

## Co-Parenting

### What is co-parenting?

The term 'co-parenting' is often used to describe the situation where a lesbian couple join with a gay couple to start a family. An increasingly common co-parenting arrangement is where the sperm of one of the gay men is used to impregnate one of the lesbian women and all four parents wish to play an active role in the child's life. Alternatively it may be one man and two women, one woman and two men or a single man and a single woman. There are no fixed arrangements for co-parenting.

If a co-parenting arrangement is going to be entered into then a parenting agreement should be made.

### What is a parenting agreement?

A parenting agreement is an agreement between all the parents outlining how the child is to be raised. Preparing a parenting agreement encourages you to consider all the issues that a co-parenting arrangement can create. It is always advisable to consider all of the issues at the start so that any potential disputes can be avoided.

The following are some of the issues to consider and include in the agreement:

- Who will be named on the birth certificate
- What legal applications will be made after the birth, e.g. parental responsibility, residence orders, adoption
- Who the child will live with
- When the child will have contact with the other parent(s)
- Financial responsibility for the child
- Decision making during the pregnancy
- Decision making once the child is born
- Provision for future siblings
- What happens if relationships break down

This list is not exhaustive and you may have other specific things in mind that you want to include in the agreement. You are free to include anything that you feel is necessary.

Parenting agreements are not legally binding as any dispute involving a child requires that the court consider the best interests of the child. However, if all parties take independent legal advice before entering into the parenting agreement the court will give a great deal of weight to the agreement.

### Who are the legal parents?

The birth mother is always the legal mother.

The status of the second legal parent is not always as clear and is dependent on the individual circumstances. The factors to consider in determining the second legal parent include:

- When the child was conceived
- Where the conception took place
- Whether the birth-mother is married or in a civil partnership

The following are some of the possible conception situations and the parental status that follows them:

- Married couple
- The husband will be presumed to be the legal father and will automatically have parental responsibility for the child.
- Lesbian couple in a civil partnership
- If the conception took place after 6 April 2009 at a licensed clinic then the civil partner is the second legal parent providing she consented to the treatment

- If the conception took place after 6 April 2009 by artificial home insemination then the civil partner is the second legal parent providing she consents and there is evidence that the conception took place by artificial means. A sperm donor agreement should be prepared to evidence this.
- If the conception took place before 6 April 2009 at a licensed clinic then there will be no second parent (providing the donor signed the relevant consents). The non-birth mother will need to adopt the child to acquire full parental status.
- If the conception took place before 6 April 2009 by home insemination then the sperm donor is the legal father. The non-birth mother will need to adopt the child to acquire full parental status and extinguish the donor's parental status.
- Lesbian couple not in a civil partnership
- If the conception took place after 6 April 2009 at a licensed clinic then the non-birth mother is the second legal parent providing the "agreed female parenthood conditions" are satisfied. These conditions are that the non-birth mother consents to being treated as the second legal parent and the birth mother consents to the non-birth mother being treated as the second legal parent. These consents must be given in writing.
- If the conception took place before 6 April 2009 at a licensed clinic then there will be no second parent (providing the donor signed the relevant consents). The non-birth mother will need to adopt the child to acquire full parental status.
- If the conception took place by home insemination then the sperm donor is the legal father. The non-birth mother will need to adopt the child to acquire full parental status and extinguish the donor's parental status. It is irrelevant when the conception took place in this scenario.

Although a maximum of 2 parents can be the legal parents of the child, other parents may still be able to acquire parental responsibility for the child by making an application to the court.

#### What happens if a dispute arises?

It may be that despite the best planning in the parenting agreement, disputes arise during the child's minority.

If these disputes cannot be resolved then any of the child's parents can make an application to the court. The legal parents can automatically apply to the court but the other parents will have to ask the court's permission to make the application first.

The most commonly used orders include:

- Residence order – decides who should be the main carer of the child
- Contact order – decides the access the other parents have to the child
- Specific issue order – decides a particular issue, e.g. which school the child should attend
- Prohibited steps order – prevents a parent from carrying out a particular act

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