

## Women's Aid Position Statement on Guardianship, 31<sup>st</sup> of January 2022

Women's Aid is pleased to provide a position statement on the review of the law on guardianship as it relates to children whose parents are not married/in a civil partnership.

Women's Aid is a national, feminist organisation working to prevent and address the impact of domestic violence and abuse including coercive control in Ireland since 1974. We do this by advocating, influencing, training, and campaigning for effective responses to reduce the scale and impacts of domestic abuse on women and children in Ireland and providing high quality, specialised, integrated, support services. More information on Women's Aid is available on our [website](#).

The law regarding guardianship was amended in the Children and Family Relationships Act 2015. This provided for automatic guardianship for unmarried fathers if he has lived with the child's mother for 12 consecutive months, including at least three months following the child's birth. Alternatively, the father can become a guardian with consent of the mother via a statutory declaration, or if that consent is not forthcoming, via an application to the courts. Women's Aid believes the current legislation represents a balanced position between the rights of unmarried fathers and the need to maintain some level of court discretion in certain situations and does not support extending automatic guardianship to all unmarried fathers for the following reasons:

- There is a great variety of non-cohabitant relationships into which the child is born, therefore it is reasonable that where the parents are not living together, consideration should be given to the actual relationship, **if any**, between the child and the father. It would not be in the best interest of the child to give rights to someone who has no involvement in the life of the child.
- Automatic guardianship for all fathers would guarantee rights for some fathers who play no role in a child's life following conception, including fathers who do not wish to have any role in the life of the child. It would afford them an effective right of veto on decisions that the mother might wish to make with regard to the child. Even if they do not exercise this right of veto, a mother may have to seek consent for medical procedures, education choices, changing residence or getting a passport for the child from someone who has no relationship with the child (and may not even be around) or go to court each time.
- Automatic guardianship for all fathers with no exceptions would mean granting guardianship to fathers where the child is conceived through rape or incest. Granting it to all fathers except where the child was conceived through rape or incest may seem an easy solution, but in practice such an exception would face two major issues:
  - Evidentiary issues: would a criminal conviction be needed? We know that rape reporting rates are very low and prosecution and convictions even lower.

- Stigmatisation of children and mothers: if rape and incest were the only exceptions to automatic guardianship, not having the father as a guardian would make it obvious that the child was so conceived.
- In our experience, the vast majority of applications for guardianship to the courts are granted, however a few each year are not, proving that there are circumstances where guardianship for an unmarried father is not in the best interest of the child and the need to retain Court oversight.

### Guardianship and Abusive Relationships

- Regardless of marital or cohabitation status, where the relationship is abusive, having to ask for consent from the abuser for commonplace decisions in relation to a child's medical procedures, education, residence and passport, may put mothers and children at risk and is not in the best interest of the child.
- In such cases, guardianship can be used as a tool to continue controlling and abusing the mother by withholding consent on a wide range of decisions or by making such consent conditional, for example on her withdrawing criminal charges.
- This forces the mother to initiate repeated, prolonged and costly court proceedings in order to implement decisions for the child without the abuser's consent.
- In our experience, for example, abusive fathers consistently deny consent to therapeutic counselling to address the harm children suffered due to the abuse perpetrated against them or their mother by the abuser.

### Suggested Way Forward

- There should be more information and awareness to encourage joint guardianship for non-cohabiting parents through statutory declarations. A Central Register of Statutory Declarations for Joint Guardianship should also be established to maintain proper records.
- Maintain a key role for the court in contested applications: in cases of parental dispute on guardianship recourse to the courts is crucial to determine the child's best interests on a case by case basis. Decisions must be made based on the quality of the relationships as well as the best interests of the child.
- The voice of the child should also be heard thorough appropriate means.
- Recognition of the impact of domestic abuse: exposure to domestic violence must be taken into account when determinations are being made regarding guardianship.
- There should be a mechanism to allow for judges to withdraw or suspend guardianship from parents, married or unmarried, cohabiting or not, on a case-by-case basis where it is in the best interests of the child to do so. Where there is domestic abuse, the non-abusive parent should not be required to obtain consent from the abuser or have to repeatedly go to court for all and any decisions regarding the day-to-day care of the child.
- In particular, abusive parents should not be able to stop children attending much needed counselling.