DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Dé Céadaoin, 9 Aibreán 2014

Wednesday, 9 April 2014

The Joint Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Senator Ivana Bacik,
Deputy Marcella Corcoran Kennedy,	Senator Martin Conway,
Deputy Alan Farrell,	Senator Rónán Mullen,
Deputy Anne Ferris,	Senator Katherine Zappone.
Deputy Seán Kenny,	
Deputy Pádraig Mac Lochlainn,	
Deputy Finian McGrath,	

In attendance: Deputies Jerry Buttimer and Ciara Conway, and Senators Mark Daly, Fidelma Healy Eames, David Norris, Averil Power and Jim Walsh.

DEPUTY DAVID STANTON IN THE CHAIR.

General Scheme of Children and Family Relationships Bill 2014: Discussion

Chairman: Apologies have been received from Senator Tony Mulcahy.

The purpose of the meeting is to have a discussion on a number of submissions received on the heads of the children and family relationships Bill. On behalf of the joint committee, I am very pleased to welcome Dr. Mary Wingfield and Dr. Edgar Mocanu from the Institute of Obstetricians and Gynaecologists; Mr. Brian Tobin from NUI Galway; Dr. Geoffrey Shannon and Ms Carol Anne Coolican from the Law Society of Ireland; and Ms Karen Kiernan and Mr. Stuart Duffin from One Family. We will have one session this morning and a longer one in the afternoon. The format of the meeting is that delegates will be invited to make an opening statement of five minutes duration. I ask them to try to stick to the five minute limit. The challenge is to distil contributions down to the main points as much as possible. The opening statements will be followed by a question and answer session with members. We are also joined by Ms Carol Baxter and Ms Dara Breathnach from the Department of Justice and Equality. I thank them for giving of their time.

I ask members, delegates and those in the Visitors Gallery to ensure their mobile phones are switched off as they interfere with the sound system or to switch them to flight mode. It is not sufficient to leave them in silent mode, as this will maintain the level of interference and impact negatively on the broadcast. If in the course of the proceedings there is interference, I will ask everybody to turn off his or her mobile phone completely. Part of the proceedings will be broadcast on UPC channel 207.

Witnesses are protected by absolute privilege in respect of the evidence they are to give to the committee. However, if directed by it to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not comment on, criticise or make charges against a person or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice or ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite Dr. Wingfield to make her opening statement.

Dr. Mary Wingfield: The Institute of Obstetricians and Gynaecologists officially represents obstetrical and gynaecological opinion in Ireland and promotes excellence in the areas of patient care and professional standards. We very much welcome the heads of the children and family relationships Bill and are delighted to have an opportunity to contribute our opinion. Our attention has focused on heads 1 to 30, inclusive, as they involve parentage issues relating to assisted human reproduction and surrogacy.

In response to publication of the heads of the Bill, an expert group of obstetrician gynaecologists was formed to compile a written opinion on behalf of the Institute of Obstetricians and Gynaecologists. However, fertility treatment is very much a multidisciplinary effort that includes not only doctors but also embryologists, nurses, counsellors and administration staff. Therefore, in order to obtain as wide an opinion as possible from assisted reproductive technology, ART, practitioners in Ireland, an invitation for input was extended to the Irish Fertil-

ity Society, the Irish Clinical Embryologists group, the Irish Fertility Counsellors Association, IFCA, the Irish Fertility Nurses Group, IFNG, and representatives of all long-established assisted reproduction units in Ireland. This document can, therefore, be regarded as representing a consensus opinion among all of these groups.

We were mindful of the report of the Commission on Assisted Human Reproduction in 2005, the Irish Fertility Society consensus on infertility and ART practice in 2011 and the recent Supreme Court and High Court judgments. While we welcome the heads of the Bill, we acknowledge the complexity of the issues involved and make the following 11 major observations. Other recommendations are included in our written report.

We identify the need for clarity in the medical terms used in the Bill. Clarity and accessible language are paramount in a complex medical area such as this. The term "conception" used in the Bill is vague, with no clear medical definition. In assisted reproduction, key events, including consent, happen at the time of sperm insemination in insemination cases and in IVF at the time of formation of an embryo but also at the time of its subsequent transfer to the uterus. We suggest, therefore, that throughout the document the term "conception" be replaced by clear time points relevant to the particular treatment being undertaken. Similarly, the term "human reproductive material", as defined in the Bill, is confusing. We suggest the terms "sperm", "oocyte" and "embryo" be used instead. We also stress that the legislation refers to the embryo only prior to implantation.

We believe the Bill should address the importance of counselling for persons undergoing assisted reproduction treatment. Professional counselling should be mandatory in cases involving donor conceptions and surrogacy.

We propose that the Bill address anonymity or non-anonymity of donors of sperm, oocytes or embryos. Whether gametes or embryos are donated on an anonymous or known basis, it should not affect legal parentage, but the right of children to access information on their genetic origins needs to be urgently considered.

We think the legislation should incorporate provisions for posthumous conception through assisted reproduction. This issue is of great concern to couples undergoing assisted reproduction. Several Irish ART clinics already provide this service. This is common practice in some European countries, including the United Kingdom. It is of particular relevance to those who have been diagnosed with cancer and wish to freeze sperm, oocytes or embryos.

We support a non-commercial approach to treatment, but propose that the Bill allow the payment of reasonable expenses to donors of sperm, oocytes and embryos.

We propose that in the Bill it be acknowledged that in cases of sperm, oocyte or embryo donation, there may be only one parent.

With regard to surrogacy, we propose that the Bill include a mechanism whereby potential surrogates and potential patients may access information on surrogacy services.

We propose that the Bill include cases where a child is conceived using a donated embryo or an embryo where the sperm and oocyte have both been donated by third parties.

We propose that the Bill include cases where a surrogate conceives using her own oocytes. There are several medical reasons for this on which we can elaborate.

The Bill should clarify the legal rights and obligations of all parties entering into a surrogacy arrangement regarding: (a) the right of the surrogate to dictate medical care for her and her foetus during the pregnancy; (b) legal responsibility for care of the child, including decision making and consent, during the interval from birth to the time of assignment of parentage; (c) responsibility for the care of a child born with a significant disability or foetal anomaly.

We believe the proposed penalties for offences in respect of payment for surrogacy may be unworkable.

My colleague, Dr. Mocanu, and I will be very happy to elaborate on these proposals. We thank the committee for giving us the opportunity to present these carefully considered views on behalf of our members and, more importantly, our patients and their current and future children. A major strength of our submission lies in the fact that it represents the considerable experience of a multidisciplinary group working at the coalface of assisted reproductive technology treatments in Ireland. We would be delighted to offer our services in the future to aid in the development of this much needed and much welcomed Bill. We realised there were some minor typographical errors in our original submission to the committee in February and have sent a corrected version to the secretariat for circulation to members.

Chairman: I thank Dr. Wingfield for her interesting presentation which was concise and to the point. It gives us food for thought. I ask Mr. Tobin to make his presentation.

Mr. Brian Tobin: I thank the Chairman and members for inviting me to offer a legal opinion on certain aspect of the heads of the children and family relationships Bill. I am a law lecturer at NUI Galway.

I suggest head 10 of the Bill, when read in conjunction with head 2, may, in fact, be constitutionally infirm. The Bill is unclear as to whether it applies to assisted reproduction that takes place only in a clinical context or if it also applies to assisted reproduction that also takes place in a non-clinical setting such as self-insemination or "home insemination". The reason this poses a problem is that where there is home insemination, there is no formal procedure by which a known sperm donor father, for example, may waive parental rights prior to a lesbian couple proceeding with self-insemination. Therefore, the known donor can be ousted from playing any parental role in respect of the child without ever having formally waived parental rights. It appears that the Bill is attempting, although I may be incorrect, to abrogate the decision of the Supreme Court in McD *v.* L, whereby it recognises that a known donor is akin to any other natural father. If that is not the intention of the Bill, I propose that the Oireachtas change some of the language used in the Bill to ensure, similar to the points made, certain things are given a proper definition at the outset. I strongly encourage that the procedure be defined in the Bill because, to my mind, it is arguable that self-insemination is a procedure that results in, to use the language used in the Bill, or leads to implantation of the embryo. Self-insemination initially results in fertilisation and eventually implantation but legally interpreting the Bill it does result in or lead to implantation. That is why I feel the Bill covers the self-insemination scenario whether that is the intention or not. The reason I believe this makes the Bill constitutionally infirm is that even in the absence of Article 42A and the child nonetheless has constitutional rights, the child has, to quote Mr. Justice Walsh in G *v.* An Bord Uchtála, natural rights to be supported and reared by its parent or parents who are the ones responsible for its birth. Arguably a known sperm donor father is responsible for the child's birth. Also Article 7.1 of the United Nations Convention on the Rights of the Child provides that the child shall have as far as possible the right to know and be cared for by his or her parents. If we are to oust the known donor prior to the birth of the child and prevent that person from applying for rights of

guardianship or access we are, perhaps, denying the child its fundamental constitutional rights. Arguably, if Article 42A is inserted, what may be a natural and imprescriptible right of the child to at least know and possibly have the society of its father is a concern in respect of the Bill as it currently stands. However, if the Oireachtas wishes to exclude the known-donor scenario I would strongly encourage that the language in Head 10 be changed and that a definition is given for what is meant by "procedure" in the Bill, that it is referring to a clinical procedure.

If the Bill is regulating and abrogating the decision in McD *v.* L then it will favour the intention-based parental status model or the intentions in the example of the lesbian couple a family unit that is devoid of constitutional protection over the constitutionally protected and, perhaps, soon expressly constitutionally protected rights of the child. While the use of the language "natural and imprescriptible" rights, may be unfortunate in Article 42A, nonetheless the use of the word "natural" does imply that a child has rights in relation to those from whom he or she naturally results, that is, his or her biological parents. Geoffrey Shannon has pointed out that the use of the terms "natural and imprescriptible" seem to allow for the natural law of philosophy to be used in the interpretation of rights under Article 42A. I would encourage the Oireachtas to reconsider head 2, which deals with interpretation, and head 10, which deals with parentage in assisted reproduction cases, other than surrogacy. If the Bill sees to oust the known donor it may be constitutionally infirm.

Head 2 defines conception. Conception is deemed to have occurred when the procedure was performed that resulted in the implantation of the embryo. Self-insemination is arguably a procedure that does result in implantation. Under head 10, the child's birth mother and a person married to, in a civil partnership with or cohabiting with her, and who consented at the time of conception, at the time of this procedure, to becoming a parent of the child will be the child's other parent. One might say having consented at the time of conception, surely that envisages a formal consent, perhaps, given in a clinical setting. Not so, because head 10(6) provides that unless the contrary is proven, a person is presumed to have consented to be a parent of the child, simply by virtue of the fact of being in a marital, civil partnered or cohabiting relationship with the child's mother. Again, that clearly encompasses the self-insemination or home insemination scenario if consent is going to be presumed. There is much evidence leaning towards the self-insemination scenario being covered by the Bill and possible future constitutional infirmity of the Bill.

Chairman: I thank Mr. Tobin. That was absolutely fascinating.

Dr. Geoffrey Shannon: The Law Society welcomes the opportunity to provide observations on the Bill. It represents the practising profession and reflects some issues arising in that context. The children and family relationships Bill represents the most significant change in family law in a generation and attempts to reflect the social reality of contemporary family life in Ireland. Until recent decades, family life in Ireland has been synonymous with marriage. However, increasing recognition of marriage breakdown, changes in relationship formation patterns, economic change and the influences of international law have all contributed to the increasing fluidity and diversification of family forms. It is no longer tenable to assert that Irish law should continue to recognise only one type of family. The constitutional preference for families based on marriage remains intact, but it is essential to provide legal certainty for all families, whatever their official status. The new framework that will be implemented following the passage of the Bill will not only radically overhaul many existing rules, it will create new rights for parents, both biological and social, and, most critically, for children. As a result, it represents an important milestone on the road to recognition of children as rights holders.

The Law Society's substantive submission on the Bill was submitted last week to the Joint Committee on Justice, Defence and Equality, drawing from the experience and expertise of its family law practitioners. It is hoped that it will assist the committee, as policy makers, and the Department in its consideration of the Bill.

The Law Society has made one of its most significant submissions to date to the Department on the issue of the broader structural reform of our family courts. We feel that any reform must be viewed in the context of broader structural reform. We understand the Minister is actively engaged in bringing forward proposals in this area. An explicit requirement for the courts to have regard to the best interests of the child when making decisions affecting them. That this is included in the Bill is welcome.

Head 32(1) requires that the best interests of the child be taken as the paramount consideration in proceedings concerning guardianship, custody, access or the administration of property or on the application of income thereto. It is submitted that consideration should be given as to whether the best interests should be required to be paramount in all proceedings concerning children and not merely those referred to in the Bill.

The provisions contained in the Bill relating to the right of the child to be heard and the right of the child to express himself or herself are to be welcomed in their desire to give a voice to the children the subject of judicial proceedings. If the Bill is enacted in its present form, a person with no biological connection to a child, albeit in an intimate and committed relationship with the child's mother, as referred to at head 10(3) and (5) and head 12(1) and (3) will be the parent of the child if they consent whereas the biological but unmarried father of the child will only be presumed to be the child's father under head 6 if he has cohabited with the child's mother for at least 12 consecutive months prior to the child's birth and, where applicable, the cohabitation ended less than ten months before the child's birth or the circumstances at head 6(3)(b) or (c) apply.

Therefore, it is arguably easier for a person with no biological connection to achieve the status of a parent than it is for the unmarried biological father to do so. Consideration should be given as to whether heads 10 and 12 of the Bill should be expanded upon to include a temporal requirement of cohabitation similar to that set out at head 6 for the unmarried biological father of a child. Conversely, consideration may be given as to whether head 6 should be brought into line with heads 10 and 12 and the cohabitation requirement for unmarried biological fathers be reduced. Either way it is submitted that the 12 month cohabitation period for unmarried fathers should be reduced so as to facilitate the recognition of family ties. The Law Society is of the view that the provision in its current form may be vulnerable to challenge under Article 8 of the European Convention on Human Rights, given the approach of the court to the nature of the family.

It is submitted that further consideration should be given as to whether children should have the right to information pertaining to their donor. In the United Kingdom, a system has been introduced by which a child conceived after 2005, is entitled on reaching the age of 16, to apply to the Human Fertilisation and Embryology Authority and receive the non-identifying information about the donor. Then at age 18, he or she can apply to receive identifying information. Access to donor material can be important for the person's development and health. Clearly it could be beneficial for a person born as a result of human reproduction to have access to their genetic information.

The use of the terms "guardianship", "custody" and "access" should be reviewed. The

report of the Law Reform Commission on the legal aspects of family relationships recommends that the terms "parental responsibility", "day-to-day care" and "contact" should replace the older terms. The concepts of parental responsibility and day-to-day care more adequately reflect the reality of children and families in Ireland today, in that they encompass more broadly the various compositions of families, such as blended families, where, for example, one parent, who may not be living with the other parent and the child, has parental responsibility, but the partner of the parent living with the child may be exercising day-to-day care of the child.

A significant reform is provided in head 39(4)(b), which requires that before a new guardian is appointed in respect of a child, if that child is over 12, he or she too must consent. This provision is worthy of further consideration. The intention behind the provision is to be welcomed, in that it provides for a significant level of participation by children in a vitally important application affecting them. However, the specific age criterion is unusual, as our international obligations are to ensure participation in line with the child's age and maturity rather than relying on a chronological age. This could be dealt with by amending the provision so that it reflects the language of Article 12 of the convention on the rights of the child, and including a rebuttable presumption that children over 12 are capable of full participation. This would also cover situations where the child who is over 12 is not capable of exercising participation rights through disability, even with significant support structures. Additionally, the requirement of consent rather than participation may be problematic.

Empirical research in several jurisdictions has consistently highlighted that children require a voice, but not a choice. This research indicates that better outcomes for children are likely to result where children are relieved of the burden of having to choose the outcome, but at the same time are integrated into the decision making process by appropriate means, including by judicial interview. Consideration should be given to revisiting this provision.

Chairman: We are way over time, so I ask Dr. Shannon to sum up if he can.

Dr. Geoffrey Shannon: In conclusion, the reforms proposed by the children and family relationships Bill will significantly benefit families in Ireland, while at the same time will increase the recognition and implementation of children's rights. Children's best interests and their right to participate appropriately are central to all facets of the Bill. The children and family relationships Bill 2014 adopts a comprehensive human rights based approach to children's human rights and, when enacted, will remove several roadblocks within the legal system that stand in the way of children having the best possible family life.

The Law Society is eager, willing and available to assist the committee and the Department in any further consideration of the Bill.

Chairman: Thank you, and sorry for interrupting, but we will come back with questions. I now call Ms Karen Kiernan,

Ms Karen Kiernan: One Family is Ireland's leading organisation for one-parent families, providing services to people parenting alone, those sharing parenting and those going through family transitions. Our policy work is rooted in the extensive family support work we have provided over the past 40 years. We welcome the heads of this Bill as it is long overdue and badly needed to support the thousands of families in need of family law services every year. The Bill attempts to reflect the realities that many children and their parents experience in Ireland today and to provide safety and security for them. We refer the committee to our written submission for an overview of all our recommendations, but today I will focus our comments on issues

relating to Part 7 – guardianship, custody and access, Part 8 – safeguarding interests of children and Part 9 – making parenting orders work.

We are very familiar in One Family with the practical, financial and legal challenges faced by mothers and fathers going through the family law courts in regard to separation, custody, access, maintenance, domestic violence and related issues. We have been particularly concerned with the lack of information and services available to family law courts when they attempt to make orders in regard to these issues. In 2009, we undertook research into the need for child contact centres in Ireland. These are safe, neutral and child-centred services where children can spend time with their non-resident parent. They are widespread outside Ireland and are used by courts, social services and families as safe places for high-conflict families, to facilitate children having an ongoing relationship with the parent with whom they do not live, who is often, but not exclusively, their father.

Following this research, we received funding for a two-year pilot project which we delivered in partnership with Barnardos in the greater Dublin area. These centres offered family and risk assessments, court reports, contact services, including handovers, supported contact and supervised contact, family support services including, counselling, play and art therapy for children, parent mentoring and mediated parenting plans. These services cost approximately €200,000 per year and have closed due to lack of funding. The independent evaluation of this project was launched 10 days ago at an event attended by five members of the judiciary - from the District, Circuit and High Court - a large number of legal practitioners and members of the Law Society of Ireland and representatives of family support services. There was overwhelming support for the work that had been done and the need for it to continue.

The key policy issues that have arisen through this work were also published last week and these are extremely relevant to the children and family relationships Bill, because we believe this is the opportunity to get this right for children in the future. Committee members should have received a copy of the publication by email, but we are happy to provide it to anyone who has not received it.

Currently, family law courts are making critical decisions about children and families in a vacuum. They are unable to make evidence-based decisions, unlike other branches of law. Irish family law courts do not have independent, quality information on the families presenting to them, because unlike other jurisdictions we do not have a court welfare system. This must change. It is not possible, for example, for head 32, best interests of the child, or head 63, enforcement orders, to function as envisaged if courts are not resourced with relevant background information on the family. Children are having unsafe and unsuitable contact with their non-resident parent or other family members on a daily basis in Ireland because courts are ordering it. This may be because there is a strong pro-contact assumption inherent in family law, because courts do not have full information on the extent and impact of domestic violence, addiction and mental health issues, because parents may not recognise the negative impact of violence on their children or their ability to parent or because courts do not have anywhere else to refer parents to for support.

What are the solutions and what can be done about this? The provision of a court welfare system must be included in this legislation, as family assessments are the basis for making evidence-based decisions in regard to families. It is also necessary that courts and social services collaborate much more closely to ensure the safety of children. A range of appropriate family support services, including child contact centres, to which families can be referred by the courts, must be nominated in the legislation. Children's voices and their best interest may be

more appropriately determined through external independent services, as is facilitated through child contact centres. The legislation should be clearer around domestic violence and abuse and the required support systems. It must be clear on the range, the benefits and limitations of family supports. There is a serious impediment to people with low incomes accessing ancillary family supports and resourcing needs to be looked at in the future.

Inclusion of these provisions in this legislation is just one of the steps required to ensure safety for children in private family law proceedings and to avoid repeated court visits for high-conflict families. We estimate that each of the 17 child and family agency areas could have a comprehensive, trained and accredited child contact centre service which could offer family assessments, contact services and family support services for a total cost of €3.5 million per year. We believe this is excellent value for money, particularly compared to legal or court based supports. This would be a defined rather than open funding stream.

I thank the committee for its time and we welcome questions.

Chairman: I thank Ms Kiernan. This is important legislation and we appreciate the input of all of those who have contributed on these complex and serious issues.

Senator Ivana Bacik: I thank the witnesses for their valuable contributions, which can be of great assistance to us in considering the heads of the Bill. It is good to hear a general welcome expressed for the long overdue introduction of these heads. I would like to acknowledge former Senator Mary Henry in the Visitors Gallery, who I know has done a lot of work on this issue over many years to try to bring forward legislation like this.

I wish to focus on two issues. Both submissions from the Institute of Obstetricians and Gynaecologists referred to definitions as potentially problematic; in particular, the current definitions which exclude what we call gestational surrogacy, or the traditional surrogacy arrangement where a surrogate mother uses her own reproductive material to become pregnant. I find slightly concerning a comment in the note on head 2, which states that there are compelling public policy reasons to exclude traditional surrogacy arrangements, as the effect would be to allow a woman to contract out of her parental responsibility for a child which is clearly hers, both by genetics and by birth. It would seem to me that the more compelling public policy reason is to protect the child born as a result of such an arrangement who currently is without any protection or regulation in law and who, following enactment of a Bill in this format, would still be without protection. Do the witnesses have a view on whether the Bill should therefore have a broader definition of surrogacy to include a surrogate mother who is using her own reproductive material to become pregnant?

Dr. Mary Wingfield: One of the difficulties with surrogacy is that there are so many different groups. It is very important that the rights of all of those groups are protected. I agree that the rights of the child are the paramount rights, because the child is the most vulnerable person in this situation. One of our main proposals is that the Bill should include cases where the surrogate uses her own oocytes for the conception. This links a little bit with cases of home insemination or artificial insemination, because if the surrogate can use her own oocytes, then she does not need to take part in an IVF procedure because it can be done by artificial insemination. There is some medical evidence that there are increased risks in pregnancy if a woman conceives using donated eggs. Her body will not reject the eggs but there are immunological changes that happen. If the surrogate is using her own eggs, she will not have those increased risks. There are certain cases where the woman in the commissioning couple may have no eggs herself for genetic reasons or for premature menopause, or for other reasons, or in cases where

there is only parent. There will be a need for donated eggs and one way of getting those eggs is for the surrogate to donate them.

We have extra suggestions in other parts of our submission because it is also very important to protect the rights of the surrogate. We have other suggestions in our document on the age of the surrogate and that she should be medically fit for pregnancy. It is important to protect all of those risks. Certainly we feel that the surrogate should be able to use her own oocytes.

One of our strong recommendations is that counselling be made mandatory for these cases, because there are so many competing interests, and it is quite complex. People choosing to commission surrogacy need counselling. They need legal advice and what is known as implications counselling, which outlines all the implications of what they are doing. The surrogate and her partner also need counselling that is independent from the counselling given to the commissioning couple. Even if that is taking place within a family, such as a woman being a surrogate for her sister, it is important that they have counselling to make sure that the sister who is going to be the surrogate is not being coerced or is feeling that she should do it when she does not want to do it. We have all of those in our submission.

Chairman: Would you include counselling for donors?

Dr. Mary Wingfield: Absolutely.

Dr. Edgar Mocanu: I would like to complement what Dr. Wingfield has said. We believe that counselling should be available after birth, particularly for the surrogate mother, and that should be included in any remuneration package that is considered. This is a very sensitive time for a woman who delivers a child and hands it over to the other couple.

The importance of surrogates using their own eggs is in the fact that this is happening. If the Bill considers all aspects of what is happening in the reproductive field, it should also pay attention to this.

Senator Ivana Bacik: I thank Dr. Wingfield for her comprehensive answer. Should we therefore be instituting some sort of arrangement in this Bill, whereby we can certify that a country from which a surrogate mother may be coming has appropriate protections in place, both for the surrogate mother and for any child born? That would be similar to the Hague convention on adoption. Would that not make sense in terms of protection?

Dr. Geoffrey Shannon: I was asked to address the European Parliament last year on the issue of both adoption and surrogacy, and I made a lengthy submission on it. The Parliament is currently looking at developing a new instrument to address intercountry adoption and surrogacy, as the private international law aspects have yet to be comprehensively addressed. The Hague conference on private international law is currently considering this issue, so if it is of assistance to the committee, I would be happy to share the observations that I mentioned in that context.

Chairman: Yes, please.

Dr. Geoffrey Shannon: I am sure that the view articulated by Senator Bacik on protections is hugely important. It is also important that there is consistency between this Bill and other statutes, such as in the context of consent under the Adoption Act 2010. A person cannot give consent to adoption until a period of six weeks has elapsed, but in this Bill it is a period of 30 days. In terms of the message that is sent out, why should consent for surrogacy be different to

consent for adoption?

In answer to the question on definitions, there are several areas in which we feel the Bill could benefit from tighter definitions. Rather than take up the time of the committee today, we could certainly send in a supplemental submission addressing those issues. We feel that this is a significant step forward in regulating an area that heretofore has remained unregulated. We fully agree with the Senator's comments. It is also important from a child's perspective and I come at this with the lens that children who are not regulated under this Bill do not find themselves in a legal limbo. I wonder whether there are parts of the Bill that might be overly restrictive and will still leave children conceived and born as a result of a surrogacy arrangement in a legal limbo.

Chairman: Any documentation that is sent in is most welcome but please send it through the clerk.

Senator Ivana Bacik: I have one final point for One Family. I thank its representatives for their work on the child contact centres. Anybody with any experience in child law in the District and Circuit Courts would be aware of the need for this sort of arrangement. Is Ms Kiernan saying there should be some provisions specifically in the legislation for such contact centres? Head 58 reproduces the section 47 reports, and I know that the Law Society is very critical of problems with them. Those reports can be very helpful to the court. The difficulty is with the ad hoc arrangements currently in place and the fact that the parties have to fund them themselves. Head 58 still provides for that. How can head 58 be improved upon to address the difficulties Ms Kiernan suggested?

Ms Karen Kiernan: The whole section in respect of making parenting orders work is where it should fit. In our written submission, we also have concerns about the definitions of some of those family supports. We believe they are insufficient. We believe child contact centres should be specifically written in as well with several optional ancillary supports to courts. We can send in further wording on that.

The issue of resourcing is not addressed in the legislation. I am unsure whether this is something that can be done, but it is very *ad hoc* in terms of people being able to afford it. Really, the courts must be resourced. For private family law cases if people cannot afford to resource the courts then they cannot make evidence-based decisions. One Family believes this is a public concern and a concern in respect of child safety. Our recommendation is that sufficient family support services should be funded publicly for people who require them and that these should be closed rather than open-ended services put in place based on the estimates of requirements.

Chairman: Dr. Shannon, you referred to time limits for consent. Can you tease out a little more what that actually means in terms of consent for whom, from whom and so on? We referred to it earlier. I will come back to questions again afterwards.

Dr. Geoffrey Shannon: Under the Bill there is provision for or the consent period is pegged at 30 days.

Chairman: Who gives the consent?

Dr. Geoffrey Shannon: The surrogate mother. This is in the context of the surrogate mother giving consent at 30 days. I wonder why it is 30 days given the position in a similar statute. If this is about protecting children, then one would have thought there should be a consistency across the two statutes. This is not only about looking within this legislation. It comes up later

in the context of cohabitation. We should consider the definition of cohabitation as set out in section 172 of Civil Partnership and Certain Rights and Obligations of Cohabitants Act and whether that should be examined alongside the provisions in the children and family relationships Bill.

Deputy Niall Collins: I thank our guests for helping us because it is rather complex. I have two questions, the first of which is for Dr. Mary Wingfield. What is the current practice in the country in respect of posthumous assisted reproduction, the keeping and freezing of sperm and the utilisation of it? What is the timeline or period?

Dr. Mary Wingfield: As the committee is aware, there is no legislation or regulation in Ireland regarding these things. Each clinic will have its own policies. Generally, most of the clinics are part of the Irish Fertility Society and we follow what would be best practice internationally, particularly in the United Kingdom. However, this leaves the clinics a little vulnerable. Let us suppose a man has frozen sperm and he subsequently dies. If his partner wishes to use the sperm, if they have received counselling prior to freezing the sperm and if they have made a wish that the male would like his partner to be able to use that sperm, then some clinics will allow that while other clinics do not. Those of us who work in the clinics believe we are vulnerable. Who are we to decide whether we should be able to do it? We believe strongly that there should be regulation of this area and legislation around it.

Deputy Niall Collins: Typically, how long is it, in Dr. Wingfield's experience?

Dr. Mary Wingfield: Usually, it would be for the duration that the couple require the sperm. For example, a couple may have sperm frozen, they may have one child and they may wish to keep the sperm frozen for several years because they may wish to have more children later on. Then, when they have decided their family is complete, the sperm is disposed of. It depends on an individual situation.

Deputy Niall Collins: Does Dr. Wingfield have a view on the period after which it should not be available for use?

Dr. Mary Wingfield: It depends on the individual situation of each couple. Most clinics provide treatment until a woman is in her 40s. Some clinics will stop at 45 years and some stop at 50 years for the female. It varies depending on the particular situation of the couple.

Deputy Niall Collins: My second question relates to the child contact centres. How many do we have in the country? Dr. Wingfield remarked that they are challenged financially and that they have closed down. Is there only one or how many do we have?

Ms Karen Kiernan: They have closed down.

Deputy Niall Collins: It is closed down. We only had one and it is closed down. Is that correct?

Ms Karen Kiernan: We had two, one in north Dublin and one in south Dublin, which ran for a little over two years. They are now gone. There are some small *ad hoc* services that would not be run as comprehensively as ours were run and they are available in various parts of the country, but there are few. Really, we have none in Ireland.

Deputy Niall Collins: What was the typical volume of demand presenting?

Ms Karen Kiernan: We were unable to meet the demand. The reason we were unable to

meet the demand was that a good deal of time was spent doing the family and risk assessments. This was not originally factored in when we designed the service because in other countries there is a court welfare system which does all the assessments for families. Therefore, family law courts in other jurisdictions already have these available. When they make a referral to a contact centre in other jurisdictions, for example, in Northern Ireland, they have all that information available and, therefore, they know what kind of services the family needs. A good deal of time was spent by our service doing these assessments. These were useful, used well by courts and judges and very much welcomed, but there was something of a bottleneck.

Originally, we carried out research based on population and we decided we would need 37 of these centres nationally, eight of which should offer a supervised contact. Now, we believe that if there was one in each child and family agency area, of which there are 17, it would be a major help to the family law courts. That would come in at €3.5 million per year, all in.

Deputy Pádraig Mac Lochlainn: The Law Society of Ireland submission made an important point. The submission referred to this welcome legislative development and suggested structural reform should take place in tandem. It referred specifically to the commitment in the programme for Government for a family court system. This links in to the view expressed by One Family on the need for a court welfare system and the reference to child contact centres. It is remarkable that, as we speak, there are families who are in distress and separated in courts where civil cases are been dealt with at the same time. There is considerable stress involved. Unfortunately, we do not have a mediation Bill in place that would allow for mediation between families.

Some father's rights groups argue they are not given the same protection as mothers under law. In fairness, we have heard the analysis from One Family which maintains that many court decisions are not evidence-based and do not consider the domestic violence implications. Various parties maintain that the system is not working for them. That strikes me as an important point and I am keen to get more commentary on the need for structural reform of the court system to take place in tandem with other changes. We need a system dedicated to family law and not one in which everyone is in the same place on the same day, like a cattle mart. That is the first question.

Chairman: We will stay with that.

Deputy Pádraig Mac Lochlainn: I have only one more question.

Chairman: That is fine. Does anyone wish to comment?

Ms Carol Anne Coolican: The Law Society of Ireland has made a comprehensive submission to the Minister in terms of the future for family law and it encompasses many of the queries raised by Deputy Mac Lochlainn. If the committee does not already have that available then we can certainly forward it to the committee.

A pilot project has been run on mediation with the assistance of the Courts Service and the Legal Aid Board and it has been effective in channelling people to a better result all round. Mediation has worked where people have gone through it. One of the findings of the review was that most people did not approach mediation for one reason: they did not believe the other side will go. It was not that they did not trust it or did not know what it was about and it was not a question that it would not work. It was a case of one side taking the view that the other would not go. When a mediation information session was made available to people and they availed

of the service they were diverted from the courts and this was better all round for them. Perhaps if that could be rolled out, it could lead to a far more cost-effective way and it would be better for the families involved.

Ms Karen Kiernan: I wish to build on that point and answer the query on competing interests in family law. One of the important things is that every family is unique and because there are no specialist family law courts or judges, some rather inconsistent views can be held. There certainly are fathers who may be treated unfairly in a court and there are cases where the violence and abuse against someone is not visible or a court does not take it seriously. They are complex and messy issues and need to be dealt with. That is why we keep going back to the evidence base and how to get that.

Deputy Pádraig Mac Lochlainn: It would be very helpful to get that submission.

In respect of heads 10 and 12 of the Bill, the Law Society gives the non-biological father the ability, with the consent of the mother, to have guardianship or co-guardianship. That raises a problem in respect of the biological father who would have to have lived with the mother for 12 consecutive months prior to the birth but that standard is not applied to the non-biological father. I can see difficulties here based on my own life experience. I know people who are very young who have a child together without living together. The child might live with the mother's parents in their home. The father is willing and enthusiastic to accept his responsibilities but if the couple break up he would have no rights under this head, if I interpret it correctly. His rights would be denied. The Law Society has pointed out a real issue and I would like more clarification on that.

Dr. Geoffrey Shannon: I refer to Deputy Mac Lochlainn's question about mediation. It is important to locate it within the Bill because the society sees head 63 as problematic in that there seems to be a requirement to mandate couples to attend mediation but mediation is a consensual process. We recommend that there be mandatory information sessions which bring home to couples the benefits of attending mediation. Given that mediation is a voluntary process this head flies in the face of that approach.

I agree with what the Deputy says in respect of unmarried fathers. The European Court of Human Rights has addressed this issue comprehensively and we are quite happy to supplement our submission on that. There is a wealth of jurisprudence in this area. While married couples and their children will virtually always come within the ambit of the term, the approach of the court is a functional-based analysis of intentionality. One cannot pick a fixed period such as 12 months and hope that will comply with Article 8 of the European Convention on Human Rights, ECHR. We have said in our submission that it needs to reflect the reality of different arrangements. We would suggest a broader approach. There are two options, reduce the temporal requirement to six months or remove the temporal requirement. The Law Reform Commission recommended compulsory birth registration followed by automatic guardianship rights. We wonder whether this issue should be reconsidered.

Deputy Pádraig Mac Lochlainn: Surely the litmus test is whether the father has demonstrated an enthusiasm and willingness to step up and be a father. If that has been established it would be very dangerous to take it away. I appreciate the intention behind the changes. We know there have been real difficulties with the non-biological father, who has established that willingness and enthusiasm and assumed the role of father but is denied that by the peculiarities of our legal system.

Ms Carol Anne Coolican: It is slightly broader than that because the father may be in an intimate and committed relationship with the mother and with the child but he may be in the Army and stationed abroad, or he may be an oil worker and would be excluded under these provisions.

Deputy Pádraig Mac Lochlainn: That is a very good point.

Deputy Finian McGrath: I welcome all the groups here today and commend their excellent submissions. This will be a very complex Bill and we need to get it right and to get as broad a consensus as possible. I strongly agree with Dr. Mary Wingfield that professional counselling should be mandatory, with her points on section 3, the right of children to access the information and her concerns about the non-commercial approach to treatment.

Dr. Wingfield states in the Institute of Obstetricians and Gynaecologists, IOG, submission that the phrase "human reproductive material" is confusing. Can she clarify section 1?

Dr. Mary Wingfield: That particular phrase can apply to sperm, eggs and embryo. The phrase of itself is okay but it is used throughout the document and is confusing because there are sections in the document that refer to a child being conceived using "human reproductive material" from a man only. That cannot happen because a sperm and egg are needed. It means the man who is intending to be the parent. The way it is written is very confusing. That situation refers to a couple in which the man is using his sperm and donated eggs. It would be much simpler to say sperm and eggs rather than "human reproductive material" from a man only.

Deputy Finian McGrath: The IOG submission states "the proposed penalties for offences in relation to payment for surrogacy may be unworkable". Would Dr. Mocanu answer that question? What exactly does he mean by that? Can he expand a little on it?

Dr. Edgar Mocanu: Commercial surrogacy is an issue that needs to be addressed, and exploitation of women through surrogacy should not be allowed by law. We feel that once it is accepted that all the surrogacy arrangements will be altruistic the role of the professional societies and entities that provide such treatments is to talk about them and make appropriate arrangements so that payment and the interests of the parties are all respected. Instituting penalties for agreements that have been made according to the law is not required but it is extremely important to impose penalties on anything that is outside the law to prevent exploitation of couples and of women.

Deputy Finian McGrath: My third question is addressed to Ms Kiernan from One Family. We hear a lot of talk in here about the rights of children and there was a referendum on the issue. I commend the fantastic work done by One Family on the contact centre projects. I feel very strongly that if we are serious about the rights of children these centres should be funded. Ms Kiernan mentioned that it cost in the region of €209,000 per annum to keep two centres in Dublin open. Is it correct to say they were closed down because of lack of funding?

Ms Karen Kiernan: It was a pilot project and we were unable to secure mainstream funding. There was a high level of interest and support in the two relevant Departments but they could not find the funding.

Deputy Finian McGrath: How many years ago was that?

Ms Karen Kiernan: They closed in December 2013.

Deputy Finian McGrath: Ms Kiernan said in an ideal world if we want to help these

children and families we would need 37 centres throughout the country but she would settle for 17 centres. She said this would cost in the region of €1.77 million. Is that per centre or for the whole national project?

Ms Karen Kiernan: For 17 centres it would cost €3.5 million in total. That would include a level of training and accreditation. They are not fully costed but that is based on the reality of how we ran them. That would provide huge support to the family law courts around the country.

Deputy Finian McGrath: For €3.5 million One Family could have 17 quality centres assisting these children in a very professional way, in a safe environment. That is value for money. We should push for that.

Senator Katherine Zappone: I thank the witnesses for their excellent and very helpful presentations. I agree with Deputy McGrath with respect to the presentation and the recommendation from One Family. My first question is for Dr. Wingfield. She put to us the need to clarify medical terms and her point that the legislation should refer to the embryo only prior to implantation. I ask if she could expand on that comment and say why is that the case.

Dr. Mary Wingfield: I am referring to the definition in the heads of the Bill, in which "embryo" is defined as following fertilisation up until the first 56 days of its life. There is a distinction between an embryo before it is implanted in the woman's uterus and the embryo after implantation. Once the embryo has implanted, then the woman is pregnant and the law and the situation are very different from those of a pre-implantation embryo, which is the type of embryo we work with in assisted reproduction units. It is a case of making that distinction.

Senator Katherine Zappone: Dr. Wingfield stated that she supports a non-commercial approach to treatment with regard to the surrogacy issue. Will she explain her view? She also stated that the proposed penalties for offences with regard to payment for surrogacy may be unworkable. I ask her to explain why this is the case.

Dr. Mary Wingfield: International guidelines and documents relating to this area show there is a risk with assisted reproduction nowadays that vulnerable, poorer people can be exploited if they are paid to donate eggs, sperm or embryos or to undertake surrogacy. It is a case of achieving a balance. On the other hand, if there is no compensation then it is very difficult for people who want to have a child to access donor eggs or sperm or surrogacy services. It is a question of achieving some balance, whereby people who genuinely wish to help women or couples to conceive are compensated and given some recognition. However, international evidence shows that poorer women are exploited with regard to surrogacy, particularly, and also with regard to donor eggs; it is not such an issue for donor sperm.

On the point about the penalties being unworkable, the Bill provides that if a person or couple undergo a commercial surrogacy arrangement - commercial surrogacy is available in the US and in India - they could be imprisoned. If a couple go through that procedure because it is the best way they can find to have a child and they have just achieved their longed-for child, for them to end up in prison is not in the best interests of the child, and in our view this provision will be unworkable. It is a draconian measure, in our view.

Dr. Geoffrey Shannon: We welcome the provisions around surrogacy. There needs to be a deterrent. The approach adopted in the Bill is proportionate. It is worthwhile to bear that in mind. We are cognisant of the issues the committee has raised and we are cognisant of avoiding

being overly punitive. We need to ensure that a child does not end up in a legal limbo. To that end, we have made submissions to temper some of the provisions. However, in our view it is an excellent starting point, and perhaps further fine-tuning would deal with some of the excesses. To convey the impression that the Bill is flawed would misrepresent the Law Society's position. We support the provisions. We have concerns around commercial surrogacy and in our view the Bill is a proportionate response to addressing those concerns.

Dr. Mary Wingfield: Similarly, we are delighted that this Bill has been introduced and we fully support it. As Dr. Shannon says, it is a case of fine-tuning the provisions.

Senator Katherine Zappone: I have one more question for Dr. Shannon. His submission and presentation to the committee recommend that the terms of the guardianship and custody Acts should be reviewed to include more up-to-date terms. I agree that those are excellent recommendations. Would there be any resistance to the change in terms, or do we have an open door to implement those recommendations?

Dr. Geoffrey Shannon: I am looking in the direction of the two civil servants with responsibility in this area, who have done outstanding work, and on behalf of the Law Society of Ireland I wish to acknowledge the outstanding work done by the Department in consolidating 20 years of inaction in this area. It is important to put that on the record. I can understand the difficulty in moving from custody, guardianship and access, which derives from the provision in the Constitution. It is my understanding that perhaps the reluctance to move derives from the fact that under the new Article 42A, the terms used are "concerning the adoption, guardianship or custody of, or access to, any child". As it could create confusion, I urge the Department to reconsider this. We all understand what the terms mean, but in my view they are outdated. Using the term "custody" to describe the day-to-day care of a child is 19th-century language. There is a legal argument for retaining these provisions, but I urge the Department to err on the side of being progressive and perhaps to dispense with the concern around the constitutional dispensation. I acknowledge that there are difficulties in moving towards the recently passed Article 42A of the Constitution.

Senator Katherine Zappone: I thank Dr. Shannon for his helpful explanation. Whereas we may know what the terms mean, it becomes more difficult outside this room, and therefore Dr. Shannon's suggestions are very useful.

Ms Carol Anne Coolican: Lawyers and legislators understand, but when dealing with my clients I have to use other terminology to explain to them in plain English.

Chairman: I ask the witnesses to comment on the use of an anonymous donation of sperm or donor eggs. Should such donations be permitted and what are the associated problems?

Ms Carol Anne Coolican: If children are to be able to find out their parentage, this will not be possible in those circumstances. I have a concern with regard to anonymous donations.

Chairman: Is it Ms Coolican's position that anonymous donations should not be allowed?

Ms Carol Anne Coolican: I would have a concern. I have not considered it. Perhaps we can return to the committee on a future occasion and make a submission.

Dr. Edgar Mocanu: There are two aspects to this matter, which are the anonymous donation and the ability to identify the donor at a later date. A clear distinction should be made between the two. If the anonymity is removed at the time of donation when the person gives the

sperm, that is one act. If the anonymity is removed for the product of that conception to access the primordial information about the initial donor, that is a completely different aspect. The institute's submission is along the lines of Dr. Shannon's point that a child - as is the case in the UK - should, on reaching maturity, be able to make a request to identify whether he or she is the result of donated human material, either sperm or egg, and be in a position to contact the donor. That automatically implies that the initial donor should have received appropriate information about the implications of his or her donation and the fact that it could happen in the future that an individual might want to access that information and make contact with the donor.

Dr. Geoffrey Shannon: It may be necessary to look at the experience in the case of adoption, because we can learn from it. In recent times there has been much discourse around this right to identity, which is also an international requirement under the UN Convention on the Rights of the Child and a right that has been articulated before the European Court of Human Rights. In our oral presentation we have stated that further consideration needs to be given to this aspect. I cited the example of the UK and perhaps we should look at that. I am aware that it is not without difficulty. The debate has moved on and this right to identity is now a key right. The Supreme Court decision in IO'T *v*. B is now dated and does not reflect the current thinking of the European Court of Human Rights. It is a very important right and one to which the committee should give close attention.

Chairman: Is it the Law Society of Ireland's position that anonymous donations should not be allowed?

Dr. Geoffrey Shannon: Yes.

Chairman: Under head 13, sections 17 to 19, reference is made to specific circumstances in which the court may not make a declaration as to parental status. What happens if a declaration cannot be made and who are the legal parents in that situation? A case might arise, for example, where a minimum age is prescribed and the person is under age when the surrogacy arrangements are made. Dr. Shannon referred earlier to a limbo situation. Is this the situation he is talking about and, if so, how can we deal with it?

Dr. Geoffrey Shannon: We have considered this complicated issue and are happy to provide a supplemental submission on it. We have a formula that the committee might consider. Our view is that the least desirable situation is for a child to be without status within the jurisdiction. There are several options that can be considered but they are quite technical in nature and I am conscious that our time is limited today. We are happy to provide some information to the committee on this particular issue.

Chairman: Thank you, Dr. Shannon. I would be obliged if submissions were made to the clerk rather than to members.

Reference was made to the issue of consent. What happens if the surrogate mother decides not to give consent and instead wants to keep the child?

Mr. Brian Tobin: The Bill indicates that if the surrogate does not consent to a legal assignation of parentage, she will be the child's legal mother. I take issue with this provision because the Bill is only regulating gestational surrogacy. In MR v. An tÁrd Chláraitheoir, the surrogate was the sister of the infertile woman and the genetic material was provided by the husband and wife. I take issue with a surrogate in those circumstances being allowed to remain the child's legal mother should that surrogate refuse to consent to a legal assignation of parentage. If it

were a traditional surrogate it would be more understandable, but not in the case of a gestational surrogate. That is a problem with the legislation.

Dr. Geoffrey Shannon: This is another issue we have considered. While I accept what Mr. Tobin is saying, the approach adopted by the Department is sensible. Under head 13(9), a birth mother who is a surrogate will remain guardian of the child until she gives consent that she is not the parent of the child, and her guardianship will be terminated if it is assigned under those proceedings. Otherwise, she will remain guardian until a guardian is appointed. This is a sensible and practical approach which will avoid the situation in which a child is left without a guardian. That is my understanding of the rationale behind this provision. In all circumstances, the birth mother will remain as guardian unless her rights are extinguished by the child's adoption. Those rights cannot be terminated under head 44. It is a difficult question to answer, but there is a logic in the approach being adopted under the Bill. As I said, I am respectful of what Mr. Tobin has said on this issue.

Chairman: What are the typical costs for a person who wishes to become a parent through surrogacy? We have heard different estimates.

Dr. Edgar Mocanu: It depends on the country, and there is a scarcity of reliable data. A European Commission document which analysed the issue found that the cost varied between €50,000 and €100,000. It is much cheaper in some countries than in others.

Chairman: How might somebody of modest means go about availing of the surrogacy process? Is it simply not an option for such a person?

Dr. Edgar Mocanu: That is precisely the point made in the document I referred to - that it is usually only people of good means who can afford to have this type of treatment. It is a factor the committee might include in its deliberations.

Dr. Mary Wingfield: This is one of the issues with commercial surrogacy, in that a good portion of the costs involved usually goes to the company that organises the arrangement. We know, for example, that intrauterine insemination is a much cheaper treatment, at hundreds of euro, than IVF, which costs approximately €5,000 in Ireland. There are no figures in regard to surrogacy in this country, but my understanding is that in the case of altruistic surrogacy in the United Kingdom, for instance, the expenses for the surrogate would be of the order of £15,000. The precise amount will depend on the surrogate's income and so on in the context of compensation for loss of earnings. The surrogate needs to be compensated and the clinic providing the treatment needs to be paid, but we would be anxious to avoid a situation in which a third party is making a fortune out of it, which is what tends to happen internationally.

Dr. Edgar Mocanu: The European Parliament produced a document in 2013 entitled A Comparative Study on the Regime of Surrogacy in EU Member States, which contains a table showing the costs to parents of surrogacy arrangements in several countries. In Greece, for example, the average cost is €14,000 to €50,000; in the Netherlands it is €7,500; in the UK it is €11,780; and in France it is €70,000. Countries in which surrogate mothers are found include the UK, Belgium and Greece, as well as the United States, Canada, Ukraine, India and Russia.

Dr. Geoffrey Shannon: On the issue of costs, head 17(2) provides that an arrangement for pay or reimbursement of the birth mother's surrogacy costs is enforceable only if it is made prior to the surrogate conception. There is reference throughout the remainder of head 17 to "reasonable costs", but no such reference is included in subhead (2). We would recommend

that a reference to "reasonable costs" be included in head 17(2). It is a practical suggestion which should be taken on board and we would be grateful if the committee would consider it as part of its recommendations.

Chairman: If an extraterritorial arrangement is entered into and a substantial payment is made - in other words, the arrangement is clearly commercial - how is that dealt with under the Bill?

Dr. Geoffrey Shannon: Further consideration needs to be given to the international aspects of surrogacy, especially in light of matters currently being considered by the Hague Conference on Private International Law. In fact, it would be worthwhile if the committee were to liaise with the Hague conference on this matter. I mentioned previously that I put together a presentation for the European Parliament's legal affairs committee last year on this issue. The Bill is very comprehensive but if I were asked to name one area it does not address, it would be what I have referred to as international issues. Further consideration is required in this regard.

Deputy Pádraig Mac Lochlainn: It is a hugely important issue. How problematic would it be to synchronise this legislation with the international framework to ensure it is compatible?

Dr. Geoffrey Shannon: There must be both a national and a multilateral approach. It is not just a question for this legislation. It is an issue that troubles many jurisdictions and needs to be dealt with at an international level. The starting point might be a general provision within the context of this legislation. I understand the Hague conference is dealing with this issue and I am happy to provide the committee with observations on that front.

Chairman: I understand a Supreme Court case is currently being examined on foot of a High Court judgment. Can any of the delegates explain in layman's terms what that is all about and its implications for this legislation?

Mr. Brian Tobin: The MR case is before the Supreme Court. I am not entirely certain what is happening in the Supreme Court, but I will sum up briefly what occurred in the High Court. The wife involved in the case was infertile and her sister kindly agreed to act as a surrogate. It was a very amicable arrangement. She was actually a gestational surrogate because it was possible to use the reproductive material - the terminology used in the Bill - from the husband and the wife. The issue was that wife was unable to carry a baby to term. Her sister bore twins for her and the issue which arose was that the married couple wanted to be registered as their legal parents. The birth mother and the husband could be registered under existing law but there was no provision for the wife - the genetic mother who had provided the ovum - to be registered as the twins' legal mother. They wrote to An t-Ard Chláraitheoir who responded that his hands were tied and that there was nothing he could do. They proceeded to the High Court and Mr. Justice Abbott found that the parents of the twins were the genetic parents and that the old maxim of *mater semper certa est* - mother is always certain - in this instance no longer applied. Whereas usually the child's mother would be the birth mother, in an instance like this, where others provided the genetic material, the mother was determined to be the genetic mother, namely, the wife from the married couple. An order was handed down that the register of births be changed to reflect that fact in this instance. The State is appealing the decision in order to have the maxim to which I refer restored.

Chairman: I am advised that we cannot comment on what is happening in the Supreme Court because it falls outside our remit.

Deputy Marcella Corcoran Kennedy: I apologise for the fact that I was obliged to leave the meeting. Our guests need not worry, however, because I intend to read the transcript of the proceedings.

Chairman: It has been brought to my attention that there is media interest in the submissions made at this meeting. Are there objections to our releasing them to the media? If not, is it agreed that we release the submissions made?

Dr. Geoffrey Shannon: Agreed.

Deputy Marcella Corcoran Kennedy: If the question I am about to ask has already been dealt with, that is fine. Let us consider the case of a couple who deliberately decide not to marry. If they have a child, the father must apply to become his or her guardian. Are our guests of the view that having the father named on the birth certificate should be sufficient for these rights to flow to him rather than being obliged to apply to be the child's guardian by completing the relevant statutory form? If a couple deliberately decide not to marry, would it make matters easier if the father had automatic entitlements as a result of being registered on the birth certificate?

Dr. Geoffrey Shannon: That is an excellent question. Both parties can agree to appoint the father as a guardian. Like Treoir which will make a presentation this afternoon, it is the society's submission that a register should be established in that context. We are conscious that there are practical difficulties. It is the case that if both parties agree to the appointment of the father as guardian, the arrangement is effected under Statutory Instrument No. 5 of 1998. The difficulty is that if one loses that statutory form, one effectively loses the evidence that one has been appointed as guardian. We are suggesting a register of guardians should be established and that it could perhaps, for consistency, be located in the same place as the registers of births and marriages. Again, we are sensitive to the fact that there are practical issues involved.

The Bill is progressive in creating a new system under which a birth father who has been cohabiting with his partner for a period of 12 months will obtain automatic guardianship rights. Our submission is that this temporal requirement should be reduced to six months or removed. In its final consultation paper the Law Reform Commission recommended that there be no temporal requirement. We submit that this approach should be considered by the committee.

Chairman: Does Dr. Wingfield wish to comment?

Dr. Mary Wingfield: I wish to make a point on another issue.

Ms Karen Kiernan: When the Law Reform Commission examined this issue, it looked at compulsory birth registration and automatic guardianship flowing from it. These issues are being dealt with by two Departments. Many of us working with families would have concerns about this. Simply because someone's name is on a birth certificate does not mean that it is in the child's best interests for that person to have automatic guardianship. There must always be a balance. Again, this goes back to an evidence base for each family around what is in the child's best interests. Children can be conceived through illegal and abusive means. We need to be cognisant of this. One Family's position certainly has been that there should be much more information provided for non-marital couples on the benefits of joint guardianship. We actually did not go as far as to say it should be compulsory. We are of the view that there should be a break between birth registration and guardianship rights for practical child safety reasons.

Dr. Mary Wingfield: I return to the issue of anonymity. Our institute's submission clearly

states we are of the view that it needs to be addressed as a matter of urgency. However, it has not been discussed at institute level as to whether there should be anonymity. This is a very complex issue. It is safe to say the majority of people who work in the area are of the view that it is important for children to be able to access information on their genetic origins. There are, however, practical implications which are debated internationally. In jurisdictions such as the United Kingdom where children can access information on their genetic origins and obtain the name and address of the person who donated, this causes a difficulty in the supply of eggs and sperm. The majority of people in Ireland have no choice other than to go to countries such as Spain where anonymity is assured and there is a large supply of eggs. I am not stating I agree with this, but, speaking practically, if there is a total ban on anonymity, it will make it very difficult for couples to access services. This is a matter which requires a very wide debate. I would not like it to be hurried and for it to be said we have not discussed it in detail at the institute.

Chairman: In theory and, perhaps, in practice, a man could father hundreds of children. In such circumstances, it would be quite possible for half-brothers and half-sisters to form relationships because they would not know the identity of their father.

Dr. Mary Wingfield: This is a difficulty, particularly as people from Ireland have gone to the same clinic in Spain. That is a reason the issue must be addressed and regulated. The clinics in Ireland which provide sperm donations have completely off their own bat introduced a system under which they all communicate with each other in limiting the number of children who can be born from a particular sperm donation. Clinics and embryologists in this country must really be commended because they did this completely off their own bat, with no Government or State support.

Chairman: When a man donates sperm, is he paid?

Dr. Mary Wingfield: It varies from country to country. Usually they are paid expenses.

Chairman: What is the position in Ireland?

Dr. Mary Wingfield: There is no sperm bank in Ireland.

Chairman: Therefore, there is no payment exchanged when someone here donates sperm.

Dr. Mary Wingfield: No.

Dr. Edgar Mocanu: Such services are not provided in Ireland. As there is no bank that collects sperm from Irish donors, the sperm is imported.

Chairman: What would be the typical payment abroad?

Dr. Edgar Mocanu: It depends.

Chairman: Will Dr. Mocanu provide an example?

Dr. Edgar Mocanu: Yes, €50.

Dr. Mary Wingfield: The only sperm available in Ireland is donated anonymously.

Chairman: Is it the case that in Ireland there is no limit to the number of donations a man can make?

Dr. Mary Wingfield: There is no legislation in place in Ireland. The clinics regulate them-

selves in order to ensure any one donation can only be used in the case of a certain number of people.

Chairman: I call Senator Fidelma Healy Eames who is most welcome. I just wish to notify her that we proceed on the basis of asking a question, obtaining an answer and so on.

Senator Fidelma Healy Eames: Fantastic. I thank our guests for their presentations. I apologise that I was not present for them, but I followed them on a monitor elsewhere.

The matter before the committee is a far-reaching item of proposed legislation which will have implications for Irish society into the future. I am delighted by Dr. Shannon's pronouncement to the effect that the right of identity is a key right. It would be good if that principle guided the legislation.

Dr. Wingfield alluded to anonymous donations and the fact that the institute had not yet taken a position in that regard. When does she expect that it will?

Dr. Mary Wingfield: We are strongly of the view that a position needs to be taken on this issue. I said in my presentation that we are very happy to work with anybody. We would like to be involved. We believe this should be included in this Bill and we would be very happy to take that further.

Senator Fidelma Healy Eames: In view of the timeframe of the Bill, it would be useful, if possible, if the institute's position was known prior to its introduction.

Chairman: A question, please, Senator.

Dr. Mary Wingfield: If requested to do so, we can certainly do that.

Senator Fidelma Healy Eames: Okay. Dr. Wingfield mentioned that she wants provision for posthumous conception.

Dr. Mary Wingfield: Yes.

Senator Fidelma Healy Eames: How would that be compatible with the child's best interests?

Dr. Mary Wingfield: If a couple are in a loving relationship and want to have children and have had IVF treatment, have embryos frozen, this is something of grave concern to any couple in Ireland at present going through assisted reproduction treatment. Part of the treatment is that it is only safe to transfer one or two embryos to a woman's uterus at a time, so many couples end up with frozen embryos and they may have a child and have frozen embryos. They will then come back to use those frozen embryos in later years. If in the meantime the male partner dies, the woman is left with those frozen embryos. Many couples would like the opportunity to be able to state in advance that if anything happened to either of them they would like those embryos to be used.

Senator Fidelma Healy Eames: Their parentage is known.

Dr. Mary Wingfield: Yes.

Senator Fidelma Healy Eames: Dr. Wingfield mentioned she would like to water down the ban on advertising, yet she sees a need for adequate information and public awareness and that clinics should be allowed to inform potential surrogates and potential patients as to the

availability of these services. Would this not effectively involve advertising since every woman of child-bearing age is a potential surrogate and practically anyone is a potential patient?

Dr. Mary Wingfield: I have a few couples at the moment who need to have surrogacy. I have a couple where the woman was born without a uterus. She has very healthy ovaries and is young. She would be able to produce very good quality eggs to lead to a healthy pregnancy. That couple's wish of their only chance of having a child together is to use their own sperm and eggs but they need a woman to carry the pregnancy, so they need a surrogate. Their only option currently in Ireland is to go to India, the United States or countries like that. If we allowed surrogacy here, that couple need to be able to let people know that they need a surrogate. There are women who have had healthy pregnancies and have children who have seen family members or friends with fertility problems and would very much like to help another couple achieve a child. Those women who wish to be altruistic surrogates need to be able to find the couples who need surrogates. There needs to be some mechanism where the provision of that information can take place.

Senator Fidelma Healy Eames: I am hearing from Dr. Wingfield that we need to find a mechanism to do that without it being advertising.

Dr. Mary Wingfield: Yes.

Senator Fidelma Healy Eames: Dr. Wingfield wants incentive payments for donors of gametes and embryos to ensure supply. Is this not treating the whole process as a commercial exchange?

Dr. Mary Wingfield: With due respect, we have never used the term "incentive payments". We believe that if donors are altruistically donating eggs they should be compensated for any expenses they would incur. Reasonable expenses is what we have put forward but certainly not incentive payments.

Senator Fidelma Healy Eames: Okay. Is there a danger then that this would wander into the commercial area?

Dr. Mary Wingfield: That is why we need regulation and legislation to ensure this does not happen.

Senator Fidelma Healy Eames: A written submission by Dr. Joanne Rose was made to this committee, a copy of which I have got, and she is an adult conceived from donor conception. I would like any of our guests but particularly Dr. Shannon to comment on the points Dr. Rose made. She stated that kinship lost for reasons of child production turns our normal social and cultural values of the best interests of the child on their head. She stated that she spent 20 years of her adult life seeking parity with the rest of her social community and seeking knowledge of her own medical, social and familial history. She also stated that she would like to have contact with her own genetic kin, which has been lost through donor conception - her genetic father and relatives. I would like one of guests to comment on that. What measures can we put into the Bill to ensure we do not create more of those situations in Ireland?

Chairman: That was supposed to be an anonymous issue but would Dr. Shannon like to comment on that?

Dr. Geoffrey Shannon: As I have previously commented, the issue of the right to know one's identity is very clearly enshrined under the international instruments, particularly the UN

Convention on the Rights of the Child. I would draw attention to Articles 7 and 8 of that convention and under Article 8 of the European Convention on Human Rights. In other areas such as the area of adoption, we know the importance of access to birth information. It is a very difficult issue and to pretend that there is a quick-fix solution would misrepresent the complexities of this situation. I happen to believe, and the society's submission is very clear on this issue, that it is important that consideration is given to the right to identity and, in so as it is possible, that this is factored into the provisions of the Bill.

Chairman: I ask members to ensure we have only one discussion at a time.

Senator Fidelma Healy Eames: I have one final question for Dr. Tobin. He recognised in his submission that the provisions are adult-centric and do not accord sufficient weight to the constitutional rights of the child. He believes that head 10 may prove to be unconstitutional. He proposes a remedy, and I would question if it is in contradiction to this, namely, how is the right of a child to know his or her father, and where possible to be raised by him, addressed by granting a sperm donor the right to be the legal father if he chooses?

Dr. Brian Tobin: I propose that the Bill should provide parity between the situation of the gestational surrogate and the known sperm donor - I am only speaking in terms of a known sperm donor - such that with the gestational surrogate there is 30-day cooling off period and then she can choose transfer parentage to the commissioning couple or the intended parents. Where a child is born, say, to a lesbian couple and there is a known sperm donor, as per McD *v*. L, I propose that this would have to be introduced in conjunction with automatic guardianship rights for all unmarried fathers - that is part of the flaw there. If that was so introduced, if as Dr. Geoffrey Shannon has suggested that the time period is perhaps put to one side and we introduce automatic guardianship rights, as recommended by the Law Reform Commission, that should apply to the known sperm donor but he can choose to waive his guardianship rights, similar to what the gestational surrogate can do after a cooling off period, and the child will have its intended family structure realised in law. That is my proposed solution.

Senator Fidelma Healy Eames: I see.

Chairman: I thank our guests for their patience and time. I have one final question. Where an embryo is being donated and surrogacy is being used, is that covered in the Bill or is that something about which we should be concerned?

Dr. Mary Wingfield: That was one of our points. It seems to be excluded in the Bill. It refers to parentage and there being a need for genetic link between at least one of the commissioning couple and the child. We state in our submission that we believe that cases where the embryo has been donated and there is no genetic link need to be included.

Chairman: I thank Dr. Wingfield for that reply. We have completed our questions for the moment. It is a very complex, interesting and important area. On behalf of the committee, I thank our guests for their engagement with it on this topic.

Our next session on this topic will be at 2 p.m. today. I propose we suspend until 11.30 a.m. when we will resume in private session to deal with some other issues. Is agreed? Agreed.

Sitting suspended at 11.18 a.m. and resumed in private session at 11.30 a.m.

Sitting suspended at 12.08 p.m. and resumed in public session at 2.05 p.m.

Chairman: We will resume our discussion with some of those who have made written submissions on the heads of the children and family relationships Bill. On behalf of the joint committee, I am very pleased to welcome Dr. Deirdre Madden from UCC; Ms Margaret Dromey and Ms Margot Doherty from Treoir; Dr. Thomas Finegan and Ms Marion Boteju from Family and Life; Dr. Fergus Ryan and Ms Sandra Irwin-Gowran from the Gay and Lesbian Equality Network; Ms Saoirse Brady from the Children's Rights Alliance; Ms Orla O'Connor from the National Women's Council of Ireland; Ms June Tinsley from Barnardos; Mr. Brian Merriman from the Equality Authority; and Ms Moninne Griffith and Ms Justine Quinn from Marriage Equality. We are again joined by Ms Carol Baxter and Ms Dara Breathnach from the Department of Justice and Equality.

The format of the meeting is that we will invite every group to make an opening statement of five minutes duration. I ask delegates to try to stay within the time limit and focus on the most salient points of concern. The opening statements will be followed by a question and answer session with committee members who may come and go as other duties in the Houses demand. Due to the number of witnesses I ask everyone to wait until he or she is called to speak so that the microphone can be activated and the television camera can be moved into position. Witnesses will be on the telly and those transcribing the meeting can ensure that evidence is attributed to the appropriate witness. Please turn off mobile phones completely or at least put them on aeroplane mode. Silent mode is not enough. Mobile phones can interfere with the broadcasting system and if the phone goes off when one is speaking those watching on television do not know what witnesses are saying. It does not look good. That advice is for everyone in the room including members, or should I say especially members.

I draw the attention of witnesses to the fact that, by virtue of section 17(2)(*l*) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members should also be aware that under the salient rulings of the Chair 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. Is it agreed that opening statements can be made available to the media due to the significant interest in the matter today? Agreed. Without further ado I invite Dr. Madden to make her opening remarks.

Dr. Deirdre Madden: I strongly welcome the intention of the Bill to create a legal structure to underpin diverse parenting situations and provide legal clarity on parental rights and duties. That is long overdue and in keeping with the rights of the child to private and family life under the European Convention on Human Rights and the UN Convention on the Rights of the Child. I wish to highlight a few key points from my detailed submission to the committee on parentage and assisted reproduction and surrogacy.

The aim of this part is to provide clarity and certainty in the legal relationship between children born through assisted reproduction and their parents. However, in my opinion the wording used in the scheme is very convoluted and does not facilitate the necessary clarity to be easily obtained. There are many examples from other jurisdictions of simpler wording which achieve the same objectives such as the Family Law Act 2011 from British Colombia in Canada. I

would urge careful drafting of these provisions to resolve any ambiguity and avoid protracted and costly litigation.

The Bill appears to deal with parentage from the perspective of the adults involved in the child's conception rather than the child himself or herself. It does not grant any recognition to the child of a right to identify the donor whose reproductive material was used in his or her conception. Given that the stated aim of the Bill is to ensure that the best interests of the child are paramount it is regrettable that the opportunity has not been taken to set out clearly in legislation that it is in the best interests of any child born through assisted reproduction to have the right to identify its genetic parent if the child so chooses.

Head 10(9) provides that the consent of an intended parent is not valid after the death of that intended parent. In many other jurisdictions posthumous conception is recognised as a valid exercise of reproductive autonomy and there are couples in Ireland who would like to avail of this option in the event of the death of one of the partners. I have outlined in my submission the mechanism whereby posthumous insemination might be permitted based on the written consent of the deceased partner and I would urge the committee to give further consideration to these proposals.

Surrogacy can be a very positive option for many couples who are trying to build a family. I commend the proposed scheme for setting out to regulate rather than to prohibit surrogacy as experience in other jurisdictions has shown that prohibition only serves to drive surrogacy underground with consequently little protection for those involved.

The policy on surrogacy in the Bill is that the birth mother is always the mother but that an application for parentage may be made to the court by the genetic father and his partner, or the genetic mother and her partner. This is subject to the consent of the surrogate. It is important to point out that in the event that the Supreme Court upholds the High Court decision in MR *v*. An tArd-Chláraitheoir the policy of the Bill will require substantial revision in this respect.

The policy of the Bill is clearly to facilitate gestational surrogacy only, that is, where the surrogate does not use her own eggs or have any genetic relationship with the child. This means that where the intended mother is unable for medical reasons to provide the eggs, she and her partner must find an egg donor who is willing to donate. The introduction of a third woman into the conception of the child is unnecessary and not consistent with the best interests of the child in circumstances where the surrogate mother might be willing to give valid consent to the use of her own eggs in the arrangement.

The stated policy rationale here appears to be based on a negative bias against traditional surrogacy which is neither appropriate nor justified. The language used presumes that the surrogate mother who is genetically related to the child either abandons the child or is forced to relinquish or sell it. There is no acknowledgement that many women volunteer to become surrogate mothers using their own eggs because they want to help others to have a child. They generally do not consider the child they are carrying to be their own child.

It is also stated that the exclusion of traditional surrogacy is intended as a human rights measure "to prevent a surrogate mother from being coerced into selling her own child". For women who volunteer to become surrogates for altruistic reasons, such as family relatedness or friendship and are willing to use their own eggs - no money changes hands, there is no financial coercion or exploitation, and therefore this policy rationale does not apply. It is difficult to see how prohibiting a surrogate mother from using her own eggs prevents potential exploitation.

While I accept that there may be concerns in relation to potential exploitation of women of lower socioeconomic class, the avoidance of such potential exploitation will not be achieved by this Bill.

The language used also leads us to conclude that women are unable to make a decision to become surrogates without being forced or coerced. Language is important in the law – this is not facilitating a black market in babies, there is no sale of a child here - children are not capable of being owned and therefore cannot be bought and sold as a commodity. In surrogacy there is a transfer of parental rights to one or more of the child's genetic parents following an agreement entered into between consenting adults as part of which the surrogate's expenses over the period of the pregnancy may be reimbursed.

Under the current proposals a declaration of parentage may only be made with the consent of the surrogate, unless she is deceased or cannot be located. Where she refuses to give consent, she will remain the legal mother, can receive the agreed payment, and presumably can seek a court order for maintenance against the genetic parents. The genetic father may apply for guardianship, which is not automatic. The genetic mother cannot apply for guardianship as the surrogate mother is regarded as the legal mother. This position is patently discriminatory against women in circumstances where both of the intended parents' own genetic material is used. I strongly recommend the adoption of a judicial pre-authorisation model similar to California or New Hampshire in the United States which ensures independent judicial scrutiny of the arrangement, oversight of the voluntariness of all parties, and the prioritisation of the best interests of the child which in almost all surrogacy cases will be to be regarded as the legal child of its intended genetic parents from the moment of birth.

Finally, although the Bill does make provision for reasonable expenses to be paid, the consequences of transgression are extremely harsh and result in potential criminal prosecution as well as loss of eligibility to apply for a declaration of parentage. In such circumstances, what is the outcome for the child? Who are the legal parents? If a court were asked to decide on the parentage of a child in such circumstances, the court would surely be obliged to prioritise the best interests of the child irrespective of whether the provision relating to payment was violated, the result of which in most cases would be to grant parentage and custody to the intended parents. Therefore the policy is likely to be ignored in practice as has occurred in other jurisdictions.

Chairman: I thank Dr. Madden for being concise and staying within the allotted time. I now invite Ms Dromey to make her opening remarks.

Ms Margaret Dromey: Thank you, Chairman. I am sharing the five minutes allocated with my colleague. Thank you for inviting Treoir to make a presentation today. It is a specialist information service for unmarried parents. We have a very long history of working with unmarried parents and we are aware of the issues of concern to them. We welcome many of the provisions in the Bill and they are detailed in our submission which I am sure many members have read.

For the purposes of this presentation I will focus on head 37 which also refers to head 31(3) relating to guardianship for unmarried, cohabiting fathers and also the presumption to paternity. My main focus is guardianship. It is very welcome that under the Bill an unmarried Dad who is living with the mother for a year or longer before the birth would be entitled to guardianship rights for his child. It is really positive and progressive. However, the Bill does not address the issue of how cohabitation will be established and that is an area of concern. I wish to paint a

scenario of a couple living together for three years at which point the relationship breaks down and the parties disagree on the length of cohabitation. He believes he is the father of the child because he was living with the mother a year before the birth and since then, but she is of the view that cohabitation evolved in that they lived together on and off initially and he moved in during the pregnancy; therefore, he is not a guardian. The only option for that father, therefore, is to go to court to establish his guardianship rights. That brings us back to the current situation because there is no improvement in that regard. Treoir is proposing that there be a system of affirming or declaring cohabitation for a year at the point of birth registration to ensure the guardians of that child are clear to everybody. That is the first point.

Second, we are concerned that there is nothing in this Bill to improve the situation of unmarried non-cohabiting fathers. They either get agreement from the mother to become guardians or they go to court. A scenario we deal with in the office every day is where both parents are involved in the child's life. They are co-parenting while living apart. That might continue for five years. The child is very involved with its father and the paternal family but the mother decides she wants to move to New Zealand, Australia or another part of the world. She can leave with her child and the father usually only discovers at that point that he has no legal rights to the child. He believes his name on the birth certificate gives him rights but it does not give him any rights. After five years of the child being involved with the father, a mother may leave the country and she has no obligation to allow that child see the father again. We are hearing those stories every day in the office, and it is very difficult. We believe there should be some improvement for those fathers who are not cohabiting.

At a minimum, at the point of birth, registration information should be given on the fact that the mother is a sole guardian. We recommend that the statutory declaration for guardianship be given to the couple at that point, and they should be told to think about it. To go even further, if a couple is in agreement about joint guardianship they could do it at the point of birth registration. That is our recommendation.

Ms Margot Doherty: I would like to talk about something that is not in the Bill. As the members are aware, unmarried fathers do not get guardianship rights from having their name on the birth certificate - many people do not know that - but they can get guardianship rights by signing a statutory declaration with the mother in front of a peace commissioner. That facility has been available since 1997 and, as members can imagine, there are thousands of these documents. We know that because in 2013 alone, 2,570 statutory declarations were downloaded from the Treoir website. In addition, a considerable number of parents telephoned asking for the guardianship form to be posted to them and the question that followed that request was "Where will I send it when it is signed?". We replied, to their amazement, that they should mind it carefully because there is nowhere they can send it. They are horrified by that. We had a case recently in which a father had lost his declaration and the mother was dying in hospital. He was very distressed. He did not know what to do, and there was nothing he could do apart from going to court at a later stage.

We have been calling for a central register for guardianship agreements for many years, and we call for it again now. We envisage a register whereby people could send their documents to be registered in a central place, and if they are lost they can get a copy. One can imagine what would happen if someone lost his or her marriage certificate and could not get a copy. It is the same in this case because that is from where one gets one's guardianship rights.

As Ms Dromey mentioned, cohabiting fathers of a year or more get their guardianship at the point of registration. If some sort of register is set up at that point it could include a register

for recording the statutory declarations already signed. Ideally, we would see this register being located in the General Register Office. That is where people register births, marriages and deaths, and guardianship is very much a key component of that.

I would like to mention one or two other areas.

Chairman: The time is a little tight.

Ms Margot Doherty: Indeed. We are concerned about the possibility of an unlimited number of guardians given that step-parents, grandparents, aunts, uncles and others can become guardians. Those of us in the office know the difficulty in getting consensus when two guardians disagree. I ask the members to be alert to that possibility, although I am not saying they should place a limit on it.

We are very disappointed that the terminology in the Bill did not change to "parental responsibility" instead of "guardianship". It refers to access and custody instead of day-to-day care and contact. That would bring us in line with our European neighbours, and is what the Law Reform Commission recommended.

There are a few definitions of guardianship in the Bill, but it would be better to have one concise definition of guardianship. When parents and guardians are mentioned, are the parents guardians? One can be a parent and not a guardian, a parent and a guardian, a guardian and a parent or a guardian and not a parent. We ask that the legislation be clear on the terminology.

Generally speaking, we welcome the Bill. There is a great deal in it and we hope there will be a good information programme when the Bill is enacted.

Chairman: I must point out that we are dealing with the heads of the Bill and not the Bill itself. It is the general scheme of the Bill, as the Bill has not been published yet. This new procedure in which we are involved is pre-legislative scrutiny, whereby we get an outline of what is being proposed. That gives everybody who is interested input into the legislation, and the mechanism for doing that is through the Oireachtas committees. It is a new role put in place in recent years. We have had about ten of these so far on different Bills and it has been extraordinarily useful because citizens, non-governmental organisations and groups can have an input into legislation. That allows us to highlight problems at this stage, when it is much easier to make changes than when the Bill is formally drafted and published. It is a huge advance. I thank the witnesses. I call Dr. Finegan.

Dr. Thomas Finegan: I will ask my colleague Ms Boteju to begin.

Chairman: If there is a phone or any other device on, please turn it off now, or I will have to ask people to leave the room.

Ms Marion Boteju: Fertility treatments have a long, lucrative history in the global marketplace. In comparison, surrogacy is a relatively new and burgeoning industry. Legalising surrogacy will lead to the widespread suppression and erosion of norms surrounding women's rights, with particular consequences for vulnerable female populations. Family & Life believes that altruistic surrogacy will eventually lead to commercial surrogacy.

The first of the primary areas of concern we wish to highlight is a lack of attention to the rights and welfare of children produced, not created. Children who are the products of surrogacy will have no legal rights to their birth mother. The commodification of children as objects

to be reared specifically to be bought, sold or traded is akin to child trafficking. Further, there is legal chaos surrounding parentage, and we have seen that in many other countries where surrogacy has been legalised.

There is a vast body of research, and a growing body of personal testimony, affirming the deep connection children have with their birth mother. Children of surrogates are now speaking out about the psychological trauma of being separated from their mother of origin. There are a number of examples of adults speaking out about the psychological consequences they experienced as a result of separation from their birth mother. A particular example is Jessica Curran, who is leading this campaign.

A second area of overall concern is the serious ethical and practical consequences of commodifying a woman's body. Pregnancy is an extremely high-risk activity. Legalising surrogacy puts women's health at risk. The medical drugs required to prepare a surrogate for an embryo carry well-documented short-term and long-term risks. Surrogacy will not just expose but normalise exposure to such drugs. We have a list of drugs commonly used for IVF, and some of the consequences as a result of using these drugs.

Our final and overarching concern is the moral and ethical consequences of transforming a normal biological function of a woman's body into a transaction. Surrogacy threatens the dignity of women. Women lose proprietorship of their bodies during this process, and women who have been through surrogacy have self-identified themselves as incubators or breeders. The medical facilities promoting the practice of surrogacy are in the profit-making business and, in many cases, information on the risks involved are not effectively communicated in an attempt to garner clientele. Legalising altruistic surrogacy will lead to commercial surrogacy and have an impact on countries, such as India, Mexico, Thailand, in two of which cases there are unregulated markets - India has just started regulating surrogacy. The trade-off for a woman in those countries who is exposed to commercial surrogacy is choosing to place a price tag on her womb in lieu of the right to dignified and safe employment, education and sustainable economic mobility for her and her family which are markers of true progress for women and, consequently, for children. As in the insupportable case for a legalised prostitution, hidden behind an application of any rights-based language to the practice of surrogacy is really the exploitation of a marginalised woman and her necessity to have to make a choice. Women of privilege will rarely offer themselves as surrogates to incubate children of strangers. We believe that this particular assault on the dignity of women is really quite a twisted turn in the reproductive industry's attempt to incentivise profitable pregnancy in short-term motherhood.

Dr. Thomas Finegan: I will address a couple of the issues pertaining to the wider general scheme of the children and family relationships Bill.

Legislators have a wide degree of discretion as to how to shape this piece of legislation. There is no Supreme Court ruling and no finding against Ireland by the European Court of Human Rights mandating a particular and rigid approach to all parts of the Bill.

It should be noted that underpinning parts 3 and 5 and aspects of part 12 of the general scheme is a strong policy preference in favour of a right to have a child by artificial or commercial means, that right being a dimension of adult reproductive autonomy. As a matter of law, the Constitution does not contain, in either enumerated or unenumerated form, such a thing as a right to have a child via artificial or commercial means. This is also true of the European Convention on Human Rights, the jurisprudence pursuant to the convention, and international human rights law generally. Thus, none of those instruments requires Ireland to make positive

legislative provision for commercial services or private arrangements which aim to satisfy adult demand for the creation or production of a child. In the alternative, both domestic and international law support a child's right to have his or her best interests govern all state actions directly affecting them. Those are merely legal points.

Turning to substantive policy points at issue here, no doubt many parts of the proposed Bill take serious account of children's best interests. I refer especially to parts 7, 10 and 11. However, it is submitted that certain parts of the general scheme clearly privilege equal adult reproductive autonomy over and above the best interests of the child. The general scheme's policy preference in favour of an adult's right to have a child via a commercial or artificial means consistently trumps the child's best interest in parts 3 and 5 and in certain heads of part 12. For example, no consideration is given to a child's right to have two parents. This relates to a single adult's right to avail of AHR services and surrogacy arrangements. No consideration is given to a child's right to the society and support of his or her genetic or natural parents. This is in relation to the permissibility of anonymous gamete donation and heterologous gametes donation in parts 3 and 5. No consideration is given to a child's right to know the identity of his or her genetic parents re the permissibility of anonymous gamete donation in parts 3 and 5. No consideration is given to the child's interest in having parents who are likely to live for the duration of the child's upbringing re the lack of upper age limits in part 3 for adults seeking to avail of AHR services. Finally, the Bill will knowingly and expressly deprive children of either a mother or a father. This is in relation to the provision for the right of a single person to avail of AHR services in surrogacy arrangements in parts 3 and 5 and the right of civil partners to jointly adopt a child in part 12.

We can see that children's best interests are only permitted expression in the general scheme where there is little or no danger that such interests will clash with adults' interests in equal reproductive autonomy. Where the right to reproductive autonomy is treated as near absolute as it is, the children's best interests are virtually ignored. They merit mention in neither the relevant textual provisions of the general scheme nor in the relevant accompanying notes, and that is no accident.

In effect, the new affirmation - it is a new affirmation - of such a thing as a right to a child indicates the commodification of procreation. The child's origin and upbringing is made subject to freedom of reproductive contract. This places Ireland, by the way, as an outlier in the European context. This is permissive by European standards. Both the child's best interests and the adult reproductive autonomy cannot be vindicated fully. One has to be subservient to the other. It is clear under the general scheme, as currently constituted, that adult reproductive autonomy trumps children's best interests.

Chairman: Has Dr. Finegan circulated that particular document to us because we seem to have something different here?

Dr. Thomas Finegan: I am not sure.

Chairman: It is usual that one circulates the presentation so that members would have it in front of them and could refer to it if they are asking questions.

Dr. Thomas Finegan: My apologies.

Chairman: We do not seem to have that document. At least, I do not anyway. Who is next?

Ms Sandra Irwin-Gowran: I will speak on behalf of GLEN. Dr. Fergus Ryan, who is a

board member of GLEN and lecturer in law in NUI Maynooth, will contribute to the discussions later.

I thank the committee for the opportunity afforded to the Gay and Lesbian Equality Network, GLEN, to contribute to the committee's deliberations on this vitally important Bill, which is, perhaps, the greatest and most needed family law reform in a generation. I acknowledge and thank the Minister and his officials at the Department for the extensive work that has been done to date on the Bill.

This Bill will directly benefit the significant numbers of children living in many differently shaped and sized families that are common in Ireland. It will give practical and real expression to the principle of the best interests of the child and will provide much needed legal security to children in many different family forms, including children being raised by lesbian and gay headed families.

The provisions of the Bill are utterly necessary and we stress the urgency with which this Bill needs to be passed.

For GLEN, I suppose, any reform in this area needs to be guided by three clear principles: one, the best interests of the child principle; two, the right of a child to know his or her identity; and three, the right of a child to have his or her family recognised and supported. I will expand a little on each of those.

GLEN is a proud member of the Children's Rights Alliance and strongly supports the application of the best interest principle to all matters concerning the child. The fact of the matter is that every child who is being parented in a lesbian or gay headed family lives without the protection of a secure legal framework. This means that the child lives without a legal relationship with his or her non-biological parent and that has potentially far-reaching consequences whereby the child can be separated from his or her non-biological parent in the event of death or separation. In the case of the family home, maintenance and inheritance, the child's financial welfare is not secure. There are other day-to-day issues as well. A number of the heads will resolve these inequalities. In particular, head 32 ensures that the best interests of the child will be the paramount consideration in areas such as guardianship, custody, upbringing of or access to a child. Part 2 provides much needed amendments to the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 regarding shared home, maintenance and provisions upon dissolution of a civil partnership, and GLEN strongly welcomes those provisions.

GLEN fully supports a child's right to know his or her biological and genetic identity and to have his or her family recognised and supported. The UN Convention on the Rights of the Child recognises these rights alongside a child's right to be cared for by his or her parents. The convention recognises that a parent can be someone who is not biologically related to the child, a person who takes responsibility for and cares for the child. Heads 10 and 11 reflect this interpretation by providing a framework for the recognition of parentage in cases of assisted reproduction. There are further provisions for guardianship in heads 38 and 39. GLEN is of the view that taken together these provisions will address many of the needs of children being parented by lesbian and gay headed families to a secure legal relationship with their parents.

Alongside the provisions for all couples planning parenthood through assisted reproduction, the Bill also proposes to address retrospective assignment of parentage, and we welcome this. Assignment of parentage involves the consent of the intending, the biological and the genetic parents. We would propose that the principle of fully informed consent should include inde-

pendent, legal and counselling advice for both the biological, genetic and intending parents. We would strongly suggest that where there is agreement between all parties, the assignment of parentage should be provided through the most effective and simplest of means in order to ensure that the provisions of heads 10 and 11 are as widely accessible as possible.

Finally, on the area of adoption, there is no ban on adoption by lesbian and gay single persons in Ireland. Lesbian and gay people can and do apply to and adopt children. However, lesbian and gay couples, even those in a civil partnership, cannot apply to adopt jointly. Consequently, GLEN, while recognising that adoption is ultimately about a child's right to a family, welcomes the provisions in the general scheme to extend the categories of people who can apply to include civil-partnered couples. We also welcome the recognition of adoptions from other countries. This is a very important provision for many lesbian and gay couples who have adopted jointly abroad. The Bill does not provide for second-parent adoption. We suggest that this be provided for as the Bill is devolved further.

I thank the committee for the opportunity to contribute and I look forward to the discussion.

Ms Saoirse Brady: As many members will know, the Children's Rights Alliance is a coalition of over 100 organisations working to secure the rights of children in Ireland by campaigning for the full implementation of the UN Convention on the Rights of the Child, UNCRC. Many of our members are present today. The committee either has heard from them or will hear from them. We thank them for their contributions to our fuller submission, which we have already circulated. We welcome the publication of the heads of the Bill as they represent the most significant reform to family law for a generation. We welcome the opportunity to be present to make our observations.

We acknowledge the work of the Minister for Justice and Equality and his departmental officials in producing this important draft legislation, which, in the main, is very child-focused. The legislation puts children at the heart of family law reform and it will address the current discrimination faced by children in non-marital families. We need only consider the results of the 2011 census to realise the wide range of different family types and parental relationships in the State today. This legislation will bring about reforms for thousands of children and their families.

We welcome the inclusion of three key children's rights issues in the proposed legislation. These are the best interests of the child, as mentioned already, the voice of the child in decision-making, and protecting the child's right to family life. The legislation would provide much-needed clarity for children and families in these areas. We have made some recommendations that we hope the committee will consider and that will improve and strengthen the legislation. We feel, however, that there is one big gap in the legislation as it currently stands from a children's rights perspective. I refer to the right to identity in cases of assisted human reproduction and surrogacy. The inclusion of the general principle of the best interests of the child is a major milestone and it reflects the rights enshrined in the UNCRC. This is the first time the principle has been defined in domestic legislation in such a comprehensive manner. While it is included in the Child and Family Agency Act, it is set out very clearly in the proposed legislation. The way it is set out in head 32 clearly complies with the standards laid out in the UNCRC, which states that the best interests of the child should be the paramount or only consideration in important decisions on adoption, guardianship, access and protection cases. For this reason, the alliance strongly recommends that the standard included in head 32(1) be retained.

The alliance believes the principle of the best interests of the child must extend to all deci-

sions made on children's care and well-being, not only to decisions of the court on guardianship, custody and access. In line with the convention, the best interests of the child should be the primary consideration in all decisions affecting a child, regardless of whether they are made by the court, an administrative body or otherwise.

The committee heard from One Family, which advocated the use of child contact centres. We support this call in respect of determining how the child's best interests could be protected and respected within the legislation.

The right of all children to be heard and taken seriously constitutes one of the fundamental values of the convention under Article 12. In the proposed legislation, the voice of the child is presented as only one of the factors to be considered when assessing what course of action is in the best interest of the child in guardianship, access or custody proceedings. We warmly welcome the fact that the voice of the child is referred to in the heads of the Bill but, in order to comply with Article 12 of the convention, this should be a stand-alone provision rather than one factor in a long list. The views of the child should be sought by the decision-maker and should be properly considered. This does not mean the child gets to decide what is best for him or her; instead, it means he or she gets to participate in and contribute to the decision-making process properly.

The proposed heads refer to the age and capacity of a child but it is not clear who will decide when a child is capable of forming views. As outlined in the guidance provided by the UN Committee on the Rights of the Child, it is important to point out that being capable of forming views and being capable of expressing them are two entirely different phenomena. The legislation should not contain an age limit since the weight to be given to the views of the child must be considered in accordance with both age and maturity. Each case must be examined individually.

Part 7 of the general scheme of the children and family relationships Bill 2014 seeks to address a number of the gaps in protection experienced by the increasing number of children who are being cared for by step-parents, civil partners and others *in loco parentis*. This is a welcome development that will extend the right to apply to become a guardian to step-parents and grandparents, for example, and create a legal link between the child and the person caring for him or her on a day-to-day basis.

We welcome the extension of automatic guardianship to unmarried fathers who are cohabiting with the mothers of their children. However, as Treoir has pointed out, automatic guardianship will not extend to unmarried fathers who do not live with or have never lived with the mothers of their children. We urge caution in respect of how automatic guardianship can be extended to non-cohabiting fathers. Obviously, we support the committee's examination of this, but it should bear in mind cases in which the mother has been a victim of domestic violence or a woman has become pregnant through rape. When balancing the rights of unmarried fathers who are not living with the mother, and considering circumstances in which children have been born from rape, proposals by the committee should not endanger the children and mothers in any way or interfere with their right to privacy. The rights of the unmarried father should be balanced with what would be in the best interest of the child.

The big gap we see in the legislation concerns the fact that the right to identity is not provided for anywhere within it. The proposals in the Bill aim to provide much-needed legal clarity on parentage for children born through assisted human reproduction. However, as I mentioned, the current heads do not provide any clarity on the right to identity enshrined in

Article 7 of the UN convention, which concerns the right to knowledge. This might be an issue where an anonymous donor has provided genetic material. The 2005 report of the Commission on Assisted Human Reproduction, set up by the Department of Health, recommended that upon reaching the age of maturity, a child born through the use of donated genetic material should be entitled to identify the donors. The Bill must make provision for the identity rights of children in these cases, and their right to identity should be vindicated as a matter of priority. We regard the gap in this regard as the key gap in the proposed legislation that must be addressed. I thank the committee for the opportunity to make a presentation today.

Chairman: What Ms Brady read out is slightly different from what is contained in her submission.

Ms Saoirse Brady: It is a summarised version.

Chairman: Perhaps she could forward to us what she read out. The other delegates should do likewise if their submissions are different from what they intend to read out. Sometimes the written submissions sent to us cannot be read out in five minutes. It helps if we have the actual statements in front of us.

Ms Orla O'Connor: I thank the committee for inviting representatives of the National Women's Council of Ireland. We, too, welcome the publication of the general scheme of the Bill. We acknowledge the considerable work done on producing this important and necessary draft legislation. We are conscious that it is very extensive and covers a wide range of very complex areas.

The National Women's Council of Ireland represents more than 170 member groups from a diverse range of backgrounds, sectors and locations. This Bill has been the subject of discussion among our members, particularly those working on children's rights in terms of recognition of care, gender equality, LGBTQ rights and reproductive rights.

In my five minutes, I will focus on just a few points, the first of which concerns the diversity of families. We really welcome the Bill's recognition of the realities of diverse parenting circumstances and the intention to provide legal clarity on parental rights and duties in diverse family forums. We really do welcome the recognition of and provision for parental and guardianship rights of same-sex couples and the fact that legislation is finally addressing the anomaly whereby same-sex couples have been excluded from applying jointly for adoption despite their being free to do so as individuals.

We welcome the fact that the Bill is offering practical recognition of the realities of divorce and remarriage. The heads recognise that, in many cases, women and men play a significant role in caring for the children of their new partners.

The Bill has the potential to address the day-to-day discrimination currently experienced by parents and children in non-marital families, particularly with regard to cohabitation. Treoir has already touched on this, but we think clearer guidance needs to be provided on how cohabitation is to be determined. In examining this issue it is also important to consider how it might accommodate situations where consecutive cohabitation has not been possible.

We wish to highlight that the Bill is significant in its recognition not only of the role and caring responsibilities of both parents, but also of the wider range of relationships that a child may have with others - such as step-parents, grandparents, aunts or uncles - and the caring responsibilities and rights associated with those relationships. It should be noted that while recognising

different rights and relationships, including the rights of separated parents or grandparents, the safety of children and the safety of their mothers must always remain paramount. For example, caution is needed in cases in which the mother has been a victim of violence by her partner. The Children's Rights Alliance and Women's Aid have highlighted concerns around the extension of automatic guardianship where a woman has become pregnant through rape.

As regards the best interests of the child, the National Women's Council of Ireland welcomes the placing of the child at the centre of this legislation. This strong emphasis on the best interests of the child is significant and reflects a practical engagement with our Constitution and the UN Convention on the Rights of the Child.

The heads of the Bill are clear that the best interests of the child should be a guiding principle within the courts system. This also needs to look beyond the courts system to other non-judicial decision making such as mediation, which is a valuable and often a recommended alternative for parents. It is crucial that non-judicial or mediated alternatives should be held to the same standards, including the best interests of the child, as a guiding principle in all decision-making on children.

Head 32 refers to the factors in determining the best interests of the child. Section 3(*j*), for example, cites "The willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and other parent and to maintain and foster relationships between the child and relatives of the child." In drawing this out, it is important to consider issues around violence against women. The Bill does so in that there is a head concerning family violence. That is critical as regards moving on in developing the heads of the Bill. We welcome the recognition of the impact that violence can have on mothers and children.

The most recent research on violence against women by the European Union Agency for Fundamental Rights presents the first such comparative set of data. It includes shocking statistics on where Ireland is in this regard. With a view to further developing the Bill, it is therefore important to listen to the organisations that are working with women and children who have experienced and are experiencing violence.

We welcome the legislative engagement in the area of assisted reproduction and surrogacy, which has lacked clarity for far too long. A regulatory approach is needed in order to guard against exploitation and ensure the rights of the child, of intending parents, and of surrogates or donors of genetic material are all adequately protected. This area is scheduled for further discussion by the National Women's Council of Ireland's members, as there is no definitive policy on surrogacy and assisted reproduction. This will be discussed at our annual general meeting in June. We are engaging with our members this year to develop a concrete policy in this area. It will enable us to contribute more to the development of the Bill as well as examining the mechanisms by which to bring it forward.

Ms June Tinsley: Thank you, Chairman. Overall, Barnardos supports many aspects of this progressive Bill as it finally gives legal recognition and clarity to children being raised in different family types. This is long overdue, because the current legal framework is outdated and fails to recognise the diverse ways of conceiving and raising children. The child-centred focus is evident throughout much of the Bill and we certainly welcome that. In the interests of brevity, my presentation will concentrate only on some aspects of the Bill.

We are certainly pleased to see that parentage is viewed more widely than the genetic make-

up of the child. It removes the legal uncertainty experienced by many parents who do not have a genetic link to their child yet provide the security, love and encouragement that a biological parent would provide.

However, we do have concerns about the Bill's consequences for birth registration procedures, which are not explored in the legislation. Will the birth certificate record biological details, including the use of donor material? Will another parentage declaration certificate be issued stating who has been assigned parentage? This has implications for establishing the child's surname, for example, in cases in which he or she is being raised by a same-sex family.

It is great to see that in part 3 legal clarity is being given to those families who become parents through assisted reproduction and surrogacy, and the use of donor material in these methods. For too long these families have been living in legal limbo. However, Barnardos is concerned that the Bill does not provide guidance regarding the recording of donor material. It is denying the child's right to know who his or her biological parents are. Denial of access to such information repeats the mistakes of the past whereby some adopted people were denied access to their records.

Access to donor information can be fundamental to a child's overall development and health, especially when medical issues arise. Ireland must regulate this sector and establish an official register of donors whose information can then be passed onto donor-conceived people at a later date.

Another worrying proposal, under head 13, is that the surrogate will be the legal mother until the court assigns parentage based on the application received, and such an application can be made up to six months after the birth of the child. This timeframe is not in the best interests of the child, as the surrogate will not be caring for the child, yet any important decisions to be made regarding the child's health or welfare rest with the surrogate. At the very least, one of the intending parents should also be granted parentage upon the birth of the child to ensure consistency in the care and decision-making relating to the child's welfare.

With regard to guardianship, Barnardos is pleased that the Bill strengthens the rights of some unmarried fathers who satisfy the cohabitation clause. It correctly recognises and values the commitment of fathers to their children. However, we do support some of the concerns raised by Treoir regarding non-cohabiting fathers. Head 32 mandates the court to ensure that decisions regarding guardianship, access or custody are made in the best interests of the child and to ensure their voices are heard. This is something Barnardos has long campaigned for and echoes the commitment in the Constitutional amendment. Unfortunately, the Bill does not indicate how the court should examine these aspects. Barnardos believes this is where the role of family assessments, including the use of guardians *ad litem*, should be undertaken. They should be given due consideration to allow the court to assess the whole picture of what the child's life is like and what effect their decision may have on the child.

The Bill allows for the child to have multiple guardians, each of whom has the right to make day-to-day decisions, such as where the child should live, consent to medical treatments and decisions about their education. The current wording of the Bill means that fractious guardians will have to regularly revert to the court over details of the child's life. This is not in best interests of the child and could delay significant decisions being made, as well as having cost implications for everyone involved. The Bill should not create a situation in which children could end up as pawns between multiple fighting guardians. There has to be some recognition of the ability of a parent who looks after a child for a majority of the time to make reasonable

decisions on the day-to-day care of the child.

With regard to Parts 8 and 13, Barnardos believes that some aspects of the Bill could be strengthened. These include assessing all couples for their suitability for mediation prior to the lodging of an application for guardianship, custody or access. Engagement in mediation can lead to faster resolutions of cases and is more cost-effective. However, if any domestic violence or child protection concerns are present, these cases should be dealt with within the court process.

Capturing the voices and wishes of the child will be diluted if head 58(1)(*b*) is unaltered, as it allows any person to compile a social report regarding the welfare of a child. It also permits these people to become guardians *ad litem*. Guardians *ad litem* should be professionals with the required expertise and training to talk to children about highly sensitive and difficult situations. Barnardos has long called for greater regulation and transparency with regard to guardian *ad litem* services. The legislation and forthcoming regulations must be compiled in close collaboration with the Department of Children and Youth Affairs and build on the guidance of the Children's Act advisory board.

Chairman: Is Ms Tinsley almost finished? Her time is almost up.

Ms June Tinsley: I will finish quickly. The imposition of fees for guardians *ad litem* on parties will reduce the opportunity for children's voices to be heard. Fees should not be a barrier to availing of services.

While we welcome broadly many aspects of the Bill, it will fail to be fully child-centred in the absence of reform of the current courts structure. The establishment of a specific family court system was promised in the programme for Government but has not yet been advanced. The development of a specialised family court structure must be accompanied by a child and family court service mandated to provide family assessments and guardian *ad litem* services or provide a link between mediation services and the courts. This would ensure judges were well informed of the complexities of cases and enable them to make key decisions in the best interests of children. Access to support services must also be more widely available. These include child contact centres, as mentioned earlier, as well as therapeutic services for parents and children and, if necessary, referral to specialist services.

Mr. Brian Merriman: The Equality Authority welcomes the opportunity to offer its preliminary observations on the general scheme of the Bill. I thank the committee for the invitation to appear. As a result of the very short lead-in time, the Equality Authority submission can only set out certain provisional observations. We are conducting a further in-depth review and will provide more detailed comments as the legislation evolves. Given the considerable detail in the scheme, it is not possible to deal with all of the provisions today. However, we appreciate greatly the opportunity briefly to highlight some key points.

The ambitious general scheme proposes a ground-breaking overhaul of the law as it applies to children and family relationships in Ireland. It addresses the increasing complexity and diversity of family arrangements in which children are being raised in modern Ireland. It acknowledges and seeks to address the fact that a diversity of people other than biological parents may play a leading role in respect of a child's upbringing. The best interests of these children require that these arrangements be recognised and supported. Broadly speaking, the authority welcomes the scheme as a significant reform.

Our submission highlights a number of issues that require careful consideration. In particular, we are concerned that the scheme makes no provision for children who are born as a result of assisted reproduction to access information on their identity and origins. Notably, the Commission on Assisted Human Reproduction in its 2005 report observed that "having access to genetic origins is potentially of profound importance for people's understanding of their identity in a psychological, genetic and historical context". Given the acute problems experienced by adopted people in this regard, it is recommended that the scheme should expressly ensure that all children at an appropriate age have access to information allowing them to identify their genetic origins.

The authority is also concerned at the exclusion of traditional surrogacy from the scheme. This involves circumstances in which the surrogate mother uses her own genetic material in the pregnancy. An arrangement involving the use of the surrogate's own eggs is arguably simpler, safer and more likely to result in pregnancy. It is also less likely to give rise to ethical complications in that the number of potential biologically connected persons will be fewer than in the case of a surrogacy arrangement other than a traditional surrogacy. This exclusion could be reconsidered.

Given the risk of the commercial exploitation of women, the focus in the scheme on altruistic, non-commercial surrogacy is to be welcomed. The authority, however, queries the imposition of certain other restrictions in respect of the surrogate. The scheme requires that a surrogate mother must be at least 24 years of age at the time of the surrogacy arrangement. Given that the age of majority is 18, it is unclear why an elevated and potentially discriminatory minimum age has been chosen in this specific context for a woman to become pregnant. Notably, there is no such minimum age imposed on a male donor of genetic material. Why should a woman be deemed insufficiently mature in making a decision of this nature prior to the age of 24 when she can make all other important, life-changing decisions from the age of 18?

The requirement that a surrogate must already have given birth to at least one child that is in her care will also preclude many women who may for altruistic reasons wish to assist another woman in having a child. This involves a surrogate making decisions to restrict the kinship of her first child. This condition may need to be re-evaluated. The authority also recommends that some consideration should be given to making pre-birth judicial arrangements in respect of surrogacy to ensure there is clarity and certainty around the legal responsibilities and rights of all parties as early as possible and prior to the birth of the child.

The authority has previously noted that the language around children's well-being could be less custodial. We welcome the provisions expanding the range of people who may seek guardianship or custody of a child and proposed improvements to availability of access. We recommend, however, the adoption of a broader definition of the phrase "relative of the child" in head 31 of the scheme to include the relatives of a spouse or civil partner of a parent in the category of those who may apply for custody and access. We also recommended that, subject to certain limited exceptions, all fathers of children born inside or outside marriage should have automatic guardianship responsibilities in respect of their children. The Law Reform Commission has endorsed this view. The scheme proposes to extend automatic guardianship to a category of unmarried fathers who have been cohabiting with the child's mother for at least 12 months before the child's birth, ending no earlier than 10 months before the birth. It is arguable that this timescale does not go far enough and arbitrarily excludes from automatic guardianship many unmarried fathers who play a vital role in the raising of their children, including those who commence cohabitation with the mother after the pregnancy or the birth. While unmarried

fathers will still be able to acquire guardianship by court order and by agreement, we submit that further consideration is required of the circumstances in which fathers are given automatic guardianship so as to ensure that fathers are not arbitrarily excluded from automatic guardianship.

We welcome the introduction of mechanisms to ensure parenting orders work effectively and expand the range of persons who may be required to maintain a child. We also welcome the significant amendments to civil partnership law that will, if implemented, ensure that the interests of children of civil partners are properly considered and vindicated in civil partnership proceedings. These measures will eliminate the most glaring remaining gaps between civil partnership and marriage and greatly enhance the position of a child being raised by civil partners. We are pleased also to see proposals to extend joint adoption to civil partners. Given that gay and lesbian people may already adopt as individuals, allowing for joint adoption by civil partners is a logical step forward which will provide greater stability for a range of children living with same-sex couples. While welcoming this step, the authority notes that the proposals exclude unmarried couples from adopting as a couple. While marriage and civil partnership in many cases will provide greater stability for children, we question whether a blanket ban on unmarried couples adopting jointly is appropriate. The UK House of Lords has invalidated a similar blanket ban in Northern Ireland on joint adoption by unmarried couples as being contrary to the European Convention on Human Rights. Similarly, we question the wisdom of excluding all unmarried couples from joint adoption regardless of their circumstances.

We recommend that the option of second-parent adoption be considered in respect of children being adopted by a parent's spouse or civil partner. At the moment, both the parent and spouse must adopt the child together. Provision should be made to allow the spouse or civil partner of a parent to adopt the child without requiring the spouse or civil partner who is a parent either to extinguish her responsibilities or to have to adopt the child alongside the new parent's spouse or civil partner.

Finally, the authority has recommended that provisions and protections under the Adoptive Leave Acts should be extended to at least one commissioning parent in a surrogate arrangement. The scheme should set out expressly the qualifications required by a person serving as guardian *ad litem* in respect of a child.

Chairman: I thank Mr. Merriman for his precise presentation and for keeping to the time.

Ms Moninne Griffith: Marriage Equality welcomes the general scheme as a major reform of family law which will reflect the complexity of family life in Ireland today. As complex as the legal details may be, however, the spirit of the legislation is clear. It is intended to legislate for the reality of children's lives in Ireland with their best interests paramount. The vast majority of children whose lives will be improved on foot of the legislation are born to heterosexual parents. However, we welcome the opportunity to address the committee as the legislation also has the potential to solve many of the practical day-to-day legal difficulties faced by children in same-sex families. I offer a snapshot of the reality for children in Ireland growing up in same-sex families, which will hopefully demonstrate why the Bill is such an urgent matter.

Currently, loving and committed same-sex couples cannot marry in Ireland. Since 2011 and the introduction of civil partnership, same-sex relationships are now recognised in Ireland and granted many of the rights and obligations available to married heterosexual couples. However, research published by Marriage Equality in 2011 entitled "Missing Pieces" highlighted many legislative differences between civil marriage and civil partnership. The most distressing of

these gaps - especially for those of us who are parenting - relate to children and parents in same-sex families. The gaps range across lack of rights on access, maintenance, custody, inheritance, guardianship and the complete lack of any mechanism for a child to have a legally recognised relationship with his or her non-biological parent or parents. All over Ireland, mums and dads who are lesbian or gay are raising kids in loving homes and doing the best they can for their children, just like other parents. However, they live their lives in a precarious and insecure legal lacuna. As the Ombudsman for Children said in relation to the civil partnership bill in her report in July 2010:

> It should be borne in mind that this is not a hypothetical problem. The omission of robust protections for the children of civil partners will have real consequences for the young people concerned and it is in their interests that the law reflect and provide for the reality of their lives.

In 2010, Marriage Equality asked a group of young adult children who had grown up in same-sex families what it was like for them growing up in Ireland. We published what they had to say in a report called Voices of Children. They told us about their vision of an Ireland where human rights for all children was a lived reality. They also told us about their experiences of growing up in Ireland and the impact the lack of marriage equality and other legal gaps had on their lives. They described experiences of homophobia in public spaces such as in schools, in contact with the health services and in private spaces such as friends' homes ranging from parents not being allowed collect them from schools because they were not recognised as a legal parent or guardian to one boy's friend not being allowed to play in his home because he had two mums.

In September 2010, Marriage Equality held a Voices of Children conference where national and international experts and advocates from areas such as child law and psychology came together with young adults who had grown up in same-sex families, LGBT parents and people working with children.

Chairman: There is a phone on. Could the person concerned please turn the phone off or leave the room?

Ms Moninne Griffith: They highlighted the many legal gaps affecting same-sex families and how those gaps played out and impacted on the day-to-day lives of the children growing up in them. Out of this conference, a group called Believe in Equality was set up by the young people themselves. Since then, they have been working with us in Marriage Equality to advocate for equality for children like them. One of them is a board member of Marriage Equality and the committee will probably have seen some of them share their stories in the media.

One young woman who shares her story was conceived with donor sperm and born to her two doting mothers. She grew up in Ireland with two loving parents but the law as it stands only recognises her biological mother as her parent even though her other mother planned her, went through the process of her partner getting pregnant, the pregnancy and the birth, raising her as her own very much-loved child. There was, and still is, no way for her mother to become her legal parent. She cannot even adopt her as same-sex couples are barred from adoption because of the marriage requirement nor could her other mother become her guardian so she could not even give permission for medical procedures or school trips. Now that this young woman is grown up, although she is no longer at risk in respect of these gaps, she worries about her parents and their future. Will she be able to make decisions about both of her mothers' health care if one of them gets sick or becomes dependent on her in the future? This Bill offers families like her family clarity around these issues. It means they will have the legal protections they need

because it will for the first time recognise them as parents and children and reflect the reality of their lives.

The main points of our submission therefore are that we welcome the Bill as a positive step to protect children all over Ireland including those growing up in same-sex families by recognising their actual parent-child relationships. While it should be remembered that the vast majority of potential parents accessing adoption and assisted reproductive services are heterosexual, we welcome the Bill's proposal to extend the definition of parent to include parents of children conceived through assisted reproduction. We also welcome the Bill's proposal to open up adoption to same-sex couples, bearing in mind that single lesbian and gay people are already eligible to apply to adopt and same-sex couples can and do foster children all over Ireland. We welcome the Bill's proposal to recognise and regulate surrogacy arrangements in Ireland.

I would therefore urge the committee to support this important legislation and ensure that it is enacted urgently so that our children can have their families recognised and protected just like anyone else's family.

Chairman: I thank Ms Griffith for staying within the time. We will now move on to a question and answer session with members. Could I impress on members that we do not want speeches? If somebody wants to make a speech, they can go into the Dáil or Seanad and make it there. This is an opportunity to engage with our guests today so I ask people to ask focused short questions. They should ask one question, get an answer, ask another and get an answer.

Senator Rónán Mullen: I echo what the Chairman said about the value of this process of scrutinising legislation in advance - looking at the heads of legislation - which has been practice. That said, there are aspects of this legislation that are so disturbing that I really look forward to debate in the Dáil and Seanad. I want to address my questions to representatives from Family and Life. Do they think this legislation could be unconstitutional?

Dr. Thomas Finegan: It is always a matter of some speculation but there is a genuine question mark over it. It does not give any credence to the idea that the child might have a right to know the identity of his or her biological parents or that the child has any sort of right to the care, society and support of their natural parents. When one reads that in the context of a Constitution that for decades has placed such a strong emphasis on the genetic link between children and their biological parents, one can imagine that there could be some constitutional questions there. One has only to look at recent cases such as M.R. & Anor *v*. An tÁrd Chláraitheoir & Ors and McD *v*. L where the genetic link was seen to be very important. In McD *v*. L, it was held that the best interests of a child conceived through assisted human reproduction commissioned by a lesbian couple meant that the sperm donor father ought to be granted access rights to the child. That would have some sort of relevance to the issues we are discussing here and the question of whether the general scheme as it is currently constituted gives or does not give enough protection to the rights of the child. The best interests of the child only seem to kick in when adult reproductive autonomy has been served. Only then, when we are talking about guardianship, access and all those other aspects of family law, does the best interests principle kick in. Prior to that, it seems to be completely absent.

Senator Rónán Mullen: I wish to tease that out. Under the Constitution, the State pledges to guard with special care the institution of marriage on which the family is founded. Is it fair to say that this proposed legislation really undermines any social preference for marriage as the context in which the State would prefer children to be brought into the world and brought up?

Dr. Thomas Finegan: That are the other grounds under which there may be some sort of constitutional question mark. In respect of the privileged status of marriage within the Constitution as well as the best interests of the child, one could not with any degree of reasonableness dismiss that possibility. It is a genuine possibility. There is no sense that marriage is taken seriously as a privileged institution. One need only compare the general scheme here with our adoption law. Adoption law provides that only a married couple can jointly adopt whereas pretty much any combination or adults considered singly can avail of a right to a child under this general scheme. A right to a child itself is a very radical proposal. It is a new right that is not recognised in many jurisdictions and is quite radical.

It has been mentioned that there is such a thing as a right of single people to adopt under Irish adoption law. There is a bit of divergence between what Irish adoption law provides in its textual provisions and what may be happening as a matter of practice. In Ireland, there is a lesser right for a single person to adopt a child. That is framed in the context of particular circumstances when it is in the best interests of the child whereas there is a far clearer and stronger right for a married couple to jointly adopt. If one looks back on the original drafting of the Adoption Act 1991, one can see that the reason that a right was granted to single people to adopt in particular circumstances was to cater for very exceptional circumstances, as the Minister at that time put it. He expressly put on the record a situation where an Irish nurse working in Ukraine might wish to adopt an orphan. Perhaps practice has expanded upon that but if it has done so, it has diverged from the text of Irish adoption law. I submit that the reason Irish adoption law is constituted as it is because it has had recourse to trying to value and respect the privileged status of marriage.

Senator Rónán Mullen: Dr. Finegan mentioned in passing that this legislation is permissive by the standards of other countries. I know his time and our time is limited but could he talk about how it is permissive by the standards of other EU countries?

Dr. Thomas Finegan: It is as permissive as it gets. France, Switzerland, Sweden and Italy are far more restrictive in this context. Germany is particularly restrictive. We are talking about who has a right to access what type of assisted human reproduction technology. Many European states have just banned surrogacy outright.

Chairman: Could Dr. Finegan name them?

Dr. Thomas Finegan: Germany has banned it. Roughly one half of EU member states ban surrogacy and almost all would ban commercial surrogacy.

Senator Rónán Mullen: I wish to address my question to our guests from Barnardos and the Children's Rights Alliance. I find it astonishing that organisations dedicated to promoting the rights and best interest of children apparently do not regard the circumstances in which children are brought into the world as matters in which children's rights arise. Their submissions do not appear to give primacy to motherhood or fatherhood. It appears they are happy to contemplate that children might be brought into a world where it is foreseen and, indeed, desired that they will not enjoy the society of their natural biological parents. We are aware that there are circumstances in which people are unavoidably deprived of upbringing of one or other parent and we regard that as a tragedy in most cases. Has there been any internal debate in the two organisations about the appropriateness of such legislation or their support for the legislation given the deprivation of what I would assert are rights of the child?

Chairman: I thank the Senator for his focused questions. He gave us a good example of

how to ask questions.

Ms June Tinsley: We consider the legislation to be desperately needed because the legal framework does not at present recognise the existence of different family forms. There is an obligation on the part of the State to recognise these families. Children need love, support and encouragement from their parents, regardless of the sexual orientation of the parents or the form their family takes. Research has proven that is what helps a child to develop and the legislation must ensure children raised in different types of families are adequately supported and receive the legal recognition they deserve.

Ms Saoirse Brady: The Children's Rights Alliance seeks the full implementation of the UN Convention on the Rights of the Child, which extends from birth to 18 years of age. As we have more than 100 members, we have to balance their interests in taking their views into consideration. In respect of this legislation, our focus is on the rights of the child. We recognise that thousands of children who are being brought up in different family forms are not currently being provided for. This legislation is long overdue, therefore, and we welcome it.

Our board has not taken a formal stance on surrogacy and assisted human reproduction but we consider the right to identity as being in the child's best interest. This legislation is child-focused and our full submission contains a table which shows how the provisions under head 32, on the best interest of the child, reflect the UN convention.

Senator Rónán Mullen: Ms Brady referred to Article 7 of the UN convention. Apart from issues pertaining to registration after birth and the right to a name and nationality, that article also defines a child's right to know and be cared for by his or her parents. The preparatory documents from the convention indicate that "parents" mean a mother and father in the first instance, and the biological parents at that. How is Ms Brady's submission consistent with that understanding of the rights of the child?

Ms Saoirse Brady: Reference was made to a child's right to two parents. That is not necessarily the case. As far as practicable, a child should be cared for by both his or her parents but the convention recognises the existence of different forms of parenthood aside from biological parenting.

Deputy Marcella Corcoran Kennedy: I am interested in hearing more from Ms Tinsley regarding her concerns about guardians *ad litem* and deciding who will write social reports on the welfare of children.

Ms June Tinsley: The Deputy's question falls under the heading of safeguarding children. The current wording of the Bill permits a social report to be drafted by a person designated by the Child and Family Agency or any other person. We are concerned about the absence of professional guidance on the individual's professional ability and training, and whether he or she should be vetted. Such an individual can also be appointed as guardian *ad litem*. Barnardos has repeatedly called for reform of guardian *ad litem* service in recognition of the need for expertise and training. The Children Act advisory board guidelines have highlighted professionals such as psychologists and social workers. Those who are trained to work with children would be the most appropriate to carry out these functions and we will call for that kind of model to be included in the legislation.

Deputy Marcella Corcoran Kennedy: Many of the witnesses before us have welcomed the proposal in the legislation to put the welfare of children at the heart of the decision mak-

ing process. I am interested in hearing how Family and Life would balance desire that with its opinion that the legislation will deliberately deprive children of certain essential rights and that children will be treated as commodities. How was it established that children would be deprived of certain essential rights and what are these rights? How would they be treated as commodities? Is that a reference to surrogacy or is it something bigger?

Dr. Thomas Finegan: This is almost an omnibus Bill in that it draws a variety of issues together. It is difficult to make one statement that would cover everything in the general scheme of the Bill. Heads 7, 10 and 11 are generally considered as priorities. My comments on the rights of the child being ignored were made in the context of heads 3 and 5, which make a strong presumption that the right of an adult to reproductive autonomy and to have a child by commercial or artificial means should be paramount. This right is not balanced, either in the text or the accompanying notes, by the best interest of the child. The child's best interests only kick in after he or she has been brought into the world and issues such as guardianship, access and custody arise. Children are deliberately deprived of both parents, their genetic identity and access to and support of their natural parents. They are deprived of a mother and father.

Other speakers raised the possibility that a child's right to identity might be downgraded. That is a constitutional right which can be drawn from a Supreme Court case in 1998 but it is merely a function of the fact that adult reproductive autonomy is privileged over and above everything else. That is to be expected when one makes the decision that there is such a thing. It is a novel right to have a child. This is where I see that children, and their origin and upbringing, are being commodified. It is not a surprise that much of sections 3 and 5 deal with commercial arrangements of industry and transactions between supply and demand. That is to be expected because we are creating a right to have a child, which has not existed in the Constitution or elsewhere in Irish law, European conventions or international human rights law. This is a novel and radical prescription.

Ms Marian Boteju: Examples have been cropping up over the last few years of children who are the result of surrogate pregnancies or IVF arrangements after being separated from their birth mothers, in the context of protecting the rights of children and the stage at which they are able to work through their psychology and experiences and put a voice on their desires and rights. I encourage all the presenters to familiarise themselves with the Anonymous Us project, a collection of stories and testimonials by children who are the products of surrogacy or IVF arrangements. It puts a voice to some to the issues with which they struggle as part of being a product of such arrangements. It is very beneficial for anybody presenting here to understand that there are children out there working through some serious difficulties and challenges, and they are able to speak about their experiences. When one considers the rights of the child, a child is not able to express his or her quandary at two to five years old. Only as adults can they work through it and deal with some of the shame of even speaking out against or verbalising the discomfort they may have felt with their families of placement. There is much psychology and emotion behind working through not understanding why one does not fit in and why one's biological parents gave one up. It would be beneficial, in the context of trying to address a very real issue, to understand that there are people speaking out about this now. They are having a hard time feeling they are able to speak out because they are coming from a certain context.

Deputy Marcella Corcoran Kennedy: Is Ms Boteju referring to adoption?

Ms Marian Boteju: Adoption is another aspect of this conversation. Although children of adoptive parents are also speaking on this, Anonymous Us is primarily for children of IVF and surrogacy.

Deputy Pádraig Mac Lochlainn: I have a question for the Children's Rights Alliance and Barnardos. Although we are supposed to be a secular State and we are supposed to be legislators, such legislation is often subject to ideological assessments. Although Joseph was not the biological father of Jesus Christ he did a pretty good job of rearing him. One of the earlier presenters said structural issues regarding the family courts should be dealt with in tandem with this legislation. In family courts, civil and family cases are taken at the same time. There is an issue around mediation, which some of the presentations have identified. Although mediation is by its nature a voluntary process, we can give people the information and point them to such solutions.

Chairman: Is there question here?

Deputy Pádraig Mac Lochlainn: Yes, do the witnesses agree that we should deal with the structural issues of a new, dedicated family court system along with this very important legislation, that both should be introduced together?

Ms June Tinsley: I definitely agree with the Deputy. We would love some structural reform to be done in tandem with this legislation. Although this is quite progressive legislation, and hopefully it will be passed soon, it will operate in an adversarial system in the Circuit Courts and District Courts as opposed to a more child-centred and family-centred dedicated, specialised family court system, which was proposed in the programme for Government. It will not be able to do full justice without the reform of the structures.

Ms Saoirse Brady: We need to reform the family court system. We have not particularly focused on that in our submission, while others have. Although mediation is much more prominent now, in the heads of this Bill "best interests" does not seem to extend to circumstances where mediation takes place. Mediation is favoured because it is more efficient and cost-effective in most cases. Where parents could agree on access, guardianship and other matters related to how to care for their child, it should be promoted. I would not like this piece of legislation to be delayed because of it. Hopefully we will see some reform of the family law system sooner rather than later.

Senator Ivana Bacik: I thank all the presenters for such valuable contributions. We also had a very good session this morning. It was good to hear the broad welcome expressed for this progressive legislation which will, finally, give us a legal structure for the regulation of existing diverse family structures.

Chairman: A question please.

Senator Ivana Bacik: That is all I will say by way of introduction. With respect to the Chair, it was an important introduction because we are entering uncharted territory in that we do not have regulation currently. I direct my questions to Dr. Madden and the Equality Authority. Dr. Madden chaired the 2005 Commission on Assisted Human Reproduction, or contributed to it.

Dr. Deirdre Madden: I was the chair of the donor programmes and surrogacy group in the commission.

Senator Ivana Bacik: I apologise. Work is being done but this is the Government's first attempt to regulate it. It is important we get it right and do not leave gaps. I note what Dr. Madden and others said about the need to ensure we do not have potential exploitation of surrogate mothers and that children born in surrogacy have their rights protected. A number of the issues

have been addressed by presenters earlier today and this afternoon.

Chairman: Does the Senator have a question?

Senator Ivana Bacik: Yes. One issue that concerns me in particular is the issue of the penalties provided for in the legislation in heads 13 and 23 where some of the provisions, such as age restrictions, are not met. One of the penalties is that a declaration of parentage will not be made. That is a concern because it means the children will be penalised. What alternatives are there? There are criminal penalties in head 23.

Dr. Deirdre Madden: I addressed that in my submission and it is a very serious issue in terms of the best interests of the child. The parents, as the Bill provides, are only for gestational surrogacy. We are talking about two genetic parents, people who are genetically related to the child. If they transgress the provisions of the Bill they will face potential criminal prosecution and will not be eligible to be declared the parents of the child. In circumstances where the surrogate mother wishes to relinquish custody of the child to those parents and does not want to raise the child herself, who will be regarded as the parents? Will the child end up parentless and in State care? It is a very serious issue that must be considered. This issue has been examined in other jurisdictions where payment provisions have been restricted to reasonable expenses, as they are in this Bill.

In my submission I cited a case called X and Y in which the courts were faced with two conflicting policies. On the one hand the best interests of the child should guide the court's decision regarding custody and parentage matters. On the other side there is a policy provision from the Legislature which says we do not want to have commercial surrogacy. Where there are two conflicting policies the best interests of the child must be regarded as paramount and custody be awarded to the genetic parents even though they may have transgressed the provisions of the Bill. In those jurisdictions the courts have said that only in the clearest case of abuse of the policy will they be able to withhold a parentage order, and most cases will not involve such abuse. The policy on the transgression of the payment provisions will be redundant because it would be ignored in practice.

Senator Ivana Bacik: Should the provisions for penalties provided for in head 13, paragraphs (17) to (19), inclusive, be left out? Should they simply not be included?

Dr. Deirdre Madden: That would be my view because it is not consistent with the paramount principle of the best interests of the child, which runs through the Bill.

Senator Ivana Bacik: I have a question for Mr. Merriman on that issue and on another issue he raised regarding adoption. He made a good point about the issue of a second parent adoption where a couple of civil partners adopts a child, for example. If one of the natural parents is not in the civil partnership, is it enough to say there are guardianship rights or should specific provision be made for two parties to adopt with a third parent retaining full parental rights? Will he elaborate on that?

Mr. Brian Merriman: We have a lot of further thinking on these particular issues. On the penalty for the age limit, we do not see that any transgression by an adult should be visited on a child. That would be unacceptable. Second, if new categories are created such as an age limit of 24, which I cannot recall existing in anything else in law, then the potential for an infringement is created. I am also a little concerned that it brings back the old definition that a woman who was pregnant or a mother in some way did not have full capacity during that time to make

decisions up to or after it. We have always fought the notion that maternity is an illness. There is an implication in saying suddenly one can decide anything from 18 but not this one. There is no reciprocation on a male donor in any way. They are fine at 18. We are concerned and we will come back to the committee on that.

In the other situation, we are looking once again at the best interests of the child, in particular if there are family units where the two parents are not together, etc. and it would be important to find a mechanism to recognise the role of the other adult directly involved in the child rearing. We have more work to do before we come back with a definitive position but it is about recognising the family units as well as the people who are parents, be they living together or not.

Senator Ivana Bacik: I have one other question on time limits for Ms Tinsley in respect of the six-month gap after surrogacy. A number of groups and individuals have identified this as a potential issue where the best interests of the child are not adequately protected if there is a six-month period where there are no legal parents. Earlier we examined of the issue of the surrogate mother and child being in a different jurisdiction. Dr. Geoffrey Shannon will make a submission to the committee on that. There may be bilateral agreements to protect against exploitation of the mother and the child. How do we deal with the six-month gap? Should the time within which consent to surrogacy can be given be shorter?

Ms June Tinsley: As the Senator rightly identified, we are concerned that a child could be in a legal limbo and could be cared for by a person who is not his or her legal guardian or parent. I do not know particularly what time limit is best but we suggested that one of the intending parents be automatically assigned a parentage certificate upon the birth of the child so that there is continuity of care, especially if the surrogate is relinquishing her duties as a mother. This is to ensure consistency.

Senator Fidelma Healy Eames: I am grateful for the opportunity to be present. I welcome the delegations. The documentation is daunting and I have many questions to ask. I am addressing my first question to Barnardos, the Children's Rights Alliance and Family and Life Alliance. In theory, we are all saying that the rights of the child are paramount. Bearing that in mind as our guiding principle, is it in the best interests of the child to give a single man, a single woman or a same-sex couple who cannot give him or her both a mother and a father the capacity to have a child? It should not be forgotten this is by deliberate design as opposed to through natural circumstances.

Chairman: Would Ms Tinsley like to come in on that?

Ms June Tinsley: I am sorry; I do not fully understand the angle Senator is taking. I will come back to it.

Ms Saoirse Brady: I think the Senator is asking if a single person or somebody who has planned to bring a child into this world is capable of doing that. We see a lot of unplanned pregnancies where people might not necessarily have the capacity to care for that child and, therefore, in terms of children's rights, as long as that child's best interests are put first, then that is the thing to be-----

Senator Fidelma Healy Eames: My question is-------

Chairman: Let the witness answer the question and then I will come to the Senator.

Ms Saoirse Brady: As long as the best interests of that child are put first, that is the most important thing. The Senator is talking about them being paramount and that is the case. That clearly is reflected in the UN convention in respect of some of these issues we are looking at in terms of adoption, guardianship, child care proceedings. The proposed legislation sets out clearly that the best interests of the children are being fully considered. As we said in our submission and as I said earlier, this legislation sets out the most comprehensive definition there has been in domestic law of the best interests of the child. The people who have drafted the heads have taken all those things into consideration.

Dr. Thomas Finegan: Drawing an analogy with everyday life and saying there are single parents who bring up children and children are brought up in all circumstances is not especially helpful in the sense we are dealing with legislation, we are dealing with something that is *sui generis* and we are dealing with the proposal to create new family circumstances so the best interests are engaged in a far more direct way with legislation like this.

In terms of what rights children have, when we look through the Constitution, there is a strong sense running through decades of case law that children have a right to the care and support of their parents. That is plural and that is understood in a genetic sense. Likewise under the UN Convention on the Rights of the Children, parents is the ordinary meaning according to the Vienna Convention on the Law of Treaties, which governs interpretation of international texts. I have to disagree with other presenters. The ordinary meaning is mum and dad. If one looks at other parts of the UNCRC, again it is understood to mean a mum and a dad and it is understood in the plural. Other terms are used in the convention when they want to talk about other types of care arrangements. Again in the UNCRC, there is this sense that there is a right to parents, plural, primarily meaning a mum and a dad. General schemes such as this give no consideration whatsoever to those rights and in fact place above them a right that has far less of a pedigree in constitutional law and international human rights law - the right to have a child - and I would say there is a denigrating of children's rights and a prioritisation of adult rights, specifically the right to reproductive autonomy.

Senator Fidelma Healy Eames: I would like to clarify lest I be misunderstood that I was not referring to single parents through natural circumstances. I refer specifically to how we are enabling a single man or woman or same-sex couple through surrogacy or IVF, for example. My concern is about the right of a child to two parents.

Ms Saoirse Brady: A child does not necessarily have a right to two parents.

Senator Fidelma Healy Eames: I am sorry-----

Chairman: Will the Senator please stop interrupting and allow the witness to reply? I will come back to her; we have plenty of time.

Ms Saoirse Brady: This legislation addresses the reality that children are being born in these circumstances and currently do not have any legal recognition. This will protect them further and it is not helpful to twist how this legislation will be interpreted. The legal reality is these children are falling through the cracks, they are not being provided for and court cases are being taken. This legislation is designed to protect those children and their families and it will impact on a considerable number of children and families living in Ireland today.

Chairman: Would Ms Tinsley like to comment now?

Ms June Tinsley: From our perspective, we are delighted that the best interests of the child

are so strong in the Bill. Different types of family are recognised. It is not as if the legislation will suddenly lead to children being born in different types of family. We have a duty to ensure that children are recognised and given legal clarity. Single parents are doing a brilliant job. Again, we welcome that different types of family will be recognised.

Chairman: I am conscious that others may wish to contribute. Will those who wish to comment please indicate?

Ms Deirdre Madden: It is important from the public policy perspective guiding our legislation that we balance the principle of the best interest of the child with the principles of equality and non-discrimination. The Commission on Assisted Reproduction states quite clearly in its report that the principle of equality and non-discrimination is very important unless the State can show by evidence and research that great harm would results in terms of the best interests of the child. There is no such evidence in terms of single people, gay or lesbian individuals or couples raising children. The principle of equality and non-discrimination should also be very important.

Senator Fidelma Healy Eames: I wish to stress that I am not speaking about children born to single parents through natural circumstances.

Chairman: The Senator has made that point already.

Senator Fidelma Healy Eames: Yes, Chairman, but I regret that the word "twisting" was used, because it is a dangerous word in the context of this debate.

Chairman: We note that. To whom is the question directed?

Senator Fidelma Healy Eames: It is directed to Ms Griffith from Marriage Equality.

The principle of consent of the birth mother is absolutely central to adoption. With regard to adoption by same-sex couples, does she support the principle of consent by the birth mother or birth parents, who would be asked whether they would wish to have their child or baby adopted by a heterosexual or a homosexual couple?

Ms Justine Quinn: My understanding is that this is not the approach that has been followed in other jurisdictions that have considered the issue very carefully, such as the United Kingdom. Other jurisdictions have not opted for such an approach. There are various reasons - first, the absence of any evidence of harm. That has been very well established in social science research. There is also the issue of the legal framework. The European Convention on Human Rights does not allow for distinctions to be made between prospective adoptive parents on the basis of sexual orientation. It would not be something that the legislature could do while maintaining consistency with convention law.

Senator Fidelma Healy Eames: Let me follow up on that point. The principle of consent is paramount in adoption law in Ireland. It is in place in many countries that send children to Ireland. As we know, the majority of children adopted in Ireland are from abroad. The only country of which I am aware in which that is not the case is South Africa.

I am an adoptive parent. Is it fair to a child who will some day ask why he or she was adopted by two mothers or two fathers? The only person who can advocate for the child is the parent.

Ms Justine Quinn: There is a conflation of two separate issues. Consent to adoption in the sense that Senator Healy Eames is referring to it is consent to give a child up for adoption.

After that, decisions regarding placement and the appropriate adoptive parents for that child are made by the adoption authorities.

Senator Fidelma Healy Eames: Not necessarily.

Chairman: Please, Senator. You will get another chance to speak.

Ms Justine Quinn: That is how it is done in most European states. There are jurisdictions that do not permit inter-country adoption in respect of certain countries that have provided for legal equality for lesbian and gay couples. That is an issue for those countries.

I will now address the Senator's question of how somebody responds to a child's question. It is very important to talk to children who have lesbian and gay parents before making an argument based on their position. It is important to consult the children. If one has questions on LGBT parenting, there are children who have been raised by gay and lesbian parents who have been willing to come forward and talk about their experiences. It is important to consult them and discuss it with them rather than using them as a position in an argument that adoption should be exclusively open to heterosexual people, which would not be consistent with the European Convention on Human Rights.

Senator Fidelma Healy Eames: I wish to follow up on this important issue in terms of the journey we are on.

Chairman: They are all important.

Senator Fidelma Healy Eames: It is important that the process of adoption is open and transparent. I wish to clarify again that while the principle of consent is about the parent consenting to adoption, there is also the more wholesome practice of the birth mother or birth parents, where both are involved, making their wishes known about how they would like the child to be reared. That was implicit in my question.

My final question is addressed to Ms Marion Boteju from Family and Life. Will she elaborate on the experience of surrogacy in other countries? In her view, is surrogacy in the best interests of women and children? Will she comment also on the proposed six-month gap in the Bill?

Ms Marion Boteju: I started my statement by stating what a law in Ireland to legalise altruistic surrogacy would lead to. In lieu of the IVF industry, there would be a really strong push towards commercial surrogacy. What we have seen in many other countries is commercial surrogacy being exported to countries where there are no regulations or lax regulations that protect women and their children. In the case of India, a major market for surrogacy was Australia, and there were quite a few Australian heterosexual couples and LGBTQ individuals who were using the market in India as a source of supply of surrogate mothers. What we have seen is a complete breakdown of efforts to move forward on the rights of women in these countries and in developing countries where for generations human rights groups on the left and the right, regardless of their political constitution, have tried to move forward the rights of women to dignified employment and to just participation in the economy. We have seen the deleterious effects on them. There have been several publications in this regard. A clinic in India was highlighted in the media with regard to IVF. There have been instances of clinics in which medical service providers have taken advantage of a market that is readily available. What is happening now is that the market has moved from India to countries such as Mexico and Thailand, where there are no regulations protecting women who would serve as surrogates. It is not an easy matter to

discuss. It is ugly, but it is fact. This is what is happening. In other countries that are considering legislation, albeit not as comprehensive as this Bill, which will attempt to address many issues, there is a concern that legalising surrogacy will cause deleterious effects for women in their own countries in terms of an eventual slippery slope to commercial surrogacy.

Chairman: I will stop Ms Boteju for one moment. This is happening. People are returning to Ireland from the jurisdictions in question with children produced in this way. What does Ms Boteju propose we do? Will these children be stateless? Will they be adopted by the parents who brought them to Ireland? What will we do when they arrive on our doorsteps? What is the solution?

Ms Marion Boteju: There needs to be a solution.

Chairman: What is Ms Boteju's solution?

Ms Marion Boteju: In a body like the committee which is considering creating legislation on this matter it should question the premise of the good of surrogacy for women and children.

Chairman: If we do this and are subsequently faced with the practical issue of a couple arriving in Ireland with a baby produced through surrogacy, what does Ms Boteju propose that we do with that child?

Ms Marion Boteju: I propose that there be legislation to deal with the parentage of that child.

Chairman: In what way?

Ms Marion Boteju: It would consider the way the child was created, the child's rights and the birth mother in a different country.

Chairman: Is Ms Boteju suggesting the child be sent back to the birth mother?

Ms Marion Boteju: I would ask for some help.

Chairman: Sure. I am sorry, but I want to tease out this matter. We are facing these issues daily and our job is to figure out what to do legislatively. Granted, there may be other issues, but what of the practical issue? What does one do when a child arrives in Ireland? Does Dr. Finegan wish to contribute?

Dr. Thomas Finegan: It is undoubtedly a conundrum. The committee might want to consider reducing the penalties from criminal sanctions involving custodial sentences to fines. As Dr. Madden stated, such cases would have to take account of the best interests of the child. France has adopted a blanket ban.

Chairman: A ban.

Dr. Thomas Finegan: If a commercial surrogacy arrangement is made and a French citizen brings a child into France, the French authorities will not recognise the child's full citizenship rights. To do so----

Chairman: What happens to the child?

Dr. Thomas Finegan: I am not sure what happens at local level, but France does so on the basis that-----

Chairman: This is our problem and these are the issues we must face. We are talking about a person, a living, breathing child. What does one do when Irish citizens travel abroad, enter into these arrangements and arrive back in Ireland with a living, breathing child?

Dr. Thomas Finegan: If one facilitates and encourages it-----

Chairman: We are not facilitating or encouraging it, but it is still happening.

Dr. Thomas Finegan: It is what the scheme proposes to do. For instance, the Adoption Authority refuses to recognise inter-country adoptions from Mexico on the basis that the Mexican authorities do not comply sufficiently with the 1993 Hague Convention on inter-country adoption. The same issue applies in this instance. There has not been an uproar over that refusal. There has been an acceptance in large parts of society that it is the right decision to take. Of course, the child is left in limbo in Mexico. It is difficult to know how to resolve this issue in the best interests of the child, but that does not necessarily mean that one must open the doors, admit defeat and legislate for it. That is a fallacy.

Chairman: I thank Dr. Finegan.

Senator Fidelma Healy Eames: I wanted to hear a little more about Ms Boteju's guidance on surrogacy and whether it was in the best interests of the child. Is surrogacy good for women?

Ms Marion Boteju: I thank the Chairman for allowing me to defer the question. I am not aware of the committee's approach to the issue. Questions about the rights of women and children arising in the context of surrogacy and eventual commercial surrogacy reflect on the Commission on the Status of Women and the efforts being made this year by the United Nations to promote the rights of women and families. As we explore surrogacy as a real occurrence and facilitate or promote it, we must take into consideration the long-term effects of legalising surrogacy on the rights of women to access employment and dignified participation in the economy. These issues must be raised because they have normative impacts on other efforts to promote progress for women.

Senator Fidelma Healy Eames: May I ask a follow-up question, if possible?

Chairman: The Senator has had a good run and others wish to contribute. She may ask a final question.

Senator Fidelma Healy Eames: Of course. Is the approach taken by Germany and Austria better? They have outright bans on egg and sperm donations, except where used by married couples.

Ms Marion Boteju: That is a definite way of dealing with the questions being raised as a result of surrogacy.

Chairman: I welcome Deputy Jerry Buttimer, Chairman of the Joint Committee on Health and Children, which obviously has an interest in this matter. The Deputy wishes to ask some questions.

Deputy Jerry Buttimer: I thank the Chairman. I also thank the delegates for their presentations. I hope everything we say is in the best interests of the child.

I will begin with a simple question. I apologise in advance for mangling Ms Boteju's surname-----

Chairman: Before the Deputy continues, a telephone is turned on somewhere.

Deputy Jerry Buttimer: It might be my iPad.

Chairman: Is that what it is?

Deputy Jerry Buttimer: My apologies.

Chairman: The Deputy might give it to the clerk at the back of the room, if he does not mind, as it is interfering with the sound system.

Deputy Jerry Buttimer: Is it, Ms Boteju?

Ms Marion Boteju: Yes.

Chairman: Through the Chair, if the Deputy does not mind.

Deputy Jerry Buttimer: I am sorry. Is Ms Boteju involved with the American Principles Project?

Ms Marion Boteju: I was formerly involved with it.

Deputy Jerry Buttimer: Currently.

Ms Marion Boteju: I am not. I am representing myself as an adviser to Family and Life. I am involved in an organisation called the Children's Rights Institute.

Deputy Jerry Buttimer: Where is that institute based?

Ms Marion Boteju: The United States.

Deputy Jerry Buttimer: Ms Boteju is not attending in a paid capacity on behalf of Family and Life.

Ms Marion Boteju: No; I am an adviser.

Deputy Jerry Buttimer: Is Ms Boteju advising it from New York or Washington DC?

Ms Marion Boteju: We have locations in both.

Deputy Jerry Buttimer: I thank Ms Boteju.

Chairman: Let us focus on the actual legislation.

Deputy Jerry Buttimer: I asked those questions because I wanted to draw Ms Boteju's attention to an article she wrote, in which she-----

Chairman: Could we stick to the legislation, please?

Deputy Jerry Buttimer: My question is based on the legislation. I will be clear - my question is on the marginalisation of children, in particular. I will cite Ms Boteju's article, in which she wrote: "However, as citizens of a country founded on the struggle for rights and freedom, Americans have a civic and moral duty to confront laws that marginalize the already marginalized and threaten to create a second-class citizenry." Does she believe the Bill will do this?

Ms Marion Boteju: The article the Deputy has cited was related to a Bill being considered

in Washington DC and that would be considered in New York. The concern of those advocating for women, children and families about the creation of a second class citizenry because of that Bill was related to women who would be targeted as the supply side in commercial surrogacy, those women living in inner cities and under poverty levels. Without knowing the inner city demographics in the districts that would be impacted on by the Irish legislation, I cannot answer the Deputy's question. I can answer it from the perspective of how that article was authored. We have populations in our districts that would be targeted explicitly. The Bill was being introduced in areas where the participants in these transactions would be participants not based on altruism but necessity. That is a fair answer to the Deputy's question.

Deputy Jerry Buttimer: On that basis-----

Chairman: Will the Deputy focus? We are dealing with the heads of the Bill, on which members should focus. We are not focusing on US legislation.

Deputy Jerry Buttimer: I appreciate that. On the basis of creating a second class citizenry, what are the opinions of Ms Boteju and Dr. Finegan, whom I welcome back to Leinster House, on LGBT people being able to adopt, foster and raise children? Given the reference in the presentation to the commoditisation of children, is it their opinion that gay people treat or look on children as commodities?

Dr. Thomas Finegan: Is that question for me?

Deputy Jerry Buttimer: Both.

Dr. Thomas Finegan: To answer the last question, no. At the outset of my presentation I tried to paint in relief the two competing rights and interests at stake. On the one hand, there are the best interests of the child vying for consideration as the paramount interest and, on the other, there is adult reproductive autonomy also vying for consideration. When it comes to Parts 3 and 5, the latter wins. There is deemed to be a right to a child. On that basis, the rights and interests of a child are ignored, including the right to two parents, the right to know his or her own genetic identity and that of the biological parents, the right to the care and support of natural parents and also a right to a mother and a father, where practicable. The way this general scheme balances it is to tip the scales most definitely in favour of all adults. There is no point in limiting it to one group or sub-group - all adults are included. The best interests of the child only kick in when he or she has been created or produced and placed in a particular family environment. The best interests of the child in that precise context are made subservient, which is problematic from the point of view of the UNCRC and our constitutional tradition which recognises a natural right of a child to the care and support in society of natural parents, even outside the marital context.

Deputy Jerry Buttimer: Does Dr. Finnegan believe a gay couple, be they two gay men or two lesbians, can raise a child and give him or her the love and security he or she needs?

Dr. Thomas Finegan: Yes, they can. What cannot happen in any situation-----

Deputy Jerry Buttimer: I am happy with Dr. Finnegan's first response.

Chairman: I understand Ms O'Connor needs to leave at this point.

Ms Orla O'Connor: Yes, owing to child care arrangements.

Deputy Jerry Buttimer: Perhaps Ms Boteju might also respond to the question I asked of

Dr. Finnegan.

Ms Marian Boteju: Perhaps the Deputy might repeat the question.

Deputy Jerry Buttimer: In Ms Boteju's view, does the Bill provide for adoption or the fostering of children by same sex couples and does she believe, as stated in her earlier presentation, that children are treated as a commodity?

Ms Marian Boteju: Let me clarify - I never said that.

Deputy Jerry Buttimer: I know that.

Chairman: Please allow Ms Boteju to speak without interruption.

Ms Marian Boteju: I never said LGBT people treat-----

Deputy Jerry Buttimer: I know that Ms Boteju did not say that.

Ms Marian Boteju: I do not think lesbian, gay, bisexual, transgender individuals view children as commodities. I think the practise of surrogacy values children as commodities, regardless of the sexual orientation of any person participating in the process. As a basic principle, that practise is problematic.

Deputy Jerry Buttimer: What is Ms Boteju's view on the ability of gay people who adopt or foster children to raise them and provide them with support and security?

Ms Marian Boteju: I cannot comment on that issue because I have not carried out enough research to be able to say conclusively that lesbian, gay, bisexual, transgender couples can raise children in the same manner. I would not deny that any individual can provide a child with love. I also cannot say a heterosexual couple sitting in front of me would give a child the love he or she needs by virtue of who they are. I would not identify giving love to a child with sexual orientation.

Deputy Jerry Buttimer: I thank Mr. Boteju.

Mr. Brian Merriman: I have a concern about surrogacy being described as a commodity or transaction. We have taken three serious cases in relation to surrogate parents in Ireland. All of them involved young couples, the female of which following marriage had cancer and either lost her womb or ovaries. In these cases, it was either a relative or a sister who decided, not only to enable the sister's recovery from the dreadful disease at a young age but to give her the gift of a family, to be a surrogate mother of a child who would be raised by the couple, the father being the biological father. We are not talking about transactions or commodities. We are talking about real situations. The Equality Authority has stood beside these children in having access to full family lives.

It is important to refocus the discussion. Surrogacy is not some type of trendy lifestyle choice. There is no such thing as gay or straight parents. There are only good or bad parents. If, in the case of adoption, a biological mother can stipulate that she would like her child-children to be raised by straight parents, why then could she not also stipulate that they be raised by wealthy parents? It is important to understand that there are people with many needs. There are children who require the vindication of their rights because their mother, father and so on has a disability, cancer and somebody in their family is wonderful enough to do something for them. The global description of surrogacy as a process in which children are a commodity is false. I

say this on behalf of the people we have supported. We have been able to ensure children born as a result of surrogacy, which children could not have been born as a result of a dreadful disability and illness, are now with happy families. These children deserve respect and rights. I admire the relatives who have enabled their families to have these children.

Chairman: The point was made that on the other side of the coin are people using surrogacy to make a great deal of money and to exploit others.

Ms Sandra Irwin-Gowran: There has been a good deal of discussion of adoption, including by gay and lesbian couples. I reiterate a point made in my opening comments, namely, that adoption is ultimately about the right of a child to a family; it is not about the right of adults to adopt. When speaking about adoption by lesbian and gay couples, we are, for the most part, speaking about adoption of a child they are already parenting. To my mind and that of any fair minded individual, in that case it is in the child's best interests. Adoption does not always meet the needs of children who are being parented by lesbian or gay couples. This legislation is so welcome and needed because it provides for broader recognition of parentage, guardianship and so on.

For decades, researchers have been comparing the development of children parented by lesbian and gay couples with that of children parented by heterosexual parents. All of the leading international child experts, including from the United States and the United Kingdom, on child development conclusively agree that what affects whether one has a healthy and well adjusted child is the quality of the relationship between the child and his or her parents, the quality of the relationship of the parents and the economic and social support afforded to that family. To my mind, that is what the Bill is seeking to do. We are not talking about it providing the opportunity to create families, rather we are talking about it taking cognisance of the complexity of family life in modern Irish society.

Deputy Jerry Buttimer: My final question is directed at Dr. Ryan and Ms Irwin-Gowran and relates to second parent adoption. Reference was made to this not being included in the general scheme of the Bill. How might it work for families? Also, in regard to Senator Fidelma Healy-Eames's question about consent, does Dr. Ryan have a view on it?

Dr. Fergus Ryan: On second parent adoption, as the law stands, where a step-parent who is a spousal parent wishes to adopt the spouse's child, the step-parent and the parent have to adopt the child together. This means that the biological parent has to give up the child for adoption and then go through the adoption process. In a number of other jurisdictions there are facilities for step-parent adoption. Under the Bill, civil partners, as well as spouses, are enabled to adopt a child without the biological parent who is a spouse or civil partner having to go through that process. This raises difficult questions. In particular, one would have to have regard to the position of other parents in this context. It is not a straightforward issue, but nonetheless it might benefit from consideration of some scheme for second parent adoption. I understand this is possible in the United Kingdom. As the scheme stands, the biological parent is required to give up the child for adoption and then adopt the child jointly. It is suggested that a much easier solution would be to permit second parent adoption, with appropriate safeguards for other interested parties.

Deputy Jerry Buttimer: What about consent in terms of adoption?

Dr. Fergus Ryan: One of the issues in this regard is the position of the birth father. If the birth father is not a guardian, his consent is not required, but he must be consulted. In that con-

text, whether it is an adoption as envisaged by this scheme or a second parent adoption, it would be important that all persons whose consent is required or who should be consulted should be part of the process.

Deputy Marcella Corcoran Kennedy: Does Ms O'Connor believe there is anything in the proposed heads that is bad for women or children?

Ms Orla O'Connor: We overwhelmingly support the proposed Bill, and I outlined in the presentation the reasons for that. It is important that I gave a proviso that there are areas in the Bill where the issue of violence against women must be considered, and that must be taken into account more in the Bill. I have mentioned a few areas in this regard.

The area which has taken up much discussion is surrogacy and assisted reproduction, and I have argued that the National Women's Council does not have a comprehensive policy on the area. That is why we declined to comment much on it. We know many members have contacted us about the Bill, and from that correspondence we initially welcome the legislation in the area. There must be legislation in this regard. The matter will be discussed at our annual general meeting in June through motions, and the policy of the National Women's Council of Ireland will be about how we are advancing and protecting women's and children's rights. In discussing women's rights, we are taking in potential surrogates and those who intend to be parents. We must consider how to bring those rights together.

Chairman: We are way over the time normally given to the topic like this, and I am conscious that people may have to catch trains or buses or have other commitments. Witnesses should feel free to excuse themselves if required. I thank everyone for being here. If someone leaves, it will not be a result of a comment but rather that people may have to go, which we appreciate.

Deputy Marcella Corcoran Kennedy: There are currently clinics in Ireland offering a service for storing eggs for future use. Does Dr. Madden believe that should be covered in the legislation?

Dr. Deirdre Madden: In keeping with the Commission on Assisted Human Reproduction report, I endorse the view that there should be regulation of *in vitro* fertilisation, IVF, egg and sperm donation, etc. It is something that should be covered by this Bill with regard to parentage. It concerns legal relationships and family structure. I understand the Department of Health is considering a regulatory system about what services and facilities IVF clinics should be able to provide. The matter should be covered either by this Bill or the legislation from the Department of Health. It may fit better in the Bill from the Department of Health, unless we are dealing with specific issues around parentage and family relationships. There should be regulation in this regard.

Deputy Marcella Corcoran Kennedy: I am specifically thinking of when women decide to freeze their own eggs for future use, perhaps having them implanted ten years down the line when they are in a position to carry a child. These women may be ensuring they can be enabled to be a mother. Is there an opportunity to include this issue in the legislation?

Dr. Deirdre Madden: The legislation coming from the Department of Health will consider clinical best practice and the guidelines from that with a clinical perspective. The issue raised by the Deputy does not raise a parentage concern, as the woman in question would be using her own eggs at a later stage in any event. There would be no concern about legal relationships

between a mother, who has stored eggs, and the child to whom she would later give birth.

Deputy Marcella Corcoran Kennedy: Currently, gay people are entitled to adopt children. Are there any figures for that? Are there statistics for families having problems in trying to establish legal entitlements? This may apply to gay couples or those not in a relationship adopting.

Ms Sandra Irwin-Gowran: The short answer is "No" as we do not have numbers for that. Single people can apply to be considered adoptive parents in Ireland, but a gay or lesbian couple cannot, regardless of whether they are in a civil partnership. Anecdotally, we know there are many lesbian and gay couples who are foster parents and, in some cases, the child or children become eligible for adoption but the couples are unable to adopt the child. The child is, therefore, denied the right to the family he or she could have if the couples were able to adopt jointly. I do not know how many people are affected, but from speaking to social workers in the HSE, I know they deal with many lesbian and gay couples. The service that lesbian and gay parents are providing as foster parents is really important and would be a huge loss if it did not exist. When we speak of adoption for lesbian and gay couples, for the most part we are talking about adoption of a child they are already parenting. It may be that one of the couple is the biological parent of the child and the other is not. The couple may want to adopt the child in order to become a secure family unit. There are some small studies indicating statistics that can be forwarded to the committee.

Ms Margaret Dromey: I have a correction. The Deputy mentioned that gay people have an entitlement to adopt but I should reiterate that no one has an entitlement to adopt, although people have the right to apply to adopt.

Senator Katherine Zappone: My questions relate to earlier comments about the constitutionality of some aspects of the legislation. Perhaps lawyers at the table would like to comment. There is a principle of a child's right to have a family recognised, and many of the other presentations have a basis in an acceptance of that principle. How would this be constitutionally compliant, given that our Constitution largely bases the family on the institution of marriage?

Ms Sandra Irwin-Gowran: There are probably people far more qualified than me to comment on the issue. My understanding is the Constitution recognises the family and this is interpreted as the family based in marriage. There are a wide range of families in Ireland currently lacking constitutional protection and recognition within our Constitution.

Senator Katherine Zappone: We have heard from the witness on the issue and that is why I raised it. If Dr. Finegan wishes to say some more but I am concerned to hear from any of the other lawyers.

Dr. Thomas Finegan: If someone else wishes to speak I would happily go to them.

Ms Margaret Dromey: Unmarried couples in families do not have recognition or protection in the Constitution and the issue should be addressed. This Bill will not do anything to address the point but we must work towards that recognition of non-marital families, including gay families.

Senator Katherine Zappone: I have another question. The issue which others have raised with us in terms of guardianship being extended to unmarried fathers and taking account of that in the context of the Bill is the possibility of issues of violence in the domestic context. Ms Saoirse Brady spoke about balancing the rights of unmarried fathers who are not living with the

mother and where children have been born and said that any proposals in this area should not endanger the children and mothers in any way or interfere with their privacy. Does she have anything to add to that or to suggest how we move in that direction?

Ms Saoirse Brady: We support Treoir's call for unmarried fathers who are not cohabiting to be recognised. We are talking about the small number of cases where women might experience violence from an abusive partner or where children are born of rape. The Rape Crisis Network Ireland publishes statistics on the number of children born of rape. In 2011 it was 90, and in 48 of those cases the girls or women chose to keep and parent the child. In those cases one would have to be very careful about granting automatic guardianship rights to fathers who have not cohabited. We have not looked in depth at how one could do that. The National Women's Council and Women's Aid might be better placed to give the committee advice on how one might protect those people.

Senator Katherine Zappone: Dr. Madden in her presentation spoke about this issue in respect of surrogacy. She said that there is no acknowledgement that many women volunteer to become surrogate mothers using their own eggs. She notes that, because there is a place for that within the legislation as they want to help others to have a child. Is she offering that view on the basis of research or evidence?

Dr. Deirdre Madden: Research has been carried out. The research I am aware of is by the Family and Child Psychology Research Centre at City University London. It carried out research into surrogacy. It is the most recent research in the United Kingdom of which I am aware. It was carried out by Susan Golombok and Fiona MacCallum. They looked at the motivations of surrogate mothers and the well-being of children and the commissioning parents following surrogacy. That is the research on which I base my submission.

Chairman: We have been here for more than two and a half hours and it has been a long, intense session. People are getting tired. I ask the remaining speakers to be extremely brief and focused in their questions. Bear in mind that some people have to travel a distance home.

Senator Jim Walsh: Gabh mo leithscéal nach raibh mé anseo don chruinniú iomlán.

Chairman: If questions have been asked already, I will let you know.

Senator Jim Walsh: I apologise. I had to attend another committee meeting and the Seanad, as I explained to you.

Chairman: I understand.

Senator Jim Walsh: I note from the submissions that many acknowledge that the best interests of the child should-----

Chairman: To whom are you directing the question?

Senator Jim Walsh: I will say that at the end.

Chairman: The way the committee operates is that one asks a question and gets an answer.

Senator Jim Walsh: If you hear me out, Chairman-----

Chairman: I will not. I want you to ask a specific question.

Senator Jim Walsh: I am asking it of someone who would disagree with the statement.

Chairman: No. To clarify how the committee operates, the member asks a question of a witness based on the presentation they have given. You identify the witness first so we can get everything lined up. I would appreciate it if you would do that.

Senator Jim Walsh: I am happy to put the question to whoever wishes to take it. If you listen to the question, Chairman, I do not think you will have difficulty with the way I put it.

Chairman: Continue.

Senator Jim Walsh: I welcome the fact that many of the submissions acknowledged that the best interests of the child should be the cornerstone of the Bill. Would any witness disagree that the best interests of the child should be absolutely paramount? If so, will they say why not? I expect that everyone agrees and that there will not be an answer to the question. However, if someone disagrees with that statement, I ask them to outline their reasons for disagreeing.

My second question is along similar lines, and I only have two questions. It relates to the issue of the absence of fathers. I will give a short quotation from President Barack Obama and ask witnesses if they would disagree with the points he made and, if so, explain why. It is a speech he gave on fatherhood and missing fathers, in which he said the foundations of families were weaker as a consequence of that. He went on to say later in the speech, and obviously he was speaking to some extent from his own experience:

> You and I know how true this is in the African-American community. We know that more than half of all black children live in single-parent households, a number that has doubled - doubled - since we were children. We know the statistics - that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioural problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it.

I believe most witnesses acknowledged in their submissions that the right of the child to know his or her biological and genetic parents was absolute. Would they not agree that just knowing is simply not good enough and that it should involve the participation of that father in the rearing and development of the child? That would obviously exclude the case made by Ms Brady. We are not talking about a child who is a product of rape. That would be untenable to anyone. In the ordinary course of events, however, where the father is not violent and there is no legal or criminal reason he should not be involved, should the State not have the framework to encourage that to happen?

Chairman: There are many fathers who do not wish to be involved and walk away.

Senator Jim Walsh: I accept that.

Chairman: There is a vote in the Dáil. We will have to conclude. Does anyone wish to respond briefly to what the Senator said?

Dr. Thomas Finegan: There is no one who disagrees with what he said.

Ms Moninne Griffith: I reiterate what our colleague, Ms Tinsley, said, that legislating for existing families and children is what this Bill is about.

Dr. Thomas Finegan: There is a little more as well.

Ms Moninne Griffith: Not legislating is not going to prevent the types of families that you

do not like or do not agree with.

Chairman: Speak through the Chair, please.

Dr. Thomas Finegan: It is not a question of not liking families; it is a question of vindicating the child's best interests. As I said earlier, there are two parts to this general scheme. One part purports to deal with current family arrangements and increase the rights of children in those families. That is generally done very well. The other part is to provide for the creation of families. That is different. The child's best interests are engaged in a different manner in those circumstances, referring to rights such as to two parents, to know the identity of genetic parents and so forth. One cannot conflate the issues and decide the latter issue one way and then transpose that into the former issue and say everything is simple.

Chairman: I must suspend the meeting or conclude. I must vote in the Chamber. As there is no other Deputy here, if I leave, the meeting stops. With members' permission, we will conclude the meeting now. I thank all the witnesses for their engagement with the committee on this topic. It has been a long session of almost three hours and it has been very intense. We had another session this morning. I thank everyone for giving their time to this issue in the committee. I thank the members of the committee and others who came forward, and I thank the officials from the Department of Justice and Equality for their attendance. If anyone has anything further to add, please feel free to send their comments to the clerk to the committee. There is also a letter here which we will put forward, but we will discuss that later.

The joint committee adjourned at 4.40 p.m. *sine die*.