



# Same-Sex Fertility: Who Has Parental Responsibility?

Starting a family as an LGBTQ+ couple is a wonderfully exciting time but the process can be stressful at points. There can be numerous hurdles for LGBTQ+ couples to overcome, initially LGBTQ+ couples may receive less support than heterosexual couples with conception and this may distract couples from the legal issues that also need to be considered. As part of pride month, we're sharing guidance in relation to the UK's fertility and surrogacy laws surrounding same-sex couples and understanding who has parental responsibility of a child.

## Artificial insemination:

'Artificial insemination' is where the child is conceived by using donor sperm (either anonymously or using a known donor or friend) in a UK licensed fertility clinic.

The female partner that is carrying the child from artificial insemination conception to birth is known as the 'gestational mother'. The gestational mother will automatically have parental responsibility of the child.

## Parental responsibility: What is it and who has it?

'Parental responsibility' (PR) of a child means the parent's rights, responsibilities and duties in relation to making decisions for the child and caring for them.

### Same-sex female couples in a civil partnership or marriage:

Since 6 April 2009, for same-sex female couples that are married or in a civil partnership, the same-sex partner of the gestational mother will also automatically have PR and be treated as the second parent of the child, so long as the same-sex partner of the gestational mother consented to the conception using artificial insemination at a UK licensed fertility clinic.

### Same-sex female couples not in a civil partnership or marriage:

If the couple are not married or a civil partnership then where a child is conceived through artificial insemination, the second female unmarried parent of the child does not *automatically* acquire PR of the child.

## How can the same-sex partner of the gestational mother acquire legal PR then?

The second female unmarried parent of the child can acquire PR through several routes:

- Being named as the second parent on the birth certificate by the gestational mother;
- Entering into a parental responsibility agreement with the gestational mother to grant the PR; or
- Applying to the court for a Parental Responsibility Order if the gestational mother will not agree to the above two options. Usually a third party requires the court's prior permission to make an application for PR, however, the same-sex partner of the gestational mother by artificial insemination is entitled to make an application for PR under s.43 of the Human Fertilisation and Embryology Act 2008.

Our specialist family law team is able to assist with advice on donor agreements, PR agreements or making an application to the court for a PR order.

## Surrogacy:

If neither female partner is carrying the child through pregnancy, or the couple is a same-sex male couple, then an option available is surrogacy.

Surrogacy is a process by which a woman carries the child through pregnancy with an arrangement in place that she will then transfer the child and parental responsibility for the child to the couple involved.

### Who has PR of the child at birth?

The surrogate mother may be the child's biological mother or she may be not genetically related to the child at all. Either way, she is again the "gestational mother" and has PR of the child automatically at birth.

Additionally if the surrogate mother is married at the time and her husband knew and consented to the surrogacy then he will be the legal father of the child on birth, even if he did not contribute to the surrogacy at all.

### How can a couple acquire PR of a child through surrogacy?

The surrogate mother cannot simply surrender or give up her PR of the child, instead it must be order by the court for the PR to transfer from the surrogate mother (and the surrogate mother's husband if applicable) to the new couple.

The father that donates his sperm for the purposes of the artificial insemination and surrogacy does not automatically acquire PR nor is he considered the legal father. Any partner that did not 'biologically' contribute to the child will also not acquire legal parenthood or parental responsibility of the child until the court orders so.

The permanent transfer of PR and legal parental for the child can only be arranged by way of an adoption order or a PR order. Our family law team is able to assist with the guidance on the surrogacy process and advice on making such court applications for an adoption or PR order.

For more information on how we can help in relation to legal issues surrounding fertility, parental responsibility or surrogacy, please follow the link [here](#). Alternatively, if you have a query then please feel free to contact our family solicitors on **0344 967 0793** to arrange for advice on the circumstances.