

The Rise of Alternative Families

As a parent raising an 'alternative family', I often feel awed by quite how much the world (and the law) has changed over the past decade. Doing things differently – whether you are a same sex parent, a solo mother by choice or a heterosexual couple conceiving through donor conception or surrogacy – is increasingly just part of the normal mainstream of fertility treatment, with law that now recognises and protects a broader range of family types than ever before.

It hasn't always been so. When Parliament first put in place the UK's fertility laws in 1990, it debated stopping anyone who wasn't a married couple from having fertility treatment, and a clause which would have made that law, was rejected in Parliament by just one vote. Ultimately, an obligation was imposed on fertility clinics to 'consider the need of the child for a father' before giving treatment, a compromise designed in practice to deter the treatment of single and lesbian women without imposing an outright ban. Interestingly, there was never any legal restriction in the law requiring clinics to consider the 'need of the child for a mother', probably because the treatment of gay and single fathers was regarded as a far-fetched possibility at the time.

Things changed in practice over the years, with clinics increasingly interpreting the 'need for a father' more flexibly and opening their doors to single and lesbian women, all part of the wider social context of greater acceptance and the broader legal context of developments like civil partnership, gay adoption and other equality laws. By 2008 when fertility law was reviewed, treatment for single and lesbian patients was widespread. It was logical to update the law so that clinics had to consider 'the need of the child for supportive parenting', a phrase which was deliberately non-specific on the number and sexuality of the parents.

The way the law recognises families in alternative structures has also changed significantly. In 1990, legal protection was given to heterosexual couples conceiving with donated eggs or sperm, making the birth mother and her husband (or unmarried male partner, provided they had 'treatment together') the legal parents of their donor conceived child. There was no legal recognition for gay or lesbian partners conceiving together through sperm donation, co-parenting or surrogacy.

Following changes to adoption law in 2006 which allowed same sex partners to apply for legal recognition as parents jointly for the first time, in 2008 the law was updated to give legal protection to lesbian partners conceiving together from the moment of conception. A same sex partner of a woman who conceives with donor sperm is now the other legal 'parent' of her child if:

- the couple are civil partners and conceive through artificial insemination or IVF, or
- if the couple conceive at a licensed clinic in the UK and both sign parenthood election forms

A lesbian partner, in these circumstances, has equivalent legal rights and status to a father, including financial responsibility, the ability to confer nationality and inheritance rights, day to day parental authority and the right to be recorded on the birth certificate. Exactly the same rights apply to hetero-



sexual couples who conceive with donor sperm, giving the non-biological father the same legal status as a biological father.

The law has also been broadened for parents creating families through surrogacy. Since a surrogate mother (and her husband) are treated as the legal parents when a child is born through surrogacy, the intended parents (whether gay or straight) have to go through a legal process after the birth to acquire legal status. 'Parental orders' were introduced in 1994 as a legal alternative to full adoption, designed especially for surrogacy. They allow intended parents to apply to the family court during the six months after the birth to be recognised as their child's legal parents, and to have their child's birth certificate re-issued.

Parental orders were, until April 2010, only available to heterosexual married couples, and unmarried, single and gay parents through surrogacy had no ready legal solution to enable them to become the legal parents of their child. In April 2010, however, the law was broadened. Gay and unmarried couples who conceive through surrogacy can now apply to court to become the legal parents of their child, using the same legal mechanism available to married couples.

Difficulties remain for solo parents. Those conceiving through surrogacy are in the most difficult position, since they cannot apply for a parental order, and there is no other easy legal means of them acquiring legal parenthood for their child. Given that single parents can conceive through donor insemination and can legally adopt, the logic of denying a legal remedy to single parents who conceive through surrogacy is hard to understand.

For solo mothers conceiving through sperm donation, complexities can also arise. A mother who conceives at a licensed clinic with sperm from a donor bank will be her child's only legal parent. For solo mothers who conceive through other means – whether with a known donor or co-parent at a licensed clinic, or informally at home with a friend or contact – the donor's legal position may be less legally certain.

Families being created in alternative structures are increasingly common and, with the likes of celebrities like Elton John becoming parents, it is a trend which looks set to continue. The good news is that the law has made important and positive strides in recent years and that children now have greater legal security within the family unit into which they are born, whatever it looks like.

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