

Families without Fathers

Natalie has kindly agreed to write an article in each edition of our magazine



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A tiny piece of the law, which is in fact of very little practical importance, has attracted enormous attention as the Human Fertilisation and Embryology Bill 2008 has progressed through Parliament. It is the requirement that fertility doctors, before giving treatment, must 'consider the welfare of the child that may be born (including the need of the child for a father)'.

As part of its general update of the 1990 legislation, the government decided to amend this wording so that clinics would have to consider just the 'welfare of the child', removing the specific reference to fathers. It was felt that the existing law was outdated in referring to particular family structures, and sat uncomfortably with other recent legal developments like civil partnership and the Equality Act.

However, the proposal caused a storm of opposition, first in the House of Lords, where ex-HFEA Chair Baroness Deech 'described it as sending the message that "fathers really aren't necessary"'. In response to this opposition, the government compromised slightly, amending the Bill to require clinics to instead consider the child's need for 'supportive parenting'. Peers approved this wording before the Bill moved to the House of Commons, where there was more controversy and a free vote on the issue for MPs. On 20 May, MPs voted to support the government's position, which means that the new law will now require clinics to consider the 'welfare of the child (including the need of that child for supportive parenting)' rather than the need for a father.

A great deal was said in the debate in both houses of Parliament about the importance of fathers and the valuable role they play in the upbringing of children. The arguments were certainly heartfelt and compelling, and echoed the fears of many about family breakdown and the exclusion of fathers from family life. But from a legal perspective, they misunderstand this particular piece of law. It is not – and was never – a statement of principle about how important fathers are. It was always about restricting access to fertility treatment.

To understand this bit of law, you need to go back to its origins. The 1990 Act was going through Parliament in early

1990, a time when Thatcher was Prime Minister, apartheid was coming to an end in South Africa and Sinead O'Connor was at number one. At the time, a powerful lobby only lost by one vote a proposed amendment which would have restricted fertility treatment to married couples only. Such an approach seems unthinkable today. The obligation of fertility doctors to 'consider the need for a father' was reached as a compromise, and its specific intent was to discourage treatment for lesbian and single women.

As a result of this piece of law, it was for many years almost impossible for patients who were not in a heterosexual relationship to access fertility treatment.

But we no longer live in the 1980s and society has changed dramatically over the past twenty years, with twenty-first century legal developments like civil partnership, same sex adoption and the Equality Act.

In response to these changes, the HFEA – which is responsible for giving guidance to clinics on how to apply the law in practice – began to shift its approach. The HFEA guidance issued in 2003 for the first time made it clear that single and lesbian women could be treated and that, in cases where there was no father, clinics had to consider 'the prospective mother's ability to meet the child's needs'. Sounds a bit like a consideration of supportive parenting, don't you think?

Essentially therefore, the law has already progressed to supportive parenting, albeit through interpretation rather than amendment. The change of wording is not nearly as controversial as it sounds, and in practice it will make no difference whatsoever to the experience of patients.

What this is about is bringing the wording of the law into line with how it is already applied in practice. And in the context of wider legal obligations not to discriminate, it is difficult to see how any other outcome could have made any sense. The deletion of the 'need for a father' is not about denigrating fathers, but about recognising that we no longer live in the 1980s and that the law can no longer discriminate by trying to dictate who can and who cannot have fertility treatment.