you.

Senator Mary Seery Kearney: Ms Cohalan is entitled to respond to the Senator's inflammatory language.

Senator Sharon Keogan: Committees are a place for a debate. If there is no critical thinking and questioning, we could write the report now-----

Senator Mary Seery Kearney: Critical thinking does not excuse inflammatory and sensationalist language.

Senator Sharon Keogan: -----with no dissenting voice or question. That is the value of true debate and free speech.

Acting Chairman (Deputy Kathleen Funchion): Hang on, everybody. There is one person chairing the meeting.

Senator Sharon Keogan: Thank you. I have asked a question.

Acting Chairman (Deputy Kathleen Funchion): Okay, Senator, but it is not appropriate to interrupt the witness. I said at the start of the meeting that there was adequate time for people, so I am allowing people to go over time.

Senator Sharon Keogan: Thank you, Chair.

Acting Chairman (Deputy Kathleen Funchion): It is not appropriate to interrupt. Allow the lady to speak. I do not want anybody to be disrespectful to our witnesses. Everybody is entitled to their own views and opinions on this, but I ask all members to be mindful of their language and to be respectful. I will not stand over a meeting where any sort of disrespect is shown to witnesses who are in this room.

Senator Mary Seery Kearney: Well said.

Acting Chairman (Deputy Kathleen Funchion): Continue, please, Ms Cohalan.

Ms Elaine Cohalan: The point I am making is that prejudicial actions and harm that happen in our community all start with words. Words matter. We are sharing deeply personal stories and the Senator's words here matter. I thank the Senator for her questions. In terms of the European cases and the Spanish High Court finding, I will pass over to my colleague, Ms O'Connell.

Ms Claire O'Connell: I am sorry to say that I am not aware of the specific circumstances around that case. Respectfully, I want to take issue with the suggestion that the Senator does not believe everyone has the right to parent a child. Obviously, the Senator has a role here, but the Irish courts disagree with her, as does the European Court of Human Rights, under which we have international obligations to adhere to. Article 8 of the European Convention on Human Rights, which respects the right to private and family life for all individuals, also disagrees with the Senator in that regard.

It is important for the Senator to define what she means by commercialisation. I have been listening to the meetings of the committee over recent weeks and I have been so grateful to Senators Seery Kearney and Ruane for their contributions, particularly the commentary around exploitation and what it means in the context of commercialisation or a payment of money or a figure. It is so important not to presume about the payment, remuneration or compensation of a woman for her time, effort and sacrifice, in many ways, over nine months of her life, in terms of her work, family life and everything she gives up - even the morning sickness alone. I cannot understand a process in which we would not recognise that massive sacrifice and contribution to the lives of everyone here. If the Senator could define commercialisation, we would be happy to answer more questions.

Senator Sharon Keogan: Commercialisation means when couples engage in a contract where they pay the surrogate mother money to carry the child.

Ms Claire O'Connell: What I would say in response to that is that from the submissions of all of my colleagues here, I imagine they have engaged in surrogacy where there may have been payments or not. They can speak to that themselves. The most important thing is that the woman would have made that decision. She would have made that decision with informed consent and perhaps counselling. Any system we are proposing as a coalition would include principles that look to have an ethical framework. That includes counselling, legal advice and making sure that there is no such exploitation, which I think is a very harmful presumption.

Senator Sharon Keogan: Why does Ms O'Connell think it is allowed or is okay for, let us say, women in Ukraine but is not okay for women in Ireland?

Senator Lynn Ruane: It should be okay for women in Ireland.

Ms Claire O'Connell: I think that is why we are here.

Senator Lynn Ruane: I agree with Senator Keogan. Let us introduce it for women in Ireland.

Senator Sharon Keogan: Why do some European countries not allow surrogacy?

Ms Claire O'Connell: I am conscious I am taking up all the time. I will let some of my colleagues come in. To clarify, there are many countries that do not regulate for surrogacy, which is a different thing from saying that they do not allow for it. I apologise; I am taking up too much time.

Senator Sharon Keogan: Does anyone want to address the issue of the birth mother being on the birth certificate?

Mr. Gearóid Kenny Moore: I will happily address the Senator's two points. In relation to European countries that do not allow surrogacy, as my colleague has said, in many cases it is not that they do not allow it, they just do not regulate for it. Through my eight-year journey to parenthood, I met lots of parents from countries in Europe where international surrogacy was either forbidden or made very difficult by the legislation and the processes in place in their countries. It did not solve the problem in those countries. Those parents still found ways to parenthood in other locations. I met them on the journey. As the members were told yesterday by the representatives from the legal profession in the UK, not allowing it, banning it or making it difficult just does not work. It just means that people find alternative ways and they are left to their own devices. What we are asking for is a framework that supports people to make ethical decisions in the interests of a child, in the interests of a surrogate and in the interests of an intended parent, and in that order.

On the Senator's point on recognition of the surrogate mother on the birth certificate, I will speak for myself and the organisation I represent. We have no issue whatsoever with a birth certificate incorporating the details of a surrogate mother. I want my children to know exactly where they came from. The Senator mentioned mother and baby homes. I am not sure that is appropriate, because in those cases the children were denied information about their lineage and heritage. None of us sitting here today wants that for our children. I am already talking to my three-and-a-half-year-old twins about where they came from, as my colleague Ms Merrigan mentioned, in an age-appropriate way. Whether it is on the birth certificate or not, parents want their children to know. We have contact with our egg donor. She is also part of our kids' story. Nobody here is trying to whitewash, as the Senator put it, people out of the picture. Actually, what we are trying to do-----

Senator Sharon Keogan: In the UK, it distinguishes-----

Mr. Gearóid Kenny Moore: Can I just finish my point?

Senator Sharon Keogan: Sorry, go ahead.

Mr. Gearóid Kenny Moore: Nobody is trying to whitewash people out of the picture. What we are actually trying to do is to set up a framework that will make sure they can never be taken out of the picture.

Senator Sharon Keogan: I am glad to hear that. I thank Mr. Kenny Moore for clarifying that.

Ms Selina Bonnie: Just briefly, in response to the Senator's question about why Ireland and other countries have not gone through this process yet, I wish to point out that it is not unusual for Ireland to lead the way, especially from a legislative, human rights or equality point of view. The human rights and equality part of the US Constitution was based on Bunreacht na hÉireann and what we did. We have had a right to Irish Sign Language since 2017 in this country, whereas the UK is only starting to have that discussion now. Why not let Ireland continue to be a leader in good practice, equality and human rights? We have done it before and we are respected for it.

Ms Ciara Merrigan: I thank the Senator for her questions and for explaining to us what her beliefs are. Her beliefs are not what I have experienced, and I am the lived experience. I have gone through the process and I did every single little piece of research I could possibly do to ensure it was a medical process I went through.

The Senator talked about whitewashing the surrogate. It is difficult to explain it to her, but I speak to my children every day about their surrogate mother. They know who she is and it is to be hoped they will meet her soon. We hope we will have days out together. Obviously, we live in different countries, so Covid has prevented that over the past couple of years. The surrogate mother is very much included in our lives every day. We honour her every day. There are photographs of her. My children see photographs of her, her children and her family. She is part of our life every day. I know it is the Senator's belief, but it can be slightly insulting to me and to my colleagues because, in Irish Families Through Surrogacy, it is a common approach that that is what we would do with our children. Our children know where they come from. They know who their surrogate mother is. They know we did not carry them in our tummies. We have to explain it to them in an age-appropriate way. We say mammy's tummy was broken and this very kind lady - I will not name her here publicly - helped mammy.

Senator Sharon Keogan: As a foster parent for 12 or 13 years, I would have gone through similar red tape Ms Merrigan would have gone through, so I understand perfectly, particularly where there is a non-consenting parent, and I empathise with that.

Senator Lynn Ruane: I thank all the witnesses for their presentations today and for sharing their stories. It takes a huge emotional toll to have to give so much of yourself, but I hope that in the giving of yourself, we see change in this area and respect for the witnesses, their family life and their private life.

It is difficult to hear other contributors talk about critically engaging with something. To critically engage with something, you have to be able to understand all sides of it and then critically engage with it. Outright opposing something because of a personal bigotry or belief is not actually critically engaging with a topic. Opposition and critically engaging are two different things. As legislators and as public-----

Senator Sharon Keogan: I object to that word absolutely, because I am certainly not.

Senator Lynn Ruane: I think you will find that you are. I think maybe you should also check your Christian values, and you walk in there every day.

Acting Chairman (Deputy Kathleen Funchion): We all need to be mindful of our language.

Senator Lynn Ruane: Respect, compassion, love, everything-----

Senator Sharon Keogan: I do.

Senator Lynn Ruane: No, you do not show it. You are crude and you are cold, and it is not okay - end of story.

Senator Mary Seery Kearney: Yes.

Senator Lynn Ruane: I want to ask two questions-----

Senator Sharon Keogan: Right, okay. That is your opinion.

Senator Lynn Ruane: You are. You are the same in the Chamber. Your gaslighting of yourself is hilarious. In relation to-----

Senator Sharon Keogan: This is very personal now.

Senator Lynn Ruane: Yes, it is, because you have been very personal.

Senator Sharon Keogan: Why are you getting personal?

Senator Lynn Ruane: You have been personal.

Senator Sharon Keogan: Why are you allowing this to happen, Chair?

Senator Lynn Ruane: You have been personal to the witnesses.

Senator Mary Seery Kearney: This issue is very personal for many people here.

Acting Chairman (Deputy Kathleen Funchion): Sorry, can everybody-----

Senator Sharon Keogan: I did not get personal.

Senator Lynn Ruane: This is a taste of your own medicine and the truth.

Acting Chairman (Deputy Kathleen Funchion): I remind everyone that this is a public forum and people are watching in.

Senator Sharon Keogan: There is no need for personalisation here.

Senator Lynn Ruane: There is.

Acting Chairman (Deputy Kathleen Funchion): Can we please have a bit of respect-----

Senator Sharon Keogan: There is absolutely no need for it.

Acting Chairman (Deputy Kathleen Funchion): -----and a bit of decorum?

Senator Sharon Keogan: Absolutely not.

Senator Lynn Ruane: There is.

Acting Chairman (Deputy Kathleen Funchion): Senator Ruane, can you please continue?

Senator Sharon Keogan: There is absolutely no need for personalisation here, Chair.

Senator Lynn Ruane: Remember that then, before you contribute again.

Acting Chairman (Deputy Kathleen Funchion): It has to be the same throughout all meetings-----

Senator Sharon Keogan: Absolutely.

Acting Chairman (Deputy Kathleen Funchion): -----and in every situation.

Senator Sharon Keogan: The same happened yesterday. A lot of personalisation went on in here yesterday and it was not stopped.

Senator Mary Seery Kearney: Absolutely, it did.

Senator Sharon Keogan: It is happening again today. This is not an echo chamber for one view.

Acting Chairman (Deputy Kathleen Funchion): Senator, I can only comment on the meeting that I am chairing now.

Senator Sharon Keogan: It has to be a chamber for all views.

Senator Mary Seery Kearney: But respectful views. It has to be respectful views.

Senator Sharon Keogan: But I am being respectful.

Senator Lynn Ruane: No, you are not.

Senator Mary Seery Kearney: It must be respectful opposition.

Senator Sharon Keogan: Just because I share a different point of view-----

Senator Lynn Ruane: You are not respectful.

Senator Mary Seery Kearney: This is not respectful opposition.

Senator Sharon Keogan: -----does not mean-----

Senator Mary Seery Kearney: This is sweeping, atrocious, sensationalist statements.

Acting Chairman (Deputy Kathleen Funchion): I am going to have suspend the meeting, which would be absolutely ridiculous. People are watching the meeting who have been waiting for this committee and this debate for years. Their children have grown up without it. Senator Keogan knows herself that she has been disrespectful at times over the past number of meetings.

Senator Sharon Keogan: No, I have not.

Acting Chairman (Deputy Kathleen Funchion): I am only speaking to the meeting that I am chairing now.

Senator Sharon Keogan: I disagree with you.

Acting Chairman (Deputy Kathleen Funchion): That is fine; you can disagree with me.

Senator Sharon Keogan: I disagree with you.

Acting Chairman (Deputy Kathleen Funchion): I am only speaking to the meeting I am chairing now.

Senator Sharon Keogan: Gearóid, just Gearóid, you are extremely lucky to be here today. You do not know how lucky you are to be here today-----

Acting Chairman (Deputy Kathleen Funchion): Sorry, Senator-----

Senator Sharon Keogan: -----and I will tell you why.

Senator Erin McGreehan: Stop it, Senator.

Senator Mary Seery Kearney: How dare you.

Senator Sharon Keogan: Yesterday morning-----

Senator Mary Seery Kearney: How dare you.

Senator Sharon Keogan: Yesterday morning at a private meeting-----

Acting Chairman (Deputy Kathleen Funchion): We are suspending the meeting.

Sitting suspended at 11:13 a.m. and resumed at 11:31 a.m.

Acting Chairman (Deputy Kathleen Funchion): Before we get into the rest of our questions I call on Senator Keogan to apologise to our witness whom she singled out unfairly before we suspended the meeting.

Senator Sharon Keogan: I thank the Acting Chair. Gearóid, I made a statement that I was not allowed to finish earlier and I would like to finish that statement.

Acting Chairman (Deputy Kathleen Funchion): Sorry Senator, you were asked to apologise.

Senator Sharon Keogan: If you would allow me to finish, Acting Chair-----

Acting Chairman (Deputy Kathleen Funchion): It is very simple. It is one sentence.

Senator Sharon Keogan: If you would allow me. Gearóid, yesterday in a private session there was a group that-----

Acting Chairman (Deputy Kathleen Funchion): Sorry, I am going to have to-----

Senator Sharon Keogan: -----actually suggested to come forward before the committee-----

Acting Chairman (Deputy Kathleen Funchion): Senator, under Standing Order 113 I am going to ask you to leave the meeting now.

Senator Sharon Keogan: -----who had 1,500 followers and-----

Acting Chairman (Deputy Kathleen Funchion): Senator Keogan-----

Senator Sharon Keogan: -----the committee here would not allow them.

Acting Chairman (Deputy Kathleen Funchion): -----under Standing Order 113 you are asked to leave the meeting.

Senator Sharon Keogan: So when I said that comment to you I was basically saying how lucky you are. I would like to-----

Acting Chairman (Deputy Kathleen Funchion): Senator, you are being asked to leave the meeting in accordance with Standing Order 113.

Senator Sharon Keogan: I do not agree that I should apologise to the committee. The fact that-----

Acting Chairman (Deputy Kathleen Funchion): Nobody is asking you to apologise to the committee-----

Senator Sharon Keogan: -----every utterance of mine is shouted down-----

Acting Chairman (Deputy Kathleen Funchion): -----we are asking you to apologise to one of the witnesses.

Senator Sharon Keogan: I am the subject of vicious personal attacks.

Acting Chairman (Deputy Kathleen Funchion): Okay, the meeting is suspended.

Senator Sharon Keogan: I did not and I will not stoop to that level. If any witness feels that he or she has issues with my questions-----

Acting Chairman (Deputy Kathleen Funchion): The meeting is suspended.

Sitting suspended at 11.32 a.m. and resumed at 11.33 a.m.

Acting Chairman (Deputy Kathleen Funchion): I apologise to our witnesses on behalf of the committee. It is never our intention to be in any way hurtful, disrespectful or inappropriate. Of course, we are in Parliament where people will have different views and people will regularly debate those views, but always in a respectful and appropriate manner. That is the way any debate should be carried out. I also apologise to people looking in, especially families who have been affected by this since I cannot even remember when, who are waiting and whose children have well passed the age of 18 years. This is not how we normally conduct our business.

Senator Ruane may resume her questions.

Senator Lynn Ruane: I thank the Acting Chair. First of all, I apologise on my own behalf. My challenging the language probably escalated things even more, so apologies for that. It is hard not to challenge it but I also see the role I played in probably escalating that very quickly by challenging it. I apologise for the interruption and any hurt that caused.

I have two questions. One is for Mr. Kenny Moore and the other is for Ms Bonnie. I am thinking in practical terms about gay dads and what Mr. Kenny Moore said about the social welfare system and everything that entails. When we think of maternity leave and the length of maternity leave we obviously think of that with respect to women. What are the very real, practical supports in the form of legislative changes that would be needed or required for gay men to access an equivalent to maternity leave? Of course, we still need access to maternity leave with surrogacy but that needs to be extended to ensure it includes gay dads. I am wondering what type of practical supports are needed when looking towards a better legislative process to ensure dads can also take that much-needed time off to be able to psychologically and socially bond with their child?

Mr. Gearóid Kenny Moore: I thank the Senator for her question. As I mentioned in my opening statement, the reality is that as a gay parent and as a parent of a child born through surrogacy, like many of the other parents attending, we find workarounds for most issues. However, maternity benefit is one we are not able to find a workaround for. That seems to be due to the fact maternity leave and benefits are inextricably linked with mothers. I do not know the logistics and the legal issues that need to be overcome to make that available to same-sex male parents. I assume maternity leave and the right to it is underpinned by a piece of legislation so clearly, in my humble opinion, that is the source that needs to be addressed in order to allow it to be extended to gay male parents.

Most gay male parents I know have not received maternity benefit. If they do it is simply at the discretion of the companies they work for and it is very much an unusual situation when it does happen. The majority of companies do not provide for that. Sometimes companies will extend adoptive leave to same-sex male parents, so that could be something that is adjusted to incorporate families like mine. To summarise, maternity benefit is provided for through legislation and that legislation is what needs to be looked at. The crucial thing is that with the legislation proposed for domestic surrogacy - and I assume something is similarly being considered for international surrogacy - because the surrogate mother at birth is recognised as the legal parent and intended parents have to go through a long process post-birth in order to have the parental rights assigned to them, that prevents maternity benefit being assigned immediately upon birth. That is another aspect that would need to be addressed, again just in my personal opinion, to allow gay dads to access maternity benefits. However, it is a crucial issue because it prevents us from spending the time we would like to spend with our children.

Senator Lynn Ruane: I thank Mr. Kenny Moore. Turning to Ms Bonnie, her opening statement mentioned increased interventions and monitoring of disabled parents that is disproportionate to non-disabled parents. I ask her to elaborate on that extra layer of scrutiny and discrimination somebody who is disabled and is a parent, or is seeking to become one, must endure in this process.

Ms Selina Bonnie: I have many different stories. I have heard from many different disabled parents stories of when their child was born how, for example, the public health nurse was overly protective and they would almost have to prove themselves to be capable of being a parent and to be a capable parent. There was a strong presumption there that because they were disabled persons they would be incapable of being an effective and safe parent. There is also a huge problem with the parental capacity assessments many disabled mothers, in particular, are expected to go through if there is any concern that there may be an issue around child welfare. Often this presumption is made by the authorities before the child is even born. There is an expectation the mother is going to fail as a parent. What happens is rather than being assessed in their usual environment or community, where they are going to actually raise their child, they are lifted out into an artificial situation where they must live somewhere they have never been before. They are lifted into an artificial situation where they have to live somewhere they have never been before. They are monitored almost 24-7. As a disabled person, I am more able within my own environment, which has been designed to meet my abilities, than I am when I am away from my own environment. I can understand how one would be more likely to be considered to be failing in one's abilities when lifted out of one's usual environment. People face these difficulties. One colleague in the disabled people's movement is also a disabled mother and wheelchair user. The psychological trauma she went through as a young mother because of the oversolicitous attention of the local professionals took a long-term toll on her mental health and ability as a parent and mother, because of the stress that created. She is a wonderful mother, raising a wonderful daughter in a loving, stable relationship. This is not a unique situation. The "Re(al) Productive Justice" research project in NUI Galway has documented some of these issues. There is substantial information there if the committee would like to find out more or if it would like me to send more information.

Senator Erin McGreehan: I thank everyone for their contributions. I was taken aback by them. Ms von Meding spoke about the different ways her children came into the world. Differences should be celebrated. That difference should never be a negative. I ask my children what they want to be and they say they want to be different. What the witnesses have done for themselves, their families, children, and other families and children who have not been even thought of yet, is powerful. What they are doing for other families for the next decades is commendable. I thank them all for being here. It is important. They have told us the most intimate details of their personal lives, which is not easy.

I have a simple question for Ms Merrigan. Why should we legislate for international surrogacy, based on her experience with pathways to parenthood? How do we create pathways to parenthood for existing children such as hers and for children in the future? I also have a general question, which may be a legal question, for Ms O'Connell. We speak about ethical surrogacy. Everyone wants it. Is there a definition of that? Some regularly comment on it and there is an automatic assumption that compensated or commercial surrogacy is unethical. Is not recognising that woman's sacrifice and compensating her unethical? It is not easy to have a child. Is it unethical not to recognise that huge sacrifice and gift and the incredible miracle that the woman is performing for another family?

Ms Ciara Merrigan: The first question was about why we are calling for legislation. The main reason is to protect all parties, our children, the rights of the surrogate and the rights of the intended parents too, which means all three parties involved. Without legislation, there is room for exploitation. We all understand that there are bad people in the world and, without legislation, they can do bad things. Irish Families Through Surrogacy is calling for legislation to ensure the systems, processes, safeguards and regulations are in place to protect all parties involved.

The Senator asked about pathways to parenthood. As I said in my statement, I am not recognised as Clara and Matthew's legal mother. In the country they were born in, I was recognised as their legal mother. We need to look abroad, at the systems in Canada, the USA and the UK. I know the committee spoke with Ms Natalie Gamble yesterday. She explained how we can put in place a system to have a post-birth transfer of parentage to the intended parents. It would be post birth and not after a long wait. In my own situation, my children were two years and ten months old when my husband received legal parentage in the State. We call on the Government to implement legislation so that the process is done quickly for the child, in the child's best interests, and so that all three parties, the surrogate mothers, the children, and the intended parents are all protected.

Ms Claire O'Connell: Ms Merrigan explained matters so well. I will add a reason to legislate. We have international obligations to do so. Whenever we ask ourselves why we should legislate, the question really should be why we should not. It is ultimately a right to beget a child and to have respect for private and family life. If the committee does not want to, though

I do not recommend that, it would have to justify it with regard to balancing of rights, proportionality, and so on.

There was a reference earlier to the UN Convention on the Rights of the Child. The committee on the rights of the child, which is the reporting body for the convention, has consistently recommended in its periodic reports to Ireland that we should create these pathways. The primary aim of the Ombudsman for Children's Office is to uphold the convention and it has also made multiple submissions to recommend that a pathway be created.

The Senator asked for a definition of ethical surrogacy. I am sorry to say I do not know if there is one in a legal sense. There is certainly not in Ireland, because we do not have a framework at all. From my perspective, the witnesses yesterday, including Dr. Horsey and Ms Gamble, spoke well about the idea that we cannot just have altruistic surrogacy meaning ethical surrogacy and commercial surrogacy meaning non-ethical surrogacy. The primary principle that should be adhered to is respecting the surrogate, her autonomy, her informed consent and her decisions, as a woman, about what to do. If we create a framework that is regulated and includes those safeguards, there is no reason it cannot or should not be done. I hope I answered the Senator's questions.

Senator Erin McGreehan: My feeling is not only that it should be or will be done, but that it has to be done. Yesterday, we spoke about the pathway to parentage and the parental order applications in the UK. Is there something we could improve on? Is that a good template for us to use in Ireland for those concepts to be translated into our law? What is the witnesses' view, based on their expertise?

Ms Claire O'Connell: Yesterday's contributions were excellent. Previous witnesses alluded to us being lucky to have the benefit of the experience of the UK, which has had this system for so long. We get to look at the reforms proposed in the UK's law commissions and then wonder if we could not just start from that perspective. I authored a proposal, which I think has been circulated to the members, detailing how we could do this in legislation. It first sets out that there would be principles. Again, this is about informed consent, autonomy and the right to respect for private family life. Definitions of "compensation" and "exploitation" are included, and all these types of things. What we must do is to set all these things out for ourselves and it is possible to do it. It could be done over a bank holiday weekend. I hope I have answered the Senator's question.

Senator Erin McGreehan: Brilliant. I thank Ms O'Connell.

Acting Chairman (Deputy Kathleen Funchion): I call Senator Seery Kearney.

Senator Mary Seery Kearney: First, I echo Senator Ruane's apology. I rowed in with her on that subject and perhaps escalated a row. I apologise to the Acting Chair, because it put her in a difficult position, to our witnesses and in the context of the general discourse around this matter. There are many people who are possibly opposed to surrogacy. It is perfectly all right for them to hold that opinion and we completely respect their right to hold a different opinion. They do not, however, need to express that opinion in inflammatory terms. That was where it became something that my colleague, rightfully and courageously, started to challenge, and I support her in doing so.

I imagined that today would be much easier because there would be people in the room with whom I have shared experiences and relationships. As it transpired, I wept openly as they read out some of the stories, although I tried to hide behind a mask for some of it. That was because I either identified with some aspects or because I was heartbroken from hearing about some of the experiences people have had. My own experience is that once this subject was spoken about in public, courageous conversations started happening among people in pubs, or perhaps over Zoom during Covid-19. My experience in the last year and a bit has been that people have contacted me regarding the prejudice they have experienced, shared their own heartfelt stories and their need to see legislation enacted urgently. I will refer to part of a communication sent to me. It is part of an exchange between a person and the priest in her church. In that exchange, the woman said, the priest advised her that she needed, as part of bringing up her child, to explain that she is different. The woman then asked if she would ever hear a priest at mass saying that IVF babies are not as sacred or that they are different, and he answered by saying there was a good chance of that happening and that the woman should speak to her daughter for that reason. This was the response to someone whose baby was born via IVF treatment, before we even get to the experience of surrogacy. Therefore, this context needs to be explained. There are people who oppose surrogacy, on religious grounds perhaps, and those people should be transparent about where they are coming from with their opposition.

I imagined we were going to have several rounds of questions, so I wrote down many topics to discuss. I have, however, been very struck by the words and of being complicit in validating prejudice. It is very important that we do not do that. It is important that we acknowledge a pathway towards reproductive justice and move on it. Ms Bonnie made a powerful contribution at a sitting of the Joint Committee on Disability Matters on International Women's Day last year. The committee on that occasion sat in the Dáil Chamber and it was there that Ms Bonnie first used the words "reproductive justice". The phrase captured my imagination, and I followed up with Ms Bonnie and we talked. This issue is about reproductive justice for women and the intersectionality of women's rights with disability issues and also about those on a fertility journey. Therefore, I think the phrase "reproductive justice" captures that vision. I also, however, claimed a little bit of it for myself and for those in similar situations. My experience on that committee has been one where I have encountered the idea of ableist privilege and learned how people with disabilities experience ableist privilege. One wonders sometimes when we hear statements made before this committee whether the people making them might perhaps word their contributions differently if they were not coming from a place of ableist privilege. Such experiences have made me ultrasensitive to disability. Therefore, I wish to give Ms Bonnie the opportunity to talk about this aspect.

I commend Ms O'Connell for her proposed new section 7A , which was submitted to the committee. It is 25 pages long, so well done for doing that on a bank holiday weekend. I agree with and endorse much of it. As a consequence of yesterday's meeting, though, I would amend the definition of "exploitative". Ms O'Connell has suggested a definition that refers to the practice of unduly influencing a person through economic pressure to entice or convince him or her to participate in a surrogacy agreement or other such arrangement. I would remove the word "economic", because what we heard from yesterday's witnesses involved siblings and almost a level of coercion in that context. I suggest a change in the definition, from one reflecting a situation where pressure emanates from payment in an economic context, to one that clarifies that pressure can be applied via many means and that exploitation can be addressed by many means. I welcome comments from Ms O'Connell's on this aspect.

Ms Cohalan addressed the issue of inflammatory language. I refer to the effect of stigmatising children who are innocent and do not deserve it. What Mr. Kenny Moore said about a child in a playground broke my heart. A parent's worst nightmare is for someone to turn around to his or her child and tell him or her that his or her parent is not really his or her parent, when that is absolutely not the case. I refer as well to the idea of someone's child knowing, almost from the moment that he or she is born, that there is what has been called a "tummy mummy" and then there is mammy, who was there beforehand, all through the pregnancy, and who will be there until, in my case, my last breath. I will be at the big moments in life, such as the wedding, to whomever that will be. Hopefully, as well, I will hold a grandchild and do all these things. I hope the journey of others will not be as horrific as mine.

Regarding the idea of a child being stigmatised, what is required in this conversation and in this journey as we move towards ethically legislating for international surrogacy is to ensure we do not inflame hate and-or give those who would jump on a bandwagon any way to be contrarian and hateful a licence to do so due to the language used in these noble Houses. Many people contact Irish Families Through Surrogacy seeking advice and support. My journey began way before that was possible. There was nobody to contact. What do we see as being the vision post legislation? I am sorry there were so many questions, but I was planning to ask them over several rounds.

Acting Chairman (Deputy Kathleen Funchion): No problem. I call Ms Bonnie to address Senator Seery Kearney's query regarding the issue of reproductive justice.

Ms Selina Bonnie: I wish to address not only the subject of reproductive justice but also to home in on the issue of ableist attitudes and their impact. As a woman, I have experienced them throughout my journey to motherhood. Sometimes people presume that I, as a disabled person, do not have a sexuality or that having it is a problem. Additionally, if people do presume that I am a sexual being, they quite often then do not presume that I might want to become a parent or that I should become a parent at any stage. There are these ableist attitudes as well. For example, it is often presumed that, due to a person's impairment, he or she could not possibly support and look after a child? They are coming at it from the point of view of being on the outside looking in on a disabled person and presuming ability. I had the experience where a doctor wanted a guarantee from me that I would not have a disabled child or the doctor would not consider me for IVF. I feel that was a very ableist attitude because who in this world can guarantee they will not have a disabled child?

Ableist attitudes are or can be also very damaging when we are looking at legislation and post-legislation. When it comes to, say, looking at criteria for an intending parent or the issue of the welfare of the child, if there is not enough guidance and if they are not understanding of issues such as ableism and harmful presumptions, the people who are making those decisions can put their own beliefs into their decision-making process. That would be a concern of mine on how ableist attitudes can continue to harm.

I will make one other point about intersectionality. I am a disabled woman but what if I was a disabled LGBTQ woman who wanted to go down the route of parenthood and needed assistance? Not only would I have the possibility of encountering discrimination due to ableist attitudes but all the other aspects of discrimination may be there as well. It is a very complex issue. When we are looking at ableism, we also need to look at intersectionality and the impact of not recognising and planning for that.

Senator Mary Seery Kearney: I thank Ms Bonnie.

Acting Chairman (Deputy Kathleen Funchion): Does Ms Cohalan want to share the questions? There is a question there for everybody. I am conscious that Ms von Meding has not had the opportunity to come in. Does she want to come first?

Ms Ranae von Meding: I would like to talk about how the Senator spoke about children knowing about their conception. I think everyone here today, both the organisations we represent and our members, wants a world in which our children have access to their genetic information where at all possible and information about their births. Children are amazing. We began speaking to our five-year-old about how she was conceived from a very early age. She is five and she could tell anyone about the ins and outs of reciprocal IVF and donor assisted conception. She is very proud of it. She will often ask complete strangers whether they knew she was an egg in moms tummy. She will tell them a doctor took that out and there was a donor, and she was an embryo and that embryo was put into mama's tummy and then mama grew her . It gets much more graphic than that at that point. She is incredible. We feel that is very important. That is part of her story and part if who she is. That is why she is here. We all fully agree and support that. I feel some people's allusion to historical practices within the State around children is misguided. It is a completely different situation that we are representing here today. We want to support women, children and our families. Anybody who thinks otherwise is completely misguided in what we are trying to do.

Acting Chairman (Deputy Kathleen Funchion): Does Ms O'Connell wish to speak? Anybody who wants to jump in may do so.

Ms Claire O'Connell: I thank the Senator for the questions and kind words. What I should say first and foremost is that I am not concerned that anyone at this table or anyone whom they represent is going to engage in any exploitative practices. When I was drafting this, what I was concerned about first and foremost were the concerns that had been raised consistently. I felt it was kind of necessary, therefore, to include some provision. I basically have five provisions that the court must have regard to in making its determination. One of these is whether the compensation was not to such an excess as to render the agreement exploitative having regard to the standard of living in the relative jurisdiction. I stole that last part from Dr. Mary Wingfield, who gave evidence to the committee a couple of weeks ago. First, I completely agree with what the Senator said about including emotional exploitation of some kind and the pressure that might put on people, even altruistically. Therefore, yes, the amendment is accepted, absolutely.

Senator Mary Seery Kearney: That was much easier than normal.

Ms Claire O'Connell: Really, it was kind of an exercise - as we sometimes refer to it - to put something before the committee that hopefully people read, exactly like the Senator did, and see something they consider could be different but that works otherwise. I hope it is helpful in terms of setting out a framework in the future.

Senator Mary Seery Kearney: It is an exceptional piece of work. I thank Ms O'Connell.

Ms Elaine Cohalan: Can I add to Ms von Meding's comment and the Senator's question around inflammatory language? I thank the Senator for that. Similar to Ms von Meding's family, although we had a very different journey in my case, our daughter was born through assisted human reproduction using a known donor and a non-clinical procedure. This is the first thing Kate says to a kid when she meets him or her on the playground and gets on the swing. She puts her shoulders back and says, "I have two moms". She is incredibly proud of her family and we are incredibly proud of her. She knows her story. How we conceived and how her donor gave us a beautiful gift is a source of joy and pride for us. It is the very thing we celebrate as a family. We march on pride parades. We celebrate our story and we tell it very openly. We do not hide in the shadows. We are not ashamed of it. We are exceptionally proud of it.

Senator Mary Seery Kearney: Hear, hear.

Ms Elaine Cohalan: It is a source of fear and worry for us that the very thing we celebrate as unique and special about our family will inevitably one day be turned against her, and she will be told that source of joy and celebration is the reason she should be fearful and shameful and is less than. Inflammatory language here and outside of here, therefore, really matters and has short- and long-term impacts.

Senator Mary Seery Kearney: I would say equating every international surrogacy with an exploitative situation and making assumptions about countries *en masse* stigmatises children and equips haters with reasons to hate them. My daughter is very proud and knows everything about her origins. We were fortunate in that we had assistance to carry out due diligence that perhaps others would not have had. That is why I want to have them stitched into any legislation. She is very proud that her mother gets to travel the journey to change the law in Ireland to recognise the legitimacy and pride that is warranted from her birth.

Ms Ciara Merrigan: Irish Families Through Surrogacy was established approximately 14 or 15 months ago with a group of mammies. We have had a few dads join us on the way as well, which is great. They kind of keep our ICT in check anyway. We all work full-time. All this work we are doing is in the evening time. Although at the moment we are very focused on the campaign, we do an awful lot of advocacy work in the background with couples, taking calls at 1 o'clock and 6 o'clock in the morning. That is still ongoing but the vision going forward is that Irish Families Through Surrogacy would become more of a formal organisation with perhaps some State support. We would be set up formally and be there to support parents, children and surrogates domestically who will be going through this process. We would have guidelines set up around the procedures and processes a person goes through but also guidelines on how to tell one's child that he or she was born through surrogacy. They need to be based on lived experiences, like how Ms von Meding explained that she has told her children or the experiences of my other colleagues here as well.

We also spoke about counselling earlier. I would agree with that. There definitely needs to be counselling. It is an opportunity to have an in-house counsellor attached to the organisation and, therefore, develop that whole specialty in itself. At the same time, one can have the formality of a counsellor but learning from other parents is just as important too. Irish Families Through Surrogacy would be there as a vehicle for that to happen. We would also like to have a few fun days out with our kids. One of the nice things about our group forming is that our children spend time with each other now. We recently all had a trip down to Cathy Wheatley's farm in Wicklow and I can confirm she is a sheep farmer as we have seen the lambs. It is lovely for our children to meet with each other so that it becomes the norm that they meet other children who were brought into this world in a slightly different way but who are 100% loved by their parents. That is the vision. I hope the energies that have been put into this campaign can, once the legislation is introduced, be put into guiding, supporting and continuing to advocate, but also bringing our kids together and having fun days out as well.

Deputy Patrick Costello: I apologise for being late. I missed some of the colourful parts of the meeting. I was late because I was dealing with some family stuff at home. I am aware of the privilege I have in doing that and that not everybody has that privilege. Despite any of the sleepless nights, the headaches or the rows over them not wanting to take their antibiotics in the morning, it was all very normal and easy - or easy within the bounds of "normal". It is a privileged position, or that is what I am stumbling towards, and I am aware of that privilege.

One of the things I want to say is that we have before us in the committee today a bunch of people who are dedicated to making it easier for everybody to have that kind of experience. That needs to be acknowledged and we need to thank them for their hard work. I think also of the words that were said yesterday about family arrangements, with which we all heartily agreed. It is not necessarily the family arrangements or how they look that matters but the love that the child experiences and the warmth, the care and the support, and that needs to be acknowledged as well. I do not think using words like “traditional” or “non-traditional” or other slightly more inflammatory language really helps because I do not think it captures the aspect that, at the end of the day, there are children who are wanted and loved and parents who are doing that loving and supporting. That absolutely needs to be the focus here.

It is also the job of this committee not to start making assumptions and making wild declarations, even if that gets someone on the news, when all the positive work, the stories, the emotional journeys and the hard work do not get on the news because that is not as spectacular, even though it is more important. To come out with these kinds of things is to prejudge the work of this committee and is in bad faith and undermining the work of this committee.

We have spoken about definitions and the due diligence that needs to be done. Our role in this committee is to set up those frameworks or to describe how those frameworks should be set up. As Ms O’Connell said, nobody on her side of the table wants to get their child and their family through exploitation. Part of our work is to ensure that does not happen and that there is due diligence to make it easy for people who want it. We need to look at the definitions of “commercial” and “ethical” from the UK and from other jurisdictions, and say, “This is what we believe is ethical and this is how it should be set up”. We want to help those who are walking the difficult journey of surrogacy. Again, the point was made yesterday that by the time people have come to make a decision to go down that journey, they will likely have had numerous setbacks, challenges and hills to climb. It is never an easy road to get to that decision. Surely our job is to make that road a little smoother while also ensuring there is due diligence. If the due diligence is there and is being done by someone else, it makes the journey easier for the families and the parents.

Mr. Kenny Moore mentioned paternity leave and the arrangements for parents. I know the Minister for Children, Equality, Disability, Integration and Youth has made announcements about reform in that area, although they are only teasing announcements that have been leaked to the newspapers, so we have no details. There is a large crossover between this committee and the children committee so we will be on to the Minister about that.

When Ms Bonnie talks about the ableist assumptions in terms of parenting capacity, I look at this through my own lens and reflect on my own time as a child protection social worker, which is where I was most familiar with that use of the phrase “parenting capacity”. Again, given the crossover with the children committee, I am thinking out loud as to whether this is something the children committee needs to look at as an issue, but I will simply wonder that out loud and leave it there.

Ms O’Connell said we need to set out these things for ourselves and I really do see that as the role of the committee. What I would be interested in hearing about is those negative experiences of international surrogacy. I know there are intending parents who have gone looking for international surrogacy and have found it to be a problematic experience and backed away from it or found another route. Those aspects could be potentially informative for us when we are trying to set that yardstick and set those definitions. As I say that, I am conscious that another very important aspect of getting this right is that if an intended parent takes the first step, has a very negative experience and then chooses not to find another route or does not have the strength to take that other route, that is a huge loss. We need to prevent that loss by having decent legislation in place. It is that practical experience of the international piece and how we can improve it that I am interested in.

Acting Chairman (Deputy Kathleen Funchion): We are tight on time but I invite the witnesses to come back in on some of those points.

Mr. Gearóid Kenny Moore: I can speak to the question around the negative experiences that some people might have had. When it comes to a surrogacy journey, there are so many components and factors. There is the IVF clinic, there is the egg donation process, there is the surrogate and her welfare and there are the intended parents, so it is a complex area. No matter what aspect of human life we look at, there will be always good players and bad players. Even in an environment where things are highly regulated, there can be situations where people do not behave according to the rules associated with that regulation. It is unavoidable and beyond the capability of any committee or any group to prevent bad actors from trying to become part of a particular journey, a particular business or a particular area.

I spoke about the Canadian model in my address. That is a highly regulated environment. For international parents who travel to Canada to try to become parents of a child, they have to go through a government-approved and appointed agency and register with it before they can do anything else. That agency then takes responsibility for understanding where the couple are coming from in terms of when they perceive being able to start a journey, in what geographical locations in Canada they might want to start their journey and so on. That agency is responsible for gathering the data around that couple and what their aspirations are and it then takes on an advisory role, similar to what we spoke about potentially for a group like Irish Families Through Surrogacy, which is doing it voluntarily right now, with regard to advising the intended parents on the clinics that might be appropriate for them and the lawyers who might be able to help them.

My point is that even when we regulate it, we are still going to have bad actors. Every industry in Ireland is highly regulated from a medical perspective yet we have had situations where those who partake in the industry still act as bad actors. We can never do something that safeguards it and locks it down in such a way that it would prevent bad experiences. We can put in place processes and government-appointed agencies and clinics that would be good actors to guide people in an ethical way towards achieving their dream of parenthood. I do not know whether this helps.

Deputy Patrick Costello: It does. The agency is governed by the Canadian Government. There is no Irish Government oversight or accreditation.

Mr. Gearóid Kenny Moore: That is correct. If people who want to become parents choose Canada as their route they are obliged before they speak to a clinic or meet a lawyer to register with an agency, whether they are domestic citizens of Canada or international intended parents. The agencies then help people to move forward in their journey at a time and a place appropriate for the intended parents. The Irish Government or the government of any other jurisdiction has no input.

Deputy Patrick Costello: It sounds like a very positive system. The challenge is how can we know about a country that does not have this. This is the bit of the jigsaw we need to piece together.

Ms Claire O'Connell: Something I have proposed is that there could be a process whereby prior to conception there is a preliminary approval process by the assisted human reproduction regulatory authority. Something I have been incredibly impressed with in the 2022 Bill, although otherwise I have many issues with it, is section 12, which refers to an information document. This document is not meant to be legal advice but a good steer. It would set out in advance for somebody engaging in assisted human reproduction treatments on how it should be done, what is required and the outcome. In the international context we could have some level of pre-conception approval by a body that over time would build up expertise and information on what countries are very good and have lists of approved clinics. Each individual country will have its own level of regulation as to whom it gives licences. I imagine a standard will be imposed whereby people would only go to a licensed clinic. It is very doable. Strict enough parameters can be set, particularly prospectively, as to what must be confirmed before people go ahead, whereby they must have consent, legal advice and counselling. I want to reference one of the proposals for the English system, whereby a court process would not be required for green-lit countries where it can stated these countries do it appropriately and these clinics offer an appropriate system. It is an option. I do not know whether it is the option for now.

Deputy Patrick Costello: There is a similar system with intercountry adoption.

Ms Claire O'Connell: Yes, exactly.

Deputy Patrick Costello: It would not be reinventing the wheel.

Acting Chairman (Deputy Kathleen Funchion): I thank the witnesses. Unfortunately we are out of time. As I said at the beginning of the meeting, we appreciate the witnesses coming before the committee to tell their very personal stories. I was delighted to hear Mr. Kenny Moore mention the Canadian model. He spoke about it at a meeting of the Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth and I could not remember where I had heard all of that before. When he said it today the penny dropped. There are aspects of it that we really should be looking at as best practice. I thank Ms Bonnie for joining us on MS Teams. I also thank Ms von Meding, Ms Merrigan, Ms O'Connell, Mr. Kenny Moore and Ms Cohalan.

The joint committee adjourned at 12.24 p.m. until 11 a.m. on Wednesday, 27 April 2022.