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**FATHERS NOT INCLUDED:
Assisted Reproduction, the Need for a Father and the Meaning of
Parenthood**

Early Report from the Assisted Reproduction Working Group of the Family Law Review (under the auspices of the Centre for Social Justice) to address issues arising in the Human Fertilisation and Embryology Bill [HL] (2007-08)

EXECUTIVE SUMMARY

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**Fathers Not Included:
Assisted Reproduction, the Need for a Father and the Meaning of
Parenthood**

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Executive Summary

This report summarises a consultation process carried out by the Assisted Reproduction Working Group, a specialist division of the independent Family Law Review set up by the Centre for Social Justice. Its purpose was to explore the implications of proposed legislation on assisted reproduction, most notably and immediately the new Human Fertilisation and Embryology Bill. A wide range of views were accessed at evidence-gathering hearings, through polling and from the academic literature. We were particularly concerned about the public policy implications of removing reference to the need for a father in the lives of children born by assisted reproduction.

In many ways, household formation in Britain has changed over the last half century, with more single units, more single-parent households, and more same-sex couple households (whether based on civil partnerships or not), although the 2001 Census found that only 0.3% of all couples live together as same-sex couples. As far as the last category is concerned, this report is not concerned with the issue of sexual orientation. It takes as its starting point the current context in which same-sex couples and same-sex parenting are widely accepted, as within most democratic communities.

The Working Group concluded that the needs of childless adults are disproportionately represented in the Bill which is challenging the need for and nature of fatherhood and calling for a redefinition of parenthood. It is doing so in the following ways:

- **Discounting a child's need for a father.**
Section 13(5) of the 1990 HFE Act¹ requires that treatment services must not be provided “**unless account has been taken of the welfare of any child who may be born...(including the need of that child for a father)**” This provision in the 1990 Act directing that clinics concerned with assisted reproduction must have regard for any resulting child's need for a father is to be removed. This clause does not make the need for a father an absolute requirement, but does state an important principle which is that the lifetime commitment of a loving father to a child is immensely valuable.
- **Removing the right for a child to have a legal father (and mother).**
When providing assisted reproduction services to lesbian couples ‘no man is to be treated as the father of the child’. Parallel provisions apply for male same-sex

¹ Clause 14 of the new Bill amends conditions for granting licences for treatment in section 13 (1990 Act).

couples using a surrogate (and a fast-track adoption order), where there will be two male parents and no legal mother. Children will be born who are intended to be legally fatherless or motherless.

- **Confusing parental status and parental responsibility on birth certificates.**

Birth certificates will continue to withhold information about donor conception and will name legal (and, where applicable, obviously non-biological) parents, undermining the certificates' status as an accurate record on biological parentage.

The current reference in legislation to a child's need for a father is largely being removed because of the alleged offence such a clause is causing to single and lesbian women. Yet in 2006² only 775 IVF treatment cycles, less than 2% of all IVF treatment cycles, were for women in these categories (and only 1472 donor insemination cycles involved lesbian and single women). Removing this reference, for the sake of a tiny minority that currently does on the whole have access to assisted reproduction, sends a powerful signal to the whole population that fathers can be dispensed with in children's lives.

This is in spite of a wealth of social research showing the importance of engaged fathers for families and communities. Fathers matter to children but fatherhood itself is essential for drawing men into dependable and responsible adulthood. It also disregards the fact that existing guidance provided by the HFEA makes it unlawful to discriminate on the grounds of sexual orientation. The combined effect of this guidance and the fact that the current clause does not make 'the need for a father' absolute, is to undermine the argument that this clause impacts unfairly on single or lesbian women. By ignoring the benefits fathers bring to children in order to accommodate childless adults, the Bill places the rights of adults at the centre, rather than the best interests of children. Whilst we acknowledge the profound distress of involuntary childlessness, such a bias is wholly inconsistent with the welfare principle usually governing family law and a wide range of other policy areas.

The Bill seeks to give equal footing to any two-person arrangement for having and raising children. Civil partnership and same-sex adoption are considered to have paved the way for this draft legislation for assisted reproduction. However, the principle of equality is being misapplied. Automatically extending parentage to same-sex partners does not recognise the different purposes usually associated with heterosexual and gay unions. Treating it analogously with adoption also ignores the significant hurdles any person or couple wishing to adopt a pre-existing child, have to overcome. They have to come before adoption panels and the intense scrutiny of adoption societies and the courts, and be subject to probationary periods. Yet this Bill which implies that it is

² See 'A long term analysis of the HFEA Register data (1991-2006)' available at http://www.hfea.gov.uk/docs/Latest_long_term_data_analysis_report_front_cover.pdf accessed 10/5/08

following the logic of same-sex adoption, proposes no such checks and balances. Parental status is to be recognized on the sole basis of adults' intentions.

YouGov Polling May 2008³

We conducted polling to gather popular views and found that:

- 61% believed that it was very important or fairly important for children to know the identity of their biological parents. Only 10% found it to be not important at all.
- Of those expressing an opinion, 79% of those polled said that there should not be an absolute right enshrined in law for everyone to have a genetically related child if they wish.
- Of those expressing an opinion, 93% agreed with the statement "Legislation dealing with fertility treatment must address both the desire of potential parents to have children and the welfare rights and needs of children resulting from fertility treatment."
- 80% of those polled believed that a child had a right to two parents.
- Of those expressing an opinion, 60% of those polled agreed that mothers and fathers both have their own unique contributions to bringing up a child and it is important children have both a male and female parent.
- Of those expressing an opinion, 76% agreed or strongly agreed with the following statement. "Some people have argued that not enough research has been done into the outcomes for children born to same sex couples through assisted reproductive treatment, and that we should wait for more research before changing the law to recognise same sex partners as parents."
- Only 24% of those polled thought that the law should recognise the partner in a same-sex couple who have a child through assisted reproductive treatment in the same way as a biological parent. 66% believed that legal recognition should take place in some lesser form or not at all.

We make recommendations for law and policy that have direct and immediate relevance to the passage of this current Bill as well as to address longer term issues of concern.

- **‘Need for a father’ clause to be maintained (and preferably amended, to include ‘Need for a mother’) within the new Section 14 (see Chapter 2.1).**

Research evidence overwhelmingly indicates the need for a committed and engaged male figure, preferably a biological father in a child’s life. In contrast very little research has been done to compare outcomes for children born by donor conception and raised in same-sex families (see below). We heard evidence that

³ Nationally representative YouGov poll of 1500 people carried out in May 2008

greater access to treatment such as IVF and donor insemination has encouraged more same-sex couples to have children. By retaining this clause the law sends an important signal that, regardless of new assisted reproductive potentials, fathers are needed. This would be consistent with many other areas of government policy where active fatherhood is being encouraged (eg. joint birth registration, preservation of contact post-divorce/separation, financial support.) Wherever possible, family policy should encourage family structures that have been demonstrated to promote the welfare of children.

- **A thorough public investigation of the implications and applications of the broader welfare principle to assisted reproduction (see Chapter 5).** The difficulties of implementing the welfare principle mentioned earlier (not providing treatment services “**unless account has been taken of the welfare of any child who may be born...**”) are widely acknowledged. Clinicians are particularly concerned that they are not effective in ensuring future children’s welfare. If clinic staff refuse treatment, on the grounds that they are concerned about clients’ prospective suitability as parents, they will obtain treatment elsewhere and records of refusal cannot follow them. Many doctors want better training to implement what they acknowledge is an important consideration.

- **More research to be carried out before changes in the law (see Chapter 4.1).**

Very little research has been done comparing children born by donor conception and raised by same-sex couples, with children raised in heterosexual families. There are no research findings on the relevance of the ‘absent’ biological parent or answers to questions such as, are knowledge of or contact with this ‘absent’ parent beneficial? What are the implications of having knowledge and contact for the integrity of the same-sex couple family? Samples are small and there is very little on gay fathers parenting.

Whilst robust, the behavioural psychology studies (of a scholar like Golombok) which have tended to predominate, would not have shown up the emotional and identity issues many donor-conceived *adults* experience. Qualitative research is required to reveal the complexity of relational dynamics in families with donor-conceived children (where infertility may be an ongoing issue). This would complement behavioural and development studies which can only reveal some of the picture.

- **Adapted ‘special guardianship’ status (see Chapter 3.1).** Current proposals to treat same-sex partners as legal parents (but not the donors of sperm or eggs or ‘gestational mothers’ ie. surrogates) would sever the link between a child and one or both of its biological parents. We are concerned about the impact this will have on the life of the child. However, social parents often have a very important role in the care of a child and if their parental *responsibility* were recognised, this would make it easier for them to give parental consent eg. in matters of education and healthcare. This would also obviate any

need to have two females or two males registered as parents, which is fundamentally incompatible with the heterosexual reality of parentage. We would recommend a status with some of the features of 'special guardianship' but which also allows private ordering (rather than a court order).

- **Greater transparency in the birth registration system (see Chapter 4.3).** The Department of Health has acknowledged a need to review the issue of birth certificates for donor-conceived individuals. Despite their rights to know their biological origins, many donor-conceived individuals are unaware of their status, as currently birth records do not register it. Several related options were presented to the Working Group, giving more or less privacy to parents and donor-conceived children (in terms of how explicit their donor status is on their birth records) and more or less control over records by the Human Fertilisation and Embryology Authority. We present these options for the Department of Health review and recommend firstly that it takes priority, for the sake of the approximately 2000 children being born by donor-assisted conception each year.

Secondly, we recommend that the best means be found for birth certificates to reflect that there are some differences between those who are social/legal parents and those who are genetic parents of the child being registered. We recognise the controversial nature of this issue, but 'decisional privacy' has to be tempered by donor-conceived individuals' rights to be made aware of their biological origins.

- **Funding and long term commitment to UKDonorLink, or a similar organisation (see Chapter 4.3).** The various parties involved in donor conception (donor-conceived individuals, their parents and donors themselves) need easy access to a service experienced in dealing with kinship loss, reunion advice and support, as well as genetic expertise. Such a body is currently being piloted. Once its viability is established it could perform a vital social service, and government (and/or assisted reproduction industry) funding and long term commitment would send an important signal to all those involved in this aspect of assisted technology that the need to assist those concerned to find their origins and related kin are recognised.
- **Mandatory information and greater availability of counselling (see Chapter 4.4).** The new HFE Bill Code of Practice guidance should make it mandatory for all prospective parents using donated eggs and sperm to receive impartial and accredited preparation prior to treatment. This is crucial for helping prospective parents think about a) all the issues bound up in parenting a child who is not genetically related to either one or both of them, and b) how they will tell their children about their origins. Donors' need for counselling is also set to increase as more children reach the age where they may get in contact and donor-conceived individuals may have identity issues which they need help to resolve. A society which creates a legal framework for taking advantage of reproductive technology should also ensure that such 'follow up' infrastructure is also in place.

- **Establishment of an independent National Bioethics Committee (see Chapter 3.2).**

Such a body would be responsible for looking into bioethical issues of concern in proposed legislation as science and ethics should go hand in hand. There are many issues of a *bioethical* nature contained in the new Bill, not least the legal provision for two-mother and two-father families. The Joint Committee who undertook a pre-legislative scrutiny of the Bill noted concern about the draft Bill lacking an ethical underpinning. Many other countries have a National Bioethics Committee or Commission but we have been made aware that these do not necessarily operate in the kind of independent way necessary to ensure impartial bioethical input into legislation. This would have to be taken into account when terms of reference were drawn up.

This report is not a coded critique of same-sex parenting but an attempt to open up a necessary debate on how best to safeguard the interests of children. Attempts are being made to change the legal framework surrounding parentage to accommodate tiny percentages of the population. We run the risk of downgrading the importance of fatherhood, and elevating the interests of adults over children in a way that is sharply at odds with other aspects of Government policy and has profound implications for society.