4 PAPER BUILDINGS

Alternative Families Seminar

"The Kids Are All Right"

A Psychological and Legal Perspective

24th May 2012

CHAIR

Alex Verdan QC

TOPICS & SPEAKERS:

Current legal issues regarding children in alternative family cases
Charles Hale & Sam King

The psychological perspective regarding children in alternative family cases

Dr Claire Sturge
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Section 1

4 Paper Buildings: Who we are

The Chambers of Jonathan Cohen QC

4 Paper Buildings

This expanding set houses "the best children lawyers in London," who are regularly instructed to handle the most complex public and private children law matters around. It also receives praise for its ability to handle high net worth ancillary relief, and for the high level of client service it offers across the board. Its excellent clerking team is applauded for always providing a "great service even with difficult timeframes." One observer notes: "I think 4 Paper Buildings must rank highest as the most experienced, specialist international children set of chambers in the country, if not the world." Peter Jackson QC's recent appointment to the High Court Bench is testimony of the set's high quality and reputation.
Chambers UK 2012

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4 Paper Buildings is consistently ranked as a leading family set of chambers, with currently 20 members recommended in the legal directories in all areas of family law

Many of the most serious, sensitive and significant family cases are undertaken by members of 4 Paper Buildings and instructions are received from a diverse array of clients including Government departments, media organizations, the rich and/or famous, parents seeking to prevent children from being removed into care and Guardians.

Section 2

The current legal issues regarding children in alternative family cases

Charles Hale & Sam King

It's as Easy as A. B, C..... or is it? The changing law and Alternative Families:

1. The development of the law in respect of what we have entitled "alternative families" and by which we simply mean, non traditional, usually homosexual families, has not been a straight line. In the recent decision of the Court of Appeal in A v B and another (Female parents: Role of biological father) [2012] EWCA Civ 285; [2012] WLR (D) 80 CA: 14 March 2012 the Court sought not to give guidance, preferring instead to return to the welfare principle as the universally applicable guidance in call cases concerning children whatever the family makeup. In doing so they have dealt with much that had gone before in previous sometimes conflicting, first instance decisions. This paper will seek to chart the path to A, B and Another through some of those cases.

Parental Responsibility and the Biological Father

2. The case of Re D (Contact and Parental Responsibility: lesbian mothers and known father) [2006] 1 FCR 556, saw Black J as she then was, delve deeper into the issues concerning alternative families perhaps than any judge before. Importantly though, the decision came before the decision of the House of Lords in Re G (see below).

3. The judge was faced with an application by the biological father for PR which was opposed by the two lesbian mothers of a child. The case had originally been heard in 2001 when a joint residence order was made to the mothers and the father application for PR adjourned. The learned judge defined the issues neatly in this way,

"[22] in this case, the debate about parental responsibility is particularly finely tuned. Ms A and Ms C are entirely happy for Mr B to be recognised as D's "father" and for her to see him for regular contact. They do not agree to an order that, as they see it, recognises him as D's "parent". They see themselves and their two children as a family. They argue that ***they*** *are D's parents and that if she were to have a third parent, it would compromise the family, affecting not only their relations with Mr B but also the way in which they, and D, are seen by others. For Mr B, to be D's father is simply not enough; he wishes to be recognises as a father and a parent and he perceives that a parental responsibility order would bring this recognition."*

4. The judge went on,

"[24] None of the authorities has so far dealt, however, with the sort of situation that exists in this case where a same sex a couple has deliberately decided to create a family and, with the knowledge of all concerned that it is their intention that they would be primary carers, involves a man to father a baby..."

5. Black J was concerned that the application of the existing test for PR (commitment, attachment and motivation) was not appropriate to *fit* these circumstances and therefore sought expert evidence. The ambit of that advice was described in this way,

".... She (Dr Claire Sturge) was particularly asked to consider the sociological and psychological impact (both in the short and long term) of granting the father parental responsibility (i) on the child (ii) on the primary family unit and (iii) on society's perception of the family."

6. In providing her opinion back in 2006 Dr Sturge recognized,

"*... with a degree of discomfort, the issues upon which she has been asked to advise do not all fit comfortably into her discipline. In order to address them properly, she has commented on some of the more general sociological issues which go beyond the people she has assessed in the case. Her contribution has been extremely helpful. Whilst she is disadvantaged in some ways by the limits of her professional expertise, no expert would, I think, have had experience or a professional qualification which would have embraced all the aspects of the present problem..."*

7. Ultimately, the Court did grant the father PR but only after very significant concessions were made by the father as to how he would <u>not</u> exercise it.

"91. Mr B's suggestion has allowed me to take a creative approach to parental responsibility in an attempt to make it serve the novel demands of a case such as this and to devise a solution which, I hope, goes some way towards what Dr Sturge outlined... I propose to grant him parental responsibility for D. The order will be considerably more detailed than normal and will recite that it is granted on the basis

> *i) that Mr B will not visit or contact D's school for any purpose without the prior written consent of Ms A or Ms C;*
>
> *ii) that Mr B will not contact any health professional involved in D's care without the prior written consent of Ms A or Ms C. "*

8. So, having canvassed the difficulties faced in the area in terms of the language used, the concepts adopted, psychological effects and the overall lack of research and expertise, ultimately the Court in the end did not have to grapple too hard with the decision given the limited ambit (of his PR) accepted by the father.

9. It is important at this stage to note that the research referred to in D and the approach of Dr Sturge in that case were relied upon by the mothers in A, B and Another in support of their approach.

Donor Sperm from Siblings

10. In Re B (Role of Biological Father) [2008] 1 FLR 1015, Hedley J was concerned with a child born from the donated sperm from one of the lesbian mother's brothers. In the discussion about conception the three agreed that the child would grow up in a nuclear family that would not include the donor father. 3 months into the pregnancy there was an estrangement and after the birth the father applied for PR and contact. Ultimately the judge made no order for PR and ordered direct contact only 4 times a year. In grappling with the issues raised, the judge said,

"*Traditionally the role of the judge hearing family law cases has been to decide them by reflecting and applying the broadly agreed norms of society. That is no longer always possible for in the increasingly complex routes by which family groups come into being or realign, it is often not possible to identify norms which a judge could be confident would be widely shared. That has required the judge to adopt the unfamiliar role of suggesting and then applying principles which should govern these new developments. Of course the basic principle of the paramountcy of the welfare of the child remains the crucial determinant but the basis upon which welfare is identified in an individual case is much less clear".* And,

"It was strongly in the interests of the child to maintain some kind of relationship with the donor father... it would help the child to know that one of his uncles was also his natural parent..". And,

"The purpose of contact between the child and the donor father was not to give the donor father parental status in the eyes of the child, or to allow the development of a parental relationship; such a relationship would threaten the ***civil partners and would not be consistent with their autonomy as a nuclear family****".*

And finally,

"I confess that I have found this a difficult and perplexing case. It has required the court to tread unfamiliar ground and to make decisions based on what at this stage must be tentative views about the future needs of BA. Nevertheless, I am satisfied that the order of the court best serves these needs as they are presently ascertained and understood. The concept of family is both psychological and biological and, in my judgment, a court would be unwise not to have regard to both aspects."

11. For Hedley J then, this case fell to be determined on the application of the welfare test but with new principles to be considered by reason of the developing notions of family. Here he found that a developing relationship with the father would threaten the mothers and would not be consistent with **their autonomy** as a **nuclear** family. He specifically did not start from the perspective of the child in reaching that conclusion.

Biological v Psychological

12. The House of Lords considered the importance of biological and psychological ties in Re G (Children) [2006] 1 WLR 2305 and then in Re B (A Child) [2009] 1 WLR 2496.

13. The facts of Re G are well known. The dispute was between 2 lesbian mothers. The biological mother behaved very badly in respect of contact an ultimately the residence of the child was ordered to the psychological mother. The HofL found that insufficient weight had been given to the biological factors in the case and allowed the appeal, reversing the order for residence and contact. The Court found that the blood tie was an important factor. Baroness Hale gave the seminal opinion. As to parenthood she said as follows:

"*So what is the significance of the fact of parenthood? It is worthwhile picking apart what we mean by 'natural parent' in this context. There is a difference between natural and legal parents. Thus, the father of a child born to unmarried parents was not legally a 'parent' until the Family Law Reform Act 1987 but he was always a natural parent. The anonymous donor who donates his sperm or her egg under the terms of the Human Fertilisation and Embryology Act 1990 (the 1990 Act) is the natural progenitor of the child but not his legal parent: see ss 27 and 28 of the 1990 Act. The husband or unmarried partner of a mother who gives birth as a result of donor insemination in a licensed clinic in this country is for virtually all purposes a legal parent, but may not be any kind of natural parent: see s 28 of the 1990 Act. To be the legal parent of a child gives a person legal standing to bring and defend proceedings about the child and makes the child a member of that person's family, but it does not necessarily tell us much about the importance of that person to the child's welfare..... There are at least three ways in which a person may be or become a natural parent of a child, each of which may be a very significant factor in the child's welfare, depending upon the circumstances of the particular case."*

And so the blood tie is a clear factor to be considered when determining welfare including in alternative family cases.

14. In Re B the House of Lords was concerned with and appeal by a grandmother who had brought up a child for the first 4 years of its life only then for residence to be transferred to the birth father once he became in a position to apply. The initial magistrates' decision was for the child to remain with the grandmother. On appeal, first to the High Court and then to the Court of Appeal, the father succeeded in the transfer of residence relying on the principles in Re G. The House of Lords reversed that decision and reinstated the grand mother's residence.

15. Lord Kerr giving the lead opinion stated as follows:

"*When considering the respective roles of parents and any other persons in the life of a child for the purposes of making a residence order...the question to be asked was how those roles, and the manner in which those persons*

fulfilled them, could conduce to the child's welfare...which was the courts paramount consideration; that it followed that consideration of the importance of parenthood only assumed significance as a contributor to the child's welfare and in common with all other factors bearing on what was in the best interests of the child was to be examined for its potential to fulfill that aim...

All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in a child's best interest.

The Court's quest is to determine what is in the ***best*** *interests of the child not what might constitute a second best but supposedly adequate alternative"*

16. So then having regard to alternative family cases whilst blood ties are important they have no priority over psychological parenting.

Pre-Birth Agreements and Nomenclature

17. In R –v- E and F (Female Parents: Known Father) [2010] 2 FLR 383 Bennett J was concerned with civil partner mothers and a married (same sex) American father. At issue was what the pre-birth agreement and the parties involvement with the child post birth. The non biological mother had PR but the father did not, even though his name was on the certificate (pre the change in the legislation). The father issued an application for PR and for shared residence. By the time of the application the child had been having extensive contact with her father including some overnight contact. Dr Sturge again gave evidence.

18. Notwithstanding the relationship and contact between the father and the child, Bennett J refused the application for PR and shared residence but made a contact order for no more than 50 days a year. He heard from all the parties about what their understanding of the pre-birth agreement was.

19. In arriving at his conclusion and in preferring the evidence of the mother's in respect of the agreement, he said the following,

"One important issue is what agreement was arrived at between Richard and John on the one hand and Emily and Frances on the other as to how the child would be parented after its birth. Such an issue comes to be resolved by the court about 10 years or so after the relevant discussions took place. In the light of the near breakdown in the relationship between Richard and John and Emily and Frances in 2008, and in the context of fraught litigation, there is always room for recollection and/or perceptions to become distorted...

It would be close to impossible in a case such as this, absent relevant contemporary documentation, to conclude whose perceptions of what was agreed are likely to be the more accurate, based only on an evaluation of the evidence of each of the adults' state of mind in 1999/2000. In my judgment, the key is to look to see how the adults

behaved once Daniel was born. For that, in my judgment, is more likely to assist me in determining what was the nature of the agreement and whose oral evidence is the more reliable."

20. So for Bennett J, the nature of the agreement between the adults was important in the overall determination of welfare for the child and notwithstanding the relationship and attachment, led him to refuse (even) PR.

21. Hedley J, also stressed the importance clear agreements when he dealt with a long running case involving 2 sets of gay parents of a 10 and 6 year old. In ML and AR –v- RWB and SWB [2012] Fam Law 13, he stressed that the case raised 2 particular issues:

"the first is the need for *precise agreement as to the roles that each is to play before any attempt is made to achieve a pregnancy; and secondly, this case, like others that I have been involved with , is bedeviled by a lack of sufficient vocabulary to explain the true nature of the relationships. It is all to easy in these cases for biological fathers to see themselves in the same position as in separated parent cases in heterosexual arrangements, whereas this arrangement is, and was* ***always intended to be*** *quite different.*

As to the constant problem of appropriate titles Hedley J, had this to say,

"*16. As I have thought about this case, I have tried hard to see whether there are any other concepts than that of mother, father and primary carer, all conventional concepts in conventional family cases. The best that I have achieved, and I confess to having found it helpful in thinking about this case, is to contemplate the* ***concept of principal and secondary parenting****. The reason why this case is not equivalent to a separated parent is that there was a clear agreement that the respondents would do the principal parenting and that they would provide the two-parent care to these children. The second respondent clearly believes that her role in this regard has been brought into question, and it is certainly my view that her role in the concept of principal parenting, as one of the two principal parents, needs to be clearly affirmed and respected.*

17. By the same token, I am satisfied that the applicants were acknowledged as having a ***parenting role, albeit in a secondary capacity.*** *That parenting role was to fulfil at least three purposes. The first was indeed to give a clear sense of identity to the child or children in due course. The second was to provide the male component of parenting which all must be taken to have acknowledged. Thirdly, there was a more general role of benign involvement which would have, but would certainly not be confined to, an avuncular aspect.*"

22. Having dealt with the facts in the first hearing, Hedley J then returned to the case to determine the welfare issues with the benefit of a Guardians report. He had previously determined that what had been agreed by the parties was that the women would be "primary parents" and the men "secondary parents". He continued to grapple with the problem of what then to do,

"5. I appreciate that in a case like this we are in what is still new territory in defining the roles of the various parties in the context of parenting. I ***have tried to develop the concept of principal and secondary parents*** *since, for reasons already explained, conventional roles provide unreliable models. The men are not separated fathers for they have never been, nor did they ever intend to be, resident parents to these girls. On the other hand they are different to grandparents for not only is ML the biological father of both girls but he holds parental responsibility in respect of them. The only safe course is to resist the almost overwhelming temptation to use established conventional models but rather to recognise that a distinct concept of parenting and parental roles is made necessary by the sort of (by no means unusual) arrangement to parent decided upon in this case."*

23. The judge was then invited by Counsel to give some general guidance. He said the following,

"*Accordingly the only guidance that I feel able to give is threefold: first to stress the importance of* ***agreeing the future roles of the parties before the first child is born****; secondly, to* ***warn against the use of stereotypes from traditional family models*** *and in particular to resist the temptation to squeeze a given set of facts to fit such a model; and thirdly, to* ***provide a level of contact whose primary purpose is to reflect the role that either has been agreed or has been discerned from the conduct of the parties****. Having said that, the third point must immediately be qualified by reference to any number of other factors peculiar to the case in hand which may have a significant impact upon the nature and quantum of contact which is right for those children in that case."*

24. Interestingly, nowhere here did Hedley J place welfare as the overarching concern of the Court in the ultimate decision about the best interests of the child (Was it implicit?). Was he distracted by the adult agreements, the primary and secondary parents and the problems as he sees are distinct to alternative family cases?

25. What then to be gleaned from the previous authorities. All cases are of course fact specific but if 2 clear themes came through they were perhaps:

    i) more weight to be attached to the lesbian couple's desire to comprise the "nuclear family" and their fear that an increased role for the father would undermine their stability and so the child's; and

    ii) more significance to be attached to ascertaining the parties' original pre-birth intentions/agreements in respect of responsibility and role and involvement of the father.

Old Dogs and New Tricks?

26. On then and finally to, A v B and another (Female parents: Role of biological father) [2012] EWCA Civ 285; [2012] WLR (D) 80 CA: 14 March 2012

27. The facts were as follows. The Appellant was the biological father of the child concerned, a boy now aged 2. The Respondents were the biological mother and her long term lesbian partner. All three were high achieving successful professionals with full time jobs. The boy was cared for in the Respondents' household by a full time nanny. The father's spacious house was nearby. The three adults in the case were all homosexual and old friends. When the Respondents wanted a child, they were very pleased when the Appellant offered to father the child using AI or IVA.

28. The biological mother's strictly religious family had profound difficulties with the mother's sexual orientation and so with the Respondents' same sex relationship. To make the arrival of a child easier the mother and father married. The aim of the marriage was to create a seemingly conventional family into which a child might be born and to gain the mother's family's blessing. However, the mother and father had no intention of co-habiting and it was always intended that any child should live in the household of the mother and her partner. It was agreed by all parties that they would be the primary carers for any child conceived. It was also agreed that the biological father would be acknowledged as such and would have a relationship with his son albeit not as a primary carer, and so a secondary one. What was not agreed was the extent of his relationship. The three adults had discussions and attempted to agree their respective roles and involvement in the child's life and each thought their respective positions were understood and agreed. After the child was born however there were increasing disagreements. The father expressed his wish for overnight contact at his home progressing to holidays with his son. The Respondents did not agree. They saw this as an intrusion into their family unit and not what they believed had been agreed pre-birth. The father applied for a defined contact order. The Respondents' response was to apply for a **joint residence order and a specific issue order to limit the father's exercise of parental responsibility.**

29. It was a central part of the case that the Respondents believed that any greater role for the father would encroach upon their relationship with the child as primary carers. They wished the autonomy of their family life to be protected and saw the father's claims as unsettling of that autonomy.

30. When the matter came before the Circuit Judge (sitting as a Judge of the High Court) the principal issue for his determination **was the frequency, nature and duration of the father's contact. He of course had PR by marriage and registration.** What makes this case of particular interest and importance was the young age of the child.

31. The previous cases referred to have dealt with contact and parental responsibility issues between a lesbian couple and a biological father and have either involved older children where a pattern of contact and a division of responsibility had already been established over a number of years prior to the issuing of proceedings, or they have been applications by a biological father for PR as a

first step to further contact. In this case the court had been asked to rule at a very early stage in the child's life and before any arrangements had been in place for any significant period of time. That raised potential new issues of principle that might govern the path of the child's life one way or another.

32. Ultimately, the Respondents at trial had objected strongly to any staying contact between the child and his father and the Circuit Judge agreed, refusing the father any staying contact for the foreseeable future, meaning at least 3 to 4 years.

33. The father appealed. Permission was granted by Black LJ on the basis that the case raised important issues as the court's approach to such cases and there was no existing Court of Appeal guidance. The full appeal came before Thorpe LJ, Black LJ and Sir John Chadwick in the Court of Appeal on 3.2.12. In reserved judgments the appeal was unanimously allowed.

34. The Court of Appeal held that the judge's refusal to contemplate staying contact for 3-4 years was 'plainly wrong' as there were too many unforeseen factors to allow for the future to be declared so definitely or for contact to be so, frozen. The Court of Appeal explained that such a refusal, although not in the form of a section 91(14) order, was tantamount to a prohibition on any application for staying contact by the father without the court's permission and again was a manifest error.

35. In addition, the Court of Appeal held that it was a fundamental error of the trial judge to rely on **non specific research and existing 'alternative family' authorities so as to apply a 'general rule' which must apply to all disputes between two female parents and the identified male parent** as all cases were so fact specific with the only principle being the 'paramountcy' one. This is an important statement and makes clear beyond doubt that there is **no general rule** in such cases.

36. In grappling with the points raised by Black LJ in granting permission, the full court accepted that this is a difficult area for first instance courts but specifically declined to give any distinct guidance which would elevate these cases beyond the universal and overriding principle of paramountcy and welfare.

37. Whilst not expressed as guidance this is in fact exactly what the Court of Appeal has provided, recognising that **all cases concerning children's welfare including those of gay families, are fact specific and must be determined in accordance with the long established principles of welfare enshrined in section 1(3) of the Children Act**. As a development of the jurisprudence the decision recognises that there can be no 'one size fits all' for alternative families where previously first instance decisions may have seemed to suggest otherwise.

38. In doing so it is our view that the Court of Appeal has brought into line this area with the guidance given in the decisions of the House of Lords/Supreme Court in Re G [2006] 1 WLR 2305 and Re B[2009] 1 WLR 2496.

39. So then, without seeking to give specific guidance the Court of Appeal has made some very significant observations which might be distilled in the following way:

    a. the role of the father in a child's life will depend on what is in the child's best interests at each stage of the child's childhood and adolescence;
    b. as with any other child, the father/child relationship (in alternative family cases), may turn out to be close and fulfilling for both sides, or it may be no more than nominal, or it may be something in between;
    c. whilst it is generally accepted that a child gains by having two parents; it **does not follow from that that the addition of a third is necessarily disadvantageous**;
    d. such cases were difficult and the Court might benefit for a bespoke expert's report;
    e. consideration should be given to joining the **child as a party to the proceedings** to ensure that adult concerns and considerations did not dominate the debate which should centre on welfare;
    f. the Court should be cautious before attaching great weight to the adult's plans and agreements for a child made before the child was born;
    g. the concept of 'principal' and 'secondary' parent put forward by Hedley J in ML and AR v RWB was specifically **not endorsed** as it has the danger of demeaning the father who was significant in the child's life even though in care terms he may have secondary role;
    h. the primary purpose of contact was to promote the welfare of the child and its level should be decided accordingly and not by reference to reflect the role that has been agreed by the parties or discerned from their conduct as suggested by Hedley J in **Re P and L** (2011) EWHC 343;
    i. the label 'sperm donor' was **not appropriate in cases where the father was known** as opposed to anonymous as it was capable of conveying the impression that the father was giving his child away and that was misleading.

Two's company; three's a crowd; four's a modern family

1) In days gone by entering the court arena as a lesbian or gay parent was a bruising experience which often resulted in losing the care of the children. In custody battles as they then were, the sexuality of the parent became a central issue in the case and often a determinative one. Now more and more gay and lesbian, bisexual and transgendered people are deciding to become parents and are doing so in many different contexts. Indeed, increasingly the legal framework serves to buttress decisions about different ways of configuring families with gay and lesbian parents rather than seeking to undermine them.

2) We have the impact of the Civil Partnership Act 2004, the changes to the basis for acquiring parental responsibility and the boundaries of parenthood pushed yet further outwards by the HFEA 2008.

3) In that context, let's start with the name of this seminar. Calling it 'the alternative families' seminar will be thought by some merely descriptive but by others, frankly, insulting. In a way both are right. While co-parenting in the context of same sex relationships is statistically less common than amongst heterosexual couples; can mean that the family structure is configured differently from the point of conception of the child; and is certainly part of a broader evolution in terms of gay visibility and positioning in society, it is now, as the authorities tell us, just like any other parenting; the same human emotions are caught, the same needs are there to be met and it engages the interests of the child concerned in no less a way.

4) There is a column which has been written each week for about a year in the guardian by Charlie Condou. He is a gay father, now of two children. The children's mother shares their care and Charlie Condou's partner is a co-parent to both. The conceit of the column was to give the wider public an insight into the lives of a non-traditional family.

5) A few months ago they had their second child - the life of their first child has been documented each week and the addition of another child was an event which was anticipated and then celebrated in the family section of the Saturday Guardian. By the time of the birth of their second child the centre of gravity of the articles had, it seemed

to me, shifted. It was less about what it's like to be a gay dad and the travails of co-parenting and more about how any parent deals with the arrival of a second child. Without being, I hope, unduly pretentious or expansive, it may serve as a metaphor. This is not an alternative family it is a family and the courts appear to have started to recognise this.

6) We practice at a time when in the courts there is a growing body of Jurisprudence which has refocused us on the role of the parent; biological, psychological and through the process of giving birth. As will be clear from that jurisprudence, the case law in relation to co-parenting has gone through something of an evolutionary process ending or perhaps more accurately, presently resting with the case of A v B and C [2012] EWCA Civ 285. Thus, what was considered as rarefied and "other" is now seen in the context of a more universal set of tenets and principles. Whereas once the sanctity of a lesbian couple's family unit was privileged within the case law and considered to both need and deserve protection through the subordination of the "donor" parent's role, now the court pulls us once more to the welfare of the child being the primary consideration and seeks to reframe our understanding of what makes a family and how we should name its constituent parts.

7) However, there is a danger to thinking that in this more inclusive and more knowing phase of the development of the case law that we have tackled all of the issues in respect of co-parenting and that there is settled law. It may seem that the challenges and question marks have gone. I am inviting you all to look again at the legal framework and to think with me about some of the remaining issues and tensions which may be the subject of the next phase of litigation or which you may be asked to give advice about.

8) Since the promulgation of the HFEA 2008 (specifically since 06.04.09), if two women have a child together in the context of an existing civil partnership at the point of conception, whether in a licensed clinic or otherwise through artificial insemination, both the birth mother and the woman who does not give birth to the child will be the legal parents of the child, both women will be listed on the birth certificate and the male progenitor will not be a legal parent of any child so born. Only if the birth mother has sexual intercourse with the man will he be considered to be the legal parent.

9) If the two women are not in a civil partnership at the time of conception through a licensed clinic in the United Kingdom after 6 April 2009, then both women will be considered legal parents so long as the agreed parenthood conditions have been satisfied and the relevant forms have been signed prior to conception. In those circumstances both women will be considered legal parents to the child from the moment of insemination or that an embryo or gamete is transferred to the womb. Both women can be listed on the birth certificate (this will bestow parental responsibility on the non-birth mother who would otherwise lack that status). The male progenitor will not be the legal father of any child.

10) It is possible in the context of an insemination in a licensed UK clinic for the male progenitor to sign the agreed parenthood forms and, even where the birth mother has a partner (to whom she is not civil partnered), he rather than the partner can be chosen by those involved to be the legal parent along with the birth mother

11) A DIY insemination at home and outside a licensed clinic with two women who are not civil partners will result in the male progenitor being the legal parent of the child. He may then be placed on the birth certificate and by that route acquire parental responsibility as well.

12) When drafting the HFEA 2008, the government of the time decided to adopt a two parent model. Thus, no child could have more than two legal parents.

13) When I have lectured recently about Surrogacy and the HFEA 2008, I have talked about the requirement that two parties apply for a parental order to bestow upon them legal parenthood. No individual can apply alone for a parental order under the terms of the legislation (See: A and A V P, P and B [2011] EWHC 1739 where the application was made by a couple and one of the commissioning couple dies before the parental order could be made. The extant partner was granted the parental order). This is because (as was stated in The Department of Health's draft impact assessment)

The 2008 Act does not allow single people to apply for Parental Orders. In drafting the 2008 Act, the Government recognised the magnitude of a situation where a person becomes pregnant with the express intention beforehand of handing the child over to someone else, and the responsibility it places on the

people who will receive the child. In light of this, the Government believe such a situation is better dealt with by a couple.

14) But the HFEA 2008 has also meant that while in the context of surrogacy children can have no fewer than two legal parents, in that and all other respects which stand apart from surrogacy, there can be no more than two either. In essence, the government shied away from the controversy which would have been engendered by accepting that three or four people can and, in an increasing number of cases, do parent a child. It was feared that introducing the notion of a multi-parent family might put the changes in legislation in jeopardy (See the work of McCandless, J. & Sheldon, S. 2010. The Human Fertilisation and Embryology Act (2008) and the tenacity of the sexual family form. Modern law review, 73 (2), 175-207 and Julie Wallbank 2010: Channelling the messiness of diverse families: resisting the calls to order and de-centring the hetero-normative family, Journal of Social Welfare and family Law, 32:4, 353-368)

15) That means that we now have a set of legal constructs which challenge the conventions of parenting (legal and otherwise) but in so doing (perhaps curiously), co-opt the existing normative model of a two parent family.

16) This exclusion through the two parent model seems to sit uncomfortably with what is happening elsewhere in the course of legislation, case law and the received wisdom from the psychiatric and psychological community. We can see immediately that while the courts are pulling in one direction, the legislation pulls in the other.

17) The picture becomes even more nuanced when one considers that in parallel with the strictures imposed by the HFEA 2008 on recognising three or four parent families, the government has, under the auspices recent legislation, enhanced the legal requirements to give information about their biological parents to adoptive children and those born through donor insemination. There appears to be a disconnect between the two initiatives.

18) But these complexities necessarily raise important questions and as any lawyer knows, for every decision made there are intended or unintended consequences.

19) In the case of family scenarios where there are more than two people who wish or are intended to be recognised as parents to the child the legal framework now in place does not simply create a hierarchy of relationships; it effectively legislates against some natural parents having any status in relation to the child. This has very significant possible implications for those embarking upon co-parenting arrangements and, in due course, may raise new questions for the court when resolving any issues which might arise between co-parents who find themselves in conflict. (See also: T V B (Parental Responsibility: Financial Provision) [2010] EWHC 144)

20) It is a confused picture when one looks at the implications of this very rigid structure. Recent decisions have considered the significance of the genetic relationship between a child and their parent and where that sits in comparison with someone who has the legal status of a parent or who has the psychological and social relationship of a parent with the child.

21) In the case of Re G [2006] UKHL 43 the House of Lords, reversing the decisions of the courts below, reaffirmed the significance of the biological relationship between a parent and a child. The House of Lords concluded that in the High Court and the Court of Appeal insufficient weight had been placed upon the biological relationship between the birth mother (whose conduct came in for considerable criticism throughout the proceedings) and the child when coming to the decision that the mother's female ex-partner should have a residence order in respect of the children.

22) There was an incursion into the notion that the biological relationship should have primacy over that of the psychological and social parent in Re B (A Child) [2009] UKSC 5. In that case it was determined that:

"*all consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child's best interests. This is the paramount consideration. It is only as a contributor to the child's welfare that parenthood assumes any significance. In common with all other factors bearing on what is in the best interests of the child, it must be examined for its potential to fulfill that aim. There are various ways in which it may do so, some of which were explored by Baroness Hale in Re G (Supra), but the essential task for the court is always the same".*

23) In Re B (A Child) [2009] UKSC 5 the following was stated:

"Re G had given the final quietus to the notion that parental rights have any part to play in the assessment of where the best interests of a child lay. Indeed, (correctly in our view) it identified this as the principal message provided by the case. It is certainly the principal message that was pertinent to the present case. It appears, however, that the urgency of that message has been blunted somewhat by reference to the speech of Lord Nicholls and some misunderstanding of the opinion that he expressed. Having agreed that the appeal should be allowed for the reasons to be given by Baroness Hale, Lord Nicholls said at para 2:

> *"The present unhappy dispute is between the children's mother and her former partner Ms CW. In this case, as in all cases concerning the upbringing of children, the court seeks to identify the course which is in the best interests of the children."*

He then said:

> *"Their welfare is the court's paramount consideration. In reaching its decision the court should always have in mind that in the ordinary way the rearing of a child by his or her biological parent can be expected to be in the child's best interests, both in the short term and also, and importantly, in the longer term. I decry any tendency to diminish the significance of this factor. A child should not be removed from the primary care of his or her biological parents without compelling reason. Where such a reason exists the judge should spell this out explicitly."*

34. As we have observed, it appears to have been in reliance on the latter passage that the justices stated that a child should not be removed from the primary care of biological parents. A careful reading of what Lord Nicholls actually said reveals, of course, that he did not propound any general rule to that effect. For a proper understanding of the view that he expressed, it is important at the outset to recognise that Lord Nicholls' comment about the rearing of a child by a biological parent is set firmly in the context of the child's welfare. This he identified as "the court's paramount consideration". It must be the dominant and overriding factor that ultimately determines disputes about residence and contact and there can be no dilution of its importance by reference to extraneous matters.

35. When Lord Nicholls said that courts should keep in mind that the interests of a child will normally be best served by being reared by his or her biological parent, he was doing no more than reflecting common experience that, in general, children tend to thrive when brought up by parents to whom they

*have been born. He was careful to qualify his statement, however, by the words "**in the ordinary way** the rearing of a child by his or her biological parent **can be expected** to be in the child's best interests" (emphasis added). In the ordinary way one* can *expect that children will do best with their biological parents. But many disputes about residence and contact do not follow the ordinary way. Therefore, although one should keep in mind the common experience to which Lord Nicholls was referring, one must not be slow to recognise those cases where that common experience does not provide a reliable guide."*

24) The press release from the Supreme court following Re B (supra) also included this summary of its meaning:

"Any discussion of a child's right to be brought up by its natural parents is misplaced. The only consideration for the court is the child's welfare; to talk of a child's rights detracts from that consideration. (Paragraphs [18]-[19])

In this case, there was reason to believe that if H's bond with GB were broken his current stability would be threatened. Whilst RJB was assessed as capable of meeting H's needs, he had recently undergone significant changes in his own domestic position and his arrangements were untested at the time the justices made their decision. In deciding where H's best interests lay the justices were therefore right to give significant weight to maintaining the status quo in H's living arrangements. (Paragraphs [40]-[41])"

25) So A V B and C (supra) in one sense does no more than follow the path laid down by Re B (supra). That it took some time to get there may be a function of the perception amongst some of the judiciary about the nature of the parenting relationship in the case of co-parenting amongst gay and lesbian parents. We can see that just last year in ML and AR v RWB and SWB [2011] EWHC 3431 (Fam) *(*sub nom PL (Minors), Hedley J emphasised the difference between a co-parenting arrangement between a lesbian couple and a gay couple and other, more conventional types of parenting arrangements:

"I appreciate that in a case like this we are in what is still new territory in defining the roles of the various parties in the context of parenting. I have tried to develop the concept of principal and secondary parents since, for reasons already explained, conventional roles provide unreliable models. The men are not separated fathers for they have never been, nor did they ever intend to be, resident parents to these girls. On the other hand they are different to grandparents for not only is ML the biological father of both girls but he holds parental responsibility in respect of them. The only safe course is to resist the almost

overwhelming temptation to use established conventional models but rather to recognise that a distinct concept of parenting and parental roles is made necessary by the sort of (by no means unusual) arrangement to parent decided upon in this case. It was I think in recognition of this that Mr. Paul Storey, Q.C. on behalf of the women invited the court to give such guidance as it could. It is a tempting invitation but (beyond what I have already said) one fraught with risk".

26) One of the problem's of the HFEA 2008 is that it risks creating precisely what the Court of Appeal deprecated in A v B and C (supra); the notion of a principal parent and a secondary parent, by operation of law.

27) It is of interest that Hedley J drew the distinction in ML and AR v RWB and SWB (supra), between those who can apply for a S.8 order as of right and those who require the leave of the court to do so when referring to the women's perception that the quantum of contact sought by the men was"an invasion of the life of the nuclear family".

Hedley J observed that:

"In the traditional model they would have a point; that is why grandparents and other relatives usually need the permission of the court to apply for contact. But they do not have a nuclear family in the traditional sense; their model does not encompass what these parties chose to agree and do in this case even though the women are and must remain the principal parents".

28) The reality under the terms of the HFEA 2008 if that the father who is the "non-parent" will also have to apply for the court's leave before making any S.8 application. I have been in a case where a father having reasonably frequent contact with his child (not less than once every two weeks) made a contact and shared residence application so that he could regularise his contact, move to unsupervised visits and gain parental responsibility. The women opposed leave.

29) No doubt in that case the women challenged the leave application for what they thought were legitimate reasons; the residence order application in particular will have been perceived as a hostile act and we have seen both the practical and totemic significance of residence orders in T v T (Joint Residence) [2010] EWCA Civ 1366, [2011] 1 FCR 267 and Av B and C (supra) from the other side of the divide. In the latter, Lady Justice

Black observed that in circumstances where there are co-parenting arrangements of the sort present in both of those cases:

Consideration also needs to be given to whether there are orders available that may assist in addressing particular difficulties. Both in this case and in T v T (Joint Residence) [2010] EWCA Civ 1366 *[2011] 1 FCR 267 a shared residence order was made in order to try to alleviate anxiety about arrangements should the biological mother die. By addressing such anxieties, and making the adults feel more secure, it may be possible to create a climate which in time will accommodate more generous contact than might otherwise be feasible.*

30) However, it is important, in my view, to also reflect upon the fact that under the prevailing legislative schema, in the case of the biological father, in circumstances where he lacks the legal status of a parent, it is the only by the making of a shared residence order that he can achieve parental responsibility. In effect, the biological father is as a stranger to the child.

31) Thus, in due course the courts will no doubt have to consider the decision in Re A (A Child: Joint Residence/Parental Responsibility) [2008] EWCA Civ 867 where the court awarded a joint residence order and parental responsibility to a man who had been the psychological parent of a child from birth but had no biological or legal relationship with him. The Court of Appeal concluded that the court at first instance had rightly made a joint residence order not to reflect an equal or near equal division of time, but rather the order was made for the purpose of conferring upon the applicant the parental responsibility which went with it. In so doing the court sought to prevent the applicant's role from being marginalised or diminished.

32) When reviewing the law on shared residence Sir Mark Potter concluded that:

"the making of a residence order is a legitimate means by which to confer parental responsibility on an individual who would otherwise not be able to apply for a free-standing parental responsibility order, as in the case of someone who is not the natural parent".

33) This mechanistic approach may well be deployed more frequently in the future in cases where the natural father is a non-parent.

34) However what do we make of where we are in light of A v B and C (supra) in relation to the issue of gay co-parenting? Have those cases been subsumed into the legal mainstream or, even after welfare has explicitly been placed so centrally in the equation, is there a residue of "difference"? The answer must be the latter. The call made by Lord Justice Thorpe for expert advice and consideration of the joinder of the child in these sorts of cases almost as a matter of course, reminds us that the purity of the welfare argument is still contaminated when the court grapples with an unconventional set of parental relationships, Thus, the following:

25. This was an important case and a difficult one. The trial judge deserved the enlightenment that expert evidence provides. In my opinion it is unfortunate that the interlocutory applications were refused. Dr Sturge is an eminent expert but there may be others who have specialised in these difficult cases. Furthermore, a published paper is no substitute for a bespoke report that considers the all important facts specific to the case. We do not know whether the views expressed by Dr Sturge in 2007 have evolved in reaction to additional research and findings.

26. I also wonder whether consideration should not have been given to joining M as party to the proceedings to ensure that adult concerns and considerations did not dominate the debate. M's welfare was the judge's paramount concern but he would surely have been assisted had the child's welfare been evaluated and advocated by an experienced team.

35) The tensions between the impact of the legislation and the exigencies of case law as it responds to the complexities of real life are manifest. It seems that in the world of the gay co-parent, the direction of travel goes both ways. At the same time as the government is moving towards an acceptance that shared residence should be the norm in conventional family breakdowns, and that on separation the continued role of grandparents should be maintained, a biological parent of a child can be airbrushed out of the legal picture. There is an essential contradiction in the endorsement of a two-parent model.

36) So where does the law now leave the biological father who is not a legal parent? What implications does all this have on the legal mother who is not biologically related to the child but is the child's legal parent? Is there a hierarchy of relationships and where does each parent fall in that hierarchy?

37) The answers are still, I would argue, somewhat more elusive than A v B and C (supra) at first appears to suggest. We have only to look at the increasingly common practice (confirmed recently by Sarah Wood Heath in her article in BioNews on 8th May 2012), amongst some lesbians of one partner providing the egg and the other carrying the child to term to throw into sharp relief the additional complications with which the courts will potentially have to deal in future in relation to the construction of modern families.

38) In addition, there are situations where it is intended and understood that the birth mother and her partner will be the parents to the exclusion of the natural father by agreement and design. If that is the case and, after the birth the paradigm continues then to argue that the biological father should have parity with the two women becomes more problematic. Those women will want some protection and, arguably, they deserve it.

39) There is also the spectre of family breakdown. We have to consider all of these questions in the context of the fact that the number of dissolutions of civil partnerships went up by 44% in 2010 (compared with the previous year) and the statistics show that dissolutions amongst women are proportionally higher than amongst men.

40) So what is the court to make of the following scenario? The eggs were provided by Ursula. They were placed in Gudrun in a fertility clinic. Following the embryo transfer and insemination they became civil partners. The sperm was provided by Gerald who married his partner Rupert in Boston when marriage was legal there, but they have not contracted a civil partnership in this country. They all intended that they would co-parent together and when the twins David and Herbert are born there was much joy.

41) Gundrun (a civil servant) went on maternity leave and then decided to stay at home for the full 5 year career break to which she was entitled. Then Gudrun returned to work part time and shared the care of the children with Rupert (a freelance stunt artist). By the time they were 6 the children stayed on alternate weekends from Friday to Monday morning with Gerald and Rupert (an arrangement which had started when they were three) and they took them away for short holidays (no more than 5 nights).

42) In this scenario: who is a legal parent? Who has PR? Who can acquire PR and by what means orders?

43) What will the court do if the relationships between the two households break down, the relationship between Gudrun and Ursula breaks down, or the relationship between the two men breaks down?

44) So is there anything that can be done to guard against complications and confusions in gay and lesbian co-parenting situations? The answer is to encourage people to take advice before entering into such an arrangement, to encourage them to think very carefully about what they want from the situation and then guide them through the process of drawing up a pre-birth agreement.

45) Such an agreement needs to cover both issues of legal status and the relational aspects of the arrangement. It can protect all of those involved. It gives everyone a platform on which to discuss areas like who are to be the legal parents? what is the child to call each significant adult in their lives? What are to be the intended relationships, including present partners, future partners and grandparents?

46) While it cannot change the legal consequences of the two parent model, a pre-birth agreement can offer a chance to discuss the legal status of each adult, the living arrangements of the child and how much day to day involvement each adult is intended to have. It will allow the parties to define their terms. If there is to be an "uncle" type relationship, will the father be known as the father or will that remain unsaid? If so, is this the type of uncle who sees the child twice a year or one who sees the child every week? What are the financial arrangements to be? How will the child be educated? Is there to be a religious affiliation? Will the child be vegetarian?

47) As noted above, the pre-birth agreement is not binding. As Lord Justice Thorpe observed:

27. I am cautious in reaction to Mr Howard's repeated submissions that great weight should be attached to adult autonomy and the plans that adults make for future relationships between the child and the relevant adults. Human emotions are powerful and inconstant. What the adults look forward to before undertaking the hazards of conception, birth and the first experience of parenting may prove to be illusion or fantasy. B and C may have had the desire to create a two parent lesbian nuclear family completely intact and free from fracture resulting from contact with the third parent. But such desires may be essentially selfish and may later insufficiently weigh the welfare and developing rights of the child that they have created. No doubt they saw the advantages of A as first an ideal known father and later as a

husband to ease problems in the maternal extended family. It would have been naïve not to foresee that the long term consequences held disadvantages that had to be balanced against the immediate advantages.

48) Lives are not static. Courts will look beyond the written terms of the document and into the fabric of the lives of those involved and the quality of the relationships, but they do have a relevance and significance and, with so much at stake, any person entering into a co-parenting arrangement would be well advised to set out their intent and understanding in a written form agreement.

49) Meanwhile, perhaps it is time to look at the two-parent model again. I would argue that the legal framework needs to reflect the realities of people's lives and move away from an ideological set of assumptions about parenthood. We have a society where there are many configurations which make up a family. Why should only one type be recognised by the legislation?

Sam King

4 Paper Buildings

Section 3

The psychological perspective regarding children in alternative family cases

Dr Claire Sturge

Children Brought Up by Parents of the Same Sex

Dr Claire Sturge

Claire.sturge@nhs.net

Preliminary Remarks

Having talked on this subject several times my awareness has been raised to the feelings of such families-

Why do we pick them out for special scrutiny as if there is something deviant about them and problems in the families inevitable?

I believe it is because some of us take time adjusting to new situations and sexuality is a topic that forces us to re-examine many issues about society and about ourselves.

Aims of my talk

I simply want to draw attention to certain issues which I title as follows:

1. The implications for children:
    1. Research on adjustment
    2. Coping with their anomalous situations
    3. Research on sexual behaviour and orientation
2. The power of maternal and paternal feelings- the unplanned for part of arrangements with known 'sperm donors'/'distance fathers'.
3. The genetic imperative/the drive for genetic reproduction
4. The anomalous situation of the co-parent
5. Issues for Courts and Society: Future Directions
6. A diversion and some final remarks

1. The implications for children:
    1. Research on adjustment
    2. Coping with their anomalous situations
    3. Research on sexual behaviour and orientation

- I am only going to deal with Lesbian households- the research on homosexuals and surrogacy is too sparse to draw any conclusions.
- Homosexual men who gain custody of children conceived during a heterosexual relationship do a good job in raising children (as do adopters/foster carers).

First a word on the research

- The early research was based on comparing mothers who left their male partners and 'came out'
- They usually became single mothers (and the research was so naive that information about lesbian partners was not collected)
- They and their children were compared with other single parent households
- Over the last 20 years- with all the societal changes and the access of homosexual couples to artificial insemination and new rights- the focus has been on lesbian couples who form households with the intention of having children.
- I shall focus on this later research

There has been some suspicion/gender politics around the research- is it conducted by lesbians researchers are mainly female).

And terminology

- Terminology besets this subject.
- The handout explains terms I use but few are satisfactory-
  - Father implies a role as well as a genetic relationship
  - Male progenitor sounds cold and meaningless
  - Co-parent is an inadequate term for the second parent in a lesbian family
  - I see a family as a unit able to provide for all the child's basic needs (needs of all types).

The implications for children: Research on adjustment

This is simple: the children do well and compare well with other groups-

- emotional adjustment
- peer relationships
- academic achievement
- overall well being

No differences are found between girls and boys- both do well in Lesbian households.

The Four Tasker Questions

1. Do children develop emotional and behavioural problems?	No.
2. Does the quality of parenting differ in families led by a same-sex couple?	No, if anything it is even better than in families headed by heterosexual parents.
3. How do children cope with the challenges of difference and the possibility of prejudice?	Well.
4. Are these children more likely to be gay or lesbian?	Yes, to a small degree - particularly in experimenting with or being bisexual.

The implications for children: Coping with their anomalous situations

Qualitative studies- talking to children- does indicate an increased amount of teasing compared with other children

This is around the unusual situation- comments about 2 mothers, accusations that they are gay or lesbian, questions about the whereabouts of fathers.

However, the good adjustment of these children suggests they are resilient to this and lesbian parents show a high awareness and having been subject to prejudice and taunts themselves are probably in a good position to advise their children.

The implications for children: Research on sexual behaviour and orientation

The research indicates (compared with control groups):

- firm sense of gender identity- being a girl or boy
- an increase in interest in and experimentation with both those of the same and opposite sex
- as yet unclear how many will decide on a firm homosexual or ac/dc orientation- increase over the rest of the population is likely to be very small

  (and figures unreliable as there is a trend for increases in the rest of the population in more varying forms of sexuality)
- These small increases are not reflected in identity problems- sense of self and who you are.

The power of maternal and paternal feelings- the unplanned for part of arrangements with known 'sperm donors'/'distance fathers'. The genetic imperative/the drive for genetic reproduction

I have combined these as they are so interconnected.

In cases I have accessed and, to a small extent, worked with and from my knowledge of similar situations, the unplanned for part of arrangements with 'sperm donors' or 'distance fathers' go awry because:

Neither the mother, the co-parent or the biological father prior to the pregnancy and/or birth predict the strength and depth of their feelings

1. Both: About the impending birth (the experience of pregnancy/knowing a baby is on the way)
2. The women: About wanting to totally enfold the baby to themselves- possessiveness by the 'mothers'
3. The men: an overpowering wish to be part of and be recognised by their genetic progeny: the drive to reproduce their genes and play a part in the lives of the child. This could be seen as part of the drive of the selfish gene – to safeguard their genetic heritage.

The anomalous situation of the co-parent

There is no good term for this position in the family which well illustrates the problem- neither a mother nor a father but the mother's partner and integral part of the household.

My impression is that they are increasingly trying to have a 'genetic' input to the child e.g. Using a member of their family as the sperm donor

Or the couple adopting a 'taking turns approach' – you have the first, I'll have the second (maybe with the same sperm donor or in a recent case each using the sperm of their own brother).

Research, particularly in the Netherlands, has focused on the co-parent

The co-parent is likely to feel:

vulnerable and insecure

to be 'put down' by the biological father- treated as the odd one out

they have unclear rights legally

In Holland the rights are clearer and adoption by the co-parent relatively easy. They (one presumes consequently) usually choose known sperm donors (over 80%). In this country it is around 50% and probably dropping (one presumes because of the outcome of certain Court cases).

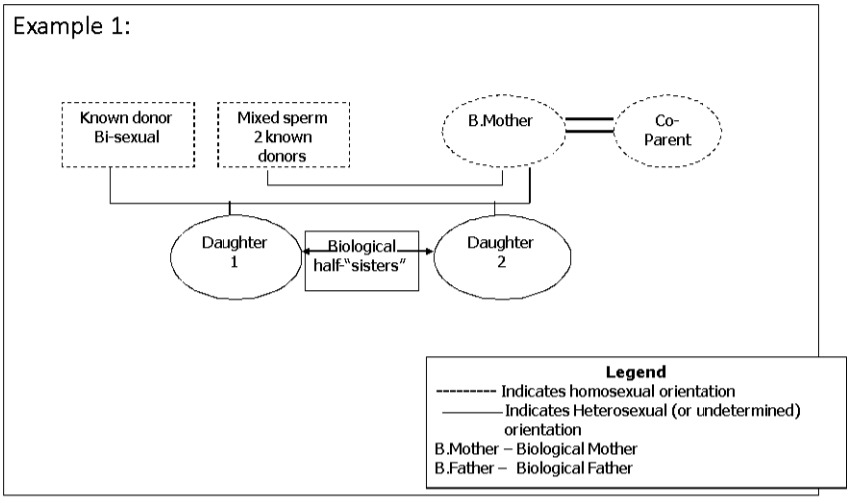
- In fact research shows children have more involved and closer relationships with the co-parent than a child would with the father in an heterosexual family. One study with control heterosexual families showed that 'social' mothers (the co-parent) took on father-like roles and were more successful in their authoritativeness!

The issue is

Is society/are the Courts going to:

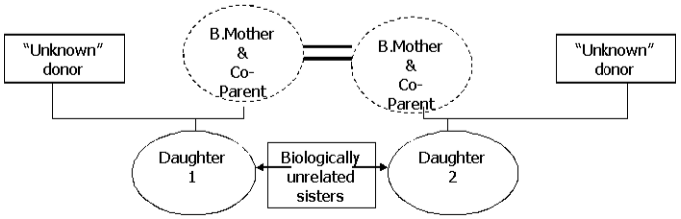
- recognise a lesbian household as a complete family (PR for the co-parent has gone some way to achieving this but not when the father gets this also)?
- Give the co-parent equal rights with the mother as regards the child/be treated as a full 'parent' e.g. if the couple separate or the 'biological' mother dies?

Examples of lesbian/co-parenting family trees



Examples of lesbian/co-parenting family trees

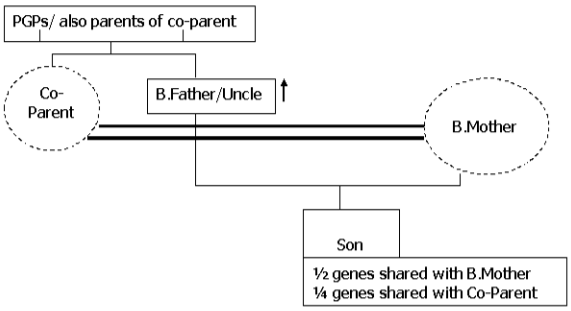
Example 2:



Legend
--------- Indicates homosexual orientation
——— Indicates Heterosexual (or undetermined) orientation
B.Mother – Biological Mother
B.Father – Biological Father

Examples of lesbian/co-parenting family trees

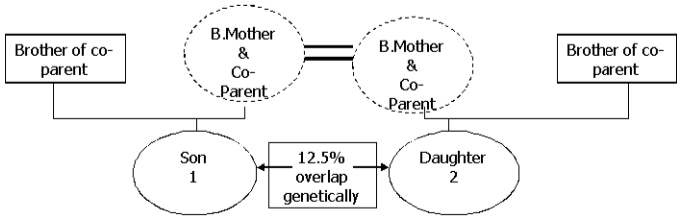
Example 3:



Legend
--------- Indicates homosexual orientation
——— Indicates Heterosexual (or undetermined) orientation
B.Mother – Biological Mother
B.Father – Biological Father

Examples of lesbian/co-parenting family trees

Example 4:



Note:
Each child has a 50% genetic inheritance from the gestating mother and 25% genetic inheritance from the 'co-parent'.

Legend
--------- Indicates homosexual orientation
——— Indicates Heterosexual (or undetermined) orientation
B.Mother – Biological Mother
B.Father – Biological Father

From the perspective of the children

In these examples the children are in a situation of:

- -Having an uncle who is also their biological father (and/or a quasi-uncle who is their sibling's father)
- -Having a sibling who is entirely unrelated
- -Having a sibling who has a small degree of relatedness
- -Having a sibling with a normal (50%) degree of relatedness
- -Having a sibling with the degree of relatedness of 'half-siblings' (25%)

Issues for Courts and Society: Future Directions

Others will be dealing with issues for the Courts

I just wanted to add a twist that is on the horizon which even more fundamentally challenges our ideas on procreation, families and genetics

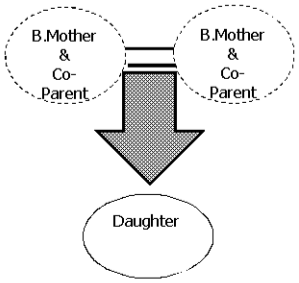
Intra-nuclear Fertilisation

It is now theoretically possible to extract the nuclear material from a gamete (the reproductive cell) and insert it into the nucleus of an egg as a means of fertilisation

i.e. The co-parent's nuclear material form one of her eggs could be used to fertilise the egg of the about to be gestational mother: the baby would be genetically 50:50 (as in heterosexual conception).

Examples of lesbian/co-parenting family trees: intra-nuclear fertilisation

Example 6:



THERE IS NO FATHER
ONLY DAUGHTERS WOULD BE PRODUCED

My Finale

- Where are we going?
- I believe it is in children's interests to have a known 'male progenitor'.
- Do we need to undertake a fundamental look at the meaning of 'family' and the role of fathers, mothers, parents?
- How do we protect the 'rights of sperm'?
- Is 'bisexuality' the ideal state?

Section 4

Speakers Profiles

Alex Verdan QC

Year of call: 1987
Year of silk: 2006

Education & Qualifications

BA (Hons)
Diploma Law

Appointments

Deputy High Court Judge 2009
Recorder 2004 (Family/Crime/Civil)
Bar Standards Board Conduct Committee 2004 - 2009
Trustee of the charity Children and Families Across Borders
Family Law Bar Association Committee 2003-2005; 2008-2010
Centre for Child and Family Reform Committee 2009 -

Specialist practice areas

Adoption
Care Proceedings
Children Act Proceedings
International Movement of Children
Medical Treatment: Children and Patients
Publicity, Media and Children
Wardship/Inherent Jurisdiction
Public Inquiries

ADR

Collaborative Lawyer
Mediator
Early Neutral Evaluator

Profile

Alex specialises in complex and serious children cases. In particular those involving:

- child fatalities and significant injuries and serious abuse with disputed medical evidence and often with linked criminal proceedings;
- allegations of sexual abuse; including false allegations;
- factitious illness;
- intractable contact disputes;
- leave to remove from the jurisdiction.

He was instructed by the children in reputedly the longest running care case in English legal history; the threshold hearing lasting for some 5 months and has just finished a 30 day fact finding.
He also has extensive experience in Inquiries both Public and Part 8, e.g. representing one of the local authorities in the Climbie Inquiry, being Counsel to the Isle of Man Commission of Inquiry into the Care of Young People and regularly advises a number of local authorities in Part 8s.

He regularly advises local authorities on policy issues.

Alex also advises the media in relation to various aspects of family law.
He has been in practice for over 20 years and over that time has built up extensive experience in all types of children cases. The majority of his practice is now in the High Court Family Division.
Alex regularly lectures at family law conferences eg at Dartington Hall and seminars and provides training for judges (through the Judicial Studies Board), solicitors, psychiatrists and social workers.

He writes for various publications including Family Law Week, Solicitors Journal and New Law Journal.

Professional Memberships

Family Law Bar Association
Association of Lawyers for Children
Affiliate Member of Resolution
Fellow of International Academy of Matrimonial Lawyers
Central London Collaborative Forum

Languages

French

What the directories say

Alex Verdan QC is instructed in the most complex children cases, both public and private in nature. Observers applaud the "clarity of thought and delivery" of this barrister, who recently handled a matter involving serious sexual abuse allegations
Recommended as a Leading Family Silk in Chambers & Partners 2012 (Ranked Band 1)

Recommended as a Leading Silk in the area of Children Law in Legal 500 2011

Alexander Verdan QC is much sought after for both public and private children work. Sources praise "his clear delivery in court and his sympathetic manner with clients."
Recommended as a Leading Family Silk in Chambers and Partners 2011 (Ranked Band 1)

Alexander Verdan QC, "does high-level children work, both private and public, and is regarded as a rising star among family silks." "He is a class act who talks such obvious good sense."
Recommended as a Leading Family Silk in Chambers & Partners 2010

The "calm and measured" Alexander Verdan QC is widely admired for the "clear and articulate advocacy" he applies to his children-related work. Although grounded in public law work, he is handling increasing amount of private children work.
Recommended as a Leading Family Silk in the area of Children in Chambers & Partners 2009

"Alexander Verdan QC is sensible....and does a very good job."
Recommended as a Leading Family Silk in the area of Children in Chambers & Partners 2008.

"Alexander Verdan QC is an approachable and effective advocate who can deal with conflict in an non-adversarial way. He undertakes work in care proceedings and public inquiries."
Recommended as a Leading Family Silk in the areas of Children in Chambers & Partners 2007

"Complex cases are all to familiar to Alex Verdan QC...he was involved in the Climbe Inquiry and is the toast of many a local authority and guardian".
Recommended as a Leading Family junior in the areas of Children in Chambers & Partners 2006

Charles Hale

Year of call: 1992

Education &Qualifications

LLB (Hons)
Blackstone Scholar
Middle Temple

Appointments

Elected member of the Bar Council of England and Wales (2004 – to date)
Chairman of the Public Affairs Committee (2008 – 2010)
Member of the General Management Committee of the Bar Council (2008 – 2010, 2011 – to date)

Specialist practice areas

Matrimonial Finance/Remedies
Schedule 1 of the Children Act
International Child Cases and Child Abduction
Children Act Proceedings
International Movement of Children
Alternative family disputes
Divorce
Rights of Cohabitees - Family Law
Wardship/Inherent Jurisdiction
Pre Nuptial and Post Nuptial Agreements
ADR

Profile

Charles is a family advocate with particular expertise in all aspects of matrimonial finance and Schedule 1 (financial remedies) and private law children work. He is regularly instructed in international family disputes, leave to remove and child abduction cases involving international law, Brussels I and II and international treaties. He has provided advice and Affidavits of Laws in French and Australian divorce cases. In domestic cases, Charles has a reputation for dealing with the most complex cases involving financial disputes as well as intractable and alienated parent cases, vulnerable adult/child cases and also cases arising out of same sex/alternative family disputes.

As one of the few recognized leading juniors in both matrimonial finance and children work, Charles is often instructed to represent clients in all issues arising out of their separation. Regularly acting for

parents and divorcing spouses, Charles has also been instructed on behalf of Cafcass Legal and Guardians for specialist advice and advocacy. Charles is also qualified to receive Direct Access instructions from foreign lawyers and professional lay clients.

Charles is a member of the Family Law Bar Association and is a national committee member since 2004. He has previously taught at Kingston University and regularly lectures to practitioners, Resolution and writes articles in leading journals including a regular political/legal column in Counsel Magazine. Charles was elected as a member of the Bar Council in 2004, and was a past Chairman of the Public Affairs Committee. He is a member of the General Management Committee of the Bar. His Bar Council/FLBA work regularly involves interplay between the government, the Bar and family justice.

Professional Memberships

Fellow of the International Association of Matrimonial Lawyers (IAML)
Family Law Bar Association
Association of Lawyers for Children
South Eastern Circuit
Middle Temple

What the directories say

Charles Hale "is very good at both money and children cases," and is thus a popular choice amongst solicitors for cases that contain both elements. He has a "very conciliatory approach and is extremely popular with clients," say sources.
Recommended as a Leading Junior for Children and Matrimonial Finance in Chambers and Partners **2012**

Charles Hale is an 'exceptional performer' who is 'outstanding at both children and money work'. Charles Hale is 'a formidable advocate, particularly in cross-examination '.
Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2011**

Charles Hale is a popular choice among many of London's leading solicitors. He is equally adept at children and matrimonial finance work. Sources note that "his jovial character enables him to forge strong relationships with clients."
Recommended as a Leading Junior Chambers and Partners **2011**

Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2010**

Charles Hale who undertakes both leave-to-remove cases and matrimonial finance matters, is "a tremendously hard-working barrister who always has a very keen sense of his cases."
Recommended as a Leading Junior Chambers and Partners **2010**

The 'brilliant' Charles Hale is recommended as a 'pleasure to work with'.
Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2009**

Charles Hale brings his "straight-talking approach" and "excellent attention to detail" to a practice that combines children-related matters with matrimonial finance work. He is regularly briefed, as is a "careful, vigorous and balanced advocate."
Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in Chambers and Partners **2009**

Charles has a broad practice embracing public and private law ancillary relief and child abduction. "Clients love him", reported one solicitor, "because he is one of the few barristers prepared to give them a little TLC"
Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in Chambers and Partners **2008**

Sam King

Year of call: 1990

Education & Qualifications

BA (Cantab)
MA (Law) Selwyn College, Cambridge University
Qualified for admission to the New York Bar 1989

Specialist practice areas

Adoption
Care Proceedings
International Child Cases and Child Abduction
International Movement of Children
Medical Treatment: Children and Patients
Wardship/Inherent Jurisdiction
Court of Protection

Profile

Sam's main area of practice is in children's law. She is regularly instructed in both private and public law cases. She represents all parties in complex cases involving allegations of sexual abuse or where there are psycho-sexual factors in issue, non-accidental injury, psychiatric ill-health, intractable contact cases and where shared residence is in issue.

She also appears in leave to remove applications and domestic and international adoption cases and is a member of chambers' international movement of children group. Sam has an interest in forced marriage and the children's law cases which arise in that context.

Sam's practice increasingly reflects her interest in the law relating to surrogacy, reproductive technologies and co-parenting arrangements.

Sam often gives lectures and seminars to lawyers and other professionals. Her lectures include talks on the subject of evidence gathering in respect of sexual abuse (LexisNexis), recent developments in the area of private law (LexisNexis), adoption and placement orders (4pb and Family Law Week). She has recently given seminars on routes to parenthood under the HFEA 2008 (Resolutions London) and in respect of international adoption and surrogacy.

Professional Memberships

Middle Temple
FLBA

What the directories say

Outstanding performer, Samantha King, who handles a wide range of children matters, both public and private. Sources describe her as a "very smart and impressive advocate who is passionate, experienced and tenacious."
Recommended as a Leading Family Junior in Chambers and Partners 2012 (Ranked Band 1)

Sam King is 'outstanding'.
Recommended as a Leading Family Junior in The Legal 500 2011

Samantha King represents the full range of parties in public children law. She is praised for her "solid understanding of medical detail and her intuitive feel for strategy."
Recommended as a Leading Family Junior Chambers and Partners **2011** (Ranked Band 1)
Samantha King, who frequently acts for local authorities in care cases
Recommended as a Leading Family Junior Chambers and Partners **2010**

Sam King is 'outstanding', 'especially in public law'.
Recommended as a Leading Family Junior in The Legal 500 **2010**

Samantha King has been around the block in relation to both private and public law children cases, and is recognised for her exemplary work in care proceedings.
Recommended as a Leading Family Junior in the area of Children - Chambers and Partners **2009**

Chambers and Partners say Sam is “experienced and extremely competent” in child care cases. “Really getting into the papers” and “good with difficult clients,” she also has an interest in international child abduction matters.

Brief Biography: Dr Claire Sturge

Dr Sturge has extensive experience as an Expert in Civil and Criminal Law cases. She has completed more than 300 reports for Courts and given evidence in about 25% of these. There have been 6 relating to issues around samed sexed parents.

She is a Child and Adolescent Psychiatrist and works in the Harrow Child and Adolescent Mental Health service where she leads the clinical service.

Her particular interests and experience are wide ranging and include, in addition to her interest in families with same sexed parents:

- Child sexual abuse and other trauma in young children.
- Parenting problems and parenting breakdown
- Developmental disorders on the autistic continuum.
- Parenting by mentally ill parents including those with personality problems.
- Complex domestic violence situations (post findings).
- Adolescent sexual offenders and other offending behaviour in adolescents.
- Attention Deficit Hyperactivity Disorder and Autism Spectrum Disorders.

Dr Sturge also takes an interest in teaching and training. As well as teaching and training medical students and trainees, she also organises regular courses designed to raise standards in the performance of experts.

She delivers lectures around the country including talks for the Judicial College and legal forums. She has talked and published an article on same sexed parenting-

Sturge, C: 2008:

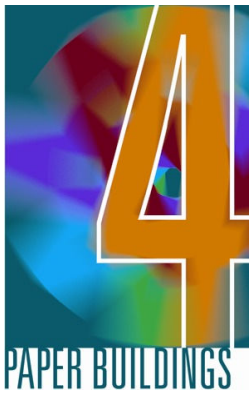
Gay and Lesbian Parenting in the UK: Biological, Societal and Psychological Issues relevant to children: International Family Law: March 2008 p. 32-38.

Sturge,C: 2008:

Anomalous conception: implications for children in: "Integrating Diversity" ed. Lord Justice Thorpe and Samanatha Singer- Jordans.

Section 5

Members List



MEMBERS OF CHAMBERS

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Baroness Scotland QC
Henry Setright QC
Marcus Scott-Manderson QC
Kate Branigan QC
Alex Verdan QC
Jo Delahunty QC
Michael Sternberg QC
Catherine Wood QC
Rex Howling QC
Teertha Gupta QC
Harry Turcan
Amanda Barrington-Smyth
Robin Barda
Jane Rayson
Mark Johnstone
Elizabeth Coleman
Alistair Perkins
Christopher Hames
Stephen Lyon
Jane Probyn
James Shaw
Mark Jarman
Sally Bradley
Rebecca Brown
Barbara Mills
Sam King
David Williams
Joanne Brown
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Joy Brereton
David Bedingfield
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Rhiannon Lloyd
Kate Van Rol
Ceri White
Annabel Turner
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Dorothea Gartland
Samantha Woodham
Laura Morley
Nicola Wallace
Jacqueline Renton
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