

# CROSSING THE THRESHOLD

## The Story of the Marriage Equality Movement

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ian Sheehan (above) and Kieran Rose

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## GLEN and the Remarkable Journey to Marriage<sup>1</sup>

The remarkable journey to marriage for same-sex couples has taken many years. Many people and organisations have played significant parts in building towards the extraordinary outcome in the Marriage Equality Referendum, including Marriage Equality (ME) and the Irish Council for Civil Liberties (ICCL), with whom the Gay & Lesbian Equality Network (GLEN) formed Yes Equality to campaign jointly in the referendum. This is the GLEN story about that journey, particularly across the decade from 2005.

The campaign for legal recognition goes back much further, at least to 1990, with the publication of the ICCL report, 'Equality Now for Lesbians and Gay Men.'<sup>2</sup> This recommended gay law reform on the basis of equality, equality legislation and domestic partnership legislation stating that:

The right to form an intimate association in a domestic partnership is a fundamental issue for lesbians and gay men. Marriage is a legal status which is not open to persons of the same sex ... and is an important social status in our society. The commitment implies stability and responsibility. Marriage is also a public statement of family relationships based on love. In our view, the law should formally recognise lesbian or gay domestic partnerships, and give them equal access to the various benefits conferred on married heterosexuals.

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The Civil Partnership Bill is signed by Minister for Justice Dermot Ahern, with Kieran Rose of GLEN, December 2010.



Outside the Oireachtas after the commencement of the Civil Partnership Bill, 2010. *From left:* Brian Keamey Grieve (Atlantic Philanthropies), Chris Robson, Marie Hamilton, Senator Ivana Bacik, Odhran Allen, Kieran Rose, Eoin Collins, Sandra Irwin Gowran, Brian Sheehan, Tiernan Brady and Senator Jerry Buttimer.



Other significant milestones prior to 2005 in which GLEN was involved include the **LESBIANS** (Lesbians Organising Together) seminar on Partnership Laws (2000); Senator David Norris's Civil Partnership Bill (2003–5); Fine Gael Civil Partnership policy (2004); Joint Oireachtas Committee on the Constitution where GLEN's submission recommended civil marriage (2005–6); the Equality Authority supporting access to marriage; and Christopher Wilson of GLEN leading the successful campaign to reform capital gains tax so that the surviving partner of a couple was not penalised by onerous taxation, achieved in the 2000 Budget of Finance Minister Charlie McCreevy. Christopher was also strongly engaged with the group which formed to support the Zappone/Gilligan case – then known as the KAL Group – and went on to become a Board member of ME.

#### **THE TAOISEACH LAUNCHES GLEN'S STRATEGIC PLAN**

In 2005, with significant funding from Atlantic Philanthropies, GLEN was able to develop a very ambitious strategic plan to transform the situation for lesbian, gay and bisexual people in Ireland and to hire highly talented and experienced staff to implement that plan. We invited Taoiseach, Bertie Ahern to launch the plan in April 2006, and there he gave a powerful speech that got widespread publicity, partly because he was the first Taoiseach to speak at an LGBT event. He said: 'Our sexual orientation is not an incidental attribute. It is an essential part of who and what we are. Sexual orientation cannot, and must not, be the basis of a second-class citizenship. Our laws have changed, and will continue to change, to reflect this principle.' This strong commitment to progress, we were later told by officials, was critical in opening the door to legislative and institutional change.

Writing in *The Irish Times* at that time, GLEN Chair Kieran Rose said:

The key outstanding legal issue for lesbians and gay men is the recognition of our intimate relationships. There is no reason why there should not be an equality of rights and responsibilities for all, in other words civil marriage for same-sex couples ... So in the recognition of these relationships, our aim should be to become the sixth country in the world after Spain and South Africa to provide for civil marriage for lesbians and gay men.

#### **THE CILLEY GROUP RECOMMENDS CIVIL MARRIAGE**

The previous year, in August 2005, Brian Sheehan was Director of the Dublin Lesbian and Gay Film Festival, when the festival controversially invited Michael McDowell, then Minister for Justice, Equality and Law Reform, to open the festival. GLEN publicly supported this



decision as an important opportunity for engagement with government. In his speech at the launch, the Minister proposed a very limited form of domestic partnership rights for all mutually dependent couples, including siblings, and said that, in his experience, lesbian and gay people did not want marriage. Following the festival, GLEN sought and was granted a series of meetings with the Minister in September and November 2005. At these, GLEN emphasised that, contrary to the Minister's perception, access to civil marriage was the desired equality option for lesbians, and gay men and suggested the establishment of a group to explore the issue.

In December, Minister McDowell established a Working Group on Domestic Partnership, chaired by former Progressive Democrat TD Anne Colley, to identify the categories of relationships and partnerships outside of marriage to which legal recognition might be accorded. The Minister nominated Eoin Collins, Director of Policy Change in GLEN, to the Working Group which also included senior civil servants and Eilis Barry, legal officer of the Equality Authority.



Protesting against the Civil Partnership Bill outside Dáil Éireann, 30 June 2010.





Preparing together for the Constitutional Convention. *Back from left:* Brian Sheehan and Tiernan Brady (GLEN), Clare O'Connell and Orla Howard (ME), Muriel Walls (GLEN), Dawn Quinn (ME), Stephen O'Hare and Wlaler Jayawardene (ICCL). *Front from left:* Conor Pendergrast, Moninne Griffith and Gráinne Healy (ME), March 2013.



Yes Equality Meeting standing up: Cathy Madden, media advisor; Yes Equality Steering Committee members Ailbhe Smyth, Brian Sheehan, Mark Kelly and Kieran Rose, April 2015.

In early 2006, while the group were working, GLEN commissioned Lansdowne Research to do the first opinion poll specifically focused on public attitudes to relationship recognition for same-sex couples. The poll showed significant support for legal recognition, with 84 per cent in favour of relationship recognition for same-sex couples; 51 per cent in favour of civil marriage and a further 33 per cent in favour of civil partnership, but not civil marriage. On a tight nine-month timeframe, the Colley Working Group met twenty times and, after detailed analysis and public consultation, the Minister published the group's report in November 2006. The report noted that the exclusion from marriage had important implications for the status and standing of same-sex couples and 'contributing to a perception that their relationships lacked value and were unequal to others'.

Eoin Collins and others on the Working Group had successfully made the case that their recommendations should go beyond their original remit to consider just domestic partnership and that the relationships between same-sex couples and their children had to be included. This was a crucial turning point on the road to full civil partnership and civil marriage. The Group proposed just two options for same-sex couples: marriage and full civil partnership. Marriage, they said, would 'achieve equality of status with opposite sex couples and such recognition that would underpin a wider equality for lesbian and gay people'.

The Group noted that should marriage be vulnerable to constitutional challenge (the Zappone/Gilligan case was underway), full civil partnership was possible and would at least give equivalent rights and obligations of marriage to same-sex couples, though they



noted that civil partnership would not give constitutional protection to same-sex couples and their families. An important aspect of the Group's report was the highlighting of the particular inequalities faced by a growing number of children now being parented by gay couples, particularly women, and a strong recommendation that the possibility of applying for adoption should be open to lesbian and gay couples.

The following month, December 2006, the judgement was handed down in the constitutional case taken by Katherine Zappone and Ann-Louise Gilligan to have their Canadian marriage recognised in Ireland. Unfortunately, the High Court ruled that there was no constitutional right to enter into a same-sex marriage. GLEN described the rejection by the court as a lost opportunity to affirm the status of lesbian and gay people as full and equal citizens under the Constitution.

### THE LABOUR PARTY INTRODUCE A CIVIL UNIONS BILL

In a remarkable coincidence, on the same day as the Zappone/Gilligan case was lost in the High Court, the Labour Party launched their Civil Unions Bill for same-sex couples. GLEN strongly welcomed the publication of the bill, which aimed to give same-sex couples the same rights and obligations as married couples. As the GLEN press release noted, it was not marriage and constitutional protection, but it was a very welcome and significant step towards full equality. The Labour Party had accepted legal advice that the introduction of civil marriage would be contrary to the Constitution and would require a referendum. However, civil union was considered by the Labour Party as a constitutionally feasible way of delivering the same legal consequences available from civil marriage to same-sex couples. The Explanatory Memorandum noted that the bill was based on an analysis that accorded with the Colley Working Group.

A few weeks earlier, GLEN had met with Labour Party leaders and urged them to introduce a bill that would provide civil marriage for same-sex couples. Labour Party leaders replied that the legal advice they had received was that marriage would not pass constitutional scrutiny and, therefore, would not make headway in the parliament. (After the High Court decision, it was difficult to disagree with the Labour Party's position.) The Labour Party had sought GLEN's support for their Civil Unions proposal and, in an inflection point in our campaign, we accepted that there was near-unanimous legal and other opinion that there was a perceived constitutional barrier to opening out civil marriage to same-sex couples. We also got the sense at the meeting that if we did not support the Civil Unions Bill, it would not be published or progressed.





Noel Whelan during the last weeks of the Yes campaign.



The Yes posters go up, 30 April 2015.



From left: Noel Whelan, Gráinne Healy, Brian Sheehan and Cathy Madden arrive at the RDS count centre, Dublin, 23 May 2015.



The GLEN strategy for civil marriage now shifted to getting full civil partnership enacted as soon as possible and all other legislation such as taxation, immigration and family recognition and protection in place so that civil partners would have all the statutory rights and responsibilities of civil marriage, although not the constitutional status. This strategy was modelled on the second successful divorce referendum where all the necessary legislation for separation was put in place first and then the referendum was about the right to remarry and not 'divorce', as such. The corollary was that when the marriage referendum was held, it would not be about taxation or immigration or parenting, but purely about equality under our Constitution and opening out the constitutional status of marriage to same-sex couples; this is how things turned out in 2015.

In February 2007, the Dáil debate on the Labour Party Bill commenced, with support in principle from all parties. A government wrecking amendment, based on waiting for the Supreme Court appeal in the Zappone/Gilligan case, meant that the bill was defeated, which, as GLEN noted in our press release, was a 'failure of political nerve on the part of the government ... which would cause considerable hardship for many lesbian and gay couples'. However, it should be said that the bill had a powerful impact in pushing the issue up the political agenda, allowing for well-considered Dáil debates that brought greater understanding of the issues and principles involved, and raised the expectations of LGBT people.

### **DELIVERING CIVIL PARTNERSHIP<sup>3</sup>**

Prior to and during the election of 2007, GLEN worked to build support among all parties for equality-based legal recognition of same-sex couples and families, and all political parties included a commitment in their written manifestos to some form of legal recognition. In June, GLEN urged the parties negotiating the new Programme for Government (Fianna Fáil, the Green Party and the Progressive Democrats) to include a commitment 'to implement the recommendations of the Colley Working Group regarding same-sex couples and to introduce legislation at the earliest opportunity'. Following the negotiations, the new government agreed only to go as far as civil partnership. It is the final commitment in the Programme and, problematically, was conditional on waiting for the Supreme Court appeal in the Zappone/Gilligan case.

The Labour Party reintroduced their Civil Unions Bill into the Dáil in October 2007, but the government stuck to the position of waiting for the appeal judgement. Eoin Collins of GLEN met with Brian Lenihan, then Minister for Justice, Equality and Law Reform, and persuaded him to change his mind. This was a huge breakthrough, as the Supreme Court

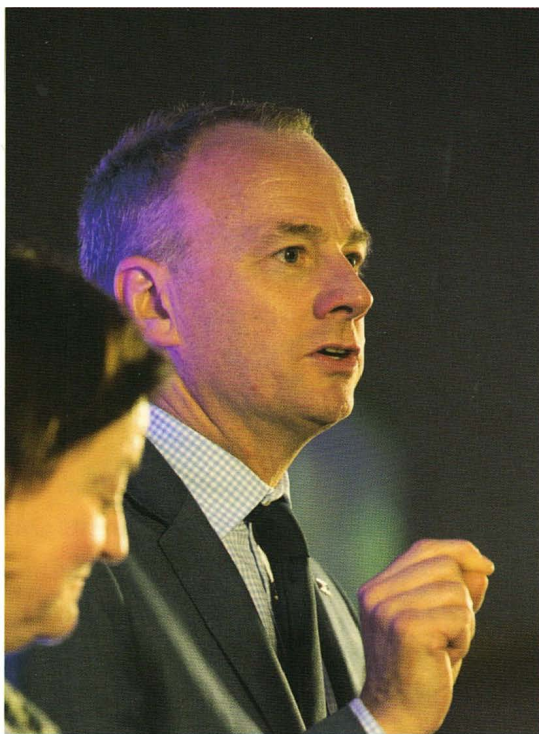


case could have taken years, as it did. Invited to speak at the launch of GLEN's annual report in December 2007, the Minister said that, given the urgency of the issue for lesbians and gay men, it was no longer his policy to await the outcome of the Supreme Court appeal and announced that he would quickly bring forth proposals for civil partnership for same-sex couples. The minister also stated that his advice was that marriage for same-sex couples would require constitutional change, though Kieran Rose pointed out that marriage was the full equality option for which GLEN would continue to strive. In June 2008, the Minister published the 'Heads' of the Civil Partnership Bill, which proposed two key models of recognition: a civil registration scheme for same-sex couples, providing equivalent rights and obligations to married couples, and a redress scheme for cohabitants, opposite sex or same-sex, who do not marry or register their partnerships.

Welcoming the 'Heads', we highlighted, and continued to campaign on, the very critical omission in relation to lesbian and gay families, which was entirely absent. Our campaigning on this issue continued and included roundtables and Dáil presentations with the Children's Rights Alliance (CRA) on the issues arising for the growing number of children being parented by same-sex couples. A backlash by Senator Jim Walsh, and thirty backbenchers within Fianna Fáil, seeking to reverse the government decision to go ahead with a bill was averted when GLEN quickly appeared twice in the one week on *Morning Ireland* and emphasised Fianna Fáil's proud tradition of republican principles, which includes treating everyone equally. Writing in his column in *The Irish Times*, Noel Whelan noted that '[Senator Jim] Walsh and others in the Parliamentary Party who oppose civil partnership for same-sex couples were clearly relying on the traditional strategy of those who oppose reform – delay'. The new Taoiseach, Brian Cowen, defending the bill, told journalists that civil partnership was a commitment in the Programme for Government and noted that 'My predecessor made an important speech in this whole area generally, which I would commend to everybody' (the speech by Taoiseach Bertie Ahern at the launch of GLEN's strategy in 2006).

The new Minister for Justice, Equality and Law Reform, Dermot Ahern, published the Civil Partnership Bill in June 2009. The bill provided comprehensive rights and responsibilities for same-sex couples who registered their civil partnership and the Minister stated that additional bills covering equal treatment for civil partners with the social welfare codes and the taxation systems would also be brought forward. As coalition partners, the Green Party had played a critical role in the delivery of the Civil Partnership Bill, which they described at the launch of the bill in GLEN's offices as an historic reform and a major step towards equality.





Brian Sheehan speaking at the Yes Equality victory party, Ballsbridge Hotel, Dublin, 23 May 2015.



Kieran Rose Sheehan at the press conference following the referendum result on Sunday, 24 May 2015, Radisson Hotel, Dublin.

While the bill offered very significant protections for lesbian and gay couples on a par with those available for married opposite-sex couples, the critical omission in the Heads of Bill was continued in the bill itself, with no provision for children being parented by same-sex couples. While we welcomed the bill as an achievement that would deliver real and immediate change for lesbian and gay couples, we highlighted the lack of recognition of children being parented by same-sex couples and urged the Green Party and the government to address this as the bill progressed through the Oireachtas.

There was a significant public campaign against the bill, including from the Catholic bishops, who restated their opposition to the Civil Partnership Bill as being 'marriage in all but name', and the Primate of All Ireland who warned that a legal challenge would be taken if the bill were enacted. Many of those who campaigned against the bill, including the Iona Institute, asked for extensive exemptions for public officials and religious organisations from the provisions of the bill. Such exemptions would have fatally undermined the spirit of the bill, and were eventually rejected by the Minister and the Oireachtas.



The Civil Partnership Bill and GLEN were also criticised from a different direction on a number of grounds, including on the basis that civil partnership was not marriage and would delay the introduction of marriage. In calculating how to respond to criticisms, GLEN faced some difficult choices. If we stated our strong belief that the legislation was the most effective stepping stone to marriage, we risked fuelling conservative opposition inside and outside of parliament and delay in getting the bill passed. As was noted subsequently, 'our clear understanding is that, had GLEN persisted with its preferred option (i.e. full marriage), civil partnership was at risk of going off the political agenda completely. GLEN understood this risk and made a calculated decision to pursue civil partnership and the legislative protections it brought'.<sup>4</sup>

When the bill was first debated in the Dáil in December 2009, in the midst of the political turmoil of one of the worst recessions ever seen in Ireland, a gallery packed with LGBT people heard very fine contributions by TDs, many stating that civil marriage was the ultimate equality option. That same evening, however, others protested outside the Dáil that the bill would be a barrier to civil marriage. In enacting civil partnership legislation, the government, supported by all parties in the Oireachtas, sought to provide a model of legal recognition as close to marriage as the prevailing understanding of constitutional limits would allow. Speaking in the Dáil, Alan Shatter TD said:

If, instead of using the formula 'civil partnership', the Bill referred to marriage simpliciter, there would have been a serious risk of a constitutional challenge to the legislation and therefore a substantial delay in its enactment. The Minister therefore had no choice other than to use the formula in the legislation. In other words, the relationship is marriage in everything but name.

Finally, in July 2010, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act passed the Dáil with the support of all parties and, shortly afterwards, passed in the Seanad by a vote of forty-eight to four. An amendment drawn up by GLEN's Dr Fergus Ryan, and proposed by Senator Norris and the Labour Party in the Seanad, to expand guardianship of children to include civil partners was defeated, but attracted support from all parties. Later that year the accompanying Social Welfare Act passed, and in early 2011, following a tumultuous general election, the new government passed the Finance Act (No. 3) which provided for equal treatment in taxation matters for civil partners. Crucially, GLEN had been able to make a case to the government that children in a civil partnership should be entitled to the same tax treatment as children in a marriage, which was then included in the Finance Act, and established the principle of equal recognition of children in lesbian and gay families.





Brian Sheehan at the Yes Equality press conference following the referendum result on Sunday, 24 May 2015, Radisson Hotel, Dublin.

Success in retrospect is often seen as inevitable, but it's rarely the case. Speaking in July 2010 at the launch of a report on LGBT community issues as Minister for Community, Equality and Gaeltacht Affairs, Pat Carey said, 'There was never an element of inevitability about the introduction of civil partnerships in this country ... To be honest, when the Bill was introduced last year, many of us thought that it would not get through Dáil Éireann without a vote, and there was a serious danger that it wouldn't get through at all.'

### CIVIL PARTNERSHIP AS A CATALYST FOR MARRIAGE

The momentum for further progress continued as a result of civil partnership, not, as some had feared, that marriage would disappear from the political agenda. The first civil partnerships were held in April 2011, to extensive media coverage and widespread public approval. At the end of the first year, nearly 800 couples had entered a civil partnership and an unknown number of couples who had foreign civil partnerships or marriages were automatically able to avail of the rights and entitlements applying to civil partnership in



Ireland. GLEN had engaged extensively in spring 2011 across the general election and the negotiation of a new Programme for Government between Fine Gael and the Labour Party, which included a commitment to a Constitutional Convention, that would explore, among other issues, marriage for same-sex couples.

On the anniversary of the first civil partnership, in April 2012, GLEN stepped up its campaign for civil marriage including stating in an op-ed in the *Irish Times* in April 2012 that 'The right to marry is a basic human right, as set out in the UN Charter of Human Rights and other human rights treaties. In a democratic republic based on equal citizenship, civil marriage should be open to all citizens, including lesbians and gay men.' Political engagement by GLEN and others continued and in 2012 the Fianna Fáil Ard Fheis supported marriage for lesbian and gay couples, joining the Labour Party, Sinn Féin and the Green Party. GLEN supported the establishment of the Fine Gael LGBT group which was launched in April by Jerry Buttimer TD, the group's Chair and the first publicly gay Fine Gael member of the Oireachtas. Subsequently, the Fine Gael Ard Fheis passed a motion to prioritise marriage in the Constitutional Convention.

The public momentum for marriage further increased, spurred by the hundreds of couples across the country who registered their civil partnerships. By June 2013, more than a thousand couples from all counties in Ireland had registered their partnerships and a further 200 couples had already given notice for their civil partnerships. The public enthusiastically welcomed civil partnerships being celebrated throughout the country. As an editorial in the *Longford Leader* stated: 'For many people the term "civil partnership" has become interchangeable with the term marriage. As far as they are concerned they are attending the 'wedding' of their gay or lesbian friends. The reality is that the tide of public opinion had just shifted towards an acceptance of gay marriage.' Breda O'Brien subsequently wrote in *The Irish Times* during the marriage referendum that 'It must be the most successful acculturation in Irish history.' In a heartfelt editorial in *Gay Community News (GCN)* in August 2012, editor Brian Finnegan wrote how he was at a civil partnership ceremony and 'suddenly I realised I was at a wedding' and that 'gay and lesbian couples who have civil partnerships are the ones driving the acceptance of marriage equality home'.

GLEN continued to campaign on parenting and children's issues, working with the new Justice Minister, Alan Shatter, building on the commitment in the Programme for Government to reform Family Law. In 2012, the Minister said:

I am acutely aware that we need to reform family law to secure equal citizenship for lesbian and gay parents and the best interests of their children. This reforming focus must also ensure that children in lesbian or gay family units are able to form a legal connection



with their non-biological parent and that kindred relationships flow from such legal connection. Reforms are also needed in the areas of guardianship, custody and access, and to ensure maintenance and inheritance rights for the children of civil partners.

The campaign for legal recognition and protection continued with the strong support of the Children's Rights Alliance, LGBT groups and other civil society groups who sought to prioritise children's rights and protections. Minister Shatter published a comprehensive briefing note in November 2013 which fully included lesbian and gay parenting and which was followed by a Heads of Bill in January 2014 that was finally enacted in April 2015.

The Constitutional Convention announced that they would explore the issue of marriage during their April 2013 sitting. There were thousands of submissions from individuals and from civil society groups supporting and opposing marriage. GLEN's submission, 'The Remarkable Journey Towards Equality and Civil Marriage for Lesbian and Gay People in Ireland', called for marriage as the next step in that remarkable journey:

GLEN, ME and the Irish Council for Civil Liberties joined forces in the presentation of the 'Yes' side to the Convention which, after an intensive weekend of debating, voted overwhelmingly to propose to the Government that the Constitution be changed to allow same-sex couples to marry. In a further remarkable outcome, the Convention voted by a larger majority to request the Government to bring forward legislation to recognise and support children growing up in lesbian and gay headed families.



'Bráinne': Brian Sheehan and Gráinne Healy as Dublin Pride Grand Marshalls, June 2015.



The three groups subsequently went on to set up the Yes Equality campaign, which was publicly launched in March 2015. Speaking at the Yes Equality launch, Kieran Rose Co-Chair of GLEN said: 'Walking up O'Connell Street this morning past the GPO where the Proclamation of our Democratic Republic was declared in 1916, where equality for all citizens was a central principle, I thought it would be a truly fitting celebration of the ideals of the Proclamation if we voted Yes to opening out civil marriage to all citizens.'

While there were, understandably, a number of disagreements and difficulties along the way, the Yes Equality campaign was soon highly professional and effective with Co-Directors Gráinne Healy and Brian Sheehan; Noel Whelan as the principal strategic advisor; a highly skilled and experienced advisory group; staff from the three organisations; and an extensive team of committed volunteers in HQ and in more than seventy Yes Equality groups all across the country. The campaign generated great enthusiasm, energy and hope from all sectors of society as Dublin City Councillor Críona Ní Dhálaigh wrote:

It has been the most positive campaign I've ever been involved in. Yes, there were low points and ugly comments, but too few to mention. South West Inner city flat complexes were overwhelmingly voting Yes and looking forward in a lot of cases to voting for the first time. We were in Oliver Bond (a flats complex) on Wednesday night and there was a great atmosphere, all the young kids were looking for Yes badges and residents shouting down 'we are all voting Yes'.