



Parental Responsibility and Assisted Conception via IVF or a Donor

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Thousands of people have benefitted from In vitro fertilization (IVF) and donor insemination at HFEA licensed fertility clinics in the UK, and it is not uncommon for an unlicensed clinic or 'at home' informal arrangement to be used for sperm donation.

While the primary focus will undoubtedly be on having a healthy baby, it is also important to think about your legal position as a parent. This may be important in the future if you should separate from or divorce your partner.

Parental responsibility – what is the legal position?

The legal position in regard to parental responsibility differs according to the method of assisted conception used. It can even vary depending on where you go to get medical help with conception, as licensed clinics provide more protection than unlicensed ones.

Being clear from the outset about who will have parental responsibility can save a lot of heartache and legal expenses in the future.

Establishing parental responsibility

What is parental responsibility?

Parental responsibility is a legal term which reflects the rights, duties, powers, and responsibilities you have for a child. It gives the holder the legal right to make certain decisions about a child, such as which school they attend and if they will undergo medical treatment. More than one person can hold parental responsibility.

If you are attending a clinic licensed by the Human Fertilisation and Embryology Act 2008 (HFEA), then you should receive advice prior to conception, and this is the ideal time to establish clarity about parental responsibility via an agreement. Although preconception agreements are not legally binding, the courts have

shown that they will give weight to them when asked to consider arrangements for children.

HFEA sets out a number of different scenarios and explains who will have parental responsibility in relation to an assisted conception.

This article outlines the position of in vitro fertilisation and donor insemination.

Who has parental responsibility after IVF?

The simplest situation is where a couple is helped to conceive with their own egg and sperm. Here, the parents are in much the same position as if IVF had not been used:

- if you gave birth to the child, you will be regarded as the legal mother and have parental responsibility;
- if you are married to the mother, you will also have parental responsibility; and
- if you are the father, but you are not married you will need to take steps to formally obtain parental responsibility (see below).

If IVF also involves egg or sperm donation, then the rules become more complex.

Who has parental responsibility after egg donation?

If conception has been achieved with an egg from a donor and:

- you gave birth to the child, you will be regarded as the legal mother and have parental responsibility even if you have used a donor egg;
- you donated the egg, you have no automatic rights to parental responsibility;
- you are the father and you are married to the mother, you will have parental responsibility;
- you are the female partner of the mother and you are in a civil partnership or married at the time of artificial insemination, you will also have parental responsibility;
- you are the female partner of the mother and you are not in a civil partnership or married, then you can acquire parental responsibility (see below).
- Where a same-sex male couple uses an egg donor, this would be treated as surrogacy and is beyond the

scope of this article.

Who has parental responsibility after sperm donation?

If conception has been achieved with sperm from a donor, the position will depend on whether this happened in an HFEA licensed clinic, at an unlicensed clinic or informally.

If you gave birth to the child, you will be regarded as the legal mother and have parental responsibility, regardless that you have used a sperm donor.

Sperm donation in an HFEA licensed clinic

- *if you are the married spouse or civil partner, you will have parental responsibility so long as you provide consent;*
- *if you are not married or in a civil partnership, you will need the mother to nominate you (by consent) as the second parent by completing the correct forms prior to conception;*
- *if you are the sperm donor, you will not have any parental responsibility or any legal obligations to the child such as paying child maintenance*

Sperm donation via an unlicensed clinic or at home

- *if you are the married spouse or civil partner, you can be named as the second parent at birth registration and obtain automatic parental responsibility;*
- *if you are not married or in a civil partnership, you cannot be named on the birth certificate and will not be able to obtain parental responsibility automatically.*
- *if you are not married or in a civil partnership, the sperm donor will be considered the second legal parent and can register the birth and obtain parental responsibility if you both consent*

In an at-home arrangement, if a child is conceived with sperm donated via sexual intercourse rather than artificial insemination, then the sperm donor will be considered the second legal parent regardless of if the mother is married or in a civil partnership.

In an unlicensed clinic or at-home arrangement, it is important to note that the sperm donor could be liable for child maintenance or future inheritance claims even if they do not register the birth.

How can I obtain parental responsibility?

If you are not married or in a civil partnership, and did not sign an agreement at an HFEA clinic, you may be able to obtain parental responsibility for the child in the following ways:

- by being named on the birth certificate;
- by subsequently marrying or entering a civil partnership with the mother;
- with a legal parental responsibility agreement; or
- through a court order.

Speak to our family solicitors if the first three options are not available to you

How our family solicitors can help

It is extremely important that all parties involved in an assisted conception understand what their role will be, if any, in raising the child.

It is best to obtain early specialist advice in order that the appropriate arrangements and agreements can be put in place if necessary.

For further information, please contact our Family team at online.enquiries@LA-law.com or call 01202 702604.