

Adoption Review Group

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Information Unit

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ADOPTION REVIEW GROUP

MEMBERS

The membership of the committee represented a cross-section of those affected by adoption and of professionals in that field. All served on the committee as independent individuals and their views do not necessarily represent those of their organisations. In general however, they reflect the opinions of the organisations with which they are associated.

Dr. Joe Robins, (former Assistant Secretary of the Department of
Chairman Health and Chairman of the Review Committee
of Adoption Services 1984)

Eileen Conway, Eastern Health Board

Margaret Dromey, Treoir (Federation of Services for Unmarried
Parents and their Children)

Marie Enright, Council of Irish Adoption Agencies.

Mary Lillis, Council of Irish Adoption Agencies.

Blanaid Lynam, Barnardo's Birth Mothers Support Group

Ann McCarthy, Central Council of Irish Adoption Agencies

Ann McEwan, Adoption Action.

Patricia Murray, Adult Adoptees Association.

Helen Scott, Adoptive Parents Association

Patricia White, Barnardo's

**RECOMMENDATIONS OF THE ADOPTION REVIEW
COMMITTEE**
(formerly known as the Ad Hoc Group for a Contact System)
**IN REGARD TO THE REVISION OF MAJOR ASPECTS OF THE
ADOPTION LAWS AND PROCEDURES**

Introduction

Irish adoption laws and procedures remain largely based on the provisions of the original Adoption Act 1952. Although, in the intervening years, there have been some amendments to that legislation, the nature of the adoption system still derives from the attitudes and social circumstances of Irish society in the 1950's. A review of the system is long overdue. The adoption of a child has profound human consequences for all concerned both in the short-term and long-term. The manner in which it takes place and the perceptions and policies on which it is founded should be subject to constant review to ensure that the best interests and the rights of the child are always paramount while also having a sensitive regard for the position of the other parties to the process.

About seven years ago we came together as an informal group of people to seek the establishment of a contact register. We are drawn from all the main interests involved with adoption including adopted persons, birth parents, adoptive parents and professionals dealing with adoption in both statutory and voluntary agencies. We have in relation to the introduction of a contact register, petitioned successive Ministers for Health and outlined the manner in which such a register might be operated. We have consistently drawn attention to the abuses and to the human problems arising from the lack of properly devised and supervised arrangements. While we have been promised action we are still awaiting a public indication of the Minister's proposals.

Our consideration of the arguments for a formal contact system brought home to us the need to update other aspects of the adoption machinery. They are all inter-dependent. For that reason we subsequently broadened our work to look critically at all the main areas of adoption. We have already made specific submissions on a number of issues which were , or are, the subject of proposed legislation before the Oireachtas. These issues are (i) foreign adoptions and (ii) the giving of consent by the father, and (iii) private adoptions.

We now submit this comprehensive memorandum in regard to important aspects of our adoption arrangements which, in our view, and on the basis of our considerable experience, require change. We have concerned ourselves with the principles rather than the detail. The memorandum includes the views already made known to the Minister for Health on specific issues. **Ideally, because of the number of enactments now in operation spanning a period of over forty years, the adoption laws require consolidation as well as amendment. But as the preparation of such comprehensive legislation would be a slow process we would urge the Minister to deal with the urgent issues referred to below in advance.**

Aspects of Adoption Requiring Change

In this submission we deal only with what we regard as serious and fundamental shortcomings in our present system rather than with less important aspects of it some of which also need to be reviewed. Our aim is to seek to have our main adoption provisions brought into line with contemporary concepts and with a full regard for the human rights of all the parties. Our comments on the Adoption (No 2) Bill 1996 have already been submitted to the Minister for Health and we have welcomed the ministers proposals in relation to consulting fathers following the issues raised in the Keegan Case.

In our view there is a need for change under the following headings in adoption legislation generally :

- 1 The granting of access to (a) the original birth registration of an adopted person and to (b) background information accompanied by advisory and supportive arrangements.
- 2 The introduction of an officially regulated contact system for those who, in the past, were placed in adoption, in long term foster care or who were reared in institutional care.
- 3 The introduction of statutory arrangements enabling ongoing contact in regard to future adoptions. This includes the concept of open adoption.
- 4 The circumvention of the need for a birth mother to adopt her own child in certain circumstances
- 5 The revision of the laws relating to the recognition of inter country adoptions
- 6 The introduction of a service to provide ongoing support for adoptive parents, adopted children and birth parents.
- 7 The introduction of a code of practice for agencies

1 ACCESS TO BIRTH CERTIFICATE

Under present laws an adopted person is, in effect, denied access to his or her original birth certificate. This practice was shaped by prevailing views and attitudes when adoption was first introduced into Ireland and it reflects the determination of those times to impose confidentiality and anonymity. The denial of access to information regarding one's origins is now universally accepted as the denial of a basic human right. We would draw attention in particular to Article 8 (1) of the United Nations Convention on the Rights of the Child which requires member states to respect the right of the child to preserve his/her identity. It is as follows :

"State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference"

We seek the necessary legislative changes to give an adopted person access to his/her birth certificate at the age of 18 years in line with countries which have passed legislation to enable adoptees obtain their birth records : England and Wales (Children Act, 1975, Section 26); New Zealand (Adult Information Act, 1985); Northern Ireland (Adoption Northern Ireland Order, 1987); American Indians (Indian Child Welfare Act, 1978).

2 INTRODUCTION OF A CONTACT SYSTEM

The granting of access to birth registrations as proposed in the foregoing paragraphs will have obvious implications in regard to enabling contact between parties to adoption. In submissions to successive Ministers for Health over the years and to the Adoption Board we have argued the case for a contact system and suggested the manner in which it might operate. These submissions are on record and it is unnecessary for us to go into detail again but we would wish to reiterate the salient points of our case. We would emphasise that the various individual organisations associated with our informal group are unanimous in their view that there is an urgent need for a properly regulated system. Some of them have made their own submissions to the Minister. If there are differences between submissions they are in relation to matters of detail rather than principle.

The main arguments for a contact system are as follows:

- (i) Every individual is entitled to information about his or her origins as a natural right. The granting of access to the original birth certificate as sought above will be insufficient in itself in many cases to lead to contact with the birth parent. The State created the adoption system. Now, in changed circumstances, it should afford every facility to adopted persons and their birth parents who wish to meet or to obtain information about each other.
- (ii) Likewise the State should make whatever arrangements are necessary to help persons born in Ireland but adopted outside the State. The State should also provide a service to those who have lost contact with their origins through being fostered or through an upbringing in institutional care.

(iii) Where parties to the adoption process wish to maintain the confidentiality of their position it should be protected and respected. However, this should not rule out periodic approaches to individuals offering further opportunities to go on the register. They should be reminded that they will, in any event, be vulnerable to unsupervised contact outside the register.

(iv) There is a great and increasing demand for a contact system. Bodies working in the area are now dealing with a great volume of enquiries. A properly regulated system is urgently necessary. Apart from other considerations it would help to avoid the gross intrusions by private investigators or by other unsuitably qualified persons into the lives of birth parents, adopted persons and adoptive parents.

(v) It is important that persons seeking information should have access to a choice of counsellor.

The Operation of the Register

We are firmly of the view that the operation of a register will require the participation of both statutory and voluntary agencies.

- (i) The Adoption Board should have a regulatory role. It should prescribe the procedures for the maintenance of the register, be responsible for the approval of agencies involved in its operation and it should generally oversee and set the standards for the manner in which it is operating.
- (ii) The Board as constituted has the status of a quasi-judicial authority whose primary role is the granting of legal adoptions. We could not emphasise enough that what is required for the operation of a register is a complex social service requiring a great deal of flexibility rather than the rigidity of a judicial procedure. This is

a consideration which must be borne in mind in determining the nature of the contact system.

Special needs of those who were born in Ireland and adopted outside the State, fostered or in long term residential care.

Persons who were born in Ireland and adopted outside the State or fostered, boarded out, or who grew up in long term institutional care and are seeking contact with their birth families should be provided for as part of the adoption contact system.

At present there is not a standard approach by health boards or other agencies to the giving of information to persons with such a background. Some health boards give information as a matter of right: other bodies view such persons as adopted persons and consider that the same confidentiality should be applied as in the case of adopted persons. There is, however, no statutory bar to giving them information.

Where foster care is concerned some of the relevant records may be with local authorities or with health boards in the areas where the individuals concerned live. Others may be with adoption agencies who arranged foster care. In relation to children who grew up in residential care, the Minister for Education has given a public undertaking to release records into the proposed contact system. We welcome that undertaking. Information is also available in the Department of Foreign Affairs in regard to Irish children placed for adoption in America. That information is not at present accessible to the public. We are aware that other relevant records are in the possession of religious communities who provided residential care and that some of these records are in provincialite houses. Access to them is haphazard. Sometimes information is given directly to a former resident: in other instances it is given only to a social worker, other professional or non-professional commercial agent.

We consider that because the Minister for Health is currently responsible for residential child institutions he should take immediate steps to locate all extant records of former residents and ensure that they are protected and are made available to whatever contact system is established. We would emphasise that the giving of information to persons who grew up in institutions or in foster care should be done with the same degree of sensitivity as should apply to those who were adopted. The families of those concerned should be dealt with in a similar manner.

3 ONGOING CONTACT/OPEN ADOPTION

The introduction of contact arrangements in relation to past adoptions has implications for future adoptions. Logically it follows that, where future adoptions are concerned, provisions envisaging and enabling the parties to an adoption to make contact with each other should be an integral part of the system.

One way in which this can be provided for is by what is known as 'open adoption'. Open adoption practice varies from the sharing of information at the time of placement along a continuum of meetings between birth and adoptive parents, yearly exchange of letters, photos or phone calls, to the most open of arrangements where there is full and mutual disclosure of identifying information. Open adoption is being practised alongside the closed system in many jurisdictions, particularly where there is provision for the adoption of marital children, and in the case of older children.

The Concept

Open adoption means initial contact between prospective adoptive parents and birth parents with the exchange of identifying information. As in closed adoption, birth parents relinquish all legal and childrearing rights to the adoptive parents. There are no legal differences between open and closed adoptions; children who are part of an open adoption are in every legal sense the children of their adoptive parents. The frequency and level of communication varies in individual cases and over lifespans, and depends on individual needs and desires, and ultimately on the quality of the established relationships. **It is important to emphasise that open adoption would not be an imposed arrangement. It would be entirely a voluntary agreement founded on goodwill between two sets of parents.**

Arguments for and against

It is argued that with open adoption the adopted child's developing personality will be based from the start on the concept of two sets of families - a birth family and a social family. There will be no sudden revelations of the fact of being adopted. Triseliotis, internationally known expert on the subject of adoption, believes that open adoption continues to increase feelings of wellbeing among adopted persons and to generally enhance their identity and self image. Studies to date on open adoption are optimistic.

The main arguments against open adoption include the view that adopted persons may have difficulty in attaching themselves to adoptive parents while maintaining links with birth parents. There is also the possibility of confusion arising - a child may feel that he/she belongs to neither family. From the adopters view point it is argued by some that openness may interfere with their parenting by making them insecure, guilty and reactivating their feelings about infertility.

Experience elsewhere

In relation to the experience of open adoption elsewhere Triseliotis states that on balance the available evidence is in favour of greater openness. In general there is agreement about the desirability of birth mothers having much more say in the selection of would be adopters but there is more uncertainty about the implications and outcome of continued contact. Because of this uncertainty, an official review of UK adoption laws has reported that 'we do not support any blanket policies in relation to contact'. It has been reported that the New Zealand experience takes a much more positive view of open adoption and its outcome.

Our view

Obviously, in view of the forgoing comments, we would not suggest that open adoption would always be the ideal arrangement. But it could be beneficial for all the parties in some cases: in other cases continuing contact of a lesser nature would be more appropriate and more acceptable. In any event we feel **strongly that the issue of future contact, and the extent of it, should be settled before an adoption order is made and should be the subject of a negotiated agreement between the birth and adopted parents.** In that connection we would draw attention to the arrangements proposed by Adoption Legislative Review Committee, Western Australia 1991 which we consider might form a basis for an Irish scheme. Broadly, it provides for a flexible approach to adoption on the basis of what is described as a Negotiated Adoption Agreement. It gives birth parents an increased opportunity for involvement in deciding their child's future family and, if desired, to stay in touch with their child as he/she develops. At the same time adoptive parents can state their wishes and will not have to sign an agreement which is not in accordance with these wishes. When adopted parents are chosen, birth and adoptive parents have a limited period within which to negotiate an agreement. The agreement is an interim one. A minimum supervision period of six months follows before the adoption order is made; the making of the adoption order is accompanied by the registration of a final agreement between both sets of parents. There are provisions in relation to referral to a family court if there are disputes about the agreement.

4 THE CIRCUMVENTION OF THE NEED FOR A MOTHER TO ADOPT HER OWN CHILD

When a woman with a child who is born outside of marriage marries a man who is not the child's father the only way the couple can make the family a legal unit is by adoption. The birth mother thus becomes the adoptive mother of her own child. There is a number of concerns about the consequences of this type of adoption.

The adoption of step-children severs existing relationships with one parent and related family members leaving them with no right of access. For the child this can lead to confusion, insecurity and problems in identity formation. We question if it is in the child's best interests to have a non-custodial birth parent and extended family members excluded from the child's life, particularly where relationships have already been established. We recognise that step-parents require protection and security in raising their step-child but having to adopt the child and change the child's identity completely as well as severing all links with the paternal family is inappropriate.

It is anomalous that the birth mother should have to become the adoptive mother of her own child. It is also confusing for the child.

Because of the varying attitudes which birth fathers might have in relation to adoptions of this category we recommend that the law should provide two choices:

- (i) The first procedure would be used where the birth father wishes to maintain contact with his child. In this instance the step-father could become a joint custodian of the child with its mother and the links with the biological family would be protected.
- (ii) Alternatively, where the birth father is not in contact, a new form of adoption might be introduced whereby only the non-birth parent should have to adopt.

5 INTER COUNTRY ADOPTIONS

Since the Adoption (No 2) Bill proposes to change the laws in regard to foreign adoptions we have already furnished the Minister with our views in that regard. They are repeated hereunder -

It is our view that, as a general principle, children requiring adoption should be adopted within their country of origin. We consider that Ireland should use its voice and its influence within international bodies and, particularly, within the United Nations Organisation and its associated agencies, to insist on the greater allocation of resources to third world countries and others struck by war or natural calamities, to ensure greater protection for children who have been deprived of their families.

We accept that there will be exceptional instances where the welfare of some children may be served only by arranging their adoption in other countries. In order to enable such foreign adoptions by Irish couples we consider that a government-funded service should be made available to prospective adopters which would inform and counsel them in regard to the social, procedural and legal aspects of foreign adoptions.

Such a service should also provide a supportive post-adoptive service for couples who may be faced with difficulties arising from foreign adoptions.

As regards changes in the laws permitting inter country adoptions we would support a policy of maintaining the same criteria in relation to eligibility of children for adoption, and of adoptive parents, as apply in Ireland.

6 ONGOING SUPPORT FOR ADOPTED PERSONS, ADOPTIVE PARENTS AND BIRTH PARENTS.

On the introduction of adoption to Ireland in 1952, standard social work practice in adoption stressed secrecy, anonymity and confidentiality. The motivation for this closed system of adoption practice was to protect birth mothers, adopted children and adoptive parents from the stigma of unmarried motherhood, illegitimacy and infertility. It was believed that the system would not only shelter all concerned but that a birth mother would soon forget about the child that she had placed for adoption. Indeed, the deeper consequences and psychological impact of an adoption for the parties involved were neither understood nor foreseen.

Experience has clearly shown that hearing about their adoption may be difficult for some adopted children and that they may need help in dealing with their grief or anger. **Adopted persons**, anxious to obtain information about their origins and the circumstances of their adoption, may require support and advice of a mature, understanding and sensitive nature. It is widely recognised that the adopted person's need to know his/her biological roots is nearly a universal phenomenon. Searching for birth parents is a difficult task for many adopted persons and support is needed throughout the search and after a reunion. In the event of difficulties such as failure to find birth parents, reluctance of birth parents to meet, distressed reaction from adoptive parents, the adoptive person is in an extremely vulnerable position.

Some **birth parents**, too, will require on-going support. Over the years there has been an increasing awareness that birth mothers do not forget the children placed in adoptive families. They may seek information on the child's progress and photographs of the child. Some would like to meet their children in later years. The grief experienced by birth mothers needs to be acknowledged and worked through. Since birth mothers were promised confidentiality, for some of them the idea of contact with their adopted child may be a frightening one.

It is very important that a request for a meeting with the adopted person be handled sensitively and discreetly.

On occasions the other element in the adoption triangle, the **adoptive family**, is faced with issues not found in the typical biological family. The pain of their infertility may be something that adoptive parents are reminded of right through their child's life. Telling the child about adoption is a complex task. Enquiries about the child's welfare and requests for photographs of or for a meeting with the adopted person can be a source of great anxiety to adoptive parents. If a search is initiated by the adopted person, the adoptive parents may also need reassurance and support. All this points to the difficult task facing adoptive parents and the need for ongoing work following the adoption order.

It is clear that life after an adoption order has been granted may sometimes be a very troubled one for some of the parties involved. Now that we have a more sophisticated and in-depth understanding of adoption it is important that services should be made available urgently to offer individual, couple, family or group support when required. Adoption agencies and a few other bodies such as Barnardo's, Adoptive Parents Association of Ireland, Adoption Action and Adult Adoptees Association are doing their best with extremely limited resources to provide that sort of support. But it is inadequate. **An improved, updated adoption system must ensure that there is sufficient public funding for an adequate, professional support service for those who require it.**

7 THE INTRODUCTION OF A CODE OF PRACTICE FOR ADOPTION AGENCIES

It is unlawful for any organisation to place a child for adoption unless the body is a registered adoption agency or a health board.

According to the 1994 Annual Report of the Adoption Board there are at present fifteen voluntary adoption societies in existence, two of which are operated entirely by health boards and one run in association with a health board. In addition each of the eight health boards may, in its own right, place children for adoption. No code of practice exists for the guidance of these bodies. *The Report of the Review Committee on Adoption Services 1984* reviewed, inter alia, the operation of the adoption agencies and made recommendations to improve the performance of these bodies. In summary these recommendations were

- Persons responsible for supervising the day to day operation of adoption agencies should be suitably qualified
- All adoption agencies should have access to a minimum range of facilities, and should themselves be obliged to provide a number of professional skills; in particular, subject to transitional arrangements, each agency should be required to employ at least one social worker with a professional qualification in social work
- All agencies should establish a case committee with responsibility for taking decisions in relation to adoptions
- All adoption agencies should be required to maintain certain minimum records and to provide for their permanent preservation

No action has been taken in regard to these recommendations. In fact, some of them are now outdated although they would still form an important basis for improvement in the services. As the parties to adoption become more conscious of their rights and more demanding in regard to services, the

pressures on the agencies have increased. Professionals are finding themselves presented with adoption problems which are increasingly complex.

The parties to adoption are sometimes displeased with the manner in which they are dealt with by the agencies. It is clear that there is a need for a code of practice which would have regard in particular to :

- the importance of treating all clients equally and with respect and courtesy
- the need for absolute accuracy in regard to information given to clients
- the benefits of a choice of service. this would include the recognition of counselling/advice/practical help etc. provided by organisations other than registered adoption agencies.
- where requests for contact are made, the importance of a realistic attempt at establishing contact within a reasonable timeframe
- an appeal mechanism which will ensure that a dissatisfied user can seek the intervention of a supervisory authority

Other countries have put considerable thought into establishing codes of practice and developing a high level of expertise for those working in the adoption area. It is rightly seen as an extremely sensitive area of human relationships which requires very special qualities and background for those who staff the services. In particular there is a need for specific training in relation to adoption especially in the area of counselling. Appropriate professional qualifications are not the only essential requirement; a firm code of practice should be an essential element of that professionalism based, in particular, on principles of honesty, respect, sensitivity and equality of treatment.

We would urge the Minister and the Adoption Board to look urgently at this aspect of our adoption services.