

Fertility Treatment: Rights and the Law.



Run by and for LGBT+ parents/carers, their children and those considering parenthood living in Greater Manchester.





IVF / DONOR / PARENTAL RESPONSIBILITY

The rights and legal obligations of a parent define what steps a parent or co-parent can take. A birth mother automatically has parental responsibility (PR). Matters changed massively with the introduction of the Human Fertilisation and Embryology Authority (HFEA). The Act recognised same sex couples as legal parents of children conceived through the use of donated sperm, eggs or embryos.

The Act also amended the information and rights available in connection with donor conception, giving new rights to donor-conceived children to contact their genetic siblings. Donor anonymity was lifted in 2005, allowing children conceived after this date to obtain identifying information about their donors upon reaching 18 years old. However this is not retrospective.

Legal parents - The partner of a woman/trans man who carries a child can be the child's legal parent and named on the birth certificate as a second legal parent.

- If the couple are married or civil partners at the time of conception, the non-birth mother/parent will be treated as the child's second legal parent, irrespective of whether the artificial conception takes place at a clinic in the UK, at a foreign clinic, or at home.
- If the couple are not married or civil partners, the non-birth mother/parent will only be the child's second legal parent if the couple conceive at a licensed clinic in the UK where all the necessary consent forms can be signed.
- As the second parent will be named on the birth certificate then they will automatically have PR.

Alternatively, if insemination does not take place a licensed clinic and the 2nd parent wishes to have PR, a step-parent PR Agreement can be entered into, but the consent of everyone with PR will be needed or it will be necessary to make an application to the court for a Child Arrangement Order or adopt the child/ren.



DONATION / CO-PARENTING AGREEMENTS

A donor donating through a registered clinic has no legal rights or responsibilities in relation to the child/ren. Many couples however look to friends to help them conceive. A known donor is not afforded the same protection as an anonymous donor through a registered clinic.

It is sensible to consider all matters at the outset and have this drawn up into an Agreement. This can set out what the parties intentions are, including the parties involvement during the child's life. The Agreement is however not legally binding but is something a court can consider if there is a future dispute as to what the intentions were.

The donor cannot automatically make an application for a Child Arrangement Order as they have no legal standing and will need leave (permission) of the court. A donor's relationship with the child is an important factor and there is now case law on the issues considered by the court for a leave application and the substantive application. There are therefore risks to "home insemination" with a "known donor".

CHILD ARRANGEMENTS ORDERS

If a couple have a child together but they are not named on the birth certificate then to gain PR, it will be necessary to apply for a child arrangement "live with" order as this will then confer PR. This would be the same for a step-parent if the parent with PR does not consent.

If parents subsequently separate then if an agreement cannot be reached in relation to whom the child/children should "live with" and when the other parent should "spend time with" the child/children. If there is however a dispute, then it is open to either party to make an application to the court (in some cases permission of the court may be required). How the court deals with matters depends on the circumstances of each individual case, the priority always being the welfare of the child.



ADOPTION

There is now no limit on who can adopt and this includes same-sex cohabiting couples, civil partners, married couples and single people. An applicant will need to show that they are in an 'enduring family relationship'.

Adoption will give you:

- Parent Responsibility
- Financial responsibility including paying child maintenance if you do not live with the child.
- Inheritance rights
- British nationality

The application can be straightforward if everyone consents. You need to give your local authority at least three months' notice before applying to the court for an adoption order. The child must have lived with you for the past six months.

The Local Authority will appoint a social worker to prepare a report for the court with their recommendation.

SINCLAIR LAW

With thanks to Suzanne Moore from Sinclair Law for this guide's content.



If you have any further questions regarding fertility treatment please get in contact with [Proud 2 b Parents](#) or attend one of our Parent 2 b workshops. We look forward to seeing you and your family at some of our meet-ups soon.