

# **FATHERHOOD AND FAMILY EXCLUSION**

**THE RIGHTS AND EXPERIENCES OF UNMARRIED FATHERS IN  
FAMILY LIFE**

**BY**

**CARRIEANN LESLIE**

supervised by

**Jim Nestor**

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Institute of Technology, Sligo.

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# Executive Summary

Unmarried fathers have no automatic rights to their children. They may, as a result, be denied access to their children. My research explores the experiences of unmarried fathers in Irish family life when relationships breakdown and they are denied access to their children. The literature review makes it clear that unmarried fathers have no constitutional rights, and few legal rights, to their children. Research was carried out with unmarried fathers and with support groups who work with unmarried fathers. In this dissertation, the real life experiences of fathers who have been denied access to their children are documented and discussed. In general, the research identifies a number of negative experiences for unmarried fathers, which arise from having few rights to their children. These include separation from their children for an indefinite period of time, the degrading experience of court proceedings, lack of support for fathers and the long-term effects of separation on fathers and children.

The experiences of fathers who have been separated from their children are then compared with the experiences of fathers who have never been denied access to their children. In essence, it has been established that fathers who have not been denied access to their children have more positive experiences of family life, and are more likely to have satisfying and fulfilling relationships with their children. My main recommendation is that an amendment should be made to the Constitution to protect the rights of unmarried fathers who genuinely wish to be part of their child's life, in particular those in a real and stable relationship with the child's mother and/or the child.

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# INTRODUCTION

In our society certain things are taken for granted and rarely questioned. The list is extensive and includes many assumptions which are gender orientated, in particular that men rightfully possess the power with women the lesser sex. Assumptions such as this are often taken at face value and can lead to ignorance of the more hidden realities in life. One of these being that men also have grievances in their lives.

Family life is one of the arenas in which men feel that they have been treated unjustly. Indeed, Irish law and the Constitution exacerbate men's weak position in relation to family life. Both have gender bias, seeing the mother as the primary parent and basing family life on married life. This leaves fathers, particularly unmarried fathers, in an extremely vulnerable position, when it comes to custody disputes over children.

The main focus of this dissertation is the rights of unmarried fathers to their child and their experience of family life. I chose this research subject because I consider that it is in the interests of both children and their parents to have contact where possible. Much research has been done on the effects of parental separation on children. In fact, according to a recent article in *The Irish Times* Irish research on family life has focused almost exclusively on mothers and children. The same article makes it clear that there are no official statistics on single fathers - "We are not even sure how many there are, never mind how they feel, what they want or what they believe their roles to be." (10/06/2003) Clearly this is an area ripe for research. My research explores the experiences of unmarried fathers when denied access to their children. The reason for basing my

research specifically on unmarried fathers is because their experience of family life is often one of separation from their children.

My review of literature gives an account of the rights of unmarried fathers to their children. It is clear from the review that unmarried fathers have few rights to their children and they can, as a result, be denied access to their children. The review also discusses some of the main arguments for improving the constitutional and legal status of unmarried fathers.

The primary aim of my research was to explore the experiences of fathers who are denied access to their children. I used qualitative and quantitative research methods. In this dissertation I present and discuss my findings, and make some suggestions for improving the position of unmarried fathers in the context of rights of access, and participation in family life.

# LITERATURE REVIEW

Family life is a valued part of Irish culture. It contributes to the quality of all our lives, and especially to the well-being of children. In recent times there have been a number of changes in both the nature and structure of the family unit. There are some definite trends, in particular a rise in co-habiting couples, single parents and births outside marriage. As new family forms are evolving, parenting roles historically assigned to men and women within families are also changing. In particular, the sole breadwinner role traditionally assigned to the father is losing ground. As a result fathers are expected to become more involved in child rearing and shared parenting.

Despite the new found inclusion of fathers in family life, many single fathers still face social exclusion from family life and do not have the opportunity to become involved in parenting their child (McKeown, 2001: 6). This is evident from the last census figures which showed that of almost 153,900 lone parents in the Republic, 85% are female. (Pension Services Office, 2003). McKeown, a contemporary writer on father's issues, said that one the most remarkable barriers for unmarried fathers to family life is their unequal constitutional and legal rights to their children (2001: 6).

This dissertation explores the rights of unmarried fathers and their experiences in family life. Previous research on the experiences of unmarried fathers in family life is limited and therefore is not the main focus of my literature review. Instead, the review examines the constitutional and legal rights of unmarried fathers and sets out some of the arguments for more equal rights for unmarried fathers. At this stage, I would like to make clear that references to a "child" throughout this

dissertation should be understood as including “children” where the context requires it.

## **Unmarried Fathers exclusion from Family Life**

According to McKeown, the Constitution and the Law play a part in the social exclusion of unmarried fathers from family life. This is because of the failure to give unmarried fathers full parenting rights to their children. Full parenting rights are the rights to guardianship and custody of their child. A guardian is a person with a number of parental rights and duties in relation to their child. Custody refers to the physical care and control of the child (Nestor, 2000: 183). In the next sections, I will look more closely at the rights of unmarried fathers to their children. I will make reference to constitutional and legal rights. Constitutional rights are certain fundamental rights protected by the Constitution (Constitution Review Group, 1996: 323). According to Walsh, J., constitutional rights refer to “natural and human rights over which the state has no authority” and rather than creating these rights the Constitution “confirms their existence and gives them protection”. (Doolan, 1981: 64). Legal rights, on the other hand, are the rights of citizens laid down in statute/law made by the Oireachtas. The Oireachtas must not enact any law that is repugnant to the Constitution (Doolan, 1981: 24).

# **The Rights of Unmarried Fathers**

## **Constitutional Rights**

The Constitution does protect the guardianship and custody rights of parents to their children. However, the scope of this protection, has been interpreted by the courts to confer protection on some parents only. Married couples have automatic guardianship and custody of their child protected by Article 41 of the Constitution. (Constitution Review Group, 1996: 321). In addition, the courts have interpreted Article 42 of the Constitution to mean that unmarried mothers are parents within the meaning of that Article, and have automatic rights towards their child, derived from the personal rights protected by Article 40.3 (Constitution Review Group, 1996; 321). Unmarried fathers have no similar constitutional right to their child under any Article of the Constitution.

The decision in *The State (Nicolaou) v An Bord Uchtala*, 1966 is indicative of the failure of the Constitution to protect unmarried father's rights to their children. The facts of the case are important.

Nicolaou, the father of a non-marital child, lived with his partner up to their child was born in February 1960 and at that time he was willing to marry the mother. However, in June 1960 the mother returned to Dublin and soon placed the child for adoption. Nicolaou challenged the provisions of the 1952 Adoption Act which allowed his non-marital child be placed for adoption without his consent (Shatter, 1982: 192).

In this case, the Supreme Court Judge clearly asserted that an unmarried father is not part of a family within the legal meaning of Article 41 of the Constitution. Nor is he a parent within the meaning of Article 42 of the Constitution and, as a

result, he has no personal rights to his child which the State is bound to protect under Article 40.3 (Constitution Review Group, 1996: 321).

## **Legal Rights**

Despite this ruling, no changes have been made to the Constitution in favour of unmarried fathers. However, some changes have been made by way of legislation to extend the legal protection for unmarried fathers. In particular, legislation now provides an opportunity for unmarried fathers to become guardian of their child. A father who is granted guardianship has a right (although not absolute and may be restricted in the interests of the common good), to contribute to the making of decisions in relation to important aspects in their child's life, and to custody of their child (Constitution Review Group, 1996: 325).

The Status of Children Act 1987, enables an unmarried father to make an application to the court to obtain guardianship of their child. More recently, the Children Act 1997 simplified the process whereby an unmarried father can be appointed guardian of his child. This Act establishes that an application to the court is not necessary if an agreement can be reached between the mother and father of the child, to appoint the father guardian (McKeown, 2001: 22).

Either way, an unmarried father can now become guardian of his child. However, it has been made clear by the courts that an unmarried father has no automatic rights to his child, and no more than a right to apply to the court seeking guardianship of his child (Walshe, 2003: 3). In addition, where an unmarried father is not a guardian, the Adoption Act 1998, establishes that he has a right to be consulted before his child is placed for adoption, to allow him to apply for

guardianship of his child (Walshe, 2003: 6). This Act was influenced by the decision in the Keegan Case. I will discuss the facts of this case later.

## **The Legal Rights of Unmarried Fathers in England**

Parental rights are referred to collectively as '*Parental Responsibility*' in the U.K. Parental Responsibility is defined in Section 3 of the Children Act 1989 as "all the rights, duties, powers and responsibilities and authority which by law a parent of a child has in relation to the child and his property". Like the position in Irish Law, an unmarried father has not been afforded automatic parental rights (parental responsibility) of his child, but can become guardian of his child through the court or in agreement with the mother (Walshe, 2003: 7). In fact, it seems that Irish Law is more advanced in relation to the notification of an unmarried father before his child is placed for adoption. In England, when a father does not have parental responsibility an adoption may proceed without his consent (Walsh, 2003: 8).

## **Reasons for the Unequal Rights of Unmarried Fathers**

Unmarried mothers have automatic rights towards their children and have never been obliged to get a court order sanctioning their rights. Why then should unmarried fathers not have equal rights? Some of the main reasons used to justify the unequal rights for unmarried fathers in the Constitution and the law are listed below. (This is not an exhaustive list.)

### **Rape, Incest or Sperm Donership**

Perhaps the leading justification used is that it overcomes the difficulty of conferring rights to those who have become fathers as a result of rape, incest, or sperm donership (Constitution Review Group, 1996: 326). This is a legitimate concern and most literature on this subject suggests that there is no justification for giving automatic rights to natural fathers in such circumstances.

### **Casual Relationship**

Although quite similar to the reason above, reference has also been made to the relationship the father has with the mother before birth, or after birth, with the child (Constitution Review Group, 1996: 326). The child may be conceived as a result of a casual relationship with the mother (McManus et al, 1997). The government when passing the Children Act 1997, was of the view that to give the father of a child born outside marriage 'a defeasible right' would enable a natural father "with no interest in the child to interfere with, for selfish or vindictive reasons, arrangements which the mother might wish to make in the best interests of the child" (McManus et al, 1997).

# **Arguments against the Present Position of Unmarried Fathers**

Much literature is critical of the failure to give unmarried fathers rights to their children. Many of the arguments against the current position of unmarried fathers fall under the following three headings:

1. Unequal treatment,
2. Respect for family life; and
3. The Best interests of the child.

I will examine each argument in turn.

## **Unequal Treatment**

The Irish Constitution and family law do not confer parental rights and responsibilities to unmarried fathers, and have frequently been criticised for this. By contrast, unmarried mothers have automatic rights to their child. For example, Archard says it is unjust that men get all the blame for unplanned conception when there is enough evidence to show that women may conceive as a result of careless intercourse on their behalf. In addition, it is shown that in exceptional cases a woman may be negligent about the health of her foetus (Archard, 1993). A point that is often overlooked is that women too can fail in relation to their child. For example, a recent NSPCC study found that the most frequent perpetrators of physical injury, emotional abuse and neglect of children were women (Philips, 2003).

## **Failure to Respect Family life**

As already stated, unmarried fathers do not have automatic rights to their child. This is defended on the grounds that it avoids giving rights to unmarried fathers who have no relationship with the mother or child (McManus et al, 1997). Nevertheless, it is true that a significant number of all children born outside marriage are born into stable, loving, caring and permanent relationships (Bacik, 2003). Much literature criticises the failure to give unmarried fathers who are, or have been, in a stable relationship with the child and/or the mother, rights to their children. McKeown, for example, refers to the absurdity of refraining from giving unmarried fathers their rights just because a few conceptions, arising from rape, incest, or sperm donership. Walsh J. (a former judge in the Supreme Court) also saw the shortcoming of the law in this regard when he held that the law should allow for at least some differentiation between devoted cohabittees and rapists (O'Mahony, 2004: 21).

In the Keegan Case (1994), the State was found to be in breach of Article 8 of the European Convention of Human Rights, in failing to constitutionally protect the rights of an unmarried father who was in a stable relationship with the mother of the child.

Joseph Keegan, the plaintiff in the case, had a stable relationship with his child's mother for almost two years, during one of which they cohabited. They decided to have a child, but a short time afterwards the relationship broke down. Following the birth of the child the mother notified Keegan that she had placed the child for adoption. Keegan applied to the Circuit Court and was appointed guardian of his child. However, the child's mother

appealed the decision to the High Court. By the time the hearing took place the child had been with his prospective adopters for 15 months. The court decided that, because of the lapse of time, it would not be in the best interests of the child to grant Keegan guardianship. (Nestor, 2000: 164). Keegan then appealed this decision to the European Court of Human Rights, in Strasbourg.

The European Court of Human Rights was of the view that the State was in breach of Article 8 of the European Convention in failing to protect an unmarried father's 'right to respect for his private and family life' (Nestor, 2000: 2). To qualify for family life under the Convention, it is necessary to produce evidence of real and close family ties.

Despite this our Constitution has not been changed to give unmarried fathers who have, or have had, a stable relationship with the mother, automatic rights to their child. Many have criticized this, for example, Barrington, J., in one of his judgments said:

“[to] say that the child has rights protected by Article 40.3 and that the mother who has stood by the child, has rights under Article 40.3 but that the father, who has stood by the child has no rights under Article 40.3 is illogical, denies the relationship of the parent and child and may, upon occasion, work a cruel injustice” (Walshe, 2003: 5).

However, if changes were made to constitutionally protect some unmarried father's rights to their children clear boundaries would have to be established. The Constitution Review Group recommended that the family protected by the

Constitution should continue to be referred to as the family based on marriage, but that the Constitution should also pledge to guarantee individuals respect to 'family life' whether or not based on marriage (Constitution Review Group, 1996: 323). It would need to be left to the court to define, on a-case-by-case basis, what might constitute family life, within the meaning of such amended provision (Constitution Review Group, 1996: 322). In my opinion, Denham J. seemed to get it right in *W.O'R v E.H and An Bord Uchtala* when she said,

“the rights of interest and concern of the fathers are directly in proportion to the circumstances that exist in the case between the father and child. The greater the beneficial contact for the children there has been, the more important it is to the welfare of the children and so the higher the rights of interest and concern for the father” (Walshe, 2003: 5).

## **The Best Interests of the Child**

A recurrent theme in the literature is that any decision that affects a child should be governed by a number of principles, in particular, those in relation to the well-being of the child. In custody disputes, the best interests of the child is the principle upon which Irish courts claim to make a decision on whether a parent will obtain custody of their child. “It is the child interest in a loving upbringing that does the moral work”, and not “a parent's interest in offering such an upbringing” (Archard, 1993: 103).

Although Irish law supposedly supports the best interests of the child it has been criticised in a number of ways. In particular, the fact that mothers have been guaranteed a right to their child, and that all unmarried fathers are without an equal right to their child, has been criticised as being contrary to the best interests of the child. This criticism is rooted in the belief that the child would in most cases have the best possible upbringing when raised by both of his/her natural parents. On the whole, natural parents, regardless of gender or marital status, are concerned for their child and both parents and children will experience distress if separated (McKeown, Ferguson and Rooney, 1998: 159). In fact, the Constitution Review Group also recommended that a child's right to be cared for by both his parents where possible should be constitutionally protected (Constitution Review Group, 1996: 329). Of course, the exercise of these rights should be regulated by law in the best interests of the child.

A body of literature states that shared parenting has real benefits for children. For

example, a study published in the *Journal of Family Psychology* found that children in shared parenting families have fewer behavioural and emotional problems, higher self esteem, and better school performance (Bauserman, 2002).

It is true, then, that the failure by the Irish government to promote unmarried fathers involvement in family life can have direct consequences for their children. There is much evidence to show that children separated from their father may experience an indefinite period of severe trauma and distress (Archard, 1993: 104). At the extreme this may result in escapism manifesting itself in alcohol or drug abuse and the tendency to engage in self-destructive or anti-social behaviour (Parental Equality, 2003). Indeed, in a recent interview, Mr Justice Keane suggested that the rise in crime may be related to the rising number of absent fathers.

## **Unmarried Fathers Experience of Family Life**

There has been very little research done to date in relation to unmarried father's experiences of family life. As a result, the effects of their weak legal and constitutional status in relation to their children has not yet been fully established. That said, it is important to note that there has been some research in this area. One of the most recent, a thesis by Dulra O'Riordian, called '*Limbo Men; Ireland's Disempowered Dads*' is useful (2001). There is also some literature on this subject matter. For example, Eddie Leenon, featured an excellent article for the *The Irish Independent*, on fathers rights in November 2003. I will now consider some of the important messages in relation to the experiences of unmarried fathers in family life, as outlined by the limited research and literature.

When a father who fails to get access in agreement with the mother of his child, decides to go to court seeking guardianship, the first difficulty is that they may have to wait up to three to four month to get into the district court (Lennon, 2003). When they get into court, they then have to go through an "emotional, grueling, often expensive legal process" before they get rights to their children (Riordian, 2001). Claims have been made that judges aren't properly trained to deal with the many difficult situations presented in family courts (Ray Kelly, 2003). In most instances, the outcome of child custody disputes is that the mother gets sole custody of the child. If the father does get access the mother can easily breach the order and it can take months to enforce it. (Lennon, 2003 & O'Riordian, 2001).

There seems to be more research done at international level. American literature, for example, has a much larger volume of literature and research that criticises

the construction of the law to favour the mother as the primary parent (Alexander, 2000). For example, Macfhoinn speaks of the court as, “A biased, anti-man system which exacerbates hostility, [and] leaves a legacy of bitterness from which families never recover” (2000). However, as the focus of this dissertation is on the experiences of unmarried fathers in Ireland, I will not pursue the international experiences further.

## **Conclusion - The Way Forward**

Unmarried fathers have no constitutional rights to their child. They do have a number of statutory rights to the child, but these do not equate their position with that of unmarried mothers. Family law has been designed to protect the mother and child, where the child has been conceived in a casual or even coercive manner. This protection is indeed necessary and most literature agrees that fathers in such circumstances should not have equal rights to their children. However, the greatest injustice in this protection is that unmarried fathers who genuinely wish to be part of their child's life, have no automatic rights to their child recognised by the Constitution or the Law. When relationships breakdown this can mean separation of father and child for an indefinite period of time. This will have a negative effect on both father and child.

Our legislators should devise a more constructive way to protect mothers and children from fathers who have no more than a biological link to the child. In this regard, the Constitution Review Group recommends that the Constitution should pledge to guarantee individuals respect for 'family life' whether or not based on marriage. It would then be left to the courts to determine and define what constitutes 'family life'. This would avoid giving rights to unmarried fathers who have no relationship with the mother of their child, while unmarried fathers who have a genuine interest in having access to their child would not be denied this right.

# METHODOLOGY

The number of lone parents families in Ireland is increasing, the majority of these families are headed by mothers. As a result, there is growing concern in relation to the exclusion of unmarried fathers from family life. Their exclusion can be seen as the by-product of a number of factors. The previous review of literature shows that Irish law and the Constitution have frequently been criticised for failing to protect unmarried fathers rights and 'respect for family life'. This failure may be a major factor in the exclusion of unmarried fathers from family life. Very little research has been carried out in relation to the failure to constitutionally and legally protect unmarried fathers rights, and the effects of this on fathers and their experience of family life. The present study explores the experiences of unmarried fathers who are, or have been, denied access to their child. In this chapter I will inform the reader about my research methods.

A number of terms need clarification. For the purpose of this dissertation, the term "unmarried fathers" refers to paternity outside marriage, with certain distinctions made in cases where 'fatherhood' results from rape, incest or sperm donership. Unmarried father's rights to their children are discussed in some depth. The Dictionary of Law defines a right as an "interest which will be recognised and protected by a rule of law". The research also makes reference to guardianship and custody of children. Guardianship is the collection of rights and duties, which a parent has in respect of her/his child. Custody refers to the physical care and control of the child (Nestor, 2000: 183).

This research is confined to unmarried fathers and does not include an exploration into the experiences of other single fathers such as divorced or

separated fathers. This is no disregard to the fact that such fathers also in some instances have child custody issues, but rather based on the consideration that most previous research on the rights of fathers tends to focus exclusively on the rights of separated and divorced fathers. In addition, while the qualitative research explores the experiences of unmarried fathers who at some stage have been separated from their children, it does not quantify the number of unmarried fathers aggrieved. This is, however, an area that merits further research.

My research has taken two forms. Primary research which involved a study of literature on the subject of unmarried father's rights to their children. From the review it was concluded that unmarried fathers have few legal and constitutional rights to their children. The review sets the context for the secondary research, which explores the experiences of unmarried fathers in family life, in particular those experiences that come about as a result of having few rights to their children.

The secondary research incorporates a number of approaches. Using the qualitative technique, interviews were conducted. I chose interviews as a research tool because they can obtain rich qualitative information about the personal experience of individuals. Such information was of fundamental importance to my research. I also used the quantitative technique. A sample of unmarried fathers were invited to complete questionnaires. This was to establish the experiences of unmarried fathers in relation to family life, and to build on qualitative data.

## **The Research Sample**

I will now turn to the specifics of the research and the sampling procedure involved in the qualitative and quantitative research.

The qualitative research involved carrying out a series of interviews. Three of these interviews were with unmarried fathers. My sample consisted of unmarried fathers who have been denied access to their children. In order to access this sample, 'Snowball sampling' was used. This involves asking a gatekeeper to identify a small number of individuals with the characteristics required (Edwards & Talbot, 1999: 40). The gatekeeper for my research was Mary Cleary. Mary is the co-ordinator of Amen, a support group for unmarried fathers in Ireland (See Appendix Page x). Special efforts were made to include in my sample fathers whose experience would add to the research. For example, I ensured that the sample included at least one father who had been through the court system and one who had not yet been in contact with the courts. From these interviews I obtained real accounts of the experiences of unmarried fathers when denied access to their children, and their views on the operation of the law.

I also interviewed 3 staff members from support groups representing unmarried fathers in Ireland. These groups work with unmarried fathers who have access and custody issues in relation to their children. I included these in my research because they have regular access to unmarried fathers and a wealth of knowledge about the experiences of unmarried fathers which would make a substantive contribution to my research. My sample of support groups workers was obtained by a sampling procedure called 'Site Sampling'. This involves

identifying groups of possible interviewees and then choosing units or individuals randomly from the list (Knight, 2002: 122). I identified the five main support groups in the Republic working with unmarried fathers. I e-mailed them with my request, and three were willing to participate (See Appendix Page vi).

I also used questionnaires in my research. The aim of my questionnaires was to gather data from which I could draw comparisons between the experiences of unmarried fathers who had received access in agreement with the mother of their child, and fathers who sought guardianship through the court. The sampling frame for my questionnaire was unmarried fathers whose relationship had broken down with the mothers of their children, and differed from the sample in the qualitative research since not all the fathers in that sample had been denied access to their children.

In relation to the quantitative technique the relative inaccessibility of unmarried fathers was an issue. Statistics on natural fathers are not readily available. I had no way of ensuring that each father had an equal chance of being in the sample and therefore was confined to carrying out a non-probable sample. I decided to carry out a 'Snowball Sample' of 20 in the Donegal and Sligo regions. I received 15 contact names and addresses from support groups: Amen in Navan and Mumsiol in Mayo. My classmates assisted me by distributing the remaining 5. However, I got an extremely low return on the postal questionnaire.

In order to obtain my sample the administrators of dads-house (a website for fathers who have child custody issues) agreed to post an electronic questionnaire on their website (See Appendix Page vii). Indeed, extra efforts were made by the administrators of dads-house to assist me. For example, they sent an email to all

their contacts asking unmarried fathers to fill in the questionnaire (See Appendix Page viii). On their advice I extended the sample to include unmarried fathers throughout Ireland in order secure a good response. I got 20 completed relevant questionnaires in total. 13 of these fathers got access to their child through the court and 7 got access in agreement with the mother. Originally I hoped to get 10 of each, although this did not go as planned the responses obtained are still relevant.

One limitation of the research is that neither the qualitative or quantitative research is a representative sample of the population of unmarried fathers in Ireland who have little or no access to their children. However, despite this it does serve its purpose and is indicative of the experiences of unmarried fathers in general who have had difficulty accessing their children.

## **The Research Design**

This section outlines the design of the qualitative and quantitative research instruments used.

In relation to the qualitative research, the interviews with fathers were semi-structured. Rather than having a tightly structured list of questions I had a range of topics, themes, and issues that I wished to cover. In this way the fathers were given an opportunity to tell their stories without much interruption. Some questions were used to clarify details and to keep the interview focused. On the other hand, the interviews conducted with support groups for unmarried fathers were more structured and specific questions were used. Most of the questions were open ended to provide scope for the interviewees to expand and add information (See Appendices Pages xi - xviii).

In the questionnaires I used a mix of open-ended questions and closed-ended questions. When designing the research questions I took particular care to ensure that the questions were appropriate and did not include errors such as: double barrelled questions or leading questions (Nachmias & Nachmias, 1981: 223 & 225). I also used Attitude scales (See Appendix iv). These are a list of statements to which people are asked to respond by showing the extent to which they agree or disagree (Edwards & Talbot, 1999: 87). I conducted a pilot study on one father in order to test the actual questionnaire and to make changes as necessary. A pilot study is a preliminary step to the main survey mirroring the method, approach and questions (Edwards & Talbot, 1999: 41). I found the qualitative research design most useful, because it tends to be more flexible, have a higher

response rate and supplementary information can be collected.

## **Analysing Data**

This section sets out how data from the research was analysed and presented.

Having undertaken my qualitative research, I chose to read the data literally and to make interpretations where I felt that this was necessary (Mason, 1996: 109). To aid this, themes and patterns were identified as they emerged across the responses from each interview. These themes were then cross referenced to similar themes from other interviews (Mason, 1996: 108). This was useful to retrieve and connect issues, topics and information which did not always appear in the same order (Mason, 1996: 113). From this it was possible to interpret the findings and to present some arguments. All responses from the fathers are presented in quotation form. Responses from the support groups are mainly paraphrased with special care taken to avoid changing the meaning.

In order to analyse the findings from the quantitative method, I coded the questionnaire in order to identify the relationships between different responses. This facilitated comparisons between the responses of fathers who got access in agreement with the mother and those who got access through the court. I use graphs, statistics and quotes to present my findings.

## **Ethical Considerations**

Ethical factors were a fundamental consideration throughout the entire research process. This project involved research into sensitive issues and human rights. I am a strong believer in human rights. Therefore my research was conducted in a manner which ensured that all participants made informed coherent choices about whether or not to share their experience with me. I respected the decision by some fathers not to share their experiences. Ethical considerations also influenced my approach when conducting interviews. In view of the personal and sensitive issues necessarily probed during the course of my research I took care to conduct the interviews in such a way that the interviewee could choose what to tell. Confidentiality was an important consideration before and after completion of the research, in particular given the sensitivity of the issues and the ability to retrace the respondent.

## **Conclusion**

The aim of this research was to explore the experiences of unmarried fathers resulting from them not having equal rights to their children. Both qualitative and quantitative methods have been used in order to establish the real experience of unmarried fathers denied access to their children. The effects of this on children is also briefly covered by the research. Consideration of the welfare of participants and an appreciation of the rights affected by the research, such as those relating to consent and privacy, informed the research practice. Last but not least, I hope you enjoy reading my research as much as I enjoyed doing it.

# FINDINGS AND DISCUSSION

1

## **Findings and Discussion on Qualitative Research**

Across the country, unmarried fathers are separated from their children. One of the main reasons for this is their unequal rights to their children. My research explores the experiences of unmarried fathers when denied access to their children. In this section, I will present and discuss the findings derived from the qualitative research. In the next, I will present the findings from the quantitative research. I would remind the reader that reference to a “child” should be construed so as to include “children” where this is relevant (and vice versa).

The qualitative research involved six interviews, 3 with unmarried fathers and 3 with support workers. I will introduce this section by giving some details of the fathers and specifics of the support groups involved in the research. I will then present my findings on the experience of unmarried fathers.

## **Introducing the Research**

### **The Father's Details**

My sample of fathers are Irish unmarried fathers, who at some stage, had difficulty getting access to their children. To maintain anonymity, I have used pseudonyms.

Mark is 36. He lives in County Wicklow. Mark and his ex-partner were together for ten years. They had two children - the first child died when he was 12 months, the second will be three in June. The relationship broke down a month before I interviewed him. The mother left the family home taking their child with her. Mark has not had contact with his child since and has now made an application to the court for guardianship of his child.

James is 43 and lives in County Mayo. He has twins, born after a short term relationship with the mother. At the time of birth, James had no relationship with the mother. During the first year, James had very little access to his children. He applied to the court and got access one day a month. Three years later he returned to the court seeking more access and succeeded in getting one day a week. This went well for about two years and then the children's mother began to say the children didn't want to go on access visits. After a while he returned to court and the court requested a psychiatric report. The psychiatrist recommend that James should have the children for 6 weeks a year and one long weekend every fifth weekend. This was fine for another couple of years, until the child's mother once again started to say they didn't want to see their father. When James went back to the court, the presiding judge said he did not place any

weight on psychiatric reports and that James would have no access for a year. He hopes to appeal the decision in August 2004.

Paul is 36. He lives in County Cork. He has a six year old child. He was in a relationship with the mother of his child for 7 years. He was denied access to his child once the relationship ended. When he applied for guardianship the mother claimed that he was not the father of the child. He had four court cases before the mother finally agreed to have a DNA test done to establish paternity. He then applied for guardianship through the courts and now is guardian of his child. He has access to his child for a few hours, twice a week.

## Support Groups Details

The second part of my research is interviews conducted with support groups that work with unmarried fathers in Ireland.

Name of Group	Person interviewed	Function of Groups
AMEN (Navan)	Co-ordinator 10 years experience	To inform and support fathers on their entitlements and the options that are open to them when relationships or marriages fall apart and there are access/custody and maintenance issues.
Unmarried and Separated Fathers (U.S.F.I) (Dublin)	PRO Committee Member 5 years Experience	
Treoir (Dublin)	Director 20 years plus	Provide an information service for unmarried parents, including fathers. Lobby on their behalf

## **Presentation and Discussion of Findings**

The research explores how some unmarried fathers experience family life, in the context of access to their children. Despite the fact that the fathers differ considerably in their experiences of separation from their children, some patterns of shared experiences, feelings and perspectives were identified.

The reality of family life for unmarried fathers can change considerably from one father to the next. An unmarried father may find himself in a number of different situations. A number of possibilities exist. He may be in a stable relationship with the child's mother (Chapter 2). He may have no relationship to the mother but access to his child. He may be seeking access to his child through the courts or have no access to his child. An unmarried father's relationship to his child, and to the mother of the child, does vary. This is discussed further in the following sections.

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## Fathers and Family Life

The average age of the fathers interviewed was 38. Two of the fathers have one child each, the third has twins. The ages of their children range from 4 to 10.

At the time of interview none of the fathers were in a stable relationship with the mother of their child. All of the fathers had had at least a short term relationship with their child's mother. However, the actual duration of the relationships varied. As can be seen from Figure 1.1, two of the fathers had a long term relationship with the mother of their child for more than 5 years.

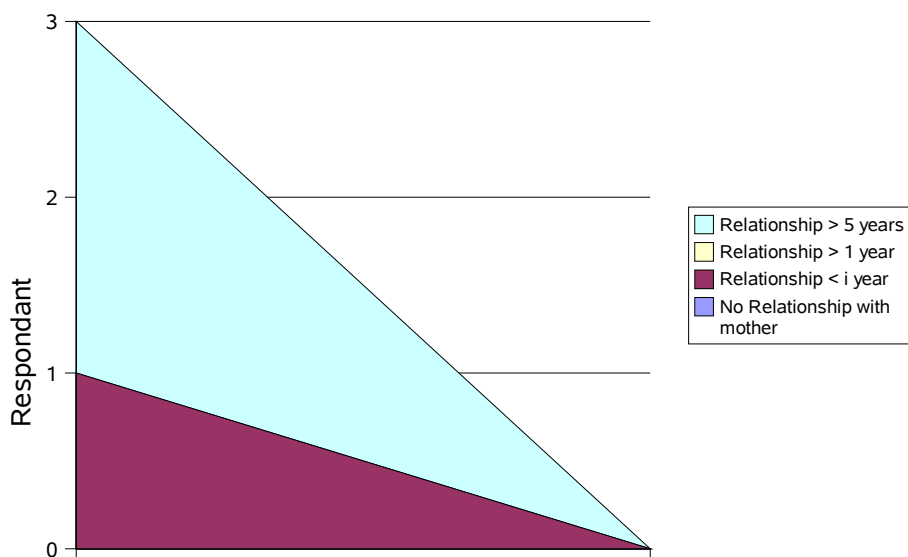


FIGURE 1.1

All three fathers were at some stage denied access to their child. This reflects the fact that unmarried fathers do not have automatic rights to their children.

## Rights of Fathers

**“ When a child is born to unmarried parents, the mother is automatically the sole guardian of the child. She's also the sole custodial parent, with exclusive access to the child. In essence the father has no rights.”** D. McGowan, 2003 (Family Law Solicitor, cited in Lennon, 2003)

All of the fathers interviewed commented on the rights of unmarried fathers. For example, James said, *“unmarried fathers have no rights whatsoever”*. Paul along the same line said, *“we have no rights or responsibilities, except financial ones”*.

According to M. Cleary of Treoir, some unmarried fathers are completely unaware that they have few rights to their child. She went on to say that many fathers who are co-habiting, believe that because their name is on the Birth Certificate they have full rights to their child. This does seem to be the case, Mark said,

*“I thought I could not be separated from my child because I am a guardian and my name is on his [the child's] Birth Certificate, but now I know different”*.

## Denied Access to their Child

**"Children need from their fathers and mothers together a balanced, complementary, and stable relationship, and this is no less the case for partners who are separated from each other."**

Cynthia Milligan and Alan Dowie,

According to M. Cleary in Amen, many unmarried fathers are being denied access by the child's mother. This is usually because the relationship between the couple has ended. Both of the fathers interviewed (Paul and Mark) who had a long term relationship with the child's mother, had access up until the relationship ended. Mark, whose long term relationship of ten years broke down, said of the child's mother,

*"Just the same relationship for the ten years, one day she was here and the next she was gone. She won't talk to me I still don't know the reason for it and I can't see my child - she won't let me see my child."*

Therefore, it appears that the breakdown of a relationship between the mother and father of a child, and the subsequent prospect of an unmarried father being denied access to his child are intrinsically linked.

The co-ordinator of Amen also said that access is stopped sometimes for the simple reason they have begun other relationships and *"they then want the father out of the picture"*. Paul said this was the main reason he was separated from his child,

*"she stopped my access because she now had a new relationship and she wanted to move on. She didn't want me being in her life. I wouldn't have*

*been in her life I just wanted to collect the child and leave it back again”.*

It seems in some cases that as the friendship between the father and mother fluctuates so may the likelihood of access. This was particularly evident in James's situation. He said,

*“For the next four months I had no access at all, and then she came round a little bit and I had a little bit of access but I got an awful lot of grief every time”.*

When a father has no access to his child and the option of agreement with the mother has been exhausted, the court system is the only alternative available. I will discuss the fathers experiences of court in the next few sections.

## **Guardianship Obtained via Recourse to the Courts**

**“When a father goes to court his troubles are only just beginning”**

Ray Kelly, 2003(Founder of U.S.F.I, cited in Lennon, 2003)

Figures for 2000, show that approximately a quarter of unmarried fathers applied to the courts for guardianship or custody of their child. (Mckeown, 2001: 24). Of the three fathers interviewed, Paul and James had previously sought guardianship through the courts. The third, Mark, was, at the time of interviewing, seeking access to his child through the court.

Although their experience of court differs, some patterns of shared feelings and experiences can be identified. In particular, there seems to be some shared experiences and feelings in relation to the fathers that are identifiable at different stages when seeking access to children through the courts.

## **Experiences and Feelings of Fathers before going to Court**

First and foremost, going to court is not a option that comes easy. When I asked Mark how he felt about going to court, he replied,

*“Not good, because I didn't want this, you know. The past month has been terrible and now for this to happen”.*

Mark and James have court cases in the near future in relation to the custody of their children, but both are pessimistic in relation to the outcome of the court case. James who has lost access to his children and has a court hearing in July said,

*“My only plan of attack is supervised access... I might not even get that”.*

Mark said,

*“It is going to be a long process. I will probably get nothing at the end of it. Yet I think am entitled to see him... you see I want to get guardianship, I would never take the child away from her, you know... I just hope to get equal custody, I won't get that”.*

This pessimism is probably due to a number of factors including the realisation that they have no rights to their children, and that they are not guaranteed to get access to their children through the court. In Chapter 2 it is stated that it has been made clear by the court that a father has no more than a right to apply to the court seeking access (Walshe, 2003: 3). In addition, they realise that equal custody is an option rarely used by the courts (Literature Review Page 16).

Interestingly, Paul told how his solicitor prepared him for the worst.

*“Firstly, my experience of court is any solicitor I got basically told to be prepared to lose. Before going to court they say “you’ll have to fight your own corner” and tell you not to be expecting to get anything. They don’t know - and more or less the attitude is if you get anything at all it is a big thing... You are told that you have no entitlements but if you want to fight it will cost you.”*

(Whether or not this is the general trend was not established by the research. )

When a father makes an application to the District Court seeking guardianship of his child, he has to wait until he gets a hearing which may be months later (Treoir & Literature Review Page 16). The fathers who had been through court spoke of the long delays getting into court. Paul told how it took him *“about 5 months”* before he got into court. *“That is nearly always the way”*, he commented. The Director of Treoir said that the long delays in getting to court are a source of great distress to many parents. Not only this, but during this period the father usually has little or no access to the child and, as she further comments, *“It is completely unjust that a father should be denied access to his child because of delays in getting to court”*. I will now turn to the experiences of the fathers in court.

## Experience in Court

James and Paul have been through the court system seeking guardianship of their respective children. James has initiated 6 court cases, many of which were for breach of access. Paul has initiated 5 court cases.

The number of court cases gives no indication to the number of times that these fathers have been in court. James's story below highlights the number of times he was before the court on one circumstance, before he even got a hearing,

*"When she stopped my access, the last time, I had a District Court order, so I went under the District Court order under breach. She was at the same time taking me to the Circuit Court for more maintenance. So when it got into the District Court, she had a senior counsellor (sic) with her and he said that there was a Circuit Court hearing fixed and that the whole lot should be heard together... so the District Court Judge said it was only 10 days to the Circuit Court, so he would adjourn this case for two weeks and if it was heard in the Circuit Court in the meantime that was fine, if it wasn't it would be back in District Court in two weeks. So we went into the Circuit Court ten days on, and Circuit Court was adjourned, back into District Court, it was a different Judge again who said – its probably going to be heard in the Circuit Court, so I will adjourn it for a month until you go back in. When we went back to Circuit Court the judge said it's to be heard in the District Court, went back to District Court and this time she [the child's mother] doesn't turn up, the judge, a different one, goes bulbous and says am issuing an warrant for her arrest, her barrister is there and pleads her case, so the judge gives her three days to appear before the District Court. She comes in 3 days onwards, a different judge and he says this has to be heard in the Circuit Court, so it all goes to the Circuit Court... and that [was] were I ended up before a judge who literally took all my access of me. And he [the judge] says so you haven't have access for the last 6 month and am saying 'yea this is why'.*

Both fathers described the actual proceedings in court as negative. "It's about proving yourself every time", says James. Eamonn Quinn, on behalf of Unmarried and Separated fathers of Ireland (U.S.F.I), said there are many good fathers that are not allowed to be until they prove it and continued *"mothers don't have to go through this gruelling process to prove their ability to parent, it seems that the perception is that fathers don't love..."*.

One of the main criticisms the fathers had of the court system was of the judges and their approach:

*"to be honest" said James, "he [the judge] just didn't seem to know what he was at, at this stage he had only been family law court about two months and he done all criminal work before this". - "I think the judges just don't seem to have any training, O.K., they have been a barrister and a solicitor but some may not have done any family law."*

*"I wasn't really happy with court, it's not fair. The judges are totally biased for the mother - there is no family orientation, it is basically up to the mother so long as you pay the maintenance and everything else... I didn't think it was fair towards the child. Although they said they look at the situation from the good of the child, they didn't. It is now proven that a child needs access to both parents even though they are separated. Although the judges are changing, the judges at that time and up to now don't really look into that aspect."* Paul

This coincides with the literature that criticises decisions in court as being in favour of the mother and claims that the family law court judges aren't properly trained (Literature Review, Page 16). Jim Nestor, a family law solicitor and

lecturer in Sligo I.T. spoke to me with concern about the fact that Irish judges are not required to get specialised training in family law before they can practice in that area. This view is shared by other legal experts. Shannon G, said in a recent newspaper article that there is:

“almost complete absence of training for judges in family law cases. Judges and the legal profession need to be trained in child psychology, because mistakes can be made by the judges, including giving the children over to the wrong parent”. (2003)

## The Outcome

The majority of fathers who seek guardianship of their child through the court are successful, according to the support groups. However, there are some exceptions whereby fathers lose the battle in court. In addition, according to Treoir, some fathers just opt out of the battle.

Neither Paul nor James were satisfied with the outcome of their court cases to date. James told how his last attempt in court to extend his access ended in withdrawal of all of his access. It was decided in court that:

*"I would have them for a long weekend every fifth weekend and that I would have them for six weeks a year... that was all hunky dory... for about another two years... Then things started to go a bit pear shaped, they didn't want to go, and all that... I went back to court... I ended up before a judge who literally took all my access of me".*

Paul, on the other hand, got access to his child, but he is not satisfied with the arrangements made by the court in relation to access to his child.

*"I have access now to me daughter - tis not great access but it is access... as far as I'm concerned there was no violence, or no criminal record against me, nothing to turn them against me, however, the decision was still in favour of the mother... and I got very poor access, [It is] expensive and mentally exhausting."*

## **Experiences and Feelings of the Fathers**

In sum, the perspectives fathers have of the court system, and their experiences in court, are negative. The explanation for this may lie with the fact that, unlike unmarried mothers, they do not have automatic guardianship of their children, and have to 'prove' their ability to parent. Not only this, but the court system does seem to have a number of shortcomings such as the the long delays getting into court, and the fact that mothers almost invariably get sole custody of the children.

## The Mother's Power

A key theme already emerging is that the child's mother seems to possess much power. First and foremost, the mother can chose to deny the father access to his child when a relationship breaks down. For example, Mark's partner of ten years, left taking their child with her, when the Gardai got in touch with her:

*“all she said to them was that she didn't want me to know were she and the child were, she gave them no explanation, which she thought she didn't have to”. Mark*

Some mothers may even try to completely disrupt the relationship between the child and his father. James told how, since he lost access to his children, his every attempt to contact them has been disrupted by their mother:

*“I have written to them, but then I get awful harassing phonecalls from her. The last thing seems to be, you send them Christmas presents by delivery (because she threw the presents at me the Christmas before and the kids went bulbous) and she rings up and says that wasn't what they wanted and you just open up worms for yourself. I sent them letters to the school, the last time I wrote to them about 10 days later I got a mad phonecall from her again, that I was embarrassing the children at school”.*

In addition, when custody disputes go to court it has been said time and time again that the hearing is in favour of the mother. The following statement by Mark puts it into context,

*“The mother has all the rights in the world, and all she has to do is spout whatever she wants and that's grand because she gave birth and some premie (sic) reason that the child is better of with the mother, and I mean, [laughs] they delight to say that us men don't have any feelings, don't have an maternal instinct, we don't have any need to protect our children”.*

Mothers even have power to obstruct a court order. Margaret Dromey, on behalf of Treoir, said, often it is not the law that is the stumbling block to fathers having rights but the mother and her family. Many fathers have been given rights in court but mothers make it impossible for them to exercise these rights and gain access to their child (Treoir). This was also noted in the literature (Literature Review, Page 16). James told of the tactics used by his partner in breaching a court order,

*“I was living in Donegal at the time and it was a long drive for me. Then about eight or nine months of this, I would drive down to Dublin and she would say they didn't want to go and I would have to drive back home again.”*

It seems then, as stated by U.S.F.I, guardianship can be worthless unless it is fully implemented.

The final difficulty, according to the director of Treoir is *“at the end of the day the mother always has a veto, she can say a particular man is not the father”*. Indeed, Paul told how that he had to get four court cases before he could get the mother to consent to a DNA test to establish his paternity.

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## Effects on the Father

**“Child rearing... a satisfying experience that leads to personal growth rather than... a burden.”** Burgess A., 1996

According to Amen, a father who has been denied access to his child may suffer from a combination of feelings including depression, isolation, loneliness, unworthiness, fearfulness and may even feel suicidal.

Some of these feelings are clear from the stories of the fathers interviewed:

*“It’s your son or your daughter, and you either love this child or you don’t love it, as much as the mother loves it. That’s what it comes down to. There is a hole in my heart. Ahh. [moans] Death in the family you know. You know that how early it is and am still in bits here. And this is really devastating like, it is just one thing on top of the other.”* Mark

*“I literally haven’t seen them for two years- well I seen them that day in court and one day playing tennis.”* James

*“I met my ex partner and baby daughter in a shop and I could not go over to speak to the child because my ex partner would create a scene, I was devastated, her man had my child in his arms.”* Paul

The fathers, according to the support groups, may get disheartened with the long process involved in seeking guardianship through the courts, and many “are afraid their children will forget them” (Amen). All of the groups said the failure of the law to protect the rights of unmarried fathers is a contributory factor in a large number of suicides. It is also a financial burden.

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## Effects on the Child

**“The paternal presence is a vital, life-giving force in the lives of children”** Preutt, K., 1996(cited in McKeown, 2001)

Chapter 2 states that it is usually in the interests of a child to have a relationship with both parents. Unmarried fathers have no rights to their children and thus can be separated from their children for an indefinite period of time. This is often against the interests of the children. Both of the fathers interviewed, who had no access to their children, spoke with concern for the welfare of their children:

*“I’m not happy with the child staying with his mother alone because I see that he needs his father as well.”* Mark

*“Can you say she been a good mother when she is not letting them see their father.”* James

According to Amen, children who are separated from their father may feel abandoned and different, perform less well in school, become depressed or may act out. Children are effected by parental separation in different ways. James who has lost contact with his twins tells how the children are coping:

*“One of them has definitely withdrawn and has gone very much into himself and is afraid of the whole thing, the other just gets on with it, he’s a bit more streetwise. I’d say definitely it is starting to affect them... I’d say now things are going to start, the next 3 or 4 years.”* James

(A friend who is in touch with the mother frequently reports to him on their progress.)

Mark is also concerned for his child's welfare,

*“Well for the last two years I've been with him day and night. I am a musician I was teaching him music from he was six months old. Everyday we were here dancing and playing. The child is in a culture shock now. He hasn't seen me in a month now, so I am sure he will start forgetting. Somehow, I don't think she is not mentioning me at all (sic) to aid the process”.*

Although Paddy has access to his child, he identified with the effects that separation may have on a child,

*“children are denied their genetic rights maybe they are told that there daddy doesn't love them, this will affect them later on in life. At school when other children are talking about their daddy am sure they feel left out and an outsider. They do not have the benefit of knowing their parental grandparents and the history of the family that goes with this.”*

Manipulation of the child by the mother may also occur and this has an effect on the child. Eamonn Quinn of U.S.F.I said *“Children are being abused emotionally and are used as weapons and pawns in a tug of love situation – It is legalized child abuse”.*

James gave an example of manipulation of his children by their mother,

*“It's no wonder the kids are saying they don't want to go”, he began, “because their mother is saying – oh, your father is coming today at 2 o'clock and then – he has let you down again, and I wasn't suppose to go at all. I know she does this”*

The issues raised in this section, in relation to the power of the mother, highlights the importance of the 'best interests of the child' principle and leaves some doubt as to whether this is given paramount consideration in custody disputes between parents. In essence, the research indicates that fathers perceive the courts as biased in favour of the mother and that court decisions are not entirely based on consideration of the best interests of the child.

## Support for Unmarried Fathers

All the fathers said that there was a significant short-fall in support for unmarried fathers. James who has struggled to get proper access to his twins for the past 10 years said:

*“There is none at all, Amen is the only sort of thing that I've been able to [find], there are a couple of groups, but they don't seem to be very organised. A couple of times, I remember when things were really bad, you would ring this group and it turned out that it was sort of one guy living on his own in a flat and if he was there, he was there, and if he wasn't well that was it you wouldn't get a hold of anybody.”*

Mark's response was,

*“None whatsoever.” “Even though I've been in touch with support groups such as Amen, there is nothing anybody can do, you can talk about it, but talking about it is just - it doesn't get anything done... My friends are a great support, they have been brilliant”.*

Paul also identifies with the view that there are few support services for unmarried fathers in this situation.

*“No. Most groups deal with separated fathers who have some rights. The nearest group is in Dublin, which is too far away. There is Forever fathers in Ballybofey. But their main issues are separated fathers and as they say “unfortunately unmarried fathers have no rights”.”*

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## Proposed Changes

The fathers interviewed make some suggestions on how things could be changed for unmarried fathers. Pat said,

*“Equal rights that how is it should be”.*

Mark said that a change in the Constitution is necessary,

*“...it's a real old law. A real ancient thing, it must be changed”.*

James referred to the removal of the in-camera rule in family law courts as a possible solution to the apparent injustice in family law. The in-camera rule stipulates that, in the interests of maintaining confidentiality, family law cases are heard in private and no records of the proceedings are kept. James said,

*“Maybe when the in-camera rule has being taken out, I don't like it, I think it will probably help, because nobody knows what is going on down there at the moment, at least they will be under a bit more scrutiny”.*

This research has explored the experiences of the unmarried fathers, who have been at some stage denied access to their children. The sharing of these experiences highlights the grievances felt by many unmarried fathers, resulting from the current weak provisions of the law for unmarried fathers as discussed in the Literature Review. In particular, the research raises a number of key issues including the negative experience of court, the unequal balance of power resting with child's mother, the effects of separation on both fathers and children and the lack of support for unmarried fathers who are separated from their child.

All the fathers who participated in the qualitative research had sought, or are seeking, access to their children through the court. There are, on the other hand, many unmarried fathers who have gained access in agreement with the mother of the child. In the next section, I will compare the experiences and views of unmarried fathers who got access in agreement with the mother and those who have been through the court. Amongst other things, this will highlight the importance of consistent and regular access both for fathers and children.

# FINDINGS AND DISCUSSION

2

## **Findings and Discussion from Quantitative Research**

20 unmarried fathers completed my questionnaire. All of the fathers had experienced a breakdown in the relationship with the mother of their child. They all had access to their child at the time of filling in the questionnaire. 7 of the fathers have obtained access in agreement with the child's mother. The remaining 13 sought access to their child through the court. The average age of the fathers is 36.

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## Number of Children

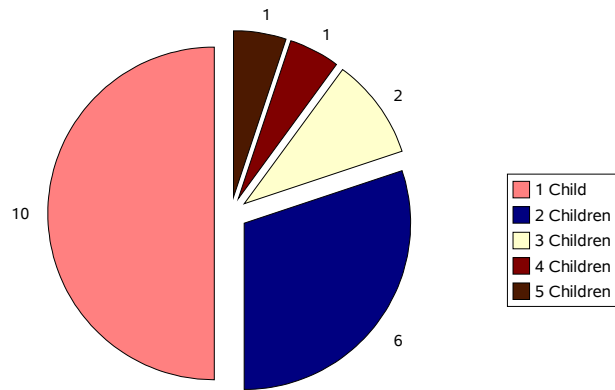


FIGURE 2.1

As can be seen from the chart above 50% of the fathers have one child and 33% have two children. The remainder have three or more children.

## The Number of Fathers with their Name on their Child's Birth Certificate

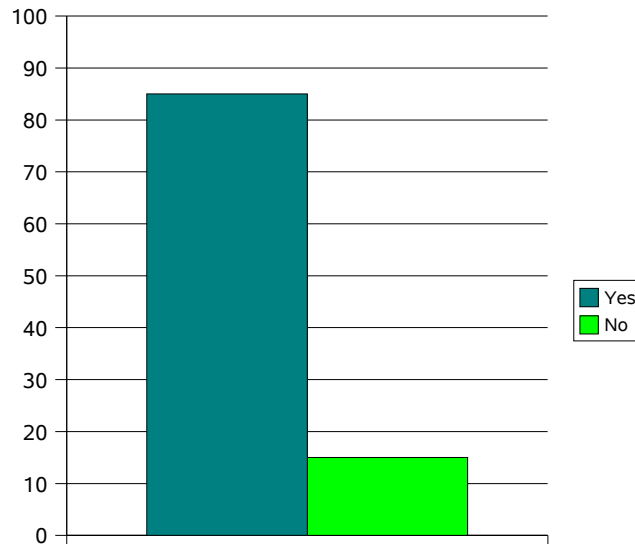


FIGURE 2.2

85% of the fathers said their name is on their child's Birth Certificate. The remaining 15% said their name is not on the Birth Certificate. These findings correspond with those in literature. A survey carried out in 1999 on 1,000 separated applicants for One-Parent Family Payment found that 17% of fathers did not have their name on the Birth Certificate (McKeown, 2001: 10). It is noteworthy that all the fathers who obtained access in agreement with the child's mother had their names on their child's Birth Certificate.

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## Regular and Consistent Access to their Child (in the past year)

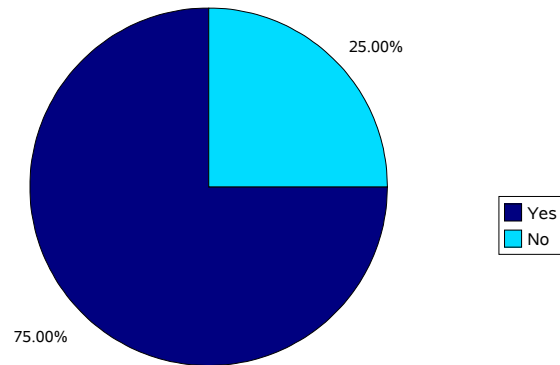


FIGURE 2.3

Despite the fact that all the fathers had access to their child, a significant proportion ( $\frac{1}{4}$ ) of the fathers said they had not had 'regular and consistent' access in the past year. All of the father who had irregular and inconsistent access in the past year obtained their access through the court. In contrast, all the fathers who said they had regular and consistent access in the past year, received access in agreement with the mother.

At this stage it can be seen that the fathers who reached an agreement with the mother are more likely to have consistent and regular access and indeed more likely to have their name on their child's Birth Certificate. These findings may reflect a number of factors, in particular, the fact that the relationship between the mother and father can have a fundamental effect on the relationship between the father and his child.

## Frequency of Access

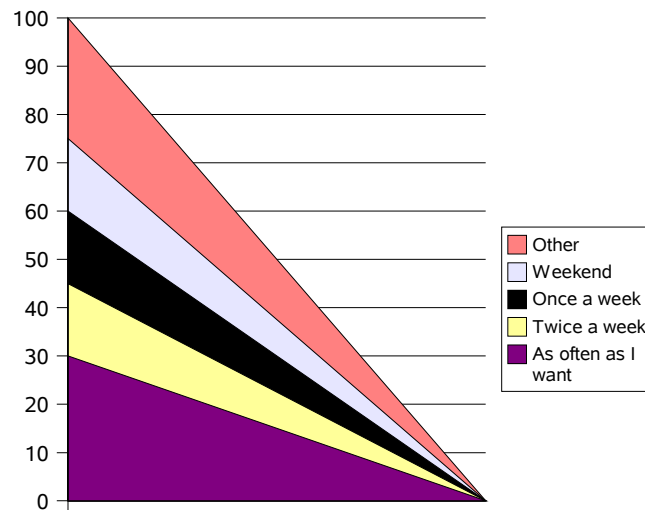


FIGURE 2.4

Figure 2.4 shows the different arrangements for the fathers in relation to access to their child. It is evident that the conditions of access do differ significantly from one father to another. Almost one third of the fathers (30%) have access as often as they want. 15% have access to their child, once a week, or twice a week and at weekends. 25% said they had other arrangements.

The findings establish, in particular, that those fathers who have obtained access with the mother's agreement are more likely to have satisfying arrangements. Indicative of this is the fact that all the fathers who said they had access to their child as often as they wanted, received this access in agreement with the mother. By contrast, the fathers who received access through the courts have more limited access arrangements to their child.

## Satisfaction with their Relationship to their Child

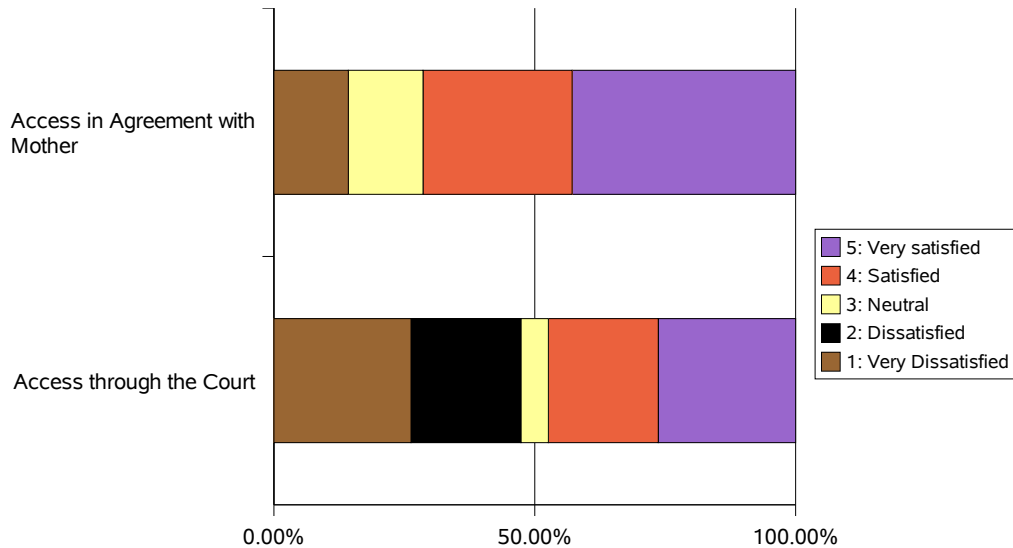


FIGURE 2.5

The fathers were asked to rate how satisfied they are with the relationship to their child on a scale of one to five, where 1 is very dissatisfied and 5 is very satisfied. The mean figure for fathers who reached agreement with the mother on access arrangements to their child is 4. This contrasts with the mean figure of 1.31 for fathers who have sought access through court.

Some important conclusions can be drawn from Figure 2.5. It illustrates that almost 45% of fathers who received access in agreement with the mother are very satisfied with their relationship to their child, compared with approximately 15% of fathers who got access through the court. Indeed, 38% of fathers who got access through the court are very dissatisfied with their relationship to their child, while only 14% of fathers who got access in agreement with the mother considered themselves very dissatisfied with their relationship to their child. It is

obvious that the level of satisfaction among the fathers who have access in agreement with the mother, significantly exceeds the level of satisfaction among those who have got access to their child through the court. In fact, the fathers who have obtained access through the court are about six times more likely to say that they are either dissatisfied or very dissatisfied with the relationship with their child.

The higher level of satisfaction among fathers who have reached an agreement with the mother is fairly self explanatory. This is the case particularly since the previous charts have shown that fathers who get access by agreement with the mother are more likely to have consistent and regular access to their children (Fig. 2.3) and to have mutually agreed access arrangements (Fig. 2.4).

## Experience of Court

In the next few subsections the research findings on the fathers perspectives of court and their experiences in court are presented. The fathers who got access with the mother's agreement were not asked to answer these questions.

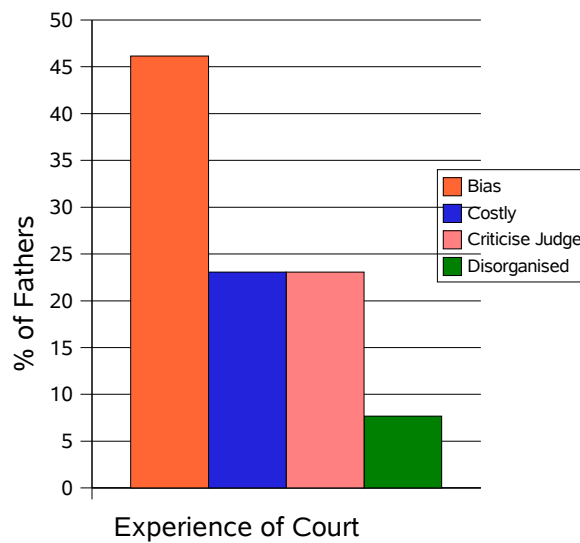


FIGURE 2.6

The fathers described in their own words their experience of court. As illustrated in Figure 2.6 above, almost half of the fathers said that the court system is biased in favour of women. Here are some examples of statements made by the fathers:

*“It is a very blunt instrument. The system is totally biased against men”.*

*“Slow and biased in favor of mother. They believe anything she said yet question everything I said.”*

These views are a cause for serious concern since, if they are correct, this bias may mean that decisions made in family courts are not always guided by the best interests of the children involved. One father said,

*“The system does not care about truth, children, right and wrong - All men are judged to be in the wrong and it is a constant battle to get heard.”*

Even if the views are not correct, they represent a significant failure on the part of the courts in that they have failed to demonstrate that justice is being done.

Figure 2.6 also shows that approximately 25% of the fathers said that going to court is a financial burden. One father described court as,

*“A costly and the most inappropriate method for resolving custody disputes”.*

Another said,

*“My financial status is screwed now thanks to the courts”.*

As in the qualitative research, some of the fathers criticised the actions, attitudes and decisions of Judges when asked about their experience in court. One of the fathers said;

*“Crap, according to some judges they believe the only responsibility that I should have towards my children is a financial one.”*

James interviewed for the qualitative research had a similar criticism of the judges in court (Page 41). These views suggest that judges may be influenced by a narrow and stereotypical view of unmarried fathers, and believe that mothers are invariably more capable parents than such fathers.

Some of the other criticisms of judges are as follows,

*“Absolute minefield and very dependent on the attitude of the Judge.”*

*“Reasonably relaxed, but the Judge did not appear to examine the evidence I had prepared. There seems to be no logic in the award of maintenance, and what I agreed to verbally in court was not what the Judge wrote up in her order. I now have to return to the courts to try to have it changed.”*

Finally, approximately 10% of the fathers said the court is disorganised. One father summed it up as follows,

*“There is no 'system' in the family courts. It is a disgusting and offensive (sic) disgrace. It is a complete mess and totally hap-hazard. No procedures, no attention to detail, no professionalism, and one has to endure insult, bad attitude and rights and needs violations, indefinitely.”*

As can be seen, the fathers who participated in the quantitative study raised many of the issues that came to the fore in the qualitative research, in particular the bias of the court system, a critic of the judges and the cost of the system. Many of these issues also arose in the previous research done in the area (Literature Review, Page 16).

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## Violation of a Court Order by the Child's Mother

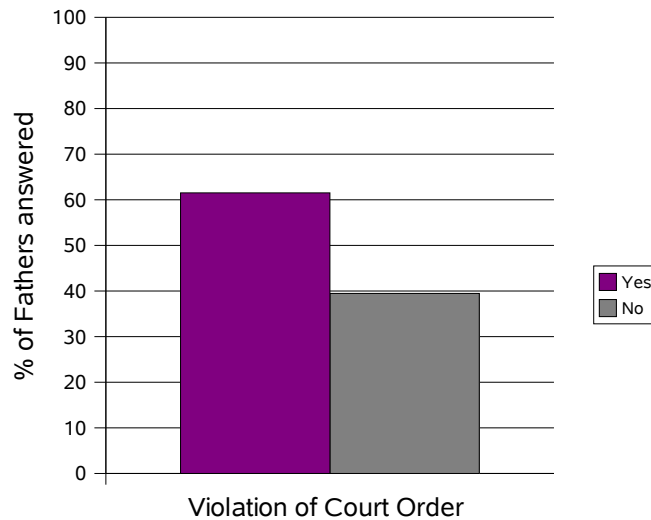


FIGURE 2.7

The fathers who received access through the court, were asked if the mother of their child had ever violated a court order. 2 out of 3 (60%) of the fathers responded "Yes".

This confirms the power of the mother, already mentioned in the qualitative research, to violate a court order and to chose to deny a father access to his child.

## Regular and Consistent Access versus Violated Court Orders

In this subsection the responses from the previous question (violation of a court order) are compared with response from the same fathers on whether they have had regular and consistent access to their child in the past year (Fig. 2.3).

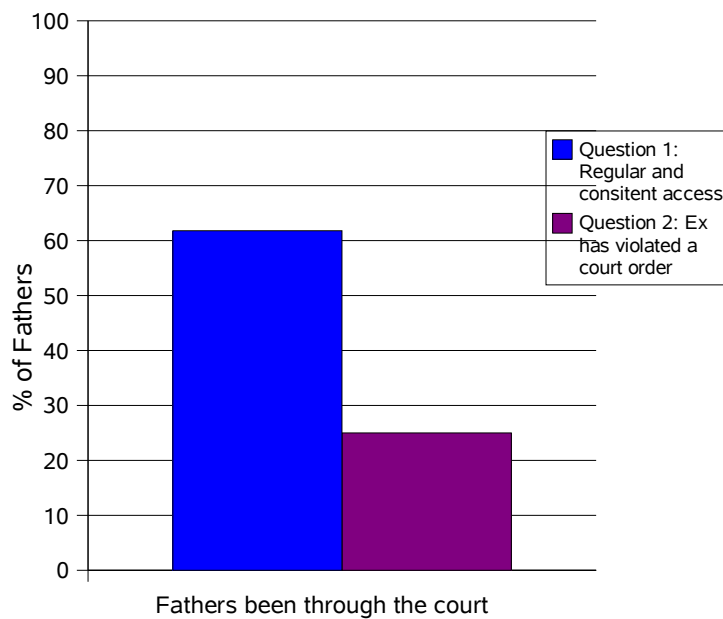


FIGURE 2.8

It can be seen from Figure 2.3 that 75% of all fathers had regular and consistent access to their child. While this is the percentage for all fathers, the chart above shows that just more than 60% of fathers who have been through the court said they had regular and consistent access to their child in the past year (Fig. 2.8). Of these fathers, i.e. those who have regular and consistent access to their child, 25% have had a court order violated by the child's mother.

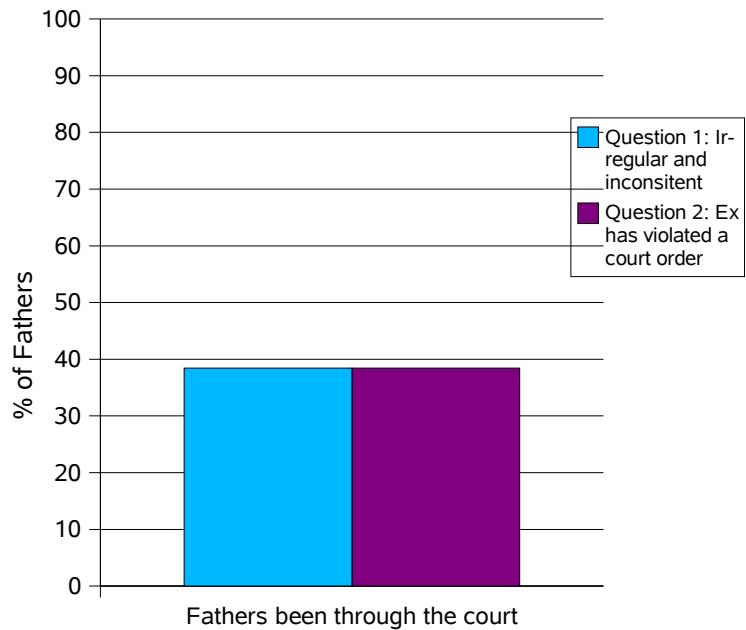


FIGURE 2.9

It was mentioned earlier all of the fathers who did not have consistent and regular access to their child in the past year, received access through the court. Figure 2.9 shows the fathers who did not have regular and consistent access in the past year and who had a court order violated by the child's mother. Significantly, all the fathers who did not have regular and consistent access to their children also had a court order violated by the child's mother.

This indicates that one of the greatest barriers to regular and consistent access by a father to his child, is the violation of a court order by the mother. It seems unjust that a father who receives access to his child through the court, (on failing to reach an agreement with the mother) can have the exercise of his rights interfered with by the child's mother who deliberately violates a court order. This causes additional distress for fathers (as was seen in James's situation in the qualitative research, Page 50) and in most cases goes against the best interests of the child.

## Effects on Children who have little or no Contact with their Father

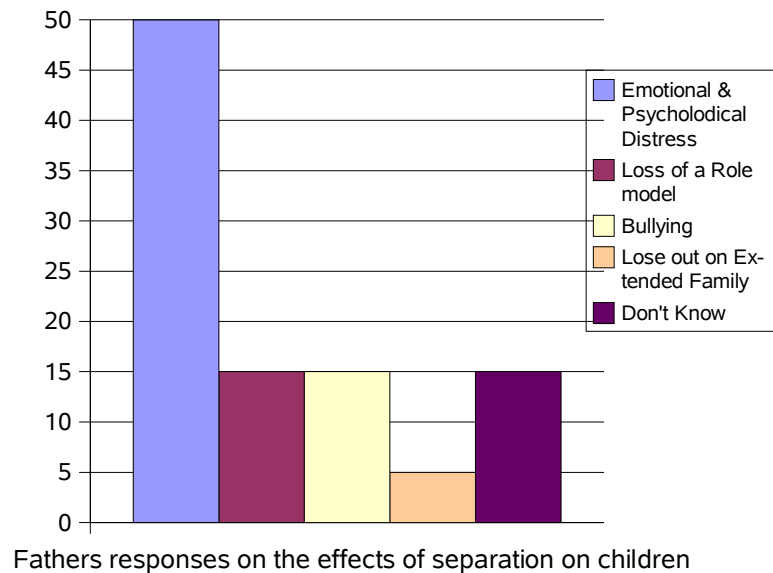


FIGURE 2.10

All twenty fathers were asked to comment on how they felt a child is effected by not having adequate contact with his/her father. The chart above shows that half of the fathers said that this can have emotional and psychological effects on the child. Examples giving by the fathers were poor self esteem and feelings of worthlessness.

Some of the fathers said that children lose a role model when separated from their father. For example, one of the fathers said that,

*“Because of no main male figure in their lives, especially boys, they may develop uncertainty and lack of direction”.*

Another referred to his own children and commented,

*“They do have contact with me but because they reside with their mother she has a greater influence over them... my son has forgotten what I taught him about morals and scruples and good manners. He has become very quiet, sullen and discompassionate (sic)”.*

Finally, bullying by peers and the loss of extended family were also mentioned as factors impacting on the child. Interestingly, a small percentage of the fathers said they did not know what effects parental separation would have on a child.

## Support for Unmarried Fathers

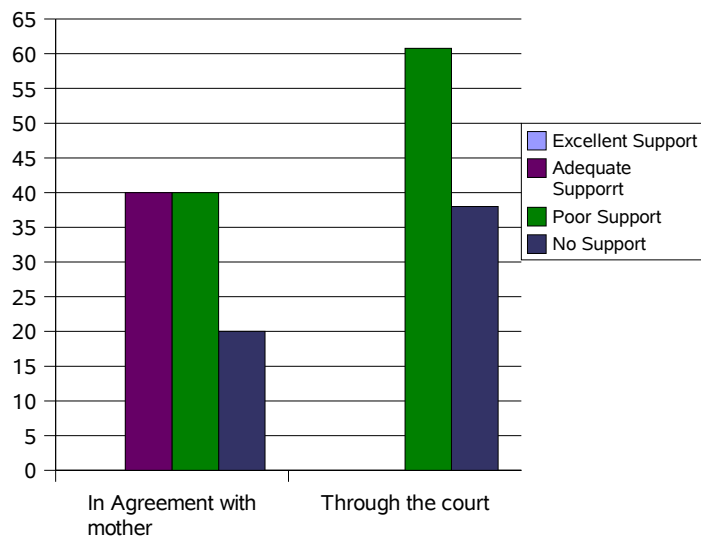


FIGURE 2.11

All of the fathers were asked to rate the support that exists for unmarried fathers when they are separated from their child. As can be seen from Fig. 2.11, the majority of all fathers (88%) said that there was little or no support for unmarried fathers when denied access to their child. Once again, a differentiation can be seen in the responses of those who got access to their child in agreement with the mother, as compared to those who got access through the court. In particular, those who got access through the court were much more likely to say that there was little or no support for unmarried fathers in this situation.

This is hardly surprising, considering that the fathers who have received access in agreement with the mother, are likely to have regular and consistent access, and feel no need to look for support. On the other hand, those have been denied access are much more aware of the reality of support for fathers, or the lack of it.

The quantitative research examines the experiences of family life for unmarried fathers when relationships break down. It has been made clear that there is a marked difference in the experience of family life for fathers who have received access in agreement with the mother, as opposed to access through the court. For example, the majority of fathers who have access in agreement with the mother, have mutually agreed access arrangements and are satisfied with their relationship to their child. On the other hand, fathers who have sought access through the court will have done so because they could not secure agreed access with the child's mother, or agreed arrangements have broken down. Access arrangements granted by the court tend to be quite limited. In addition, the mothers may attempt to frustrate access rights granted by the court. This increases the likelihood of fathers being dissatisfied with their relationship with their child. Therefore, the quality of the relationship between the mother and the father has a significant impact on the quality of the relationship between the father and the child.

The research has a number of other clear-cut findings. Many of these coincide with the findings from the qualitative research. In particular, the negative experience of court as reported by the fathers and the power of the mother to deny a father access to his child. There is also skepticism in relation to the support available to unmarried fathers.

CONCLUSION  
AND  
RECOMMEND-  
ATIONS

Unmarried fathers have no automatic rights to guardianship or custody of their children. Due to the unsatisfactory state of the law in this regard, they can be denied access to their children for an indefinite period of time. Much research has been done on the experience of children when separated from their parents. In those circumstances, of course, the best interests of the child should be considered. However, it is also necessary to take into account the feelings and interests of parents when separated from their children against their will. My research explores the experiences of unmarried fathers in Irish family life when relationships breakdown and they are denied access to their child. In this section I will draw out some of the main conclusion of my research.

A number of clear messages about the experiences of unmarried fathers are derived from the research. The Literature Review makes it clear that an unmarried father may obtain guardianship rights either with the consent of the child's mother or if she resists, through the courts. The quantitative research has revealed some significant differences in the experiences of unmarried fathers who get access to their child by agreement with the child's mother as compared to those who have to seek access through the courts. In particular, the former do not have to go through the long and "mentally exhausting" process of court (Page 44), are more likely to have consensually agreed access to the child, and to be satisfied with their relationship to their child.

However, when relationships breakdown and the mother refuses to consent and allow the father guardianship and access rights, the father has no option but to apply to the court seeking guardianship. Both types of research gives an insight

into the general perspectives and experiences of unmarried fathers who have been through the court seeking guardianship and access to their children. On the whole, the fathers are critical of the court system. The fathers interviewed commented adversely on the long process involved in getting into court, which leaves fathers in distress and without access to their child. In the context of the actual proceedings in court the fathers said that judges do not seem to be properly trained and that the court proceedings tend to be biased in favour of the mother. In addition, the common practise of giving the mother sole custody of the child and the father limited access, means that many unmarried fathers are in a state of dissatisfaction with the relationship with their child.

Another theme that arises from the research is the automatic rights of unmarried mothers to their child which confers upon them a power that is not only discriminatory but leaves many fathers in distress. This is particularly evident from the fact that they can choose to deny a father access to their child even when the father has obtained a court order granting them access to their child.

Fathers are sometimes completely denied access to their children or have inconsistent and irregular access to their children. The clear-cut and damaging effects of this, for both fathers and children, has been identified by earlier research and confirmed by my own. Notwithstanding the weight of this research, there is still little effective support for fathers in these circumstances.

In conclusion, we cannot afford to ignore the fact that the Constitution and the Law do, to some extent, foster these problems. The current provisions of the Irish

Constitution and the Law in relation to the rights of unmarried fathers are not conducive to the development of strong father/child relationships. In this respect our law is broadly similar to that in the UK and many other countries. A number of recommendations can be made for changes to improve the weak legal and constitutional status of unmarried fathers and to protect their relationship with their child.

- The Constitutional rights of unmarried fathers ought to be reviewed. There appears to be no justification for giving all unmarried fathers automatic rights to their children. However, Article 41 of the Irish Constitution should be amended to respect the family life of unmarried fathers. 'Family life' could be interpreted by the courts, to mean, for example, real and close family ties. In this way, those who have or have had a stable relationship with the child's mother and/or the child would have constitutionally protected rights to their child.
- One of greatest shortcomings of current legislation is the failure to promote the involvement of unmarried fathers in family life. Legislation should encourage continuity and stability in family relationships, and should facilitate long term contact and involvement between children and non-resident parents. The needs and rights of both children and parents should be given due consideration in the development of legislation, and should reflect the rights under the European Convention on Human Rights and United Nation Convention on the Rights of the Child.
- Provision should be made for ongoing research and evaluation. There is need

for further research into the experience of fathers who have been denied access to their child and to quantify the number of fathers in this situation. Research should also be undertaken on the approach and training of Judges.

- Support services for unmarried fathers need to be improved significantly, at least until adequate changes in the Constitution and Law have been made.

It is difficult to envisage a radical restructuring in the near future, but research like this highlights a number of issues that need to be addressed seriously if the law is to strike a fair balance between the rights of unmarried fathers, the rights of the mothers of their children, and the interests of those children – which may not always correspond neatly with the rights of either parent. Indeed, the rising number of non-marital families and births outside marriage has greatly increased the number of fathers, children and families affected by these issues and thereby intensifying the urgency for reform. Research findings such as this could be used as an aid to lobby for change.

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