

used elsewhere does not apply here and there is no lower age limit. It is made clear that women should only be offered egg or embryo freezing if they are well enough to undergo treatment, if it will not worsen their condition and if there is enough time before the start of their cancer treatment.

- For couples where the male is HIV positive, the new guideline suggests that if the man is compliant with HAART (highly active antiretroviral therapy), has had a plasma viral load of less than 50 copies/ml for more than six months and there are no infections present, the risk of HIV transmission through unprotected intercourse limited to the time of ovulation is negligible. Where these conditions are met, sperm washing may not further reduce the risk of infection but may reduce the likelihood of pregnancy. Where the man is HIV positive but these conditions are not met, sperm washing should still be offered but couples should be informed that although this can reduce the risk of transmission, it cannot eliminate it.

Commenting on the new guideline, Sir Andrew Dillon, NICE Chief Executive, said: “Infertility affects more people than you might think; around one in seven heterosexual couples in the UK. It is a recognised medical condition that can occur at any age and for a variety of reasons, such as endometriosis, polycystic ovary syndrome or naturally low ovarian reserve. Whatever the cause, we know fertility problems can have a potentially devastating effect on people’s lives; causing significant distress, depression and possibly leading to the breakdown of relationships.”

“The good news is that, thanks to a number of medical advances over the years, many fertility problems can be treated effectively. It is because of these new advances that we have been able to update our guideline on fertility, ensuring that the right support, care and treatment is available to those who will benefit the most.”

The full guideline is available on the NICE website at www.nice.org.uk

Re G and Re Z
[2014] EWHC 1300
[2014] All ER (D) 413 (12/14)
[2014] Fam Law 1001 (12/14)
[2014] 1 WLR 1752 (12/14)

**by Nicola Scott, solicitor at
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A recent landmark High Court ruling (on a case in which our team has been representing the parents) has made law for known donation arrangements. It is an important case for counsellors to understand when working with anyone considering a known donation arrangement and it highlights the fundamental importance of thorough discussions, agreement and counselling in advance of conception between parents and known donors and co-parents.

The case of *Re G and Re Z* involved two lesbian mother families who had conceived at home with known sperm donors. In each case, the mothers were civil partners and so recorded on the birth certificate together as the parents. This meant that the donors were legally sperm donors, and like other types of donors (including egg and sperm donors through clinics) explicitly had no legal parental rights or status.

However, the High Court has ruled – in the first case of its kind - that the sperm donors should have permission to apply to court for rights of contact with the children, against the wishes of the legal parents. This was on the basis that the donors had already had some involvement with the children, and so the same rule now applies (on a case by case basis) to any other known egg or sperm donors who have had any existing contact, including donors through clinics. The donors in this case have not yet been awarded any rights of contact – at the time of writing, this is the next stage in the ongoing litigation and will be decided on the basis of what is

in the best interests of the child – but the decision to allow their cases to be heard already represents a significant dilution of what previously seemed secure law, making it crystal clear that gamete donors have no legal rights, status or responsibilities.

It is worth highlighting that the judge made clear in his judgment that the donor may not ultimately be awarded any contact, following his substantive application. He continued that the donor's current expectation of the level of contact he will have is "wholly unrealistic" – an interesting point but of dim comfort to the parents who remain acutely aware that formal contact between their son and the donor for the foreseeable future is a very real possibility.

It is therefore important going forward for anyone going into a known donation arrangement to have a clear understanding of their legal position, and the potential risks involved. Drawing up a legal known donation or co-parenting agreement may also be sensible, in addition to clinic consent forms. In practice, the main benefit of having an agreement is very often in the discussions, communication and harmonisation of expectations that it encourages whilst being drawn up, rather than in the legal force it may or may not have further down the line. In addition to this, the very presence of such a document by nature tends to add a layer of formality to such arrangements, which may in itself serve to discourage parties from swaying from their original agreement.

Counsellors can also contribute significantly to setting these good foundations. In *Re Z*, the lesbian mothers had wanted a 'role model' level of involvement for the donor, and the biological father had wanted more, and the arrangement unravelled as a result of these mismatched expectations. Although there were discussions and meetings between the parents and the donor before conception and birth, it is acknowledged by all parties that these were not as thorough as they should have been. The parents and donor would have benefitted hugely from having had professional support and counselling at this stage. This would likely have encouraged further discussions until

an agreement was reached, or perhaps even prevented the parties from going ahead on the basis that they could not agree their fundamental roles in the child's life.

As counsellors you may therefore play a key role in highlighting the potential pitfalls of such arrangements to parents, donors and co-parents, and helping them talk through their expectations about the roles they will play. You have the skills to help them talk to each other honestly (and to listen to each other properly), and that may be invaluable. We see many known donation arrangements working incredibly well, but the law in this area is complicated and its application comes down to the specifics of the arrangement. This case highlights that this area remains tenuous, and whilst the underlying legal position may protect parents, it cannot necessarily be relied upon to afford complete autonomy (particularly where the donor has had a level of involvement with the child). It is therefore vital that all parties in known donation arrangements seek legal advice before they conceive, and settle their expectations very carefully through thorough discussion.

For further information for you and your patients, please visit our website, : nataliegambleassociates.com

Photo: Nicola Scott of Natale Gamble Associates

