

Marriage Equality: A Child's Rights Issue

The Northern Ireland Commissioner for Children and Young People (NICCY) is the Independent Human Rights Institution created by legislation in 2003 to 'safeguard and promote the rights and best interests of children and young people' in Northern Ireland. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings and taking into account the role that parents play in the lives of their children. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). Therefore NICCY has a role in ensuring the rights of all children are respected and that they do not suffer discrimination of any kind based on either theirs or their parents' identity or status.

The current debate surrounding marriage equality is about the rights of same sex adults to get married should they so choose. However, it also affects the current and future rights of young Lesbian, Gay and Bisexual (LGB) people and as such, is a child's rights issue and young people should be extended the same right to participate and engage in the debate. The support for recognition of the rights of LGB children and children of LGB parents is a barometer of how far NI has progressed towards being a completely fair and equal society. However, current discrimination against same sex couples to marry represents a breach to human rights and an inequality which must be addressed in order to ensure true equality for all and to fully realise the rights of children which are guaranteed across the spectrum of international Human Rights instruments.

Equality is a key human rights principle, as set out the International Covenant on Civil and Political Rights¹ and the Charter of Fundamental Freedoms² which states that all people are equal before the law and are entitled - without discrimination - to equal protection under the law. In order for this to become the lived experience of LGB children and children of LGB parents, the opportunity to marry must be extended to include same sex couples.

¹ <https://www.ohchr.org/en/professionalinterest/pages/CCPR.aspx> Articles 23 & 26

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> Article 21

The fundamental human rights principle of equality means that civil marriage should be available, without discrimination, to all couples, inclusive of sexual orientation. All people have the right to freedom from persecution and discrimination and we all have a responsibility to challenge such discriminatory practices.

People are not 'entitled' to persecute, penalise, ostracise or otherwise discriminate against others. While the extension of civil marriage law to include same sex couples may be an issue for some, we believe it is important that a clear focus is kept on the fundamental rights which are engaged. Further, in order to assuage the concerns of those who may be opposed, it is important to acknowledge that any extension of the law will not threaten or conflict with their rights.

The UNCRC must serve as the underpinning framework for all decisions concerning children's lives. The Convention is the most comprehensive international human rights treaty and encompasses civil, political, economic, social and cultural rights for children and young people - placing obligations on governments to ensure these are realised.

The UNCRC reflects the importance of the family, noting in its preamble that a child "should grow up in a family environment, in an atmosphere of happiness, love and understanding". It refers interchangeably to "parents" and "legal guardians" and makes no reference to marriage or married parents; it does not mention fathers at all and refers to mothers only in the context of pre and postnatal care. Importantly, the term "family" is repeatedly mentioned throughout representing inclusive acknowledgement of the range of family forms.

This is reiterated by Article 8 of the European Convention on Human Rights (ECHR):

"Everyone has the right to respect for his private and family life, his home and his correspondence."

The Convention also acknowledges that some children cannot be cared for by their birth or biological parents for a range of legitimate reasons and it is therefore implicit that no one family type is seen as the only one which can fulfil children's needs. While the Convention recognises the right of the child as far as possible, to know and be cared for by their parents, it cannot be used to assert that every child has an absolute right to be raised by

them. In international law, the emphasis is on protecting the child's family relationships, rather than entitling the child to be raised only by their biological mother and father. What is important to children's well-being is not simply who their birth parents are, but the quality of the care, love, support and security that they receive. Research increasingly shows that the quality of children's relationships with their carers is what affects children's lives and life chances.

In relation to the child's right to identity, of particular relevance is Article 2 of the UNCRC:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Similarly Article 14 of the ECHR also promotes "*the right to protection from discrimination in the enjoyment of all of the other Convention rights*".³

The introduction of marriage equality legislation in NI would go some way to sending a message to LGB children and those being brought up in families with same sex parents, that they have equal right to be safe and secure as well as valued and fulfilled in the knowledge that their relationships are protected from discrimination. This would clearly have the best interests of the child as a primary consideration provided for in Article 3 of the UNCRC.

The UNCRC is clear in that the best interests of children must be paramount as outlined in article 3 where it states 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"

³ Article 14 of the ECHR prohibits discrimination with respect to rights under the Convention, i.e. an applicant must prove discrimination in the enjoyment of a specific right that is guaranteed elsewhere in the Convention.

NICCY believes that marriage equality is in the best interests of children and young people i.e. that they are equally able to grow up, form relationships and have those relationships recognised equally by the State. The positive benefit of such recognition to the mental health and well-being of children and young people should not be underestimated.

The human rights of all people, inclusive of real or perceived sexual orientation, should be recognised, protected and promoted. Diversity should be welcomed and celebrated. All measures to protect children and parents in regard to this issue should be applied in a manner that truly is in the best interests of children. Discussions on the issue should be based in quality, reliable, objective evidence about parenting, children’s development and children’s psychosocial health and wellbeing.

The right of children to have their views heard is enshrined in article 12 of the UNCRC:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

In its General Comment 20 concerning the rights of adolescents the UN Committee on the Rights of the Child expands on this:

“State parties should introduce measures to guarantee adolescents the right to express views on all matters of concern to them, in accordance with their age and maturity, and ensure they are given due weight, for example, in decisions relating to their ... sexuality, family life and ... administrative proceedings. States should ensure that adolescents are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives, at school and at the community, local, national and international levels.”

The overwhelming evidence indicates that children and young people overwhelmingly support the introduction of equal marriage in NI e.g. in the ‘Civil Conversations on Marriage Equality’ Report ⁴. 250 young people who participated were ‘overwhelmingly’ in favour of it as were the 300 young people who participated in the Youth Congress in February 2018.

⁴ <https://www.ictuni.org/publications/civil-conversations-report/>
http://www.ark.ac.uk/nilt/2013/LGBT_Issues/SSEXMARR.html 72% of those under 24 agreed that same sex marriages should be as legally valid as traditional marriage

Indeed the last (5th) vote in the NI Assembly was a majority vote in favour of equal marriage however, it was blocked by the DUP's use of the 'petition of concern'. Additionally the most recent poll of people in NI shows that 76% are in favour of equal marriage. Regardless of this overwhelming view the public discourse can be disturbing.

It is vital that the political and public debate as a whole - including through all forms of media - is conducted with respect and integrity. Regardless of what perspectives or personal beliefs or opinions people bring to same sex marriage discussions, these should not:

- invalidate or victimise children or their families;
- undermine children's identity;
- reduce children's social and family support;
- isolate or exclude children;
- adversely impact children's mental health and wellbeing; or
- discriminate against children and/or their families.

There is clear evidence that prejudice and ignorance can cause lifelong harm and highly correlates with bullying and violence which can lead to mental ill health and depression even suicide. All children, irrespective of the sexual orientation of their parents, or their own sexual orientation, have the right to a safe and healthy childhood free from discrimination. People who identify as, or indeed who are perceived to be, lesbian, gay or bisexual, often suffer unacceptable discrimination, intimidation, harassment or violence.

As the debate regarding same sex marriage affects children already living in same-sex families, as well as LGB young people who may want the option to marry in the future, children and young people should be included in these discussions in a purposeful and meaningful way. This will ensure that their Article 12 Rights under the UNCRC are respected and upheld

In the run up to the Irish Referendum on Same Sex marriage in 2015, Mary McAleese gave a powerful speech at an event in Dublin:

“Will a Yes vote affect my heterosexual marriage or any heterosexual marriage? Not in the least. But it will greatly affect my life and the lives of all parents of gay children. It will give us peace of mind about our children’s future and pride in our country’s commitment to true equality. It will right an unacceptable wrong. Our gay children will be able to know the joy and peace and comfort of being part of a loving married couple fully recognised at the highest level our country can offer.”

Conclusion

Children and young people across NI have demanded that we address the significant discrimination that LGBT+ young people experience alongside the perceptions of children of same sex couples that their families may be viewed or indeed treated as second class citizens. Such prejudice can manifest in discrimination, mental ill health, isolation and poorer life outcomes. The lack of equal marriage in NI both directly and indirectly discriminates against specific groups of children and young people.

The NI Commissioner for Children and Young People strongly recommends that legislation is enacted as soon as possible to introduce same sex marriage in Northern Ireland.