

# A GUIDE TO LESBIAN PARENTING AND THE LAW



Deciding to co-parent a child or children with your lesbian partner can be exciting but complicated. Lesbian parenting can take many forms. You may decide to foster or adopt a child, conceive by artificial or donor insemination, or you or your partner may already have a child from a previous relationship. This information sheet has been prepared to give general information about the law relating to your status as a child's biological mother, non-biological co-parent or civil partner and raises some of the issues that you will need to consider when making decisions about your family. It also looks at the legal status of your child's biological father.

This information sheet relates only to the legal aspects of lesbian parenting. For practical advice and support on issues such as donor insemination and raising children as lesbian parents see the 'Other useful telephone numbers' section at the end of this leaflet.

## The law

The law relating to lesbian parenting is set out in the **Children Act 1989 (CA 89)** and the **Adoption and Children Act 2002 (ACA 02)**. These Acts set out a framework of orders relating to children and the legal status of those who are or may wish to become involved in their lives. The applications you may need to make will depend on your relationship with your child.

## Biological mother

As your child's mother you automatically have **parental responsibility (PR)** for

your child. This means that you have the legal status to make all the decisions necessary in your child's upbringing, particularly decisions about health, education, religion and leaving the country. The only way you can lose PR is if your child is adopted (unless the adoption of your child is by you and your partner under the ACA 02); otherwise you will continue to have full legal status throughout your child's upbringing.

## Civil partners

If you have entered into a civil partnership you will have similar rights and

responsibilities to married couples in relation to each others' children. You will be treated in the same way as a married step-parent and will be able to obtain PR for your civil partner's child giving you the ability to make and be involved in all the important decisions in the child's life. You can obtain PR by either entering into a **Parental Responsibility Agreement (PRA)** or applying to the Court for a **Parental Responsibility Order (PRO)**. If the father of the child has PR, he will need to be involved in signing the PRA or be notified of your application for a PRO. For more information about PR see our **Guide to Parental Responsibility**.

Entering into a PRA is very straightforward. You, your partner and the child's father (if he has PR) will need to sign a PRA form. You will be able to get this form from your local County or Magistrates Court. The form will need to be signed in the presence of a court official and then sent to the Principal Registry of the Family Division in London.

To apply for a PRO you can apply to your local Family Proceedings Court or County Court. Again, if the child's father has PR, he will need to be notified of and involved in the Court proceedings.

As a civil partner you will also automatically be able to apply to the court for orders in relation to the children of your civil partner, such as contact and residence. You can also apply for an adoption order under the ACA 02. See below.

## Non civil partners

If you have not entered into a civil partnership you will not have any legal status in relation to your partner's

biological children unless you take legal steps to formalise your position. You can apply for a **shared residence order** (sometimes called a joint residence order) under the CA 89 or an **adoption order** under the ACA 02. See below for further information about these orders.

## Shared residence orders

Applying for a shared residence order involves an application to either your local Family Proceedings Court or County Court. A shared residence order will give you PR for your partner's child, giving you the ability to make and be involved in all the important decisions in the child's life. You will be able to consent to medical treatment, make decisions about how and where she or he should be educated and what religion she or he should follow as well as all the day-to-day decisions you will have to make during the child's upbringing.

If you have been living with your partner's child for a period of 3 years in the last 5 years you will automatically be able to make an application for a residence order. If not, you will need the permission of everyone who already has PR for the child – her mother and perhaps her father. If you do not have permission from everyone who has PR you will have to get the permission of the court in an **application for leave**. To obtain the court's permission you will have to satisfy the court that you have a connection with the child and that the proposed application would not disrupt the child's life. For further information about residence orders see our **Guide to Residence Orders**.

## Adoption

Civil partners and unmarried couples, whether they are same-sex or opposite-sex, are now able to adopt a child together as a couple. This means that you will be able to adopt a child who has no biological connection with either of you or a biological child of one of you. Adoption involves a fairly lengthy and complex procedure involving an assessment by Social Services and court proceedings.

If the child you are adopting has a known biological father who has PR he will need to be part of any court proceedings and if he does not agree to the adoption the court will have to decide whether adoption is in the child's best interests. When the court looks at whether adoption is in the child's best interests one of the factors that it has to take into account is the fact that if adopted by you the father would lose PR and all legal status in the child's life. The court may not agree to an adoption where, for example, the father has played an active role in the child's life and the court believes it is in the child's best interests for this to continue.

Once you have adopted a child you will gain PR and become the child's legal parent. Adoption is therefore a much more permanent option than a shared residence order. Seek further legal advice about adoption by calling our legal advice line or consult a solicitor.

## Fostering a child

Another way in which lesbian couples can become involved in parenting a child is to become a foster parent. This involves an investigation of your home circumstances by Social Services to assess your suitability as a carer. Once you have been approved as

a foster carer the Local Authority can place children with you for short or long term placements and you will receive a foster carer allowance. For more information about fostering contact your Local Authority.

## Fathers from previous relationships

A father to whom you or your partner are or were married will automatically have PR for your child. If you were not married then whether or not he will have PR will depend on your child's date of birth, whether he is on the birth certificate or whether he obtained PR through a PRA or PRO (see above and our **Guide to Parental Responsibility**). If the father does have PR he has the right to be involved in all the important decisions you make during your child's upbringing. He has the right to apply to the court for orders in relation to your child including contact and residence orders. He will need to be involved in any court proceedings about your child such as your application for a shared residence order or adoption with your partner. However, if an adoption order is made he will lose PR and his legal status in relation to your child.

He will have a legal financial responsibility to his child and therefore the CSA can carry out an assessment and collect maintenance payments from him.

## Choosing between known and anonymous donors

There are a number of legal matters that need to be considered when choosing between self-insemination with a sperm donor who is known to you and insemination at a fertility clinic. For information about health implications of

this decision please contact one of the organisations listed at the end of this information sheet.

### **Known donors**

As the biological father of your child a known donor will automatically have certain legal rights. You will need to discuss what involvement he will have in your child's life but it is important to remember that any agreements you reach are not legally binding. For example, you may reach an agreement with him about how often he should see your child but this would not prevent him from applying to the court for more contact or for shared residence.

One important decision you will have to make is whether his name should be registered on the birth certificate. If your child was born on or after 1st December 2003 or registration took place after this date and the father's name was registered on the birth certificate he will automatically have PR for your child and the right to an involvement in all the important decisions you make in your child's upbringing. He will also need to be involved in any court proceedings about your child such as your application for a shared residence order or adoption with your partner. If he is not registered on the birth certificate, he will not automatically have PR but he could obtain it by entering into a PRA with you or applying to the court for a PRO.

Whether or not he has PR or is named on the birth certificate, he will also have a legal financial responsibility for his child. As you are not in a relationship the CSA may contact you to find out if he is contributing financially and could insist that he pays maintenance.

### **Assisted conception and anonymous donors**

Fertility treatment in the UK is regulated by the Human Fertilisation and Embryology Authority (HFEA). The HFEA publishes a Code of Practice that sets out guidance on issues such as assessing and screening potential donors, the storage and use of embryos, consent to treatment and confidentiality.

An anonymous donor will not have any legal status in relation to your child and will therefore have no involvement in their life. Children born by anonymous donor assisted conception after April 2005, however, will have the right to receive information about their donor when they reach 18 years old.

### **What if we separate?**

The courts have recognised that non-biological lesbian co-parents have an important ongoing role in their child's life following relationship breakdown. What rights a non-biological co-parent will have will depend on what your legal relationship was to your partner and child.

If you entered into a civil partnership you can automatically apply to the court for orders in relation to your civil partner's biological child such as contact and residence orders.

If you have a shared residence order it will last until the child's 16th or 18th birthday or until the court makes a further order in relation to the child. Therefore if you separate from your partner, one of you could apply to the court to discharge the shared residence order. Discharging the shared residence order would mean the non-biological co-parent would lose her PR (unless she had entered into a PRA or obtained a PRO). She may, however, still

be able to remain involved in the child's life by applying for a contact order.

If you adopted a child together you will both remain that child's legal parents despite your separation and either of you will be able to apply to the court for orders concerning her or him without first having to obtain the court's permission. Neither of you will lose PR for the child.

For further information on all of these issues see our Guides to **Child Contact** and **Residence**.

### **Child support**

You will only be able to claim maintenance for your child from your ex-partner through the **Child Support Agency (CSA)** if you adopted your child together or if you entered into a civil partnership and your child was considered to be a child of the family (see our **Guide to Child Support**). If you entered into a civil partnership there may be other financial claims you can make, see our **Guide to Financial Arrangements After Civil Partnership Breakdown**.

### **Homophobia**

The way that the law and legal system views lesbian couples wishing to raise children together has moved fast over the past twenty-five years. Courts throughout England and Wales should deal positively with applications for parental responsibility, shared residence orders and adoption by lesbian couples. If, however, you do experience homophobic attitudes from your legal representatives or the courts, challenge them and make a complaint to the appropriate body such as the Law Society, the Bar Council, the Court Service or Department for Constitutional Affairs.

**The law relating to these issues can be complex. We have provided only a very basic overview of the terminology, law and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.**

**Please note that the law as set out in this information sheet is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.**

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For free confidential legal advice on family law including on civil partnerships, relationship breakdown, children and contact issues, call the Rights of Women Advice Line on **020 7251 6577 (telephone) or 020 7490 2562 (textphone).**

**Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm**

**Friday 12 noon – 2pm**

For free legal advice on sexual violence and the criminal law please call our Sexual Violence Advice Line on **020 7251 8887 (telephone) or 020 7490 2562 (textphone).**

**Monday 11am – 1pm or Tuesday 10am – 12 noon**

### Other useful telephone numbers

Child Support Agency	08457 133 133	<a href="http://www.csa.gov.uk">www.csa.gov.uk</a>
Community Legal Service (for finding a family solicitor)	0845 345 4345	<a href="http://www.clsdirect.org.uk">www.clsdirect.org.uk</a>
Donor Conception Network	020 8245 4369	<a href="http://www.donor-conception-network.org">www.donor-conception-network.org</a>
Human Fertilisation and Embryology Authority	020 7291 8200	<a href="http://www.hfea.gov.uk">www.hfea.gov.uk</a>
London Lesbian and Gay Switchboard	020 7837 7324	<a href="http://www.llgs.org.uk">www.llgs.org.uk</a>
Parentline	0808 8002222	<a href="http://www.parentlineplus.org.uk">www.parentlineplus.org.uk</a>
Pink Parents	08701 273 274	<a href="http://www.pinkparents.org.uk">www.pinkparents.org.uk</a>
Women's Health Concern	020 7451 1377	<a href="http://www.womens-health-concern.org">www.womens-health-concern.org</a>

**Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT**

**Office/Admin: 020 7251 6575/6**

**Textphone: 020 7490 2562**

**Fax: 020 7490 5377**

**Email: [info@row.org.uk](mailto:info@row.org.uk)**

**Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

**Industrial and Provident Society No: 23221R**

