

## How can a mother prove an individual is the biological father of their child when they refuse to take a DNA test?

JONATHAN EVANS, BARRISTER, 4 PAPER BUILDINGS, 05/06/2020

SHARE  

 Add to favourites  Send Feedback

In [my previous article](#) in this series, I considered the concept of parental responsibility and how a father can have his legal status reflect the biological reality and he be recognised as the child's father. It is not only fathers who may want to have the law recognise their parenthood.

Mothers may also wish to prove that an individual is the biological father of their child. In some cases the mother may not be sure themselves; in others they may be sure, but the putative father may not be willing to engage with them. In such circumstances, what are they to do?

There are a number of benefits of knowing who the father of your child is. These not only include benefits to the child, which will be considered further in part three of this series, but also to the mother herself; of certainty, of stability and of potential financial provision.

Anyone who wishes to prove that an individual is or is not the parent of a child may make an application to either the High Court or the Family Court for a Declaration of Parentage, which is an different concept to that of parental responsibility, a biological fact, rather than a legal construct.

Within such an application, a Judge can direct an individual to comply with DNA testing to determine paternity.

Test results are generally considered to be 99.99 percent accurate in establishing that an individual is a father of a child and 100 percent accurate in establishing that they are not. The court cannot compel an individual to submit to DNA testing, but can draw inferences from a refusal to do so, as a decision will be made on the available evidence.

If the child lives with the mother, then the mother's consent is needed for a sample to be taken from a child under the age of 16, but if the mother refuses, the court may still order a sample to be taken if this is considered to be in the child's best interests. In most cases, the DNA testing is determinative of the application. After a declaration of parentage is made, it is not uncommon for the parent to then seek to develop their relationship with a child through spending time with them, potentially through an application to court.

An application does not always need to be made to court though. If a mother seeks to establish who should be responsible for the payment of child maintenance, an application may be made through the Child Maintenance Service (CMS).

The CMS will ask the applicant to name the other parent and that person is presumed to be the child's parent unless and until they can prove otherwise. Although unfortunately many parents try to dispute parenthood, figures from 2013 estimate that only one in five individuals who dispute that they are a child's parent succeed in proving this.

The CMS can organise DNA testing. If a named parent refuses to provide a sample for the test, they are presumed by the CMS to be that child's parent. If the receiving parent refuses to provide a sample, then the case is closed. Where there are evidential difficulties with a DNA test, for example if the child has been conceived through fertility treatment, then the CMS can make an application to court to determine the issue.

A further advantage of establishing that an individual is a child's parent is that it makes an application under Schedule One of the Children Act 1989 easier. Legal advice should be sought before embarking on such an application.

Under this provision, an application can be made for a parent to make financial provision for the benefit of the child by way of lump sum or by periodical payments. This can include provision for a housing fund to provide accommodation for the mother and child to live in. Although there are limitations to such applications, which can be complex, it is a significant benefit of identifying a child's father.

Establishing that an individual is a child's father does not have to, but certainly can be a difficult process and obtaining legal advice in advance is a sensible course of action. It is not only the mother, but as will be further considered in the next article in the series, also a child who can derive real benefit from having legal certainty as to their father.

However, as with parental responsibility, it is usually only the start of a lifetime of challenges, the identity of a child's father being the starting point, rather than the ultimate destination.