

THE CENTRE FOR
**SOCIAL
JUSTICE**

**Briefing Paper from Family Law Review on the
Human Fertilisation and Embryology Draft Bill [HL]**

**PROPOSAL FOR THE REMOVAL OF THE NEED FOR
A FATHER**

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ABOUT THE FAMILY LAW COMMISSION

The Family Law Commission was established in response to a key recommendation from the Social Justice Policy Group (SJPG), commissioned by David Cameron to make policy recommendations for the next Conservative manifesto, which reported in July 2007 with the publication, Breakthrough Britain.

The recommendation from the Family Breakdown Working Group (one of the six groups comprising the SJPG) was for "a review of family law conducted by a dedicated independent commission".

The Report continued, "The relationship between the law and family breakdown and legal aspects of marriage, divorce, cohabitation, parental rights and the rights of the extended family (especially grandparents) are highly complex but require consideration. We recommend that this be carried out under the auspices of an independent body such as the Centre for Social Justice."

This recommendation was taken up and a Family Law Review instituted. One area currently being considered by some members of this body concerns the Government's Human Fertilisation and Embryology Bill, currently proceeding through Parliament, which is intended to update UK law on embryology and assisted reproduction.

There are a number of proposed changes within the Bill which directly relate to fathers. One change proposes that IVF clinics will no longer need to consider 'the need of the child for a father' before a woman has fertility treatment. The Family Law Review has written this briefing paper which looks at some of the implications of this proposed legal change, and whom it might affect, within the context of the important, and distinctive, role that a father plays in a child's development.

**Briefing Paper from Family Law Review¹ on the
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INTRODUCTION

Draft legislation for assisted reproduction and embryo research proposes to **remove** the current reference in legislation to a child's need for a father.² This means that prior to provision of fertility treatment, there will no longer be any requirement, nor guidance, to consider the child's need for a father.³ Yet paradoxically, consideration of the 'welfare of the child' will remain a duty for clinics. This is being done because of the alleged offence such a clause is causing to single and lesbian women. The first section of this briefing makes clear a) the small numbers of women in such categories involved and b) the **protection** against discrimination provided by existing legislation.

The state should not deny the child's need for a father. A wealth of social research findings challenge the notion that *deliberately* planning to have fatherless children can be in their long-term interests. (A key submission to the Joint Committee on the Draft Human Tissue and Embryos Bill was a bibliography with 113 references to the uniqueness and importance of fathers accessible at www.care.org.uk/fathers.) Moreover, polling conducted in November 2007 by ComRes for CARE¹ indicates a lack of popular support for the implications of such proposals.

¹ Hosted by the CSJ and chaired by Dr Samantha Callan. Paper prepared by Samantha Callan, Philippa Taylor and Professor Brenda Almond.

² Currently section 13(5) of the Human Fertilisation and Embryology Act 1990 Act requires that "*a woman shall not be provided with any treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for a father), and of any other child who may be affected by the birth.*"

³ The draft Bill proposes changes to the conditions of licences for providing treatment services. It proposes to remove from the existing conditions of licences the requirement to take account of "the need of that child for a father" before treatment services can be provided.

77% of the British public think it is very important or important for the need of a father to be considered for children resulting from IVF.⁴

80% of women say it is important to have regard for a need for a father for children resulting from IVF

The majority, 52%, of people think that it is unfair that this Bill will legally prevent children from having a father, for those conceived by IVF to lesbian parents. Only 10% think that it is fair.

These poll findings mirror the results of the Government's official consultation on the Bill. Of 505 published responses to the Bill, only 103 supported it.

A brief look at the statistics of women involved in assisted reproduction

In 2006, according to the HFEA, of all those registering for IVF (40,484) only 201 females (0.5% of those receiving IVF treatment) registered as lesbians and 574 females (1.4% of the total) registered as single females. We are talking about 775 women, less than 2% of all those receiving IVF treatment.

Percentages are much higher for donor insemination but numbers are of a similar order of magnitude. Of all those registering for DI (3864) only 767 females registered as lesbians (20.1%) and 705 (18%) as single, making a total of 1472.

We are talking about removing a vital signal to the socially valued role of a father for the sake of just over 5% of women receiving IVF and DI. This clause currently covers all women and would be removed for all women, yet only one twentieth fit into the categories of those allegedly 'offended by it'

Significantly though, well over 2000 lesbian and single women **did** receive this treatment, notwithstanding the clause about the requirement for clinics to consider

⁴ ComRes interviewed a nationally representative sample of 1010 GB adults by telephone between 9th and 11th November 2007. Data were weighted to be demographically representative of all GB adults. ComRes is a member of the British Polling Council and abides by its rules.

the need for a father. **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 this clause does not make ‘the need for a father’ an absolute one completely rebuts the argument that **not** removing this clause impacts unfairly on single or lesbian women. Indeed, data on those being denied treatment due solely to this clause has proven to be impossible to obtain, for the very reason that people are not denied treatment on the grounds covered by the clause alone. Other concerns about the welfare of the child (such as the likelihood of domestic violence) have been cited, but not the absence of a father in and of itself.

The importance of fathers in children’s lives – a summary of key aspects

- Fathers play a unique and crucial role in nurturing and guiding children’s development. Indeed, the importance of fathers in children’s lives is now almost uncontested within social science research and policy.⁵
- The IPPR’s recent report on fatherhood⁶ says “What is clear from research is that everything a father does – negative or positive – impacts on his child.” The lifetime commitment of a loving father to a child is immensely valuable. He contributes unique fatherly qualities which enhance the well-being of the child and enables understanding of maleness. Children deprived of a father often experience psychological, social and community disadvantages, which can be damaging. Carlson (2006)⁷ found that father – but not mother – involvement is a key predictor of teenage behavioural problems. In areas such as emotional intelligence, self-esteem, competence, and confidence, the father’s influence cannot be duplicated or replaced easily by the mother, no matter how good a mother she is.⁸

⁵ “Over the last twenty years it has become recognised that fathers play a crucial role in child development and subsequent adult status and behaviour.’ Flouri, E., *Fathering & Child Outcomes*, Chichester, West Sussex: John Wiley & Sons, 2005.

⁶ Stanley K., (ed) 2005, *Daddy Dearest? Active fatherhood and public policy*, IPPR, p59

⁷ Carlson, M., 2006, "Family structure, father involvement, and adolescent behaviour outcomes", *Journal of Marriage & Family*, Vol. 68, pp. 137-154

⁸ See eg. Belsky, J., 1998, ‘Paternal influence and children’s well-being: Limits of, and new directions for, understanding’, in Booth and Crouter (eds.) *Men in Families*, pp. 279–293.

- A father's presence is beneficial for the socialisation of both boys *and* girls. "Closeness to fathers makes a unique contribution to offspring happiness, life satisfaction and psychological distress...fathers are important figures in the lives of young adults" and "Regardless of the quality of the mother-child relationship, the closer children were to their fathers, the happier, more satisfied and less distressed they reported being...this holds for both sons and daughters."⁹
- Longitudinal studies also show that fathers add a unique contribution to their children.¹⁰ This contribution impacts beneficially on communities as well as on individuals, as communities where there is a conspicuous absence of resident fathers experience well-documented social problems.
- Family law also clearly recognises and upholds the important role of the father in respect of child maintenance, access, and negligence etc. This current government itself states that "Father-child relationships, be they positive, negative or lacking, have profound and wide ranging impacts on children that last a lifetime, particularly for children from the most disadvantaged backgrounds."¹¹
- Of course children are born and their father may tragically die, but the significant body of research we draw from indicates that fatherlessness due to accident is not reason enough to allow treatment that deliberately *plans* such an outcome.
- We fully support retaining in legislation the duty to consider the welfare of the child prior to provision of fertility treatment. However, we see no reason

⁹ Amato P., 1994, "Father-Child Relations, Mother-Child Relations and Offspring Psychological Well-being in Early Adulthood," *Journal of Marriage and the Family*, vol.56, 4, p1031.

¹⁰ Amato, P. R., & Booth, A., 1997, *A generation at risk: Growing up in an era of family upheaval*, Cambridge, MA, Harvard University Press.

¹¹ Department for Work and Pensions (DWP), *Joint birth registration: promoting parental responsibility* CM7160, June 2007; Available at: <http://www.dwp.gov.uk/publications/dwp/2007/joint-registration-of-births-gp.pdf8>.

to remove from welfare considerations the role that an involved father can play in influencing successful outcomes for children and thus their long-term welfare.

Examining and countering common arguments put forward for removing the father's clause

Argument 1: Everyone has the right to reproductive choice in fertility treatment. To oppose these changes is to discriminate against same-sex parents.

Such arguments generally put parents' interests above children's. The wishes of prospective parents should be of secondary importance to the best interests of the child concerned. It is widely agreed, and a wealth of research shows, that a father is central to a child's welfare. Fathers play a unique nurturing role throughout their child's life that is different, and yet complementary to, that of the mother. It cannot therefore be in a **child's** best interests or welfare to deliberately write fathers out of their lives.

Indeed, why should anyone feel *entitled* to make that choice on behalf of a future child when a recent UNESCO declaration on bioethics¹² states that:

*For persons who are not capable of exercising autonomy, special measures are to be taken to **protect their rights and interests...***

"Some adults may find that rights they consider important, and that other people enjoy, were taken away from them by actions and decisions made by other people before they were born."¹³

¹² UNESCO Declaration Article 5 http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html

¹³ Almond, B., *The Fragmenting Family*, OUP, 2006, p. 104.

Argument 2: A father is not necessary in raising children. One or two women are quite capable of it. Research by Golombok suggests that the absence of a male parent is not a serious harm to children.

Although a woman can of course adequately meet **physical** requirements, a mother cannot substitute for all the **emotional and social** needs of children, especially boys. Males and females provide different yet complementary parenting roles. Despite claims that there is no psychological harm to children born of assisted reproduction, there are in fact remarkably **few serious studies** of donor-conceived adolescents or adults. The work usually cited is by Golombok, but her research on donor conceived children has major shortcomings in that it is based on small samples¹⁴ and mainly covers pre-teen children, an age when children do not question in any depth who they are, how they were conceived or where they come from. Golombok herself acknowledges this problem:

“Few studies have included children at adolescence or beyond, and little is known about the consequences of conception by assisted reproduction from the perspective of the individuals concerned.”¹⁵

Argument 3: ‘Biology doesn’t matter.’

A child conceived by donor-insemination inevitably faces the loss of a biological father, but a father is far more than genetic material. To be against this proposal is not to be anti-gay parenting, but **for** the child to be protected by law, from the likelihood that his or her identity will be compromised throughout life.

Probably the most important question any of us ever asks is ‘Who am I?’ For many people, though not all, knowledge of ancestry and personal history is of value in itself and it forms part of their conception of their own identity. It is more commonly when children become older adolescents and adults, when starting their own family

¹⁴ For example, one study was based on only 17 egg donation families and 35 DI families: Murray C., MacCallum F., Golombok S., 2006, *Egg donation parents and their children: follow-up at age 12 years*, *Fertility and Sterility*, vol. 85, issue 3.

¹⁵ Golombok, S., MacCallum, F., 2003, *Practitioner Review: Outcomes for parents and children following non-traditional conception: what do clinicians need to know?* *Journal of Child Psychology and Psychiatry and Allied Disciplines*, Volume 44, Number 3, pp. 303-315(13).

or when difficulties in parent-child relationships occur, that these issues become significant. And so, we argue that a child's ability to access knowledge of his or her own biological parentage should be more firmly protected by the measures we set out in our proposals regarding [birth-certificates](#)).

The argument that 'biology doesn't matter' is sometimes used in connection with fertility treatment, but if it really does not matter, why do couples so often prefer it to choosing to adopt? The answer is that it **does** matter to both parents who want a child who will often choose fertility treatment that makes it possible for their child to share at least half of its biological heritage with them.

The new HFE Bill 2007 includes in Schedule 6, Amendments to Births and Deaths Registration Act 1953, provision for references to 'father' to mean second woman.

As Baroness Deech said, "to have a birth certificate listing two women as parents is an odd way of pursuing the truth." (House of Lords Debate 8th Nov 2007)

*Argument 4: The clause is illogical because it is not an absolute **requirement** for treatment and is therefore unnecessary. It is also widely ignored.*

The language of the Act does not make the need for a father an absolute requirement. Indeed the current system does not prevent women having children on their own or as part of a same sex couple. 'Taking account' is not a dogmatic statement and treatment is not necessarily dependent upon it. Nevertheless, removing the clause is unnecessary and unhelpful because not only does it provide some flexibility in application for different situations, but it also makes a critically important point of principle that **fathers are important** for children.

The clause operates on at least two levels. First it provides a statement of principle in law acknowledging that a child's welfare is impacted beneficially by the presence of both a mother **and** father. This point of principle is important given that the same reasoning is to be applied in the case of a male couple wishing to create a motherless

child – a child without a female parent - something that is more readily seen as a deprivation. Secondly, in some cases (even if not all) the presence of this clause will provide useful guidance for both clinicians and patients considering the welfare of the child.

The argument that it is sometimes ignored is not an argument to remove it, but rather to consider how it might be more effectively implemented.

Argument 5: The law should not interfere in and prevent conception for those using assisted reproductive technology (ART) when it does not for people conceiving naturally.

When the state is asked to assist a person or couple to create a child then it becomes a public not a private issue and the state has to take responsibility to look out for the child's welfare and protection. In stark contrast to the proposed legislation, the Adoption and Children Act 2002 states that the welfare of the child should be **paramount**, and thus parental wishes should become secondary to the best interests of the child concerned.

CONCLUSION

Many children are already being born without a resident father (15% of all children are born into homes with no fathers¹⁶), or see them rarely (around one quarter of all fathers have not seen their children in the last year and the same number see their children less than once per week¹⁷). Instead of doing all we can to turn these figures around we are implying that having a father around is not really necessary.

Moreover, numbers of children resulting from assisted reproduction seem likely to rise. The removal of the clause which states the need for a father is a prime case of morally-biased policy being dressed up to appear more equitable. There is a concern that female same-sex couples are discriminated against and that single women might be denied their procreative rights. However, in denying the necessity of fatherhood, a social construction of parenthood is being advanced to displace the natural and historic conception of parenthood as a fundamentally biological concept. Our ability to manipulate biotechnology is leading us to assume that parenthood can follow any and every permutation to satisfy the rights of adults. However, at bottom this is putting the interests of adults and their purported rights to be parents, ahead of the rights of children to know and benefit from the role in their lives that both sexes can play, and that has been necessary for their own conception.

¹⁶ Kiernan, K., & Smith, K., 2003, 'Unmarried parenthood: new insights from the Millennium Cohort Study' *Population Trends*, 114, 26-33. London: Office of Population, Censuses and Surveys

¹⁷ Burghes, L., Clarke, L., and Cronin, N. (1997), *Fathers and Fatherhood in Britain*, London: Family Policy Studies Centre, pp. 65–67