Editorial
The need for a father: mixed messages in the UK’s new legislation on gamete donors?

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Two pieces of legislation passed in the last 3 years will have a major impact on fertility treatment – and particularly on services involving donor gametes.

1. In April 2005 a change in the law involving sperm donation (as well as the donation of eggs or embryos) ruled that donors would no longer be able to remain anonymous. The change of law gave to anyone conceived with donated sperm, eggs or embryos the right, at the age of 18, to ask the government’s regulator (the Human Fertilisation and Embryology Authority, HFEA) for information about the donor. The new law also meant that fertility clinics must ask all their donors for identifying – as well as non-identifying – information. This information cannot be made available to the child’s parents.

2. In May 2008, as part of updates to the 1990 Human Fertilisation & Embryology Bill, MPs voted to remove any requirement for licensed fertility clinics to consider a child’s need for a father. The new clause shifted the welfare emphasis of assisted reproduction treatment (ART) from consideration of the need for a father to the less specific ‘supportive parenting’.

Parliament’s vote in favour of the latter change caused surprising indignation, particularly because the vote seemed to remove any legal barriers to single women and lesbian couples from having children by ART. The Church of England said that the vote ‘sends a signal that fathers don’t matter’, adding that “we now have a situation where the perceived ‘right’ to have a child trumps the right for a child to be given the best possible start in life”.

The Roman Catholic Church, led in England and Wales by Cardinal Cormac Murphy-O’Connor, expressed concerns over a trend towards ‘moral relativism’, whereby people replace deeply fixed moral concepts of absolute right and wrong with decisions about what is right or wrong for them as individuals at the time.

In their expression of unease about the vote, both Churches held the view that politicians – as well as the scientists and clinicians supporting the changes – are promoting a utilitarian approach to human life which neglects the ‘common sense’ view of the family and its broadly accepted moral principles. Newspaper headlines, such as ‘Fathers not needed’, reflected this unease.

However, the British Fertility Society (BFS), which took part in the consultation process for drafting the new legislation, has consistently argued that the ‘need for a father’ was potentially discriminatory and should be replaced by the ‘need for high quality parenting’. The BFS, therefore, in representing the UK’s fertility clinics, welcomed the change of law, emphasizing that, as has always been the case, ‘consideration of the welfare of potential children is central to the provision of care’ and is unaffected by Parliament’s decision.

Indeed, some licensed clinics already have a long history of treating single women and lesbian couples, and have, as the BFS statement suggests, always applied considerations of ‘supportive parenting’ in their pre-treatment counselling. For these centres the new legislation thus provides a legal framework to what they have long regarded as best practice.

Such moves in Britain, however, are in contrast to recent legislation elsewhere in Europe, which, some would argue, is becoming more, not less, restrictive. For example, Italy’s infamous Law 40, which was approved by Parliament in 2004 and by referendum the following year, ruled that ART was only allowed in married or co-habiting couples of different sex. While there has been some recent relaxation in Law 40, treatment for single women and lesbian couples is still outlawed, and the overall objectives of the legislation – to give equal rights to the mother, father and embryo – remain largely intact.

In Britain, there are those who have sensed a conflict of view in the anonymity changes of 2005 and the latest need-for-a father changes of 2008. While the former gave greater rights to the child (conceived by donor sperm or eggs), the latter appeared to take other rights away. It would be erroneous to accept this view: rights to the child conceived with a donor are only applicable once the child is 18; rights as a child remain as before, with its future welfare still the principal consideration before treatment.

Like the BFS, fertility centres in the UK have welcomed the statutory changes to the Human Fertilisation and Embryology Bill. The Bill had remained unchanged since its adoption in 1991, and the practice of fertility treatment, as well as the people who seek it, has changed a great deal over the intervening years. The reality is that there are currently more than three million children growing up in single-parent households in the UK.

Since their introduction in 2005, changes to the law on donor anonymity have made very little difference to the outcome of donor insemination or egg sharing treatment at some clinics, nor to supplies of donor sperm. Other clinics, which have found themselves less well equipped to respond to these changes, have suffered from shortages. They will need to review their strategies and adjust to the new laws, even if they seem more germane to patient aspirations than to their own.