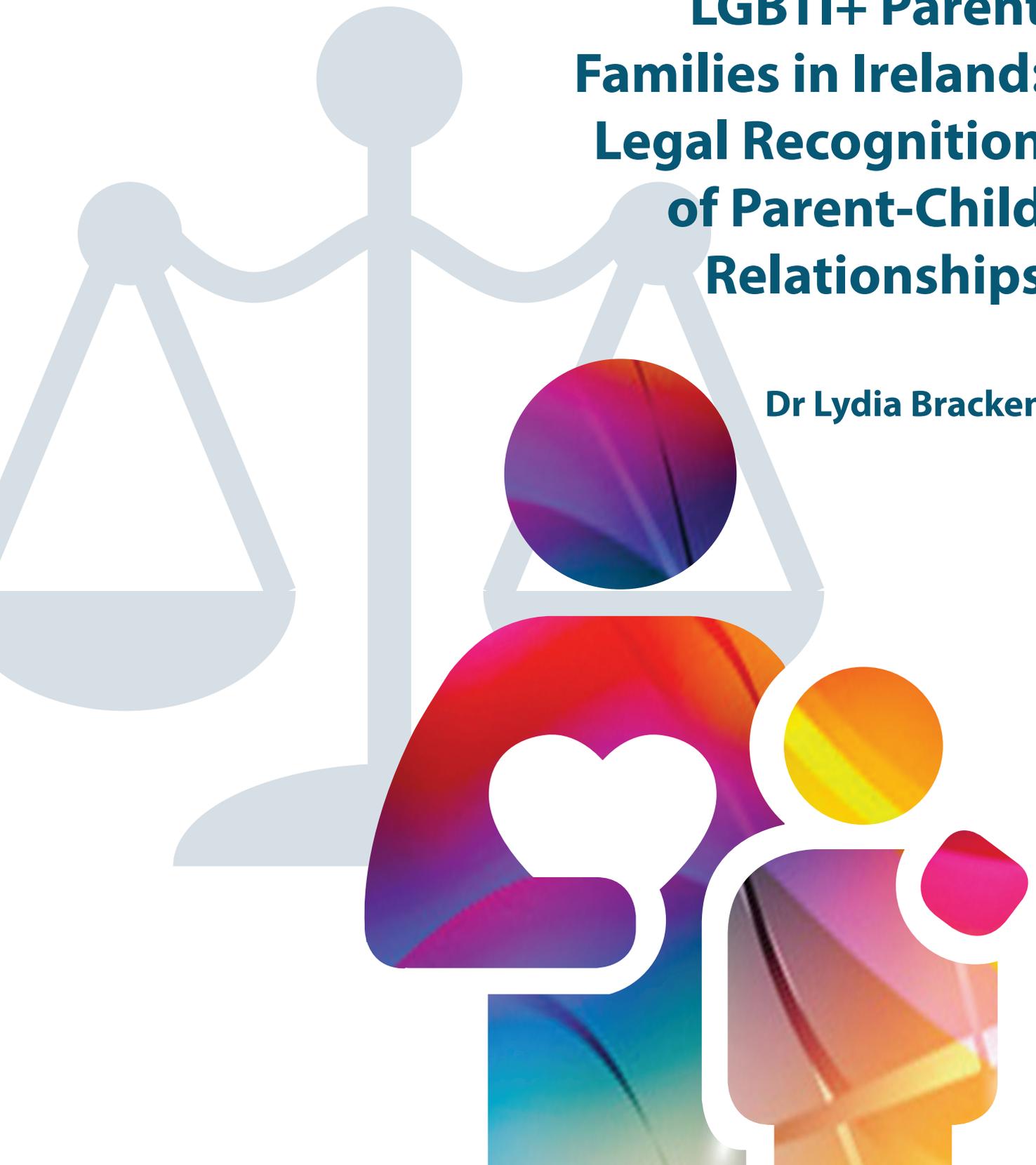


LGBTI+ Parent Families in Ireland: Legal Recognition of Parent-Child Relationships

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Please cite as: L Bracken, *LGBTI+ Parent Families in Ireland: Legal Recognition of Parent-Child Relationships* (University of Limerick, 2021).

Project funding: Irish Research Council, New Foundations Scheme 2020

Table of Contents

Acknowledgements	i
Author Biography	i
Partner Organisation: LGBT Ireland	i
Definitions	ii
Executive Summary	iii
Recommendations	iv
Section 1: Introduction	1
1.1. Background to the Research	1
1.1.1. Profile of Respondents	2
1.2. Methodology and Survey Design	4
Section 2: Overview of the Relevant Legal Framework	6
2.1. United Nations Convention on the Rights of the Child (UNCRC)	6
2.2. Donor-Assisted Human Reproduction	8
2.2.1. Retrospective declaration of parentage	9
2.3. Surrogacy	10
2.4. Adoption	10
2.5. Guardianship	11
2.6. Calls for Reform	13
Section 3: Description of the Research and Survey Results	14
3.1. Introduction	14
3.2. Overall Responses	14
3.2.1. Understanding of Laws	15
3.2.2. Legal Parental Status	16
3.2.3. Guardianship	18
3.2.4. Discrimination/ Attitudes	19
3.3. Donor-Assisted Human Reproduction	22
3.3.1. Legal Parental Status	22
3.3.2. Nature of the DAHR procedure	26
3.3.3. Legal reform	27
3.4. Surrogacy	28
3.4.1. Nature of the Surrogacy Arrangement	29
3.4.2. Legal Reform	30

3.5. Adoption	31
3.6. Final comments	33
Section 4: Conclusions and Recommendations	35
4.1. Legal Recognition of Parenting	35
4.1.1. DAHR	36
4.1.2. Surrogacy	38
4.1.3. Adoption	39
4.2. Administrative Changes, Training and Education	40
4.3. Legal information and support	41
References	42
Appendix 1: LGBTI+ Parent Families in Ireland: Legal Recognition of Parent-Child Relationships Survey	44

Acknowledgements

This project would not have been possible without the generous participation of the LGBTI+ parents who undertook the anonymous survey. I am most grateful to the participants for sharing details of their pathway to parenting, family structure and experience of obtaining legal recognition of their parent-child relationships. Their experiences and perspectives provide the evidence base for this research report, which endeavours to shine a light on the legal barriers facing LGBTI+ parent families in Ireland and to identify legal reforms that ensure that all family types are legally recognised and protected.

The project is a collaboration between the researcher and LGBT Ireland. I am very grateful, in particular, to Paula Fagan of LGBT Ireland who provided guidance, advice and feedback throughout the project to shape the direction of the research. Paula's practical assistance and support enriched the project from the outset and ensures that the research is responsive to the needs of the community and can act as a basis for future advocacy campaigns by LGBT Ireland.

I would also like to acknowledge and thank the Irish Research Council for providing the funding to support this research collaboration between the researcher and LGBT Ireland. This research was made possible by the Irish Research Council New Foundations Scheme 2020.

Author Biography

Dr Lydia Bracken is the Assistant Dean for Equality, Diversity and Inclusion in the Faculty of Arts Humanities and Social Sciences and a lecturer at the School of Law, University of Limerick. Lydia researches the areas of child and family law, with a particular focus on the legal recognition of 'non-traditional' and 'new' families. Lydia is the author of two books, *Same-Sex Parenting and the Best Interests Principle* (Cambridge University Press, 2020) and *Child Law in Ireland* (Clarus Press, 2018), and has published her research on child and family law in high-ranking national and international journals.

Partner Organisation: LGBT Ireland

LGBT Ireland is a national charitable organisation which provides quality services to Lesbian, Gay, Bisexual, Transgender and Intersex + (LGBTI+) people across the country. Informed by the issues and experiences raised through our frontline services, we also undertake extensive training and advocacy work to enhance the visibility, inclusion and rights of the LGBTI+ people living in Ireland.

The organisation played a pivotal role in achieving the full implementation of the Children and Family Relationships Act 2015 in May 2020, which saw for the first time two mothers recognised as legal parents on an Irish birth certificate. The organisation continues to advocate for legal reform to ensure that all children born to LGBTI+ parents will have equality in law to have their families legally recognised.

Definitions

Co-parent: is a person who shares parenting with another person.

Donor-assisted human reproduction (DAHR): is defined in Irish legislation as ‘any procedure performed in the State with the objective of it resulting in the implantation of an embryo in the womb of the woman on whose request the procedure is performed’ where one or both of the gametes or the embryo has been provided by a donor.

Embryo: formed by the fertilisation of a human egg by a human sperm; classified as an embryo 2-8 weeks after fertilisation.

Gamete: a reproductive cell (egg or sperm).

Gestational parent: the parent who undergoes pregnancy and gives birth to the child.

Guardianship: a bundle of legal rights and responsibilities associated with raising a child.

Intended parent(s): the person or persons who request the performance of a DAHR or surrogacy procedure and who intend to undertake parental duties in respect of the child. The term ‘intending’ parent(s) is often used as an alternative phrase (for example, the Children and Family Relationships Act 2015 refers to ‘intending’ parents).

Legislation: written laws enacted by the Oireachtas (Irish Parliament), which may be referred to as ‘Acts’ or ‘statutes’.

Parentage: the status of being a parent of a child.

Surrogacy: a process where a person (the surrogate) agrees to carry a child on behalf of another person or persons (the intended parents) and to relinquish care of the child and all rights of parentage and parental responsibility to that person or those persons.

Executive Summary

This research project examined the obstacles facing LGBTI+ parent families in obtaining legal recognition of their family relationships in Ireland. It found that, in a significant proportion of LGBTI+ parent families captured by the research, children do not have a legal relationship with both of their parents. This creates practical and legal issues that can frustrate family life and impact negatively on both the parents and the child(ren). The research indicates that the Children and Family Relationships Act 2015 embraces a variety of new and non-traditional family forms by regulating areas such as DAHR and by expanding the categories of persons who can apply for guardianship. However, the legislation also ignores many other families. The impact of the narrow focus of the legislation is evident in the survey data as many families fall outside of its parentage provisions.

A significant proportion of respondents to the current research indicated that they had experienced discrimination as a parent because they identify as LGBTI+. Heteronormativity was a common theme in respondents' descriptions of discrimination when accessing services. The experiences of the respondents highlight the pressing need for legal reform to recognise diverse family relationships, but also underline the fact that legal reform alone is not a panacea and that wider issues need to be addressed in order to accommodate all LGBTI+ parent families. The legal reforms recommended in this Report will require accompanying administrative changes to ensure that diverse families are specifically included in procedures and processes by design, as well as appropriate training and education for service providers. LGBTI+ parents also require accessible legal information and practical support to help them to navigate the laws that apply to their family relationships.

The research project was conducted in partnership with LGBT Ireland. However, the recommendations presented in the Report represent the views of the researcher. In addition, any errors or omissions are the researcher's own

This Report reflects the law as it stood as of October 2021.

Recommendations

Recommendation 1: Legal reforms are required to accommodate the diversity of LGBTI+ parent families that exist in Ireland and to ensure that the rights and best interests of children raised in those families are protected.

Recommendation 2: The rights and best interests of the child and the principle of non-discrimination should guide the development of legal reform in this area.

Recommendation 3: Irish law should provide an effective pathway to recognition for second parents in cases of non-clinical DAHR.

Recommendation 4: Irish law should be reformed to allow a retrospective declaration of parentage to be granted in respect of DAHR procedures involving a known donor that occurred prior to 4 May 2020.

Recommendation 5: A mechanism should exist to legally recognise the parentage of a child conceived through a DAHR procedure conducted abroad after 4 May 2020.

Recommendation 6: Irish law should provide for the regulation of surrogacy arrangements and should contain provisions to recognise both domestic and international surrogacy. There should also be provision to retrospectively recognise the legal parentage of a child who has already been born through surrogacy to Irish intended parents.

Recommendation 7: Further research should be undertaken to understand the experience of LGBTI+ adoptive parents and prospective adoptive parents in respect of the Irish adoption system.

Recommendation 8: Administrative changes should be introduced to accompany any legal reforms to ensure that LGBTI+ parent families are included in processes and procedures by design.

Recommendation 9: Legal and administrative changes should be accompanied by appropriate training for service providers.

Recommendation 10: Accessible legal information and practical support should be made available to LGBTI+ parents in respect of the laws that apply to their family relationships and relevant court applications.

1: Introduction

1.1. Background to the Research

Irish law allows for some LGBTI+ parents to be jointly recognised as legal parents of their children. Legal recognition is dependent on the mode of conception of the child and, as a result, many LGBTI+ parent families cannot secure full legal recognition of their families. In such cases, only one parent is regarded as a legal parent of the child(ren) of the family. Much has been written about the children's rights implications that the lack of family recognition has on the best interests of children raised by LGBTI+ parents.¹ Yet, there remains a dearth of information regarding the scale of this disadvantage: because the families in question are excluded from recognition, there is no formal record of the number or structure of LGBTI+ families that exist in Ireland. Some data is available from the Central Statistics Office,² but this does not present a full picture of LGBTI+ parent families, for example in respect of the chosen pathway to parenting.

The objective of this research project was to identify and examine the obstacles facing LGBTI+ parent families in obtaining legal recognition of their family relationships in Ireland. Through empirical research, the project sought to generate a picture of the number and structure of LGBTI+ parent families that exist in Ireland, their chosen pathway to parenting, and their experience of obtaining legal recognition of their family relationships. The data was subsequently assessed against international standards to understand whether current practice in Ireland meets our international human rights obligations.

The research builds on research previously conducted by the researcher in collaboration with the partner organisation, LGBT Ireland.³ The earlier research formed the basis of advocacy strategies by the organisation to advance the rights of children raised by LGBTI+ parents in Ireland including presentations to the Oireachtas Joint Committee on Health in February 2019. The earlier research also highlighted the knowledge gap that currently exists in respect of the number and form of LGBTI+ parent families. Awareness of that gap formed the impetus for the current project.

1 See for example, Lydia Bracken, *Same-Sex Parenting and the Best Interests Principle* (Cambridge: Cambridge University Press, 2020).

2 Central Statistics Office, 'Census of Population 2016 - Profile 4 Households and Families'. See also Oireachtas Library and Research Service, *LGBT+ Community in Ireland: A Statistical Profile* (June 2019).

3 LGBT Ireland, *Pathways to Parenting: Proposals for Reform* (LGBT Ireland, 2018).

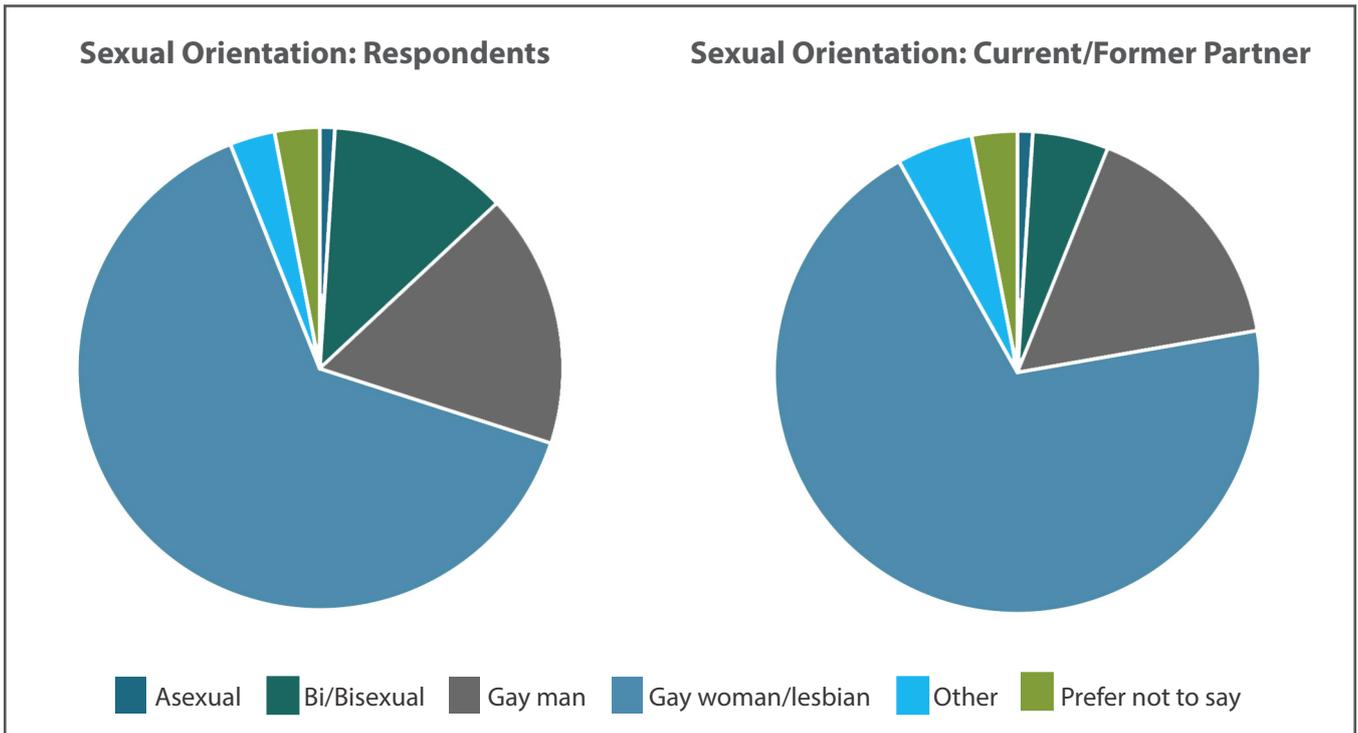
The empirical research undertaken for this project involved an anonymous survey completed by 99 parents who identified as LGBTI+. The vast majority (90%) indicated that they share parenting with a current partner, while 7% share parenting with a former partner. Only 3% of respondents stated that they parent alone. None of the participants indicated that they share parenting with a friend. The survey asked that families complete the survey once (one parent answering on behalf of the other parent or parents) unless this would not accurately describe the nature of their family. Assuming that this request was followed, it can be estimated that the survey represents the views of 195 parents parenting approximately 170 children.

Census 2016 indicated that there were 591 same-sex couples with children in Ireland.⁴ While the current research was not limited to same-sex couples and instead invited responses from all parents who identify as LGBTI+, it can be estimated that, drawing on the available Census data, the current research represents the views of approximately 16% of LGBTI+ parents in Ireland. In this way, the research does not represent the views or experiences of all LGBTI+ parents. Rather, the research spotlights the experiences of a sample of LGBTI+ parents in Ireland and provides an insight into the legal barriers experienced by some families in obtaining legal recognition of their family relationships. In doing so, the research raises awareness of the legal and societal issues facing some LGBTI+ parents with a view to provoking legal reform in key areas.

1.1.1. Profile of Respondents

Respondents were invited to participate in the survey if they were a parent who identified as LGBTI+. The survey did not define the terms 'LGBTI+' or 'parent' and so participants could self-determine whether they were part of the target respondent group. It was felt that members of the community would be familiar with the acronym 'LGBTI+'. The survey did, however, ask participants to indicate their gender and sexual orientation although there was also a 'prefer not to say' option.

4 Central Statistics Office, 'Census of Population 2016 - Profile 4 Households and Families'



The survey did not specifically ask respondents if they or their partner/co-parent identify as transgender. Instead, respondents had the option to self-declare their gender using an open-ended text box. No respondent chose to do so but some respondents indicated that they or their partner/co-parent are transgender in other open-ended comment boxes concerning particular pathways to parenting. Due to the limited number of respondents in this category, the relevant data is not presented separately. It is, however, important to acknowledge that parents in this category face particular legal barriers in the recognition of their parent-child relationships.⁵ This issue warrants further investigation in the Irish context.

When asked about parenting, questions were phrased in an open manner. For example,

Q.8 How many children do you have? This question applies to all individuals who consider themselves to be parents, regardless of the legal status of this position. Please answer this question in whatever way instinctively makes sense to you.

Thus, the survey captured the views of both legal and non-legally recognised parents.

⁵ For discussion, see Alice Margaria, 'Trans Men Giving Birth and Reflections on Fatherhood: What to Expect?' (2020) 34 *International Journal of Law, Policy and The Family* 225–246.

1.2. Methodology and Survey Design

The central aim of the current research was to better understand the nuances of, and legal difficulties faced by, LGBTI+ parent families in Ireland. As such, quantitative research methodology was primarily used in the project as this approach focuses on testing or verifying 'the appropriateness of existing theories to explain the behaviour or phenomenon one is interested in.'⁶ Data was collected using a self-administered, anonymous online survey. The majority of questions in the survey had fixed response options while a small number of open-ended questions were included. The fixed response questions related to categories of interest predetermined by the researcher, while the open-ended questions allowed for a more inductive approach. In this way, it was possible to collect some qualitative data in addition to the quantitative data.

The survey questions were developed and refined in collaboration with the partner organisation, LGBT Ireland. Sample questions were circulated to a small number of LGBTI+ parents for feedback on language and clarity. Due to the diversity of LGBTI+ parent families, questions were designed to capture the nuances of many different family types. There was a total of 69 questions in the survey. Logic flow rules were used such that some questions were only displayed to respondents depending on their answers to previous questions. For example, respondents who indicated that they share parenting with another person were subsequently asked further questions about that person whereas respondents parenting alone were not. Similarly, respondents who indicated that they had undertaken a particular pathway to parenting were asked further questions about that pathway that others (who had not engaged in that pathway) were not. In this way, no respondent was shown or required to answer all 69 questions. There were also no mandatory questions in the survey other than the initial question regarding consent to participation and the cover page informed participants they could skip questions if they did not feel comfortable answering them. As a result, the total number of responses to each question varied. To address this, response data is primarily presented in this Report as a percentage of the respondents to the particular question rather than as a percentage of total respondents, unless otherwise stated.

Prior to engaging in the data collection, ethical approval for the research was obtained from the Arts, Humanities and Social Sciences Research Ethics Committee at the University of Limerick. An information letter was displayed on the landing page of the survey to provide respondents with further details about the research and how the data from the survey would be used. The survey took place online through Qualtrics software. This software includes a feature to 'prevent multiple

6 Wing Hong Chui, 'Quantitative Legal Research' in Michael McConville and Wing Hong Chui (eds.), *Research Methods for law* (Edinburgh: Edinburgh University Press 2007), p 58.

submissions' which was enabled to prevent respondents from submitting the survey more than once. All responses to the survey were anonymous and no identifying information was collected as part of the survey.

The anonymous survey went live in June 2021 and closed on 31 July 2021. The survey was circulated through various channels including the LGBT Ireland email circulation list; the Royal College of Physicians of Ireland e-zine; social media; and through informal parenting support networks. 155 respondents engaged with the survey. Of these, 56 responses were incomplete and so were excluded. The process of data cleaning left 99 complete responses that formed the basis for the subsequent data analysis. As noted above, the target population for the survey was parents who identify as LGBTI+ and the survey is estimated to have captured the views of approximately 16% of LGBTI+ parents in Ireland. In this way, the research is not representative of the views of all LGBTI+ parents in Ireland. The small sample size reduces the reliability of the findings and makes it difficult to draw accurate inferences from the data. Still, the data provides an important insight into the experiences of some LGBTI+ parents.

Filtering tools and cross tabulation were used in the data analysis. Filtering allowed the researcher to identify how particular categories of parents answered specific questions and cross tabulation was used to compare the responses of different categories of parents. Thematic analysis was used to analyse the qualitative survey responses. The results of the data analysis are outlined in Section 3: Description of the Research and Survey Results.

2: Overview of the Relevant Legal Framework

There are many different pathways to parenting available to LGBTI+ individuals. In the current research, donor-assisted human reproduction (DAHR), surrogacy and adoption are identified as the most common pathways used by research participants. As such, this section provides an overview of the Irish law applicable to those areas in order to provide context to the survey data that is presented later in the Report. The law applicable to guardianship is also outlined. In addition, it is necessary to identify the relevant international standards that apply in the areas mentioned. As children are the group most affected by the law's response to their family structures, children's rights and the best interests principle are guiding principles in the analysis.

This section details the law as it stood at the time of writing the report (October 2021). This section is for information purposes only and does not constitute legal advice.

2.1. United Nations Convention on the Rights of the Child (UNCRC)

Article 3(1) UNCRC provides that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In the context of adoption, Article 21 UNCRC provides that:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.

The Committee on the Rights of the Child has explained that where the best interests of the child are expressed as a 'primary consideration', those interests have 'high priority' and, 'a larger weight must be attached to what serves the child best.' Where best interests are described as the 'paramount consideration', they are to be the 'the determining factor when taking a decision.'⁷

The best interests principle has been criticised as vague and uncertain. The Irish Special Rapporteur on Child Protection, Professor Conor O'Mahony notes that the uncertainty of the best interests

⁷ Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14*, paras 38-39.

principle has, at times, 'led to the principle being invoked on both sides of the debate regarding prohibition or regulation' of assisted human reproduction.⁸ O'Mahony notes that the vagueness associated with the principle can be mitigated by applying the principle in a way that 'maximises the child's enjoyment of his or her other rights and in a manner that is informed by the best available empirical evidence derived from social science research.'⁹ The following rights are identified in the Special Rapporteur's report as particularly relevant in the context of DAHR and surrogacy:

- The right to family life (Articles 7, 9, 10, 16 and 18 UNCRC, Article 8 ECHR)
- The right to identity (Article 8 UNCRC, Article 8 ECHR)
- The right to health (Article 24 UNCRC)
- The right of the child to express their views in all matters affecting them (Article 12 UNCRC)
- The principle of non-discrimination (Article 2 UNCRC, Article 14 ECHR)
- The prohibition on abduction, sale and trafficking of children (Article 35 UNCRC and Article 1 Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography).

Thus, the best interests of the child must be a guiding principle in analysing Ireland's legal response to the recognition of parent-child relationships in LGBTI+ parent families and a rights-based approach must be adopted in determining what is meant by 'best interests'. An individualised approach is also required to allow the best interests determination to be 'adjusted and defined on an individual basis, according to the specific situation of the child or children concerned.'¹⁰

The best interests principle features in Article 42A of the Irish Constitution and in many Irish statutes, albeit in a different form to that expressed in the UNCRC. Most notable for the purpose of this report is the fact that the principle appears in the Children and Family Relationships Act 2015 as this statute regulates the area of donor-assisted human reproduction and introduced significant reforms in the area of guardianship, both of which are discussed below.

8 Conor O'Mahony, *A Review of Children's Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law* (December 2020), p 9.

9 O'Mahony, above, p 10.

10 Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14*, para 32.

2.2. Donor-Assisted Human Reproduction

Donor-Assisted Human Reproduction or 'DAHR' is regulated under the Children and Family Relationships Act 2015. For the purpose of the Children and Family Relationships Act 2015, DAHR is defined as 'any procedure performed in the State with the objective of it resulting in the implantation of an embryo in the womb of the woman on whose request the procedure is performed' where one or both of the gametes or the embryo has been provided by a donor.¹¹ Surrogacy does not come within the definition of DAHR in the Children and Family Relationships Act 2015. Surrogacy remains unregulated in Ireland at the time of writing of this report (October 2021).

Section 5 of the Children and Family Relationships Act 2015 provides that the parents of a child who is born following a DAHR procedure shall be the mother (the woman who gives birth to the child)¹² and the spouse, civil partner or cohabitant, as the case may be, of the mother. If the mother is single, they will be the sole legal parent of the child. In neither case will the donor of genetic material be regarded as a parent of the child nor will they have any parental rights and duties in respect of the child. In order for parentage to be allocated to these persons, consents and declarations are required from each of the parties. Before consents can be given, each of the parties must be provided with specific information about the implications of his or her role in the process. Where a DAHR procedure is conducted in line with the Children and Family Relationships Act 2015 after 4 May 2020 (the date that the legislation was fully commenced), female parents can be jointly recognised as the child's legal parents from the time of the birth.

As noted above, the definition of DAHR in the Children and Family Relationships Act 2015 provides that the procedure is one that is 'performed in the State'. As a result of this proviso, where a child is conceived by way of DAHR conducted in another country, the Children and Family Relationships Act 2015 parentage provisions will not apply. This means that, in the case of a female couple who travel abroad to engage in DAHR, the partner of the birth mother may not be recognised as a legal parent under Irish law at the time of the child's birth. There is an exception for children conceived prior to 4 May 2020 whose parents may be able to apply for a retrospective declaration of parentage, explained below.

11 Children and Family Relationships Act 2015, section 4. The 'donor' for the purpose of the legislation is also defined in section 4.

12 Children and Family Relationships Act 2015, section 4.

It should also be noted that the parentage provisions only apply where the DAHR procedure is conducted in a 'DAHR facility'. This means that 'at home' or non-clinical procedures also fall outside of the ambit of the Children and Family Relationships Act 2015.¹³ As a result, where a child is born through this type of procedure, the person who gives birth will be regarded as the child's legal mother;¹⁴ if they are married, their husband (but not wife) is presumed to be the child's legal father;¹⁵ and if unmarried, the father listed on the birth certificate is presumed to be the legal father.¹⁶ Both presumptions can be rebutted where it is shown, on the balance of probabilities, that the man is not the father of the child. In this situation, the genetic father is regarded as the legal father. For a female couple engaging in non-clinical DAHR, this means that the person who gives birth is recognised as the legal mother and the sperm donor is regarded as the legal father, which fails to reflect the child's intended parenting.

2.2.1. Retrospective declaration of parentage

The Children and Family Relationships Act 2015 was enacted in 2015 but the DAHR provisions were not commenced until 4 May 2020. As a result, children born through DAHR before 4 May 2020 were subject to the same parentage provisions that apply to any other conception. As above:

- the person who gave birth to the child was regarded as the child's legal mother;
- if the person who gave birth was married, their husband (but not wife) was presumed to be the child's legal father;
- if unmarried, the father listed on the birth certificate was presumed to be the legal father.
- Both presumptions could be rebutted where it was shown, on the balance of probabilities, that the man was not the father of the child. In this situation, the genetic father was regarded as the legal father.

This situation failed to accommodate female couples who engaged in DAHR as the non-gestational mother was not recognised as a legal parent.

13 See further Lydia Bracken, *Same-Sex Parenting and the Best Interests Principle* (Cambridge: Cambridge University Press, 2020), pp 160-163.

14 *MR v An tArd Chláraitheoir* [2014] 3 IR 533.

15 Status of Children Act 1987, s 46(1).

16 Status of Children Act 1987, s 46(3), amended by Children and Family Relationships Act 2015, s 88.

Following commencement of the Children and Family Relationships Act 2015 DAHR provisions, it became possible for parentage to be retrospectively allocated to an intended parent not previously recognised as a legal parent. In order to be eligible for such an application, certain criteria have to be met, including that the gamete donor was and remains unknown to the intended parents.¹⁷ This means that where a known donor was used, the application cannot be granted.

2.3. Surrogacy

Currently in Ireland, surrogacy is permitted but there is no specific legislation to regulate the process. This means that, in line with the existing law, where a child is born through surrogacy, the surrogate is regarded as the legal mother and the genetically related intended father can be recognised as the legal father. There is no mechanism to recognise the non-gestational intended mother or non-genetically related intended father as a legal parent of the child at the time of the birth.

Proposals to regulate surrogacy have been put forward in the General Scheme of an Assisted Human Reproduction Bill 2017. A revised Bill is expected to be published in 2021. As currently drafted, the General Scheme proposes to only allow for surrogacy that is domestic, gestational and altruistic in nature. A number of other conditions are also proposed but there is no provision in the General Scheme to retrospectively recognise the legal parentage of intended parents who have already had a child or children through surrogacy.

The current law means that, where a male couple engages in surrogacy, the genetically related intended father can be recognised as the child's legal father, but the non-genetically related intended father cannot be recognised as a legal parent.

2.4. Adoption

There is no right to adopt in domestic or international law but certain persons are permitted to apply for adoption. Under Irish law, married couples, civil partners, and cohabiting couples of the same or opposite sex are eligible to apply to jointly adopt a child.¹⁸ Single persons are also eligible to apply to adopt.¹⁹ There is also specific provision for second-parent or 'step-parent' adoption such that where

17 Children and Family Relationships Act 2015, s 20(1)(d)-(e).

18 Adoption Act 2010, s 33, as amended by Adoption (Amendment) Act 2017, s 16.

19 Adoption Act 2010, s 33(1)(a)(iii).

a child is adopted by a step-parent, the child is deemed to be the child of that step-parent and the step-parent's spouse, civil partner or cohabitant, as the case may be.²⁰ The step-parent is defined as the spouse, civil partner or cohabitant of a legal parent. In order to be eligible to adopt, the child must have lived with the step-parent and the legal parent for a continuous period of not less than two years.²¹

Adoptive parents must also be deemed 'suitable' to adopt a child.²² The assessment of eligibility and suitability of prospective adopters is undertaken by the Child and Family Agency (Tusla). Based on this assessment, the Adoption Authority of Ireland will decide whether to grant or refuse the declaration of eligibility and suitability.

The relevant legislation does not impose any restrictions on the use of adoption following DAHR or surrogacy, but it has been reported that the Adoption Authority of Ireland does not currently facilitate requests for adoption in such cases.²³ As a result, for many LGBTI+ parents, guardianship provides the only mechanism to secure a legal relationship with their child.

2.5. Guardianship

Where a person is not legally recognised as a parent, they may be able to secure guardianship of the child as a way to create a legal connection between them. Guardianship refers to a bundle of rights and responsibilities associated with raising a child. Although most legal parents are legal guardians, this is not always the case and, for many parents, will depend on their marital status. Where the mother and father of a child are married to each other at the time of the child's birth, both parents are automatically made joint guardians of the child.²⁴ Where the child is born outside of marriage, the mother is deemed to be the sole automatic guardian.²⁵ A non-marital father can obtain guardianship rights in relation to his child, either by subsequently marrying the mother, through cohabitation with the mother where certain conditions are met,²⁶ by agreement with the mother,²⁷ or by court order.²⁸

20 Adoption Act 2010, s 58A, inserted by Adoption (Amendment) Act 2017, s 26.

21 Adoption Act 2010, s 37(5) as amended by Adoption (Amendment) Act 2017, s 18.

22 Adoption Act 2010, s 34.

23 Ailbhe Conneely, 'Legal rights call for children born through surrogacy' *RTÉ News*, 10 June 2021.

24 Guardianship of Infants Act 1964, s 6(1), as amended by Marriage Act 2015, s 16(a).

25 Guardianship of Infants Act 1964, s 6(4), as amended by Children and Family Relationships Act 2015, s 47(c).

26 Guardianship of Infants Act 1964, s 2(4A) as inserted by Children and Family Relationships Act 2015, s 43(c).

27 Guardianship of Infants Act 1964, s 2(4), as inserted by Children Act 1997, s 4.

28 Guardianship of Infants Act 1964, s 6A(1), as inserted by Children and Family Relationships Act 2015, s 48.

Where the child is born through DAHR, the person who gives birth to the child and their spouse or civil partner who has consented to being recognised as the child's second parent under section 5 of the Children and Family Relationships Act 2015, will be recognised as guardians upon the birth of the child.²⁹ If the parents are unmarried and are not parties to a civil partnership, the person who gives birth is automatically regarded as a legal guardian of the child and their partner who has consented to being recognised as the child's second legal parent under section 5 of the Children and Family Relationships Act 2015, and who has cohabited with the mother for 12 consecutive months (including a period of 3 months after the birth of the child), will be recognised as a guardian.³⁰ If the second parent does not meet these cohabitation requirements, they may acquire guardianship by way of statutory declaration³¹ or court order.³²

It is also possible for someone who is not a legal parent to apply to court to become a guardian where certain criteria are met:

- The person is married to or is in a civil partnership with, or has been for over 3 years a cohabitant of, a parent of the child, and has shared with that parent responsibility for the child's day-to-day care for a period of more than 2 years,³³ or
- The person has provided for the child's day-to-day care for a continuous period of more than 12 months, and the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship in respect of the child.³⁴

In the case of DAHR procedures that fall outside of the Children and Family Relationships Act 2015, many intended parents rely on the first provision above to secure guardianship of their child as this represents the only available mechanism for them to establish a legal relationship with their child. While guardianship is a useful mechanism for this purpose, a drawback is that the applicant must have cared for the child for at least two years before they can apply. Moreover, guardianship is a temporary status that comes to an end when the child reaches the age of majority. It does not create a legal relationship with the extended family in the way that legal parentage does, and it does not confer many important rights that are associated with legal parentage such as those pertaining to citizenship or succession.³⁵ The availability of guardianship alone is not therefore a 'solution' to the issues experienced by families where one parent is not recognised as a legal parent.

29 Guardianship of Infants Act 1964, s 6B(1) and s 6B(2)(a), inserted by Children and Family Relationships Act 2015, s 49 and amended by Marriage Act 2015, s 16(b).

30 Guardianship of Infants Act 1964, s 6B(2)(b), inserted by Children and Family Relationships Act 2015, s 49.

31 Guardianship of Infants Act 1964, s 6B(4), inserted by Children and Family Relationships Act 2015, s 49.

32 Guardianship of Infants Act 1964, s 6A(1), substituted by Children and Family Relationships Act 2015, s 48.

33 Guardianship of Infants Act 1964, s 6C(2)(a) as inserted by Children and Family Relationships Act 2015, s 49.

34 Guardianship of Infants Act 1964, s 6C(2)(b) as inserted by Children and Family Relationships Act 2015, s 49.

35 Lydia Bracken, *Same-Sex Parenting and the Best Interests Principle* (Cambridge, Cambridge University Press, 2020), p 98

2.6. Calls for Reform

A number of academics³⁶ and civic society organisations³⁷ have criticised the existing legal framework for failing to provide legal recognition to certain LGBTI+ parent families in Ireland and, in doing so, failing to prioritise the best interests of the children raised in such families. Most recently, the Irish Special Rapporteur on Child Protection published the findings of a review of children's rights and best interests in the context of parentage in cases of DAHR and surrogacy.³⁸ The Special Rapporteur concludes that a number of amendments are required to existing legal provisions and a number of new legal provisions need to be introduced in order to safeguard children's rights and best interests in the context of DAHR procedures and surrogacy arrangements. This includes amendments to the Children and Family Relationships Act 2015 and changes to the current proposals for the regulation of surrogacy that are contained in the General Scheme of an Assisted Human Reproduction Bill 2017. The Special Rapporteur's recommendations are discussed further in Section 4: Conclusions and Recommendations.

The survey data detailed in the next section of the Report starkly illustrates the impact of the law (or the absence of relevant laws) on new and non-traditional families in Ireland and strengthens the argument that legal reform is needed to protect families and children and to eliminate discrimination.

36 See for example, Lydia Bracken, *Same-Sex Parenting and the Best Interests Principle* (Cambridge, Cambridge University Press, 2020); Lydia Bracken, 'The Assisted Reproduction Bill 2017: An Analysis of Proposals to Regulate Surrogacy in Ireland' (2017) 68 *Northern Ireland Legal Quarterly* 577-587; Claire O'Connell, 'The Aspirational Shortcomings of the Irish Legislative Proposals in Assisted Human Reproduction—Part 1' (2018) 21(4) *Irish Journal of Family Law* 91-97; Brian Tobin, 'Assisted Reproductive Techniques and Irish Law: No Child Left Behind?' (2020) 64 *Irish Jurist* 138-152.

37 See, for example, LGBT Ireland, *Pathways to Parenting: Proposals for Reform* (LGBT Ireland, 2018); Equality for Children, 'Press Release 31st March 2021'.

38 Conor O'Mahony, *A Review of Children's Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law* (December 2020).

3: Description of the Research and Survey Results

3.1. Introduction

The overall aim of the empirical research was to investigate the nuances of, and legal difficulties faced by, LGBTI+ parent families in Ireland. The empirical research undertaken for this project involved an anonymous survey completed by parents who identified as LGBTI+ (for a description of the methodology, see Section 1.2. Methodology and Survey Design). Analysis of the survey data has identified three common pathways to parenting: DAHR, surrogacy, and adoption. In addition, the survey data indicates that many respondents and their partners/co-parents (whether legal parents or not) are also guardians of their children. The first part of this section of the Report presents overall data pertaining to the profile of all respondents; understanding of laws; legal parental status and guardianship status; and experiences of discrimination/perceptions of attitudes. Thereafter, data for the three main pathways to parenting (DAHR, surrogacy, and adoption) are presented to allow for analysis and comparison between subgroups.

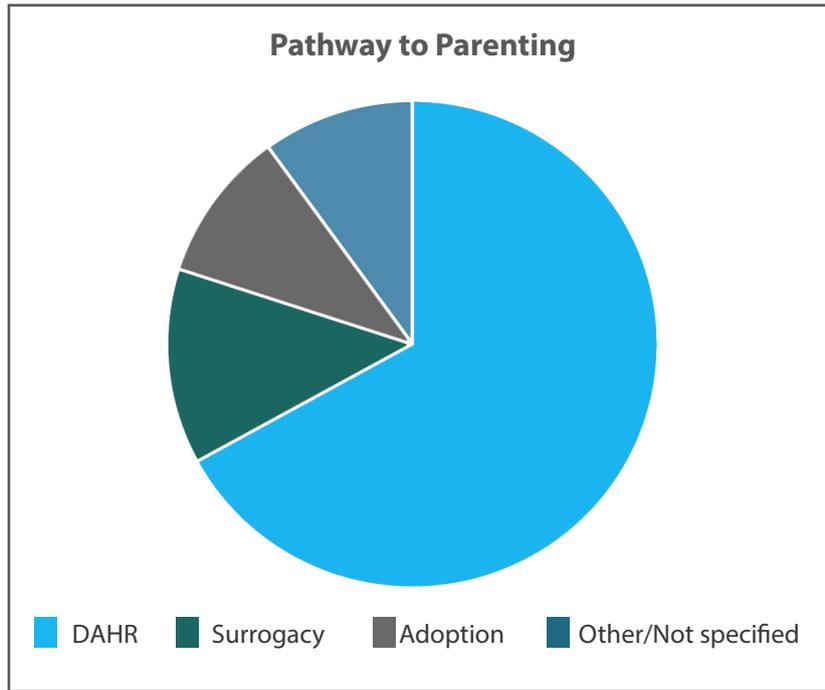
3.2. Overall Responses

There were 99 complete survey responses. The vast majority (90%) indicated that they share parenting with a current partner, while 7% share parenting with a former partner. Only 3% of respondents stated that they parent alone. None of the participants indicated that they share parenting with a friend. The survey asked that families complete the survey once (one parent answering on behalf of the other parent) unless this would not accurately describe the nature of their family. Assuming that this request was followed, it can be estimated that the survey represents the views of 195 parents parenting approximately 170 children.

The majority of respondents to the survey identified as female (79%) gay woman/lesbian (64%), parenting with a current partner who identifies as female (72%) gay woman/lesbian (67%).

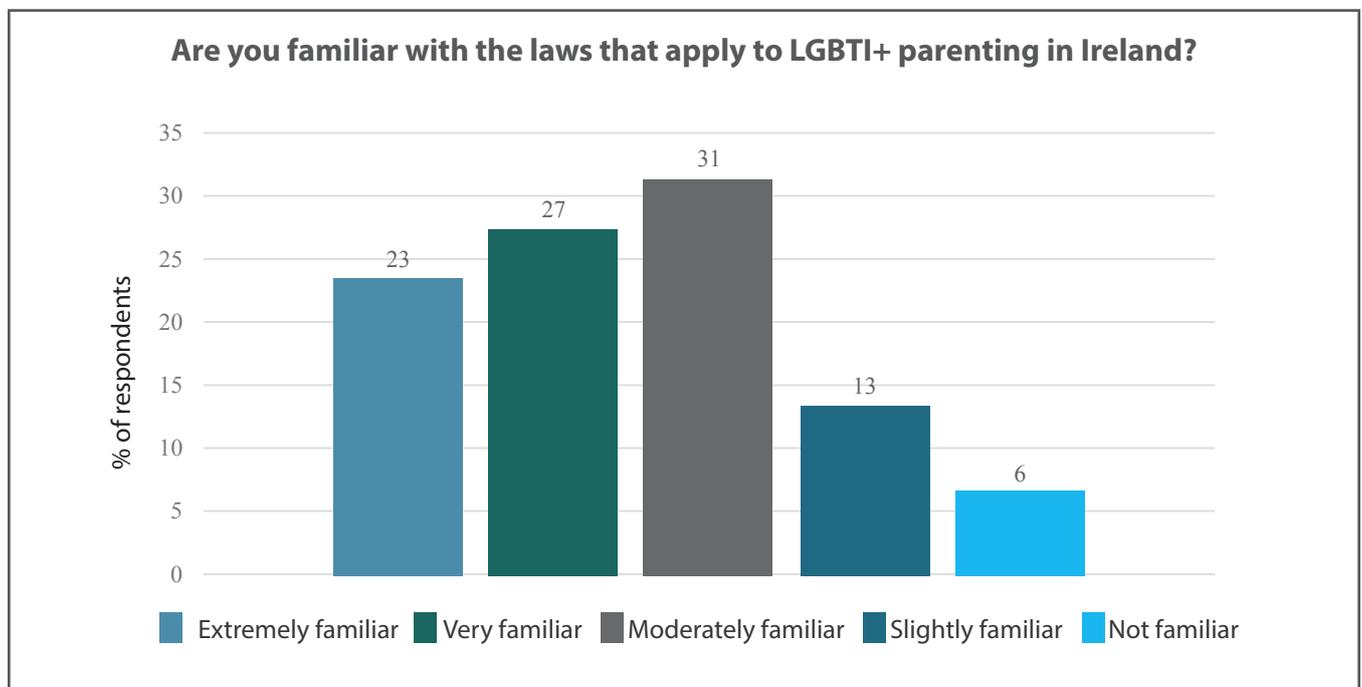
Most respondents (60%) were in the 36–45-year-old age range and most (66%) were married. Most respondents lived in Dublin (52%).

Donor-assisted human reproduction (DAHR) was the most common pathway to parenting used by respondents, representing 67% of all responses. 13% of respondents had engaged in surrogacy; 10% in adoption and 10% adopted a different or unspecified pathway to parenting.



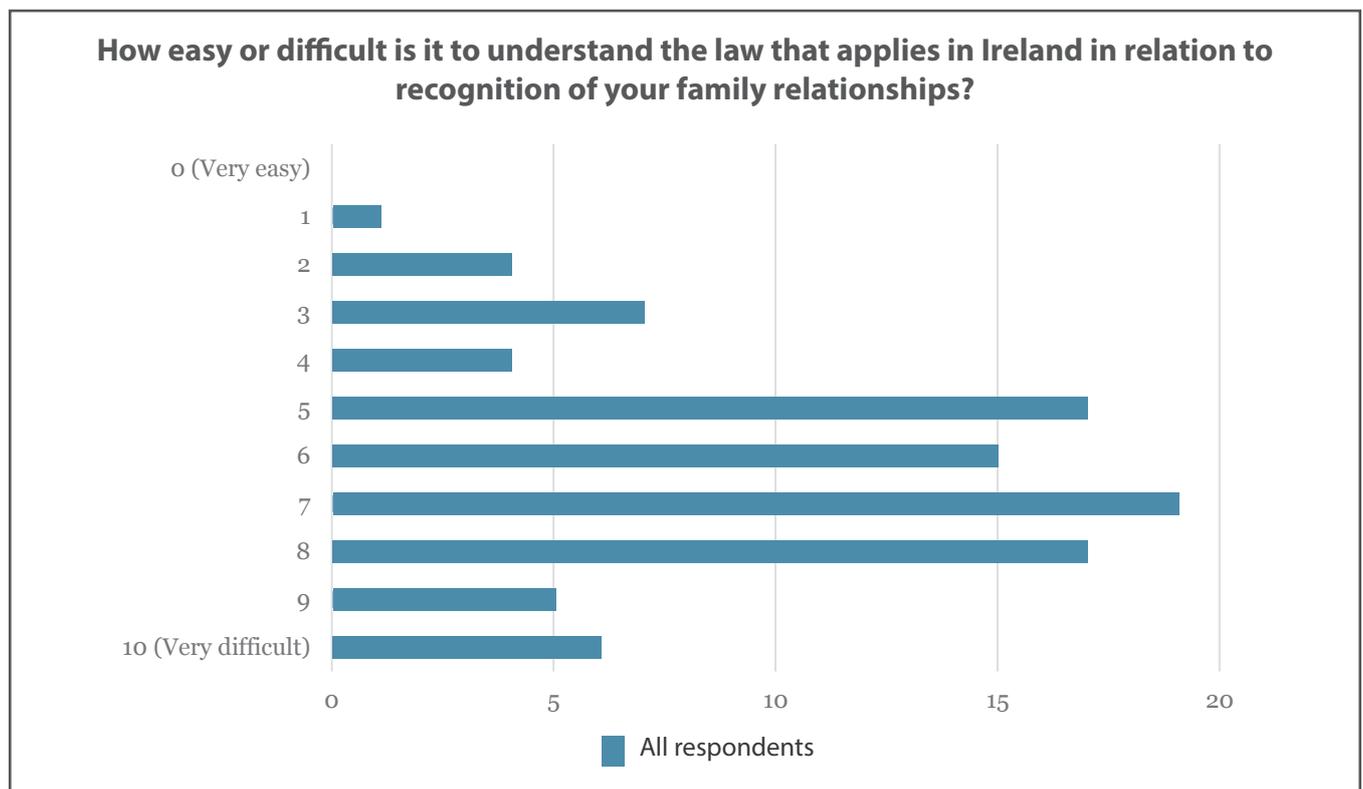
3.2.1. Understanding of Laws

Overall, respondents indicated a high level of familiarity with the laws that apply to LGBTI+ parenting in Ireland.



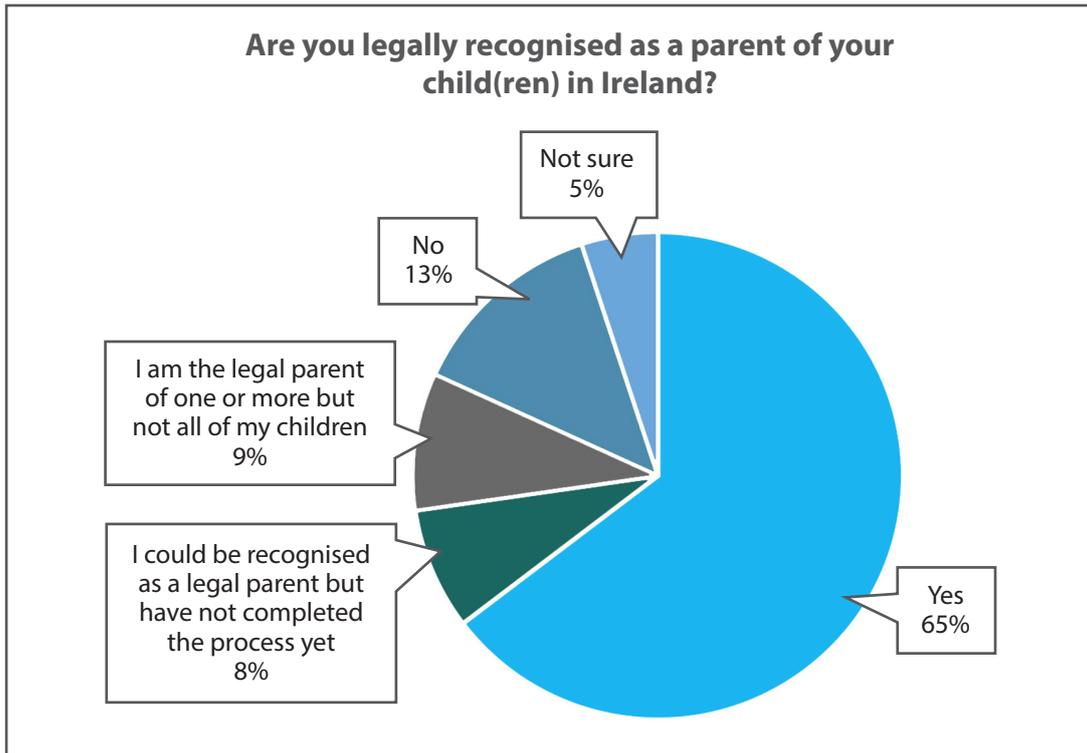
At the same time, some confusion as to legal terminology was observed in the survey responses. For example, the section on donor-assisted human reproduction (DAHR) included a definition of that term and specified that ‘Surrogacy does not come within this definition. If your child was born through surrogacy, please select “no” to the first question on DAHR below to skip to the next section.’ Still, 31% of parents through surrogacy selected ‘yes’ to indicate that their child had been conceived through DAHR when, in fact, this was not the case. This suggests that there is some uncertainty regarding the applicable legal terminology among some parents.

Related to this issue of uncertainty are the responses to the question ‘How easy or difficult is it to understand the law that applies in Ireland in relation to recognition of your family relationships?’ Most respondents to this question stated that it was more difficult rather than easy to understand the law that applies in Ireland in relation to recognition of their family relationships, as illustrated in the bar chart below.

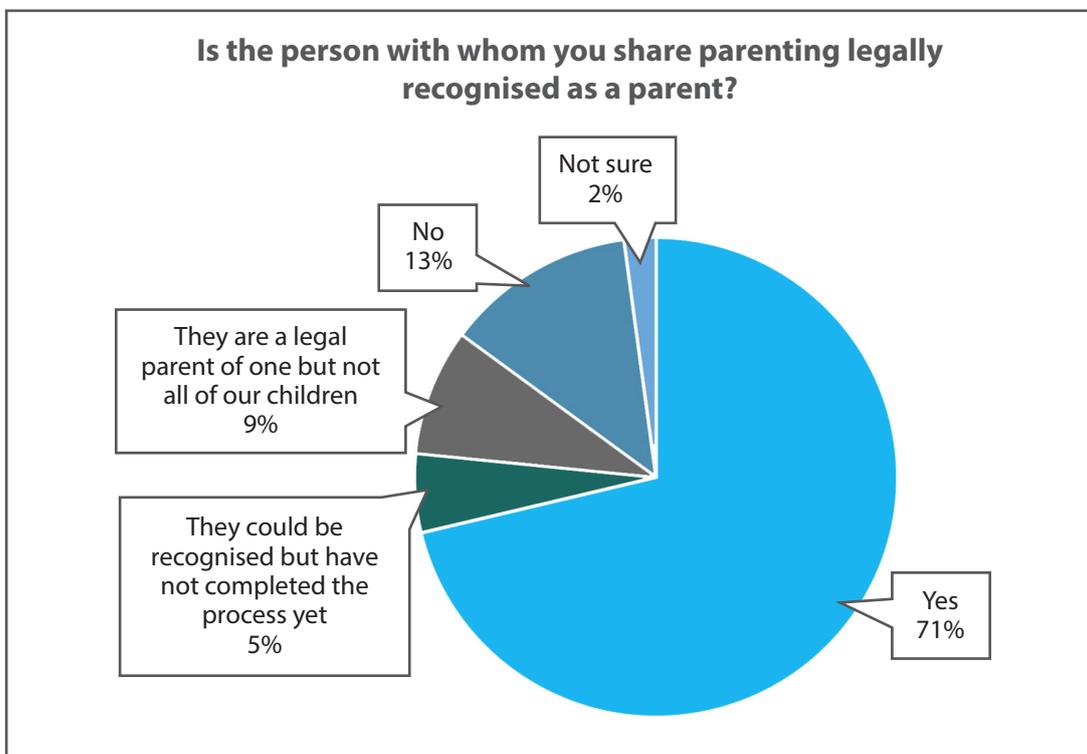


3.2.2. Legal Parental Status

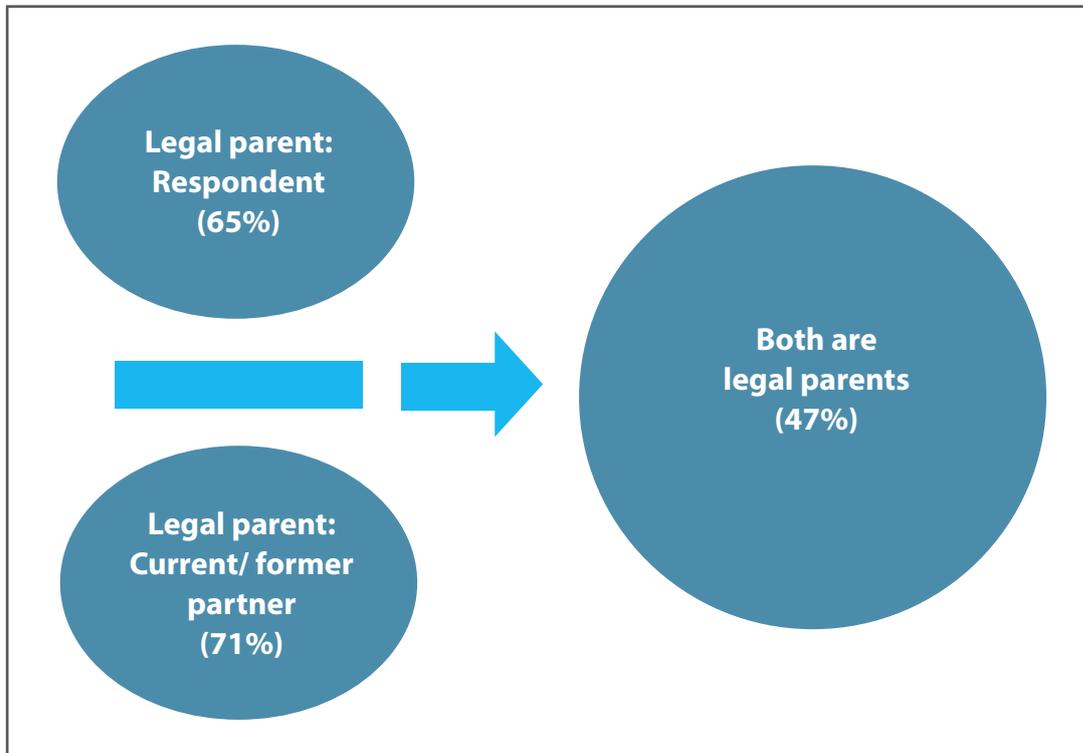
Most respondents (65%) indicated that they are the legal parent of all of their children.



Of the respondents who indicated that they share parenting with a current/ former partner, most (71%) indicated that the current/ former partner is legally recognised as a parent of all children.



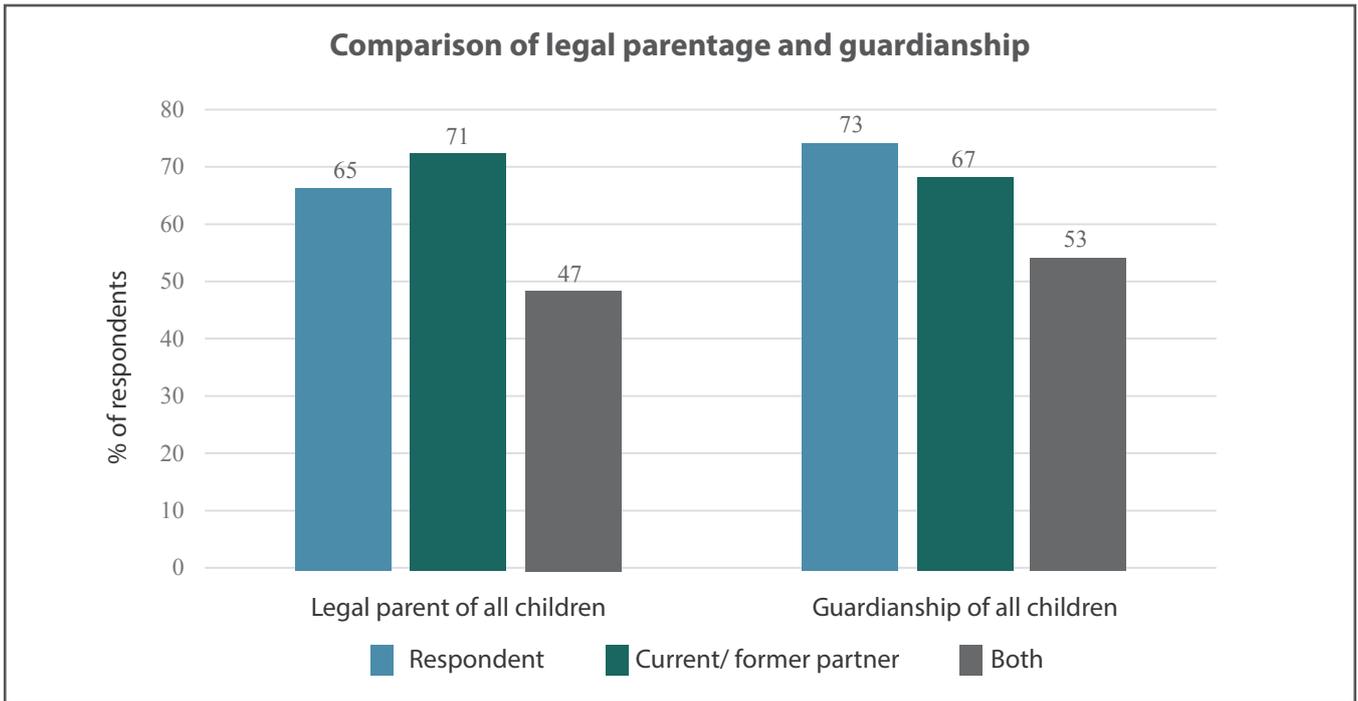
However, of those respondents who indicated that they are a legal parent, only 47% stated that the person they share parenting with is also a legal parent of all children. Thus, in 53% of the families captured by the survey, all children do not have a legal relationship with both of their parents. This indicates that a significant proportion of LGBTI+ parent families are not fully recognised under Irish law.



3.2.3. Guardianship

The data on guardianship among total respondents is broadly similar to that on legal parentage but, overall, there were slightly more guardians than legal parents in the families who are encompassed by the survey.

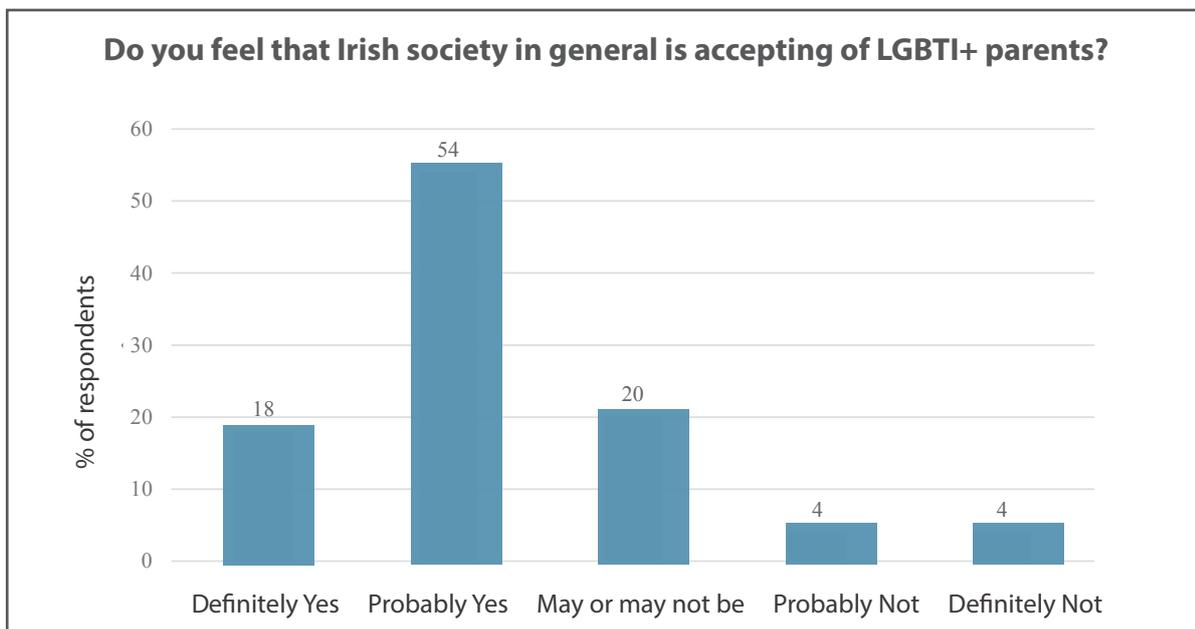
Most respondents (73%) indicated that they are a legal guardian of all of their children, and most of those parenting with a current/former partner stated that the person with whom they share parenting is a legal guardian of all children (67%). The percentages fell slightly when looking at joint guardianship, although the number of respondents who indicated that both they and their partner are legal guardians of all children (53%) was higher than the numbers reporting joint legal parentage (47%). The bar chart below shows the differences between legal parentage and guardianship.



The relatively high proportion of families where both parents are not legal guardians of all children (47%) may be explained by the fact that there is a two-year waiting period before someone who is not a legal parent can apply for guardianship (Section 2: Overview of the Relevant Legal Framework). It could, therefore, be the case that, in some of these families, the child is under the age of two years old and so the parent does not yet meet the eligibility requirements to apply for guardianship.

3.2.4. Discrimination/ Attitudes

Most respondents (54%) felt that Irish society in general is 'probably' accepting of LGBTI+ parents.



Many of the comments pertaining to heteronormativity concerned rigid administrative systems that fail to accommodate diverse family forms. For example:

"Dealing with government departments, schools, financial institutions as forms/applications etc are not designed for alternative family dynamics"

"System set up for 'mothers' to do child parenting. Lots of questions about 'No Mother?'. All forms are 'Mother'... you are required to complete different forms and continuously explain 'how' you are a parent..."

Other respondents mentioned a lack of acceptance or understanding of their family relationships among members of society:

"Being told by strangers etc that my wife cannot be a parent of our child as 'a child can only have one mom' etc"

"...we have had people, usually mothers, comment that men cannot nurture kids, and that kids need mothers..."

"...people thinking I'm lying about being my child's mum as they have already met her other mum..."

"Being told by a small minority that every child needs a mother, also being asked if my child is more likely to be gay by having 2 dads..."

Other respondents specifically mentioned instances of discrimination and a lack of acceptance of their relationships when interacting with medical professionals, in particular nurses, in maternity hospitals.

Many respondents referred to the legal barriers they or their partner had experienced as a non-legal parent. For example:

"Before the Children and Family Relationships Act 2015 came into effect, my wife had to swear an affidavit declaring that she was effectively a single parent in order to apply for a passport for our son."

"Our son has serious medical issues and attends hospital regularly... before I obtained guardianship and legal parent status, I was unable to sign hospital paperwork to consent to surgeries/scan/medical procedures etc..."

“Not being able to sign a form in crèche for my son when he had an accident as I’m not a legal parent.”

These comments highlight the pressing need for legal reform to recognise diverse family relationships, but also underline the fact that legal reform alone is not a panacea and that wider issues of societal understanding need to be addressed in order to accommodate all LGBTI+ parent families.

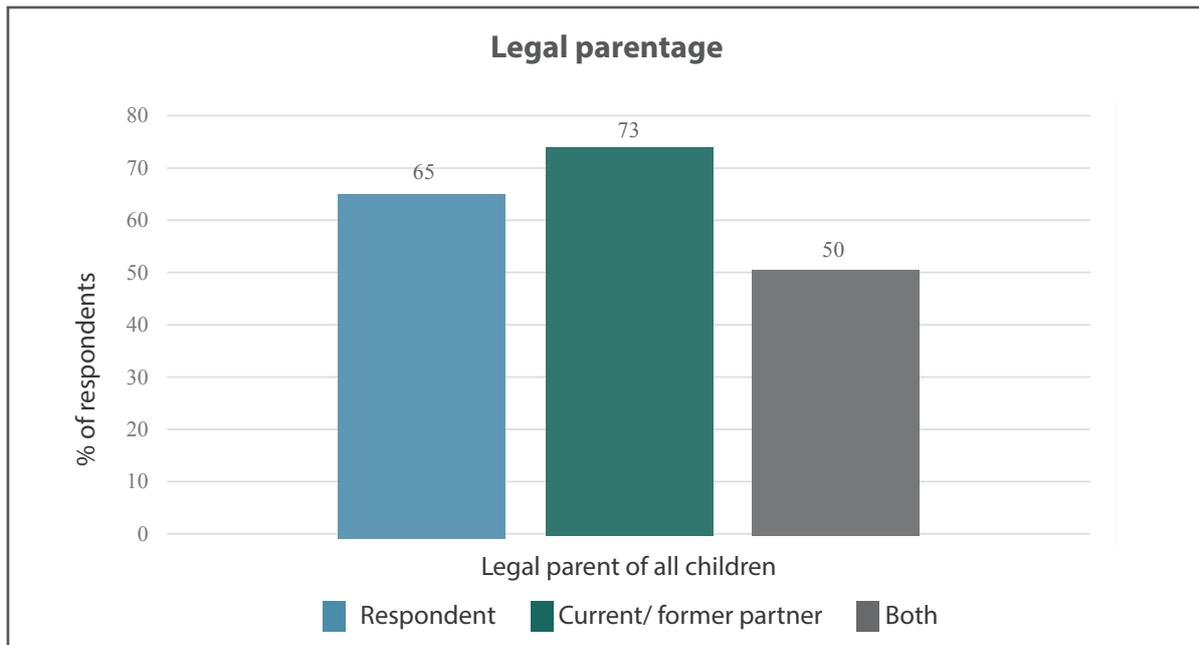
3.3. Donor-Assisted Human Reproduction

67% of all respondents to the survey indicated that they had engaged in donor-assisted human reproduction (DAHR). For the purpose of the survey, DAHR was defined as a procedure ‘with the objective of it resulting in the implantation of an embryo in the womb of the woman on whose request the procedure is performed where either one or both gametes (sperm/egg) or the embryo is provided by a donor.’ This definition was displayed on the survey and it was noted that surrogacy does not come within this definition.

All of the DAHR parent respondents to the survey identified as female. Most of these respondents indicated that they are parenting their children with a current partner (94%) and that that current partner identifies as female (97%). This cohort were parenting a total of 102 children conceived through DAHR.

3.3.1. Legal Parental Status

65% of the DAHR parent respondents indicated that they are a legal parent of all of their children. 73% of the DAHR parent respondents who shared parenting with a partner indicated that their partner is a legal parent of all children. However, only 50% of these respondents indicated that both they and their partner are legal parents of all children.

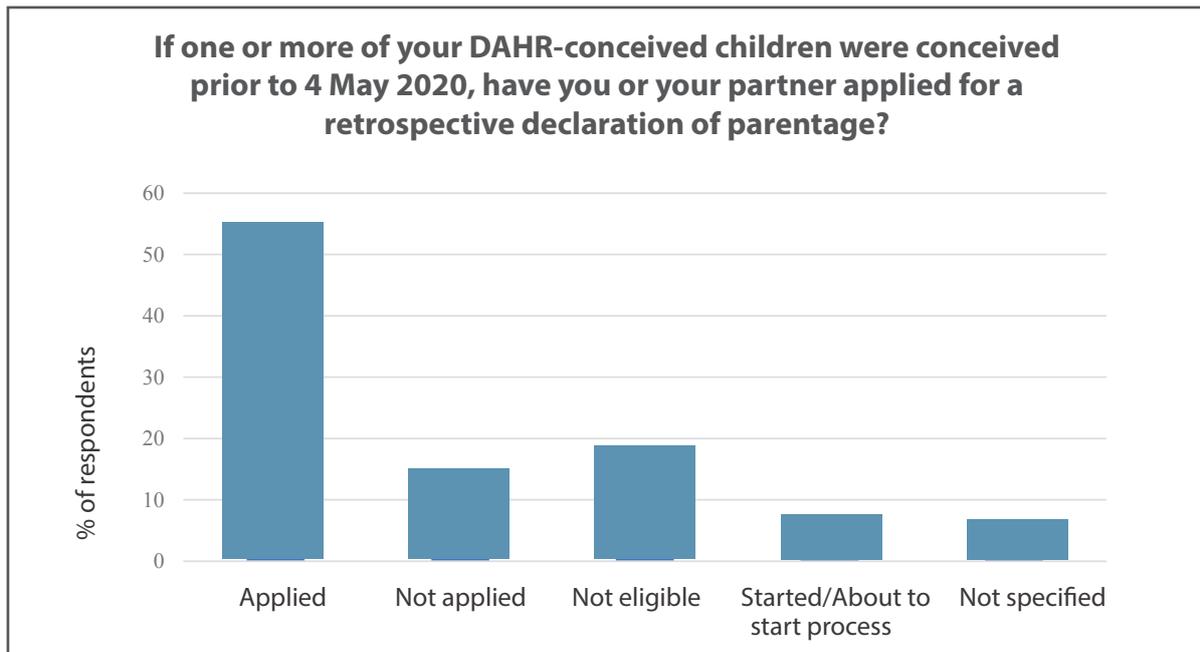


The percentage of DAHR parent respondents who indicated that both they and their current/ former partner are legal parents (50%) is slightly higher than the overall proportion of respondents who indicated joint parental status with a current/ former partner (47%). This is likely due to the impact of the Children and Family Relationships Act 2015, which specifically regulates the area of DAHR. Indeed, the significance of the legislation is apparent when results are filtered to distinguish between parents whose children were conceived prior to 4 May 2020 (when the DAHR provisions of the legislation were fully commenced) and those whose children were conceived after 4 May 2020.

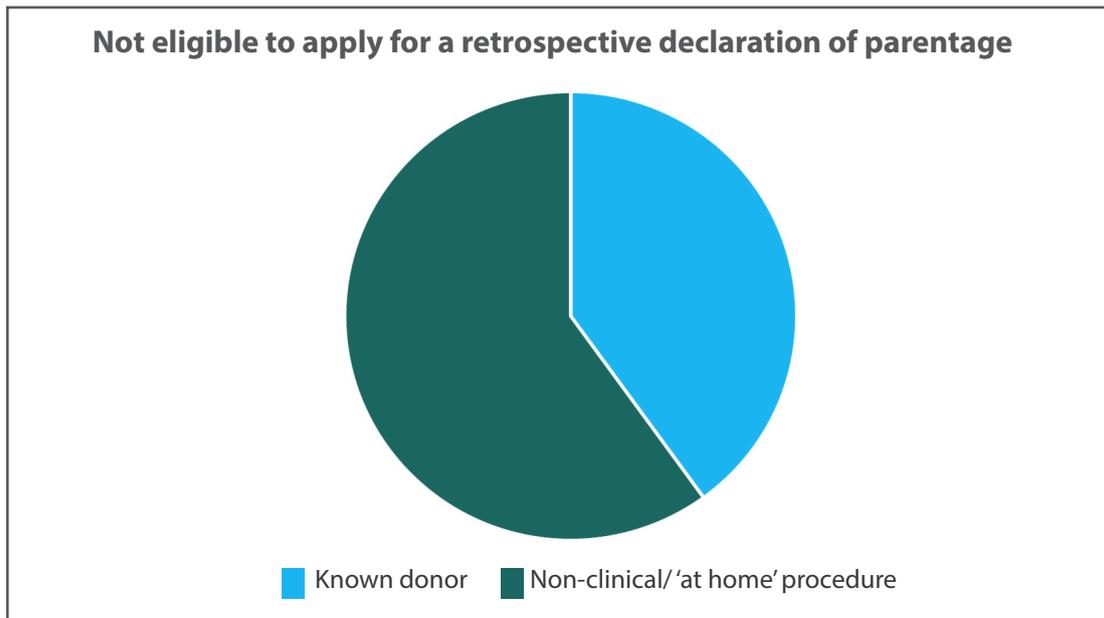
Significance of commencement of the Children and Family Relationships Act 2015

Just 5% of the DAHR parent respondents indicated that both they and their current/ former partner were recognised as legal parents at the time of the child's birth. In each case, the child(ren) had been conceived through DAHR after 4 May 2020. This reflects the fact that, prior to full commencement of the Children and Family Relationships Act 2015, it was not possible for female intended parents who conceived a child through DAHR to be jointly recognised as legal parents at the time of the child's birth.

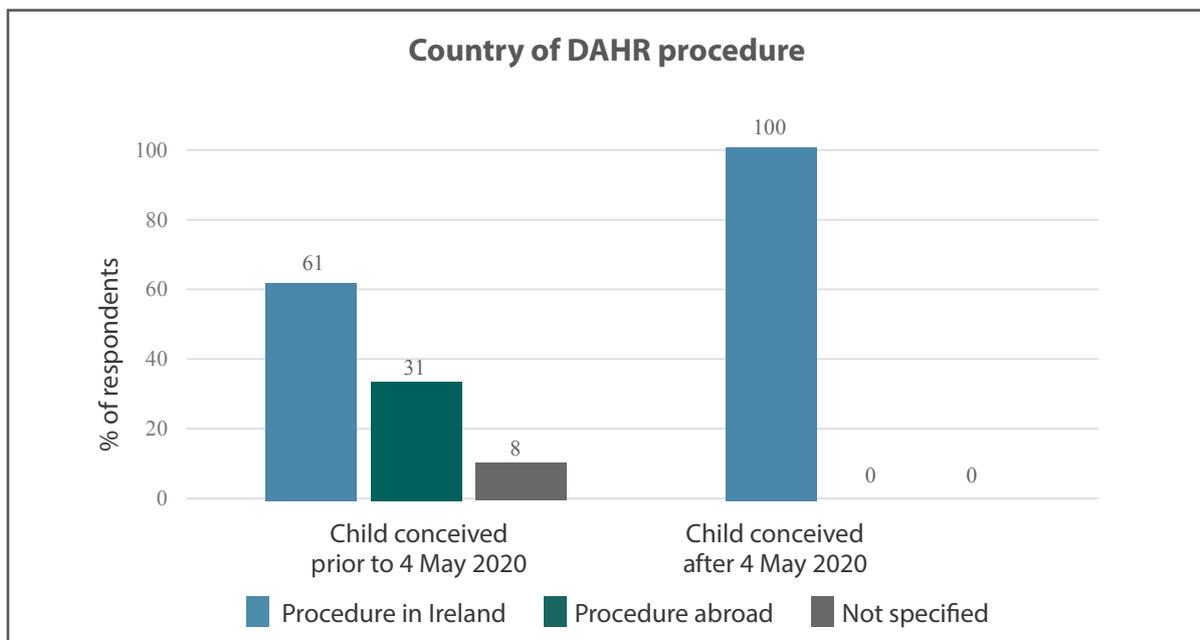
92% of the DAHR parent respondents indicated that at least one of their children was conceived through DAHR prior to 4 May 2020 and hence prior to full commencement of the Children and Family Relationships Act 2015. Of these respondents, 54% had either themselves applied or their current/ former partner had applied for a retrospective declaration of parentage; 15% of respondents or their current/former partner had not applied; 18% stated that they were not eligible to apply; and 7% stated that they had started or were about to start the process. 6% of this cohort did not specify whether they had applied for the retrospective declaration of parentage.



There are various reasons why a person may not be eligible to apply for a declaration of parentage in respect of a child conceived through DAHR prior to 4 May 2020. In order to be eligible to apply, the applicant must meet the criteria specified in section 20 of the Children and Family Relationships Act 2015. Among other things, the legislation requires that the gamete donor must have been unknown to the intended parents and must not him/herself have been an intended parent at the time of the procedure, and the donor must remain unknown to the intended parents at the time of the application. Therefore, where a known donor has been used, the declaration cannot be granted (Section 2: Overview of the Relevant Legal Framework). Of the 18% of respondents with children conceived through DAHR prior to 4 May 2020 who stated that they were not eligible to apply for a retrospective declaration of parentage, 40% had engaged a known donor, while 60% had engaged in non-clinical/at home insemination.



All of the respondents with children conceived through DAHR after 4 May 2020 had undergone the DAHR procedure in Ireland. The picture was more mixed among the DAHR parent respondents whose children were conceived prior to 4 May 2020: of these respondents, 61% had engaged in DAHR in Ireland, while 31% had engaged in DAHR abroad. 8% of these respondents did not specify the location of the DAHR procedure. The United Kingdom was the most common destination listed for DAHR procedures conducted abroad.

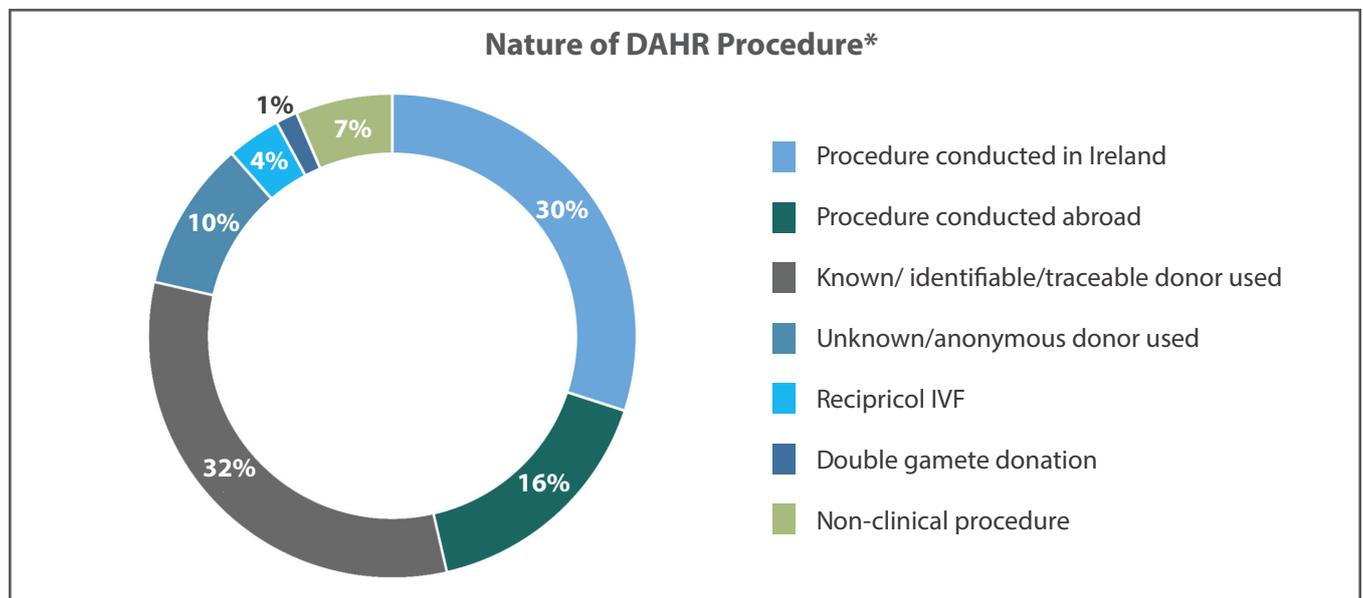


The fact that all DAHR procedures undertaken by respondents to the survey since 4 May 2020 took place in Ireland reflects the fact that the Children and Family Relationships Act 2015 specifies that the procedure must be conducted in Ireland in order for the parentage provisions to apply. This demonstrates the impact of the legislation in influencing the nature of the DAHR procedures undertaken by some parents.

3.3.2. Nature of the DAHR procedure

32% of responses to the question asking about the nature of the respondent’s DAHR procedure(s) indicated that a known /identifiable/ traceable gamete donor was used, compared to just 10% of responses indicating that an unknown/anonymous donor was used. Of those who had used an unknown/anonymous donor, 57% had engaged in a DAHR procedure abroad, while 43% engaged in a DAHR procedure in Ireland.

7% of responses to this question indicated that the respondent had engaged in an ‘at-home’ or non-clinical procedure. In these cases, only the birth mother was recognised as a legal parent of the child(ren). This reflects the fact that non-clinical DAHR is excluded from the ambit of the Children and Family Relationships Act 2015.



***Note:** Respondents were asked to select all that apply such that more than one option could be selected. Respondents could therefore be describing the nature of more than one conception.

A common theme in the comments related to the difficulties associated with the court process for securing legal recognition. For example:

“Training of staff in court admin to support families through the process of applying for retrospective parentage [is needed]”

“The court process was challenging and stressful”

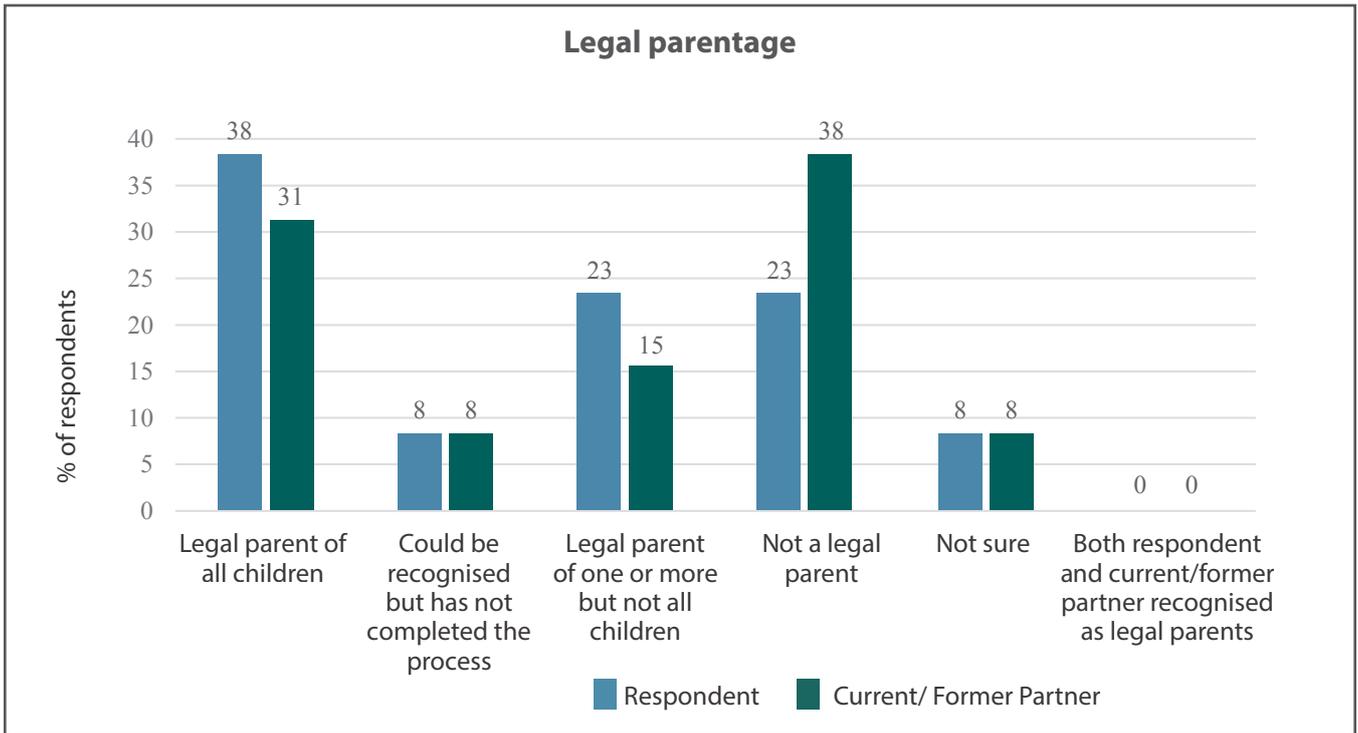
“The retrospective declaration of parentage is intimidating. This could be made more accessible”

“Wider info needed within the profession, families are left to educate those they require from and court systems unaware to requirements or amendments make the whole journey daunting and devastating to the family seeking recognition.”

3.4. Surrogacy

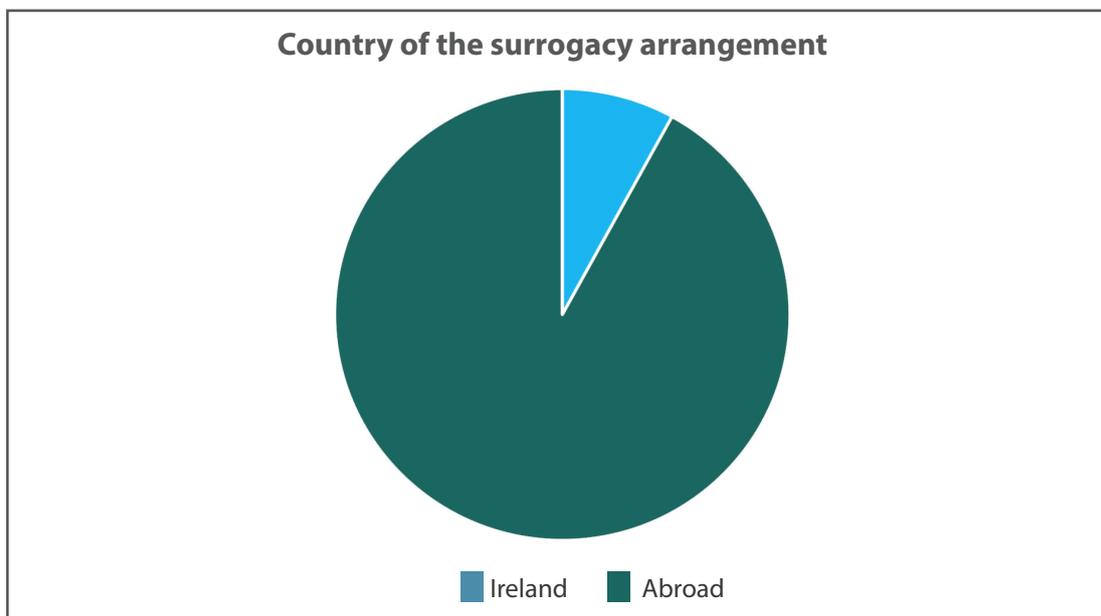
13% of total respondents to the survey indicated that one or more of their children were born through surrogacy. In total, these respondents were parenting 21 surrogate-born children. All of the surrogacy parent respondents identified as male, parenting with a current or former partner who also identifies as male.

At present, there are no specific laws in Ireland to regulate surrogacy and so the same parentage laws apply to surrogacy as to any other form of conception that is not otherwise regulated. This means that where a child is born through surrogacy to male intended parents only the genetically related intended father can be legally recognised as a parent (see Section 2: Overview of the Relevant Legal Framework). Thus, it is unsurprising that none of the surrogacy parents who responded to the survey were joint legal parents of all of their children with their partner. 38% of respondents indicated that they are a legal parent of all children, and 31% indicated that their current/former partner is a legal parent of all children. 23% of respondents indicated that they are a legal parent of one or more but not all children, and 15% stated that their current/former partner is a legal parent of one or more but not all children.



3.4.1. Nature of the Surrogacy Arrangement

92% of the surrogacy parents who responded to the survey had engaged in surrogacy outside of Ireland.

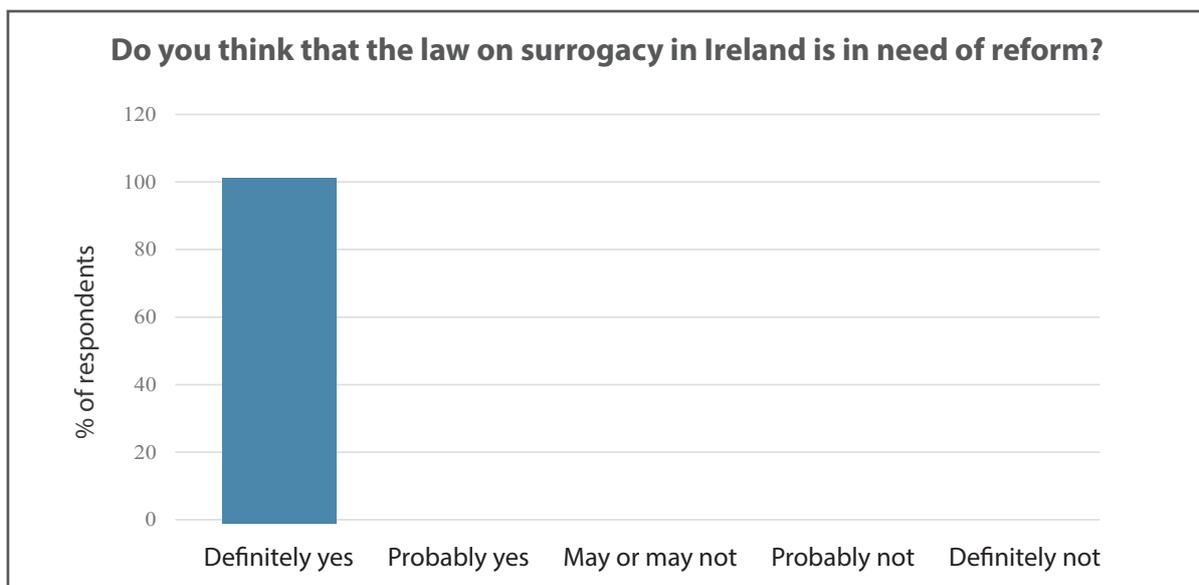


In the majority (92%) of the cases where the surrogacy took place outside of Ireland, the respondents indicated that they had been issued with a birth certificate by the surrogacy country listing them and their partner as joint legal parents. By contrast, as noted above, none of the couples are jointly recognised as legal parents under Irish law. Of the respondents who specified the country where the surrogacy took place 45% had engaged in surrogacy in Canada, 36% in the United Kingdom and 18% in the United States of America.

Only one respondent indicated that they had engaged in commercial surrogacy. The other respondents either indicated that the surrogacy had been altruistic (54%) or did not specify the nature of the surrogacy (38%).

3.4.2. Legal Reform

All (100%) of the surrogacy parent respondents felt that Irish law relating to surrogacy is 'definitely' in need of reform.



The survey asked parents who stated that the law on surrogacy is in need of reform to specify the nature of the legal reforms required in an open-ended comment box. A variety of responses were received. The common theme among the responses was the need for legal recognition of parental status. For example:

"Both parents need to be recognised as parents of the child or children. Both parents' names should be on the birth cert."

"Both myself and my husband should be recognised from birth as full parents. Our children are in legal limbo for years, this is unacceptable."

"It has felt like I have stepped back into the closet and faced discrimination I have not experienced in several years as a gay man. As a gay parent, I have been made feel 'less than', a headache for the passport office and a 2nd class Irish citizen. I am not a parent in the eyes of the current law..."

A final open-ended comment box allowed respondents to note any further comments on surrogacy. Here, the issue of cost was a common theme. For example:

"The legal process has few solicitors that specialise, and this is very expensive, prohibitively so. Unfair on those who cannot afford these costs."

"It will cost us about €15,000 each child in legal fees to secure parentage and guardianship rights for our children."

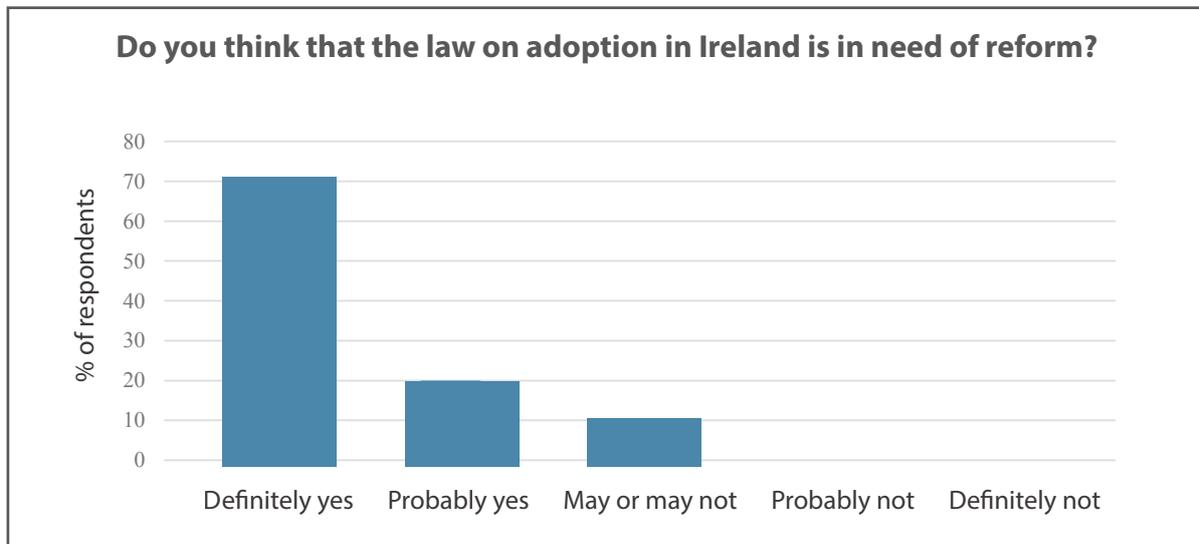
"Whatever arrangement is made, I think it is important to be legally affordable"

3.5. Adoption

10% of the total respondents indicated that they or their partner are an adoptive parent of at least one of their children. All respondents in this category shared parenting with either a current or former partner. These respondents were adoptive parents to a total of 15 children. The gender breakdown of adoptive parent respondents to the survey was 60% female and 40% male. All of the adoptions had taken place outside of Ireland. Other than this commonality, the nature of the adoption was quite different in each case as some had engaged in joint adoption and others in second parent adoption.

Despite the fact that joint adoption and second parent adoption are provided for by Irish law and permit gay and lesbian applicants to apply, only 60% of the adoptive parents who had undertaken adoption abroad stated that both they and their current/former partner are legally recognised as parents in Ireland. Analysis of the responses suggests that there may have been some ambiguity in relation to this question raising the possibility that the true figure may be lower than 60% of the adoptive parent respondents. The question asked the respondents if they are a legal parent *in Ireland* but it is not clear if this is reflected in all answers. For example, one respondent specifically noted that their foreign adoption orders were not recognised by the Adoption Authority of Ireland (AAI) but nonetheless stated that they and their partner are recognised as legal parents in Ireland. It is possible that this respondent and their partner are each recognised as the legal parent of one child under Irish law, but it could also be the case that the respondent was referring to their legal status in the country where the adoptions took place. 40% of adoptive parent respondents specifically noted that their foreign adoption order(s) are not recognised in Ireland by the AAI.

70% of the adoptive parents who responded to the survey felt that Irish adoption laws are ‘definitely’ in need of reform.



The survey asked parents who stated that the law on adoption is in need of reform to specify the nature of the legal reforms required. A common theme related to non-recognition of adoptions legally concluded abroad. For example:

“My partner and I adopted our child when we resided in [country]. On returning to Ireland, we were told only one of us could register as a parent as we are not married.”

“Our children were adopted in their birth countries...where we were resident at the time of birth. Neither of the adoptions is legally recognised by the Adoption Authority of Ireland, because there’s no legal framework for them to do so.”

3.6. Final comments

A final comment box allowed respondents to provide additional remarks or clarify any point. The most common themes evident in these comments were discrimination/ less favourable treatment, the need for legal recognition of parental status, and the importance of research.



The comments starkly highlight the legal and practical issues facing LGBTI+ parents in Ireland as a result of the lack of legal recognition of parental status. For example:

"I feel that is it wrong that I am not a legal parent to my own biological child."

"my son has been denied two legal parents and my partner denied parentage legally despite being 100% committed and a loving parent"

"It's exhausting being the family having to explain, justify and seek a place for us within our society."

4: Conclusions and Recommendations

The core themes emerging from the research relate to the absence of legal recognition for certain parents; discrimination and heteronormativity; and a need for legal information and support. Thus, the three main recommendations from the current research concern:

- The need for legal reforms to allow recognition of both parents irrespective of the pathway to parenting that is adopted.
- The need to address heteronormativity and discrimination in administrative systems.
- The provision of legal information and support to LGBTI+ parents and prospective parents.

4.1. Legal Recognition of Parenting

*'Both myself and my husband should be recognised from birth as full parents. Our children are in legal limbo for years, this is unacceptable.'*³⁹

This research project shows that LGBTI+ parent families are diverse and involve many different pathways to parenting. Yet less than half of all families captured by the research reported that the parents of the family are joint legal parents of all children. DAHR was the most common pathway to parenting used by respondents to the survey. While more DAHR parents were recognised as joint legal parents with their partners/co-parents than the general population, the proportion of joint legal parents was still just 50% among the DAHR parents. The research shows that the nature of the DAHR procedure engaged in by Irish LGBTI+ parents varies considerably. By contrast, the Children and Family Relationships Act 2015 accommodates a narrow vision of DAHR. As a result, for many parents, the existing legal framework does not reflect or accommodate the nature of the DAHR procedure that was entered into. Among the surrogacy families, none of the parents were jointly recognised as legal parents of all children, reflecting the fact that there is no mechanism available under Irish law to allow for such recognition. 60% of the adoptive parents reported that both they and their partner are jointly recognised as legal parents but as noted in Section 3.5 of the Report it is likely that this proportion is actually lower than reported.

The research indicates that specific legal reform is required in order to accommodate the diversity of LGBTI+ parent families that exist in Ireland. This reform is required to protect the rights of the children who are raised within these families. Children are the group who are most affected by the law's failure

³⁹ Survey respondent.

to recognise their family relationships. The absence of legal recognition for LGBTI+ parent families places children in a vulnerable position as the parents who care for them on a day-to-day basis may lack the full range of legal tools necessary for the caring role. It also means that the children of those families are denied many of the legal protections that are afforded to the children of opposite-sex/heterosexual couples. Children must be given the opportunity to obtain the security of having a legal relationship with both of their parents, whatever the gender or sexual orientation of those parents may be. Therefore, in order to protect the best interests of children who are raised by LGBTI+ parents, legal recognition of their family relationships must be made possible. Indeed, legal reform in the areas noted in this report will also benefit the children of other families created through DAHR and surrogacy who are currently unrecognised under Irish law.

Recommendation 1: Legal reforms are required to accommodate the diversity of LGBTI+ parent families that exist in Ireland and to ensure that the rights and best interests of children raised in those families are protected.

Recommendation 2: The rights and best interests of the child and the principle of non-discrimination should guide the development of legal reform in this area.

In 2021, the Irish Special Rapporteur on Child Protection conducted a comprehensive review of children's rights in the context of DAHR and surrogacy. The Special Rapporteur highlights a number of gaps in the existing legal framework that leave children in a vulnerable position as they cannot secure a legal relationship with both of their parents. Overall, the Special Rapporteur recommends that legal mechanisms should be introduced to recognise intended parents who engage in different pathways to parenting to ensure that children are not disadvantaged by virtue of the mode of their conception. The key recommendations in respect of DAHR and surrogacy are summarised below.

4.1.1. DAHR

In respect of DAHR, the Special Rapporteur notes that some procedures are excluded from the Children and Family Relationships Act 2015, including retrospective cases where a known donor was used and non-clinical procedures. The Special Rapporteur supports the view of the UN Special Rapporteur on the sale and sexual exploitation of children who has noted that the 'overarching principle of non-discrimination signifies that none of the rights of the child should be impacted

by the method of his or her birth.⁴⁰ The Special Rapporteur also endorses the present researcher's argument that the law 'should provide a more effective pathway to recognition for second parents who are currently excluded'⁴¹ from the Children and Family Relationships Act 2015 and proceeds to outline the structure that such a pathway could take in the context of non-clinical procedures, emphasising that it should incorporate protections for the child's right to identity.⁴²

The current research demonstrates that non-clinical procedures are a reality in Ireland but currently children born through such procedures to female couples are not legally connected to the non-gestational parent at the time of their birth. This leads to differential legal treatment as children who are born through these arrangements are deprived of a legal relationship with both intended parents at birth when other children (conceived through clinical DAHR) automatically have a legal relationship with both parents at birth. It is recommended that a pathway should exist to allow for recognition of the second parent in cases of non-clinical DAHR.

Recommendation 3: Irish law should provide an effective pathway to recognition for second parents in cases of non-clinical DAHR.

The Special Rapporteur notes that the objective of excluding retrospective cases involving a known donor from the Children and Family Relationships Act 2015 was to avoid infringing on the rights of the donor.⁴³ The Special Rapporteur is not convinced that this rationale is justified because 'all it does is prevent some children from achieving full legal recognition of their family relationships, and discriminate between different groups of children born following DAHR procedures which occurred prior to 4 May 2020.'⁴⁴ The Special Rapporteur concludes that the law should provide retrospective recognition of parentage 'for as many children as possible' and recommends that the proviso precluding the application for a declaration of parentage in cases involving a known donor is repealed, albeit with the addition of new safeguards for the known donor in respect of the application to court.⁴⁵

40 Report of the UN Special Rapporteur on the sale and sexual exploitation of children, A/74/162, 15 July 2019 at para 23, cited in Conor O'Mahony, *A Review of Children's Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law* (December 2020), p 13.

41 Lydia Bracken, *Same-Sex Parenting and the Best Interests Principle* (Cambridge: Cambridge University Press, 2020) pp 187-190, cited in O'Mahony above, p 13

42 O'Mahony above, p 13.

43 O'Mahony above, p 41.

44 O'Mahony above, p 41.

45 O'Mahony above, p 42.

In the current research, of the 18% of respondents with children conceived through DAHR prior to 4 May 2020 who stated that they were not eligible to apply for a retrospective declaration of parentage, 40% had engaged a known donor. In these cases, the children do not have a legal relationship with the two parents who care for them on a daily basis. Thus, it is argued that these children should not be deprived of the possibility of obtaining such a legal relationship and so it should be possible for parents to apply for the declaration of parentage in cases where a known donor was used prior to 4 May 2020, subject to the safeguards proposed by the Special Rapporteur.

Recommendation 4: Irish law should be reformed to allow a retrospective declaration of parentage to be granted in respect of DAHR procedures involving a known donor that occurred prior to 4 May 2020.

The Special Rapporteur does not address the issue of DAHR procedures conducted abroad following commencement of the Children and Family Relationships Act 2015. The research presented in this Report indicates that many parents choose to access DAHR abroad. As such, it is argued that a mechanism should exist to recognise the parent-child relationships in those cases.

Recommendation 5: A mechanism should exist to legally recognise the parentage of a child conceived through a DAHR procedure conducted abroad after 4 May 2020.

4.1.2. Surrogacy

The Special Rapporteur presents a series of recommendations for the regulation of surrogacy in Ireland that are much broader than the proposals contained in the General Scheme of an Assisted Human Reproduction Bill 2017. Underpinning this wider approach is an acceptance of 'the reality of surrogacy as an international phenomenon.'⁴⁶ The Special Rapporteur notes that a blanket prohibition of surrogacy is simply not an option due to the availability of surrogacy in other countries. Thus, 'the focus must shift from *whether* regulation should be pursued to *what form* of regulation is optimal from a children's rights perspective.'⁴⁷ The Special Rapporteur puts forward detailed proposals for the regulation of both domestic and international surrogacy arrangements but recommends that the different types of surrogacy would be subject to different recognition mechanisms. The Special Rapporteur also argues that that provision should be made to allow

⁴⁶ O'Mahony above, p 6.

⁴⁷ O'Mahony above, p 7 [emphasis in original].

the court to make a declaration of parentage in respect of children born following surrogacy arrangements that were concluded prior to the commencement of any future legislation.

The current law fails to accommodate surrogacy, leaving children in a legal limbo. Recognition of the reality of surrogacy necessitates a legal response to ensure that children who are born, and who will continue to be born, in this way are legally recognised and protected. The current research indicates that a number of children have already been born through surrogacy undertaken abroad. Their need for legal recognition cannot be ignored. As such, it is submitted that any legislative scheme for the regulation of surrogacy must accommodate both domestic and international arrangements and should make provision for the retrospective recognition of parentage in respect of children who have already been born through surrogacy.

Recommendation 6: Irish law should provide for the regulation of surrogacy arrangements and should contain provisions to recognise both domestic and international surrogacy. There should also be provision to retrospectively recognise the legal parentage of a child who has already been born through surrogacy to Irish intended parents.

4.1.3. Adoption

The research project has identified a number of issues pertaining to Ireland's adoption practice. However, there was a relatively low number of respondents (n = 10) who indicated that they or their partner are an adoptive parent and the nature of the adoption was quite different in each case as some had engaged in joint adoption and others in second parent adoption. Moreover, all of the adoptions had taken place outside of Ireland. Thus, it is not possible to generalise the responses and it is recommended that further research is undertaken to better understand the experiences of LGBTI+ adoptive parents in Ireland. This further research should include examination of the experience of LGBTI+ applicants in respect of both the recognition in Ireland of adoptions conducted abroad and the availability of second-parent adoption following DAHR or surrogacy as these are identified as issues in present research.

Recommendation 7: Further research should be undertaken to understand the experience of LGBTI+ adoptive parents and prospective adoptive parents in respect of the Irish adoption system.

4.2. Administrative Changes, Training and Education

'Heteronormativity at every turn'⁴⁸

The research also underlines the practical legal barriers faced by LGBTI+ parent families in their day-to-day lives. Many respondents reported discriminatory attitudes among professionals; a failure to acknowledge diverse families in official forms and policies; and obstacles in the provision of care for the child where one parent is not recognised as a legal parent, for example in respect of the provision of consent to medical treatment.

A number of the qualitative responses to the survey related to instances of heteronormativity whereby existing structures and processes failed to accommodate LGBTI+ parent families. For example, some respondents mentioned that standard forms referred to 'mother' and 'father' without space for two mothers or two fathers (or indeed simply two 'parents') to be listed. This results in a situation where, as one respondent put it, 'you are required to complete different forms and continuously explain "how" you are a parent.' This process was described as 'exhausting' by another respondent.

The recommended legal reforms in this Report (Recommendations 1 - 6) will require accompanying administrative changes to ensure that diverse families are specifically included in procedures and processes by design. As far as possible, forms should adopt the gender-neutral term 'parent' rather than 'mother' and 'father'.

Recommendation 8: Administrative changes should be introduced to accompany any legal reforms to ensure that LGBTI+ parent families are included by design.

Some respondents also encountered homophobia and discrimination when interacting with service providers, in particular medical professionals in hospitals. This suggests that any legal and administrative changes should also be accompanied by appropriate training and education for service providers.

Recommendation 9: Legal and administrative changes should be accompanied by appropriate training for service providers.

⁴⁸ Survey respondent.

4.3. Legal information and support

'a legal minefield'⁴⁹

Overall, respondents to the survey stated that it was difficult rather than easy to understand the law that applies to their family relationships in Ireland. This points to a need to provide parents with accessible legal information pertaining to their families. Related to this is a need for support with court processes for establishing legal parentage, which respondents to the survey described as 'stressful', 'intimidating', and 'daunting', among other things.

It is noted that various bodies such as Citizen's Information, the Court's Service of Ireland, and LGBT Ireland currently provide relevant legal information on their websites. Increased signposting to the relevant information would be useful for parents.

Recommendation 10: Accessible legal information and practical support should be made available to LGBTI+ parents in respect of the laws that apply to their family relationships and relevant court applications.

⁴⁹ Survey respondent.

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Appendix 1: LGBTI+ Parent Families in Ireland: Legal Recognition of Parent-Child Relationships Survey

This research is conducted by Dr Lydia Bracken, University of Limerick in partnership with LGBT Ireland. The aim of the research is to understand the structure of LGBTI+ parent families in Ireland and to identify and examine the obstacles facing such families in obtaining legal recognition of their family relationships. The research will lead to the creation of a report for LGBT Ireland that will form the basis of advocacy campaigns by the organisation and will be disseminated through awareness-building activities.

This online survey asks you about your family structure and your experience of obtaining legal recognition for your family relationships. The survey will take approximately 15-20 minutes to complete.

All responses to the survey are anonymous and no identifying information will be collected as part of the survey. The survey will not link you to your response systematically. Please note, however, that it may be possible to infer your response from any commentary you may give. The survey responses will be collated to understand obstacles facing LGBTI+ parent families in obtaining legal recognition of their family relationships in Ireland. The information gathered will subsequently be published as part of a Report and/ or book chapter(s)/ journal article(s) and will be used in presentations. Nothing in the publications or presentations will be used to identify you. The information collected in this research will be kept securely for seven years and then destroyed.

Participation in the research is voluntary and there is no requirement to participate. If you do not feel comfortable answering a particular question, there is no requirement to do so. If you have any queries or would like more information about the project, please contact:

- Principal investigator: Dr Lydia Bracken (Lydia.Bracken@ul.ie)

This research study has received Ethics approval from the Arts, Humanities and Social Sciences Research Ethics Committee (reference: 2021-03-18-AHSS). If you have any concerns about this study or your participation and wish to contact an independent authority, you may contact:

Chairperson Arts, Humanities and Social Sciences Research Ethics Committee
AHSS Faculty Office
University of Limerick
Tel: +353 61 202286
Email: FAHSSEthics@ul.ie

We recognise that the questions in this survey relate to sensitive personal issues. Please note that support is available should you need it from the National LGBT Helpline (1890 929 539) and out-of-hours from the Samaritans (116 123).

To avoid duplication of results, we ask that each family completes the survey **once** unless you feel that this would not accurately capture the dynamics of your family.

Q1. I understand that by completing this survey I am providing consent to participate in the survey and for the data that I provide to be used. I understand that I can discontinue the survey at any time or choose to not answer a question or provide written comments, without any need to explain.

- Yes
- No

Part 1: About You and Your Family

Please note that reference to a 'partner' in the questions includes a current or former partner or spouse who shares responsibility with you for parenting your child/children, unless otherwise stated.

Q2. With which gender, if any, do you self-identify?

- Male
- Female
- Non-binary/ third gender
- Self-Declare (if identified gender is not captured by the above)
- Prefer not to say

Q3. In terms of sexual orientation, I prefer to describe myself as

- Asexual
- Bi/bisexual
- Gay man
- Gay woman/ lesbian
- Other (please specify)
- Prefer not to say

Q4. What age are you?

- 18-25
- 26-35
- 36-45
- 46-55
- 56-65
- over 65
- Prefer not to say

Q5. What is your civil status?

- Single (never married or in a civil partnership)
- Married (first marriage)
- Re-married
- In a civil partnership
- Co-habiting (living together in a committed intimate relationship but not married or in a civil partnership)
- Separated
- Divorced
- Formerly in a civil partnership but now

separated/ civil partnership dissolved

- Widowed or surviving civil partner
- Other

Q6. What county do you live in?

- Antrim
- Armagh
- Carlow
- Cavan
- Clare
- Cork
- Derry
- Donegal
- Down
- Dublin
- Fermanagh
- Galway
- Kerry
- Kildare
- Kilkenny
- Laois
- Leitrim
- Limerick
- Longford
- Louth
- Mayo
- Meath
- Monaghan
- Offaly
- Roscommon
- Sligo
- Tipperary
- Tyrone
- Waterford
- Westmeath
- Wexford
- Wicklow

Q7. Do you mostly live in an urban or rural setting?

- Urban
- Rural
- I am not sure how to describe my living arrangement

Q8. How many children do you have? This question applies to all individuals who consider themselves to be parents, regardless of the legal status of this position. Please answer this

question in whatever way instinctively makes sense to you.

- 1
- 2
- 3
- 4
- 5
- 6 or more

Q9. What age(s) are your children?

- 0 - 12 months
- 12 - 23 months
- 2 - 5 years
- 5 - 10 years
- 10 - 17 years
- over 18 years

Q10. Do you jointly parent/ share parenting/ co-parent your children with another person(s) (tick all that apply)?

- Yes, with my current partner
- Yes, with my former partner
- Yes, with a friend/ friends
- No. I parent alone
- Other (please specify)

Q11. [Survey logic flow] With which gender, if any, does your current partner self-identify?

- Male
- Female
- Non-binary / third gender
- Self-declare (if none of the above apply)
- Prefer not to say

Q12. [Survey logic flow] In terms of sexual orientation, my current partner describes themselves as

- Asexual
- Bi/ Bisexual
- Gay man
- Gay woman/ lesbian
- Other (please specify)
- Prefer not to say

Q13. [Survey logic flow] What age is your current partner?

- 18-25
- 26-35
- 36-45
- 46-55
- 56-65
- Over 66
- Prefer not to say

Q14. [Survey logic flow] How many friends do you co-parent with?

- 1
- 2
- 3
- 4
- 5 or more

Q15. [Survey logic flow] With which gender, if any, does the friend/friends with whom you share parenting/ co-parent self-identify (if more than one, select all that apply)?

- Male
- Female
- Non-binary / third gender
- Self-declare (if none of the above are applicable)
- Prefer not to say
- Not sure

Q16. [Survey logic flow] In terms of sexual orientation, the friend(s) that I co-parent with describe themselves as (if more than one select all that apply)

- Asexual
- Bi/ Bisexual
- Gay man
- Gay woman / lesbian
- Other (please specify)
- Not sure
- Prefer not to say

Q17. [Survey logic flow] What age is the friend/ are the friends

that you co-parent with (if more than one select all that apply)?

- 18-25
- 26-35
- 36-45
- 46-55
- 56-65
- over 65
- Not sure
- Prefer not to say

Q18. [Survey logic flow] With which gender, if any, does your former partner self-identify?

- Male
- Female
- Non-binary / third gender
- Self-declare
- Prefer not to say

Q19. [Survey logic flow] In terms of sexual orientation, my former partner describes themselves as

- Asexual
- Bi/Bisexual
- Gay man
- Gay woman/ lesbian
- Other (please specify)
- Not sure
- Prefer not to say

Q20. [Survey logic flow] What age is your former partner?

- 18-25
- 26-35
- 36-45
- 46-55
- 56-65
- Over 66
- Not sure
- Prefer not to say

Q21. [Survey logic flow] With which gender, if any, does your former partner self-identify?

- Male
- Female

- Non-binary / third gender
- Self-declare
- Prefer not to say

Q22. What age is your former partner?

- 18-25
- 26-35
- 36-45
- 46-55
- 56-65
- Over 66
- Not sure
- Prefer not to say

Q23. Are you legally recognised as a parent of your child(ren) in Ireland?

- Yes, from the time of the birth of the child(ren)
- Yes, following application to court for a declaration of parentage
- Yes, using a process not specified above
- I could be recognised as a legal parent but have not completed the process yet (please explain your answer)
- I am the legal parent of one or more but not all of my children (please explain your answer)
- No
- Not sure

Q24. Is the person with whom you share parenting (partner/friend) legally recognised as a parent? (If you share parenting with more than one person, please select the final option)

- Yes, from the time of the birth of the child(ren)
- Yes, following application to court for

a declaration of parentage

- Yes, using a process not specified above
- They could be recognised as a legal parent but have not completed the process yet (please explain your answer)
- They are the legal parent of one or more but not all of our children (please explain your answer)
- No
- Not sure
- Not applicable
- More than one co-parent (please provide details of who is/ is not recognised as a legal parent)

Q25. Are you a legal guardian of your child?

Guardianship refers to the responsibilities, rights and duties associated with raising a child. It is concerned with the most significant aspects of the child's life, such as where the child is to be educated, the child's religious upbringing (if any) and healthcare decision-making. Most legal parents are also the legal guardians of their children, but this is not always the case and whether you are a legal guardian may depend on your civil status and/or pathway to parentage. It is also possible for someone who is not a legal parent to apply to become a legal guardian in certain circumstances. If you are not sure if you are a legal guardian, please select 'not sure'

- Yes
- No
- I am a legal guardian of one or more but not all of our children (please explain your answer)
- Not yet, but I will apply once eligible

- Not sure

Q26. Is the person with whom you share parenting (partner/friend) a legal guardian of your child? (If you share parenting with more than one person, please select the final option).

Guardianship refers to the responsibilities, rights and duties associated with raising a child. It is concerned with the most significant aspects of the child's life, such as where the child is to be educated, the child's religious upbringing (if any) and healthcare decision-making.

Most legal parents are also the legal guardians of their children, but this is not always the case and whether you are a legal guardian may depend on your civil status and/or pathway to parentage. It is also possible for someone who is not a legal parent to apply to become a legal guardian in certain circumstances. If you are not sure if you are a legal guardian, please select 'not sure'

- Yes
- No
- Not yet, but they will apply once eligible
- Not sure
- They are a legal guardian of one or more but not all of our children (please explain your answer)
- More than one co-parent (please provide details of who is/ is not recognised as a legal guardian)
- Not applicable

Q27. Have you or the person with whom you share parenting (partner/friend) applied for second-parent adoption in order to establish a legal relationship with your child?

- Yes

- No
- Not eligible to apply

Q28. [Survey logic flow] Was the application for second-parent adoption granted?

- Yes
- No
- Other (please explain)

Q29. Are you familiar with the laws that apply to LGBTI+ parenting in Ireland?

- Extremely familiar
- Very familiar
- Moderately familiar
- Slightly familiar
- Not familiar at all

Q30. How easy or difficult is it to understand the law that applies in Ireland in relation to recognition of your family relationships?

0 Very easy – 10 very difficult
(1,2,3,4,5,6,7,8,9,10)

Q31. Do you feel that Irish society in general is accepting of LGBTI+ parents?

- Definitely yes
- Probably yes
- May or may not
- Probably not
- Definitely not

Q32. Have you ever experienced discrimination as a parent because you are LGBTI+?

- Yes
- No
- Maybe

Q33. If you are comfortable doing so, please describe the nature of the discrimination you have experienced as a parent who identifies as LGBTI+:

Part 2: Donor-Assisted Human Reproduction (DAHR)

Donor-Assisted Human Reproduction (DAHR) is a procedure ‘with the objective of it resulting in the implantation of an embryo in the womb of the woman on whose request the procedure is performed’ where either one or both gametes (sperm/egg) or the embryo is provided by a donor.

Surrogacy does not come within this definition. If your child was born through surrogacy, please select ‘no’ to the first question on DAHR below to skip to the next section.

The questions below assume that you share parenting with one individual (a ‘partner’), but we recognise that this might not always be the case. If the questions do not allow you to accurately represent your family, please clarify this in the final comment box at the end of the section.

Q34. Was your child/ Were any of your children born through donor-assisted human reproduction (DAHR)?

- Yes
- No

Q35. How many of your children were born following a donor-assisted human reproduction (DAHR) procedure?

- 1
- 2
- 3
- 4
- 5 or more

Q36. Was your DAHR-conceived child/ were your DAHR-conceived children conceived prior to 4 May 2020 (this is the date that the Children and Family Relationships Act 2015 was fully commenced)?

- Yes
- No
- One or more but not all of my DAHR-conceived children were conceived prior to 4 May 2020

Q37. If one or more of your DAHR-conceived children were conceived prior to 4 May 2020, have you or your partner applied for a retrospective declaration of parentage?

- Not applicable
- I have applied
- My partner has applied
- Neither I nor my partner have applied
- Not eligible to apply
- Other (please explain)

Q38. [Survey logic flow] Was the application for the declaration of parentage granted?

- Yes
- No

Q39. [Survey logic flow] Do you intend to apply for a declaration of parentage in the future?

- Yes
- No
- Not sure

Q40. Please state the nature of the DAHR procedure(s) that you have engaged in (tick all that apply)

- Procedure conducted in Ireland
- Procedure conducted outside Ireland/ abroad
- Known/ identifiable donor used
- Unknown/anonymous donor used
- Unknown but identifiable/traceable donor used
- Reciprocal IVF

- Double gamete donation (both sperm and egg provided by donor)
- Non-clinical/ at-home procedure
- Other (please explain)

Q41. If the DAHR procedure was conducted outside of Ireland, was the child/ were the children born in Ireland?

- Yes
- No
- Different approach for each child (please explain)

Q42. If the DAHR procedure was conducted outside of Ireland, please state the country where the procedure took place:___

Q43. If you plan to have a child through DAHR in the future (or are currently expecting another child), please state the nature of the DAHR procedure(s) that you plan to engage in (tick all that apply)

- I am not planning to have a(nother) child through DAHR
- Procedure conducted in Ireland
- Procedure conducted outside Ireland/ abroad
- Known/ identifiable donor used
- Unknown/anonymous donor used
- Unknown but identifiable/traceable donor used
- Reciprocal IVF
- Double gamete donation (both sperm and egg provided by donor)
- Non-clinical/ at-home procedure
- Other (please explain)

Q44. Did you or your partner contribute a gamete to enable your child’s conception through DAHR (tick all that apply)?

- Yes, my egg was used

- Yes, my sperm was used
- Yes, my partner's egg was used
- Yes, my partner's sperm was used
- No, neither I nor my partner contributed a gamete (both donor egg and sperm were used)
- Different methods were used for the conception of each child (please explain your answer)

Q45. Did you or your partner gestate the pregnancy/ give birth to the child?

- I did
- My partner did
- Neither I nor my partner did
- Different methods were used for the conception of each child (please explain your answer)
- Other

Q46. Do you think that the law on DAHR in Ireland is in need of reform?

- Definitely yes
- Probably yes
- May or may not
- Probably not
- Definitely not

Q47. [Survey logic flow] What legal reform do you think is needed in the area of DAHR?

Q48. Do you have any further comments on DAHR law or practice in Ireland?

Part 3: Surrogacy

Surrogacy is the process where a person ('the surrogate') carries the children behalf of another person or persons ('the intended parent(s)')

The questions below assume that you share parenting with one individual (a 'partner'), but we recognise that this might not always be the case. If the questions do not allow you to

accurately represent your family, please clarify this in the final comment box at the end of the section.

Q49. Was your child/Were any of your children born through surrogacy?

- Yes
- No

Q50. How many of your children were born through surrogacy?

- 1
- 2
- 3
- 4
- 5 or more

Q51. Please state the nature of the surrogacy arrangement(s) that you have engaged in (tick all that apply):

- Surrogacy in Ireland
- Surrogacy abroad
- Traditional surrogacy (the egg of the surrogate was used)
- Gestational surrogacy (the egg of the surrogate was not used)
- Altruistic (the surrogate was paid reasonable expenses only)
- Commercial surrogacy (the surrogate was paid more than reasonable expenses)

Q52. If the surrogacy took place abroad, please specify the country: _____

[Survey logic flow] Q53. If the surrogacy took place abroad and you were issued with a birth certificate from the country where the surrogacy took place, are you listed as a legal parent on that birth certificate (tick all that apply)?

- The surrogacy country did not issue a birth certificate

- I am listed as a legal parent
- The surrogate is listed as a legal parent
- My partner is listed as a legal parent
- The gamete donor is listed as a legal parent
- Other (please specify)

Q54. Did you or your partner contribute a gamete to enable your child's conception through surrogacy?

- Yes, my egg was used
- Yes, my sperm was used
- Yes, my partner's egg was used
- Yes, my partner's sperm was used
- Neither I nor my partner contributed a gamete (both donor egg and sperm were used)
- Different methods were used for the conception of each child (please explain your answer)

Q55. If you plan to have another child through surrogacy in the future (or are currently expecting another child), please state the nature of the surrogacy arrangement(s) that you plan to engage in (tick all that apply):

- Not planning to have another child through surrogacy at present
- Surrogacy in Ireland
- Surrogacy abroad
- Traditional surrogacy (the egg of the surrogate was used)
- Gestational surrogacy (the egg of the surrogate was not used)
- Altruistic (the surrogate was paid reasonable expenses only)
- Commercial surrogacy (the surrogate was paid more than reasonable expenses)

Q56. Do you think that the law on surrogacy in Ireland is in need of reform?

- Definitely yes
- Probably yes
- May or may not
- Probably not
- Definitely not

[Survey logic flow] Q57. What legal reform do you think is needed in the area of surrogacy?

Q58. Do you have any further comments on surrogacy law or practice in Ireland?

Part 4: Adoption

Adoption is a legal process where the legal parental rights and responsibilities of the birth parents of a child are transferred to adoptive parents through an adoption order.

The questions below assume that you share parenting with one individual (a 'partner'), but we recognise that this might not always be the case. If the questions do not allow you to accurately represent your family, please clarify this in the final comment box at the end of the section.

Q59. Are you or your partner an adoptive parent of your child/ any of your children?

- Yes
- No

Q60. How many of your children are adopted?

- 1
- 2
- 3
- 4
- 5 or more

Q61. Was the adoption/ were the adoptions:

- Joint adoption (both you and your partner jointly adopted your child)

- Second parent adoption (either you or your partner adopted the child of the other as a 'step-parent')
- Other (please specify)
- Different processes used in respect of different children (please explain)

Q62. Was the adoption/ were the adoptions intercountry in nature (i.e. your child was habitually resident in another country before the adoption?)

- Yes
- No
- At least one but not all of the adoptions were intercountry in nature (please explain)

Q63. Did the adoption(s) take place in Ireland?

- Yes
- No
- At least one but not all of the adoptions took place in Ireland (please explain)

Q64. Was the adopted child/ were the adopted children born through DAHR or surrogacy?

- Yes
- No
- At least one but not all of my adopted children were born through DAHR or surrogacy (please explain)

Q65. Do you think that the law on adoption in Ireland is in need of reform?

- Definitely yes
- Probably yes
- May or may not
- Probably not
- Definitely not

[Survey logic flow] Q66. What reform do you think is needed in the area of adoption?

Q67. Do you have any further comments on adoption law or practice in Ireland?

Part 5: Final Comments

Q68. If your child(ren) was/were not born through DAHR or surrogacy and you are not an adoptive parent of your child(ren), please explain your pathway to parentage:

Q69. Do you have any final comments? Please use this box if you would like to make any additional comments on anything not captured by the questions or to clarify any point

Thank you for taking the time to complete this survey.

This research is supported by the Irish Research Council New Foundations 2020 and is run in partnership with LGBT Ireland



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