AN INTRODUCTION TO MODERN FAMILIES

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What are ‘modern families’?

- A wide range of family structures, including:
  - Same-sex parents
  - Families formed through assisted reproduction
  - Families formed by donor conception
  - Surrogacy families
  - Blended families
  - Families formed through adoption
  - Single parent by choice
  - Platonic or elective co-parenting

Donor Conception and Assisted Reproduction

What do we mean by Donor Conception and Assisted Reproduction?

- Donor Conception
- Assisted Reproduction

Legislation

- Human Fertilisation and Embryology Act 1990
- Human Fertilisation and Embryology Act 2008

Who is the child's mother?

- Defined by Section 33(1) of the HFEA 2008
- No one else can be the child's mother, unless child is adopted or subject to a parental order
- Applies irrespective of genetics
- Applies irrespective of gender - R (McConnell and YY) v The Registrar General for England and Wales [2020] EWCA Civ 559

Who can be the child's second parent?

Three categories of second parent recognised:

- Spouse/Civil Partner of the gestational mother
- Another man or woman the gestational mother consents to (if certain conditions are met)
- Genetic father

Spouses or Civil Partners of the gestational mother

- Governed by s35 of HFEA 2008 for men and s42 for women
- Men cannot rely on s35 if their sperm used
- No equivalent prohibition for women under s42

M v F and another [2013] EWHC 1901 (Fam)

- Court can rely on common law if conception falls outside HFEA 2008
- Inaction or silence do not constitute consent under s35 of the HFEA 2008

S (Children: Parentage and Jurisdiction) [2023] EWCA Civ 897

- Consent under s42 (and presumably s35) of the HFEA 2008 does not require deliberate choice or active participation
- The court should ask itself “Has it been shown on the balance of probabilities that the spouse or civil partner did not consent to the assisted reproduction that was undertaken”

Re P v Q and another (Child: Legal Parentage) [2024] EWCA Civ 878

- Common law presumption of parentage applies unless it is shown that conception falls within the statutory scheme set out by HFEA 2008
- Caution when using known sperm donors

FZ v MZ [2025] EWHC 3338 (Fam)

- Highlights the gap (or lacuna) in the recognition of transgender parents, due to the interaction of the Gender Recognition Act 2004 with the HFEA 2008

A man or a woman that the gestational mother consents to

- Section 36 of HFEA 2008 for men
- Section 43 of HFEA 2008 for women
- Only applies to licenced clinics acting under their licence
- Consent can be established from documents the parties have signed - S v T [2024] EWHC 2126 (Fam)

Conditions under s37 (men) and s44 (women)

- Notice of consent must be provided by the person intended to be the second parent.
- Notice of consent must be provided by the gestational mother.
- Neither has withdrawn their consent.
- The gestational mother has not given further notice that she wishes another woman or a man to be recorded as the second parent.
- Neither gestational mother nor the person intended to be the second parent are within prohibited degrees of relationship in relation to each other.

Genetic fathers

- Will be recognised as the father unless s41 HFEA 2008
- But can be replaced by someone under s35, s36, s42 or s43 of HEFA 2008
- Sections 38(1) and 45(1) of HFEA 2008

S v D & E [2013] EWHC 134 (Fam)

- Section 45 of the HFEA 2008 meant that S and T were not considered parents of Z and G
- They could still apply for contact but must first seek permission under s10(2) of the Children Act 1989

Conclusion

This section has covered Donor Conception and Assisted Reproduction, including:

- The differences and similarities between donor conception and assisted reproduction
- Who is the child's mother (section 33 of HFEA 2008)
- Who can be recognised as the child's father (sections 35 to 38 of HFEA 2008)
- Who cannot be recognised as the child's father (section 41 of HFEA 2008 and FZ v MZ [2025] EWHC 3338 (Fam))
- Who can be recognised as the child's second female parent (sections 42 to 45 of the HFEA 2008)
- When this can and cannot be displaced (S v D & E [2013] EWHC 134 (Fam), S (Children: Parentage and Jurisdiction) [2023] EWCA Civ 897 and Re P v Q and another (Child: Legal Parentage) [2024] EWCA Civ 878)

Surrogacy

Surrogacy

- An arrangement whereby a woman carries and gives birth to a child in accordance with an arrangement made before she began to carry the child and made with a view to the child being handed over to and parental responsibility being met by another person or persons (Surrogacy Arrangements Act 1985, section1)

- Commercial surrogacy is unlawful.

- A surrogacy arrangement is not enforceable in law

Types of surrogacy

- **Gestational surrogacy** – the eggs of the intended mother (or a donor) and sperm of the intended father (or a donor) are used. There is no biological link between the surrogate and the baby.

- **Traditional surrogacy** – the intended father's sperm is used to conceive the child by artificial insemination of the surrogate (who is therefore the biological mother of the child).

Parental orders – two applicants

HFEA 2008, section 54 – the court may make a parental order when the following statutory requirements are met

- The gametes of at least one of the applicants was used
- The applicants are married, civil partners or living in an enduring family relationship
- The application is made within 6 months of birth
- At the time of the application the child's home with with both applicants and they are domiciled in the UK
- The surrogate and any other person who is a parent of the child have freely and with full understanding of what is involved agreed unconditionally to the order
- The court is satisfied that no money or other benefit (other than for reasonably incurred expenses) has been given in consideration of the making of the order, agreement to the making of the order, handing over of the child or making the arrangements with a view to making the order – unless authorised by the court.

Parental orders – one applicant

- **HFEA 2008, section 54A – the court may make a parental order when the following statutory requirements are met**
- The gamete of the applicant was used
- The application is made within 6 months of birth
- At the time of the application the child's home is with the applicant and the applicant is domiciled in the UK
- The surrogate and any other person who is a parent of the child have freely and with full understanding of what is involved agreed unconditionally to the order
- The court is satisfied that no money or other benefit (other than for reasonably incurred expenses) has been given in consideration of the making of the order, agreement to the making of the order, handing over of the child or making the arrangements with a view to making the order – unless authorised by the court.

Parental orders

Welfare

- The court must also have regard to section 1 of the Adoption and Children Act 2002 so that the welfare of the child throughout their life is the court's paramount consideration and it must have regard to the matters in the welfare the checklist at section 1(4).

Reasonable expenses

- No statutory definition. Payments may be authorised by the court if the authorisation is in the child's best interests. The court will also have regard to legality in the relevant country and public policy (D and another v K [2026] EWFC 279)

Private arrangement

- A parental order can be made where a surrogacy is by private arrangement and not in a licensed clinic (AY & Anor [2023] EWFC 39)

Key issues for persons considering surrogacy

- A non-exhaustive list of issues, first endorsed by Theis J in Re Z (Foreign Surrogacy) [2025] 1 FLR 900, added to by Sir Andrew McFarlane P in Re Z (Unlawful Foreign Surrogacy: Adoption) [2025] EWHC 339 (Fam) and then by Knowles J is found in K v Z [2025] EWHC 927 (Fam)

- This has a particular focus on international surrogacy arrangements, in which considerations as to lawfulness, legal status, nationality and immigration are of the utmost importance.

- Essential for intended parents to take legal advice before entering into a surrogacy arrangement.

When a parental order is not available

- Adoption
- Special guardianship order
- Child arrangements – lives with order

Platonic co-parenting

What is platonic co-parenting?

- Intentional decision to conceive, birth and raise a child together without being in a romantic relationship, civil partnership or marriage.
- No fixed definition - platonic co-parents could be existing friends, two prospective parents who meet via a co-parenting website, two same-sex couples, a same-sex couple and a third parent ...
- Platonic co-parenting can provide stability, emotional and practical support, extended support networks, financial stability, healthy relationships and positive communication.

What should prospective co-parents consider?

- How will the child be conceived?
- Who will be the child's legal parents (there can only be two)?
- Who will have parental responsibility?
- Should the parents enter into a parenting and/or cohabitation agreement?
- How will finances be arranged?
- Will the co-parents and child live together or separately?
- What time will the child spend with each parent including special occasions?
- What are the parents' parenting values and styles?
- Will the child be brought up observing a religion?
- What is agreed re education, foreign travel, health and medical treatment etc?
- How will any disagreements be resolved?

When might a co-parent need legal advice?

- Prior to deciding and agreeing to become a platonic co-parent.
- When planning to enter into a written co-parenting agreement and when varying that agreement.
- When purchasing a property or moving into one parties' property together.
- If a co-parent who previously did not wish to be actively involved or to hold PR changes their mind.
- If there is a disagreement about the exercise of parental responsibility or child arrangements – CA 1989, section 8.
- If one parent wishes to re-locate internationally or domestically.
- Financial issues arise – circumstances change or there is a need for an application under CA 1989, schedule 1 or to CMS.
- When engaging in dispute resolution – mediation, arbitration etc.

Adoption and Blended Families

A brief look at step-parent adoption

Applying for a step-parent adoption order

- Adoption as a couple under s50(2) of the Adoption and Children Act 2002
- Adoption solely by the step-parent under s51(2) of the Adoption and Children Act 2002
  - s46(3)(b) enables biological parent to retain their parental responsibility
  - s51(2) applies only if the applicant is the partner of a parent of the person to be adopted
  - Definition of partner under s114(7)

Definition of ‘couple’ under the Adoption and Children Act 2002

- Defined by s144(4) of the Adoption and Children Act 2002
- Do not need to be living together - T & Anr v O.C.C & Anr (2010) [2010] EWHC 964 (Fam)
- Has been applied to couples who are separated - Re E (a child) (adoption by one person) A v B and others [2021] EWFC 45

When will the court make a step-parent adoption order

- Must rely on the first condition under s47(2) of the Adoption and Children Act 2002
- Definition of parent under s52(6) of the Adoption and Children Act 2002
- Consider whether consent can be dispensed with under s52(1) of the Adoption and Children Act 2002

Re P (Step-Parent Adoption) [2014] EWCA Civ 1174

- Applied the European Court of Human Rights Case of Söderbäck v Sweden [1999] 1 FLR 250
- Distinction to be drawn between public law adoption and step-parent adoptions
- Degree of interference with Article 8 rights likely to be less if the parent who would lose parental responsibility for the child has not been involved in their life

Conclusion

This section has covered step-parent adoption, including:

- Adoption as a couple or by a single step-parent (s50(2) and s51(2) of the Adoption and Children Act 2002)
- Who can adopt as a couple or a partner of a biological parent (definition of couple (s114(4)), definition of partner (s114(7), T & Anr v O.C.C & Anr (2010) [2010] EWHC 964 (Fam), Re E (a child) (adoption by one person) A v B and others [2021] EWFC 45))
- The test the court must apply to step-parent adoptions (Re P (Step-Parent Adoption) [2014] EWCA Civ 1174)

Legal principles

Who has parental responsibility?

- Gestational mother (CA 1989 section2(1))
- Child's father if married to or civil partner of the gestational mother at the time of birth (CA 1989 section2(1))
- Female spouse or civil partner of mother who is a parent by virtue of section 42 of HFEA 2008 (whether child is conceived at a licensed clinic or at home by artificial insemination)
- Biological/genetic father whose name is placed on the birth certificate (but not if wrongly registered - Re J, Re M, Re P (Loss of Parental Responsibility) [2026] EWCA Civ 344)

How can parental responsibility be acquired?

- **A biological/genetic father** – by marrying the mother, becoming registered as the child's father on the birth certificate with mother's consent, entering into a parental responsibility agreement, by obtaining a parental responsibility order or by a lives with order.
- **Female partner of mother and second parent** by virtue of section 43 of HFEA 2008 (conceived at a licensed clinic) – by being registered on the birth certificate, entering into a parental responsibility agreement or by obtaining a parental responsibility order or by a lives with order (not certain if this can be achieved by subsequently marrying the mother)

How can parental responsibility be acquired?

- **A step-parent** who is married or in a civil partnership with a parent with parental responsibility – by entering into a parental responsibility agreement, obtaining a parental responsibility order or by step-parent adoption.
- **A person named in one of the following orders**:
  - CAO lives with or shared lives with order (in the case of a biological/genetic father or female second parent a PR order must be made, otherwise the PR lasts for the duration of the order)
  - CAO spends time with/contact order *if* the court orders that the person named shall have PR for the duration of the order
  - Special guardianship order
  - Adoption order
  - Parental order

Nature of parenthood

- **Re G (Children)(Residence: Same sex Partner) [2006] UKHL 43**

- Baroness Hale identified the different ways that a person can be a parent:
  - Legal parent
  - Genetic parent
  - Gestational parent
  - Social and psychological parent

Legal principles

- Children Act 1989, section 1
  - Paramountcy principle
  - Welfare checklist
  - No delay principle
  - (presumption of parental involvement) – Courts and Tribunals Bill

Welfare is paramount

- Every case requires a fact specific application of the welfare principle

- **Re G (Children)(Residence: Same sex Partner) [2006] UKHL 43**
- The welfare principles of the CA 1989 are of universal application

- **A v B and C (Lesbian Co-Parents: Role of Father) [2012] EWCA Civ 285**
- "In the end the only principle is the paramountcy of child welfare."
  (per Thorpe LJ)

Intentions of the adults

A v B and C (Lesbian Co-Parents: Role of Father) [2012] EWCA Civ 285

- Pre-conception intentions of the adults are relevant factors but are not determinative

- See for example EC-D and FC-D v GH [2025] EWHC 1403 (Fam) – Trowell J

Applications for determination in respect of parental responsibility, child arrangements, child's surname, foreign travel, religious upbringing and education.