

The Child and Family Relations Act 2015

Catherine Bond, CEO, The Irish Foster Care Association

December 1st, 2016.

The Irish Foster Care Association welcomes the invitation by the Adoption Authority of Ireland to contribute to this seminar this morning.

The signing into Law of the Children and Family Relations Act in April 2015 is welcome and acknowledges the rights of all children as individuals as well as members within the family unit¹. The insertion of Article 42a into the Constitution permits children born to both married and unmarried parents, and who have been placed in long-term foster care for a specific time frame, to be adopted. The 2015 Act covers a wide range of situations where adults can apply for guardianship of a child. This paper will focus on fostering to adoption.

Article 3 of the United Nations Convention on the Rights of the Child², the “best interests” principle”, is the cornerstone on which the legislation is built, and will safeguard that correct decisions are made for the child who can move from foster care to adoption, or to guardianship.

I will outline some of the considerations here today of the new Act for foster care.

¹ Shannon. G (2016)

² United Nations Convention on the Rights of the Child (1989)

Article 3 of the UNCRC³ sets out that the child's best interests be taken into consideration. Article 3 states:

The Best Interests of the child be taken in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

Article 3 gives the child the right to his or her best interests to be taken into account as a primary consideration in all actions or decisions that concern him or her, in both the public or private sphere.

The concept of best interests is indeed not new, it pre-dates the Convention and was already enshrined in the 1959 Declaration on the Rights of the Child.⁴

The UNCRC in its General Comment on Article 3 requires States to describe how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision reached. This will be an extremely important aspect of court decisions.

Where adoption is at the heart of decision-making, the right of best interests is further strengthened, in so far that it is not simply a "primary consideration" but "the paramount" consideration.

Article 12 of the Convention, "The right of the child to be heard, taken seriously, express his own views freely, and be given due weight" is inter-linked with Article 3⁵.

Article 12 is a right in itself in that it realises all other rights.

³ United Nations Convention on the Rights of the Child (1989)

⁴ Convention on the Rights of the Child/General Comment (2014)

⁵ United Nations Convention on the Rights of the Child (1989)

The 2015 Act sets out 11 factors and circumstances when determining what is in the best interests of the child⁶ in any proceedings related to guardianship, custody, or access to a child. Included in the list of factors are:

- the benefit of the child having a meaningful relationship and sufficient contact with both parents, and with other relatives and persons who are involved in the child's upbringing
- the willingness and ability of each of the child's parents to encourage a close and continuing relationship between the child and the other parent and to maintain and foster close relationships between the child and relatives

Other factors for inclusion in the decision making process are:

- the physical
- psychological
- emotional needs of the child

The child's:

- religious
- spiritual
- cultural
- educational and any special characteristics which should also be taken into consideration.⁷

⁶ Guardianship of an Infant Act 1964, Section 3 as amended by Child and Family Relationships Act 2015.

⁷ Tusla Child and Family Agency. (2016).

Foster care is the backbone of the care system in Ireland. Of the 6,388 children placed in the care of the Irish State to the end of June 2016, 93% of those children have been placed in foster care. 65.1% of children were placed with general foster carers and 28.1% in the care of a relative.⁸

In some instances today, children placed with relatives are not formally, “in care”, in so far as the relative foster carers have not been assessed or approved as foster carers and the child has no care plan. The Children and Family Relations Act 2015 offers the potential for such arrangements to become formalised through guardianship.

Article 42A 2.2 of the Constitution outlines for the provision by law of the adoption of a child:

*Where the parents have failed in their duty toward the child for such a period of time as may be prescribed by law and where the best interests of the child so require.*⁹

It requires that the child be in care continuously for a period of 36 months and where there are no reasonable prospects that the parents will be able to care for the child, that adoption is a proportionate means by which to supply a parental presence.

There is the potential for up to 2,000 children placed in foster care to fit this criteria¹⁰. But it should not be assumed that all children in long-term foster care should be considered for adoption. Many foster care placements offer the child the benefits of two families who demonstrate a positive experience of care of the child. In such instances, where the birth family is actively involved

⁸ O'Brien, V. and Palmer, A. (2015). Adoption and the Irish Care System: Context and Drivers for Change.

⁹ Government of Ireland, The Thirty-First Amendment to the Constitution (Children) Act 2012

¹⁰ O'Brien, V. and Palmer, A. (2015). Adoption and the Irish Care System: Context and Drivers for Change

in access, contact and life experiences of the child, this should be maintained, and with the views of the child elicited.

In keeping with the “best interests” principle, it is imperative that any move to consider the adoption of a child in long-term foster care is motivated by the child’s best interest rather than State savings.

A fundamental principle located within long-term foster care is the importance of the identity of the child, and the National Standards for Foster Care¹¹ sets out guidance for both foster carers and social workers to promote and maintain the identity of the child. It would be imperative that any child who is in long-term foster care and who has stable links with his or her birth family and is eligible for adoption would retain the right to his or her identity and that clear recommendations be established to ensure this. While the 2015 Act is very progressive and welcome, we do not wish to return to the time in Ireland as outlined in the Ryan Report¹² where children were severed from their family of origin.

The motivation of foster families to foster is a fundamental tenet of the fostering assessment process. Current practice is to approve most foster carers for all categories of foster care: short-term, long-term, respite, emergency foster care, and with agreement, supported lodgings. Following an initial review of the short-term placement, and where the child is deemed to require long-term foster care, (more than six months duration), the foster carer is then deemed to be providing long-term foster care.

Where it is likely that a child placed in short to long-term foster care, and potentially to adoption, the fostering assessment should consider these

¹¹ National Standards for Foster Care (2005) Stationery Office, Dublin 2.

¹² Report of the Commission to Inquire into Child Abuse. (2009). Stationery Office, Dublin 2.

factors, including the motivation of the prospective foster carers, if adoption is the ultimate object. This can avoid the breakdown of a placement of a child who requires long-term foster care, and who ultimately may be placed for adoption, where the foster carers do not have the intention of adoption.

The training of social workers to consider all of the options when undertaking fostering assessments, as well as of foster care committees, will be essential.

Similarly, additional modules for undergraduate social work training will also be required.

The current enhanced rights provision for foster carers which allows for a foster carer to apply for enhanced rights to give consent, following a period of five years of foster care, will be required to be streamlined with the new fostering to adoption timelines.

Experience of foster carers seeking to acquire enhanced rights for children in their care offers a variety of practices towards securing such rights, ranging from the direct consent of the courts to seeking self-financed legal advice and representation, or non-encouragement to seek such right.¹³ Clear guidelines which are not open to interpretation or subjectivity will be required for all involved in the consideration of a decision to move a child from fostering to adoption to ensure a consistent approach and that the rights of the child are upheld.

As we are aware, children who have been placed in care have had early life traumatic experiences in most instances, which requires a range of supports to be offered to the child.

13. Irish Foster Care Association

The fact that a child may move from foster care to adoption does not diminish the child's continued need of supports.

Where consideration to move a child from foster care to adoption is being undertaken the approach should be systemic, involve clear criteria and involve all of the professionals working with the child, the foster family and birth family, to identify the range of supports required, including financial supports.

A transitional care plan is recommended, which involves regular review for an interim period.

Most importantly, a commitment to ensure that all current and future state services required for the child should follow the child, as a right, due to their placement in the care of the State in the first instance.

In essence, where consideration is being given to move a child from foster care to adoption, neither the child nor the carer should not be disadvantaged in any way. The transition should be planned, measured, and include all those involved with the child. The right of the child to be heard and have his or her views taken seriously and in his or her best interests, should be central to all decisions.