



LGBT FAMILY LAW INSTITUTE
UK & IRELAND

Working with modern families

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Introduction

- LGBT Family Law Institute
- Natalie Gamble – NGA Law
- Andrew Spearman - Laytons
- Law, terminology, client care:
 - Basics for family lawyers
 - Surrogacy
 - Known donation and co-parenting
 - Gender identity

What do we mean by modern families?

- Same-sex couples and multiple parent families
- Single parents by choice
- Parents through assisted reproduction
 - IVF
 - Egg or sperm donation
 - Surrogacy
- Identity considerations
 - Sexual orientation
 - Gender identity

Basics for Family Lawyers



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Parents through assisted reproduction

- Significant legal issues may not be obvious if you don't take a full history
- Do you ask if your client's children were conceived through:
 - IVF
 - Egg, sperm or embryo donation
 - Surrogacy?
- If not, should you?

LGBT parents

- More obvious - children through surrogacy, donor conception, co-parenting or adoption
- Law changes 2005-2010 to recognise same-sex parents:
 - Birth certificates
 - Parental responsibility
 - Adoption
 - Parental orders after surrogacy
- Additional legal issues for transgender parents

Good client care

- Sensitivity to dynamics around biology and any history of infertility
- Understanding that sexual orientation and gender identity might not be fixed
- Proper use of evolving language and the right terminology. If you aren't sure, ask!
- Remembering to think about embryos or gametes in storage

Who is a legal parent and who has PR?

- Easy where child conceived naturally by a (cisgender) man and woman – legal parents are the biological parents
- Statutory rules apply if conception is ‘artificial’. Examples:
 - Donor eggs, sperm or embryos
 - Surrogacy
 - Parents in a same-sex relationship
 - Either/both of the parents is transgender
 - More than two parents
- All family lawyers should know the basics to know what to ask and where they need further help

Who is a mother?

- The woman who gives birth 'and no other' is the child's legal mother
 - Biology and gender identity are irrelevant
 - Gestation is what matters
- Law protects mothers using donor eggs
- Unhelpful for surrogates and transgender men who give birth but identify as fathers

Who is a father?

- Where child conceived through assisted reproduction, the legal father is the first of :
 1. Birth mother's consenting husband
 2. If no consenting spouse, man nominated as the 'father' at a UK fertility clinic
 3. Biological father (if not legally a sperm donor)
- Law protects fathers through sperm donation
- Unhelpful for surrogate's husbands and some transgender parents

Who is a female 'parent'?

- Two women can be recorded on a child's birth certificate
- Legal parenthood goes to birth mother and:
 - Birth mother's consenting wife/civil partner
 - Woman nominated as a 'parent' by the birth mother at a UK fertility clinic
- Where a child has two female parents, there is no legal father

Questions to ask your clients

- Was their child conceived through assisted reproduction?
- If the answer is yes, you need to know:
 - Who gave birth?
 - Were they married or in a civil partnership?
 - Where did conception take place?
 - If a UK fertility clinic, were procedures followed to nominate someone as a parent?
 - Where was the child born (and what is on their birth certificate)?
 - If a surrogacy case, has a parental order been made?
 - Has your client's gender identity (or legal gender) changed?

Surrogacy



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Surrogacy (the basics)

- Who needs a surrogate?
- Gestational vs traditional surrogacy
- UK vs international surrogacy
 - Restrictive legal framework in the UK
 - Surrogacy agreements 'unenforceable'
 - Restrictions on professional services
 - Shortage of surrogates
 - Half UK parents go overseas – US, Canada, Ukraine, Georgia

Surrogacy and legal parenthood

- Parents through surrogacy are not the legal parents initially
 - Surrogate and her spouse are
 - Applies irrespective of whether the child is born in the UK
- Parents expected to apply for a parental order after the birth
 - To become legal parent/s and get UK birth certificate
 - Process takes 4-12 months
 - Various criteria in legislation, expanded by case law

Reform on the horizon

- Law Commission project 2018-21
- Provisional proposals:
 - Regulated surrogacy organisations
 - UK pathway for legal parenthood from birth
 - Potential recognition of some overseas surrogacy arrangements
 - Parental orders to remain for other cases
- When will the law change?

What do you need to know?

- Parental orders and nationality are a specialist area, but you still need to know the basics:
 - Is your client a legal parent of their child?
 - Do they have parental responsibility?
 - Do you they need to regularise things?
- All family lawyers should:
 - Ask if children were conceived through surrogacy
 - If so, check if a parental order was made and if not seek further help

Known donation and co-parenting



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What is it?

- Agreement to conceive a child without being in a relationship
- Common among LGBT families
 - Female same-sex couple with known father
 - Male same-sex couple with single mother or female couple
- Biological father might be a donor or a father or something in between

Legal parenthood

- Max two legal parents in the UK
- Birth mother's partner is/can be the other legal parent if:
 - Married or civil partners
 - Conception at a UK clinic
- Biological father may be a legal father (with or without parental responsibility) or a donor with no legal status
- Agreements don't affect legal status

Case law – donor and co-parenting disputes

- Various cases in which:
 - Donors/ fathers have sought contact/parental responsibility
 - Donors/ fathers have contested financial responsibility
- May need leave if not a legal parent
- Broad range of outcomes on welfare basis – full father-style contact to no contact

Good client care

- Be sensitive to terminology – donor, father, step-mother may all be contentious
- Include everyone appropriately
- Don't treat this as a standard parental separation
- Be conscious of vulnerabilities and emotional context
- Understand the case law

Gender identity



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Gender identity (the basics)

- Trans = anyone who identifies as having a gender other than the one they were assigned at birth
- Trans woman (MtF)
- Trans man (FtM)
- Non-binary

Gender identity (the law & practice)

- Can self-identify in identifying gender
- Gender Recognition Certificate needed to change birth certificate
 - Current process
 - Need for spousal consent
 - Government review
- Status as a mother/father/parent
 - Section 12 GRA
 - Re TT case

Gender identity (client care)

- Significance of respecting your client's gender identity – your whole staff
- Ask about pronouns – initial client information
- Terminology and titles
 - Evolving language
 - She, he and they
 - Ms, Mr and Mx
- Don't be coy - ask!



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Questions?

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