

Sperm donors for same-sex couples need to make sure they have legal protection

by [Jonathan West](#)

In light of a recent High Court case involving two lesbian couples and two gay men, Jonathan West, head of family law at City law firm [Prolegal](#), writes for [PinkNews.co.uk](#) on the importance of knowing about arrangements governing sperm donation.

Sperm donation can be a selfless way of helping women and couples have the child they so badly want. Naturally, there are a number of reasons why donation might be necessary. And whether official or otherwise, donations to same-sex female couples (in particular) are on the increase.

However, since 1992 there has been no tangible increase in official new registrations for sperm donors. One explanation could be the lack of confidence donors feel in their legal position, and whether they would like to have involvement as the father, or wish to remain anonymous.

To be clear, donors who donate through an HFEA licensed clinic have no legal or financial rights, or responsibilities for any child conceived with their sperm. The situation becomes complicated, however, when a man offers to help a friend or acquaintance on an informal basis and no legal arrangement has been made.

For couples who have had a civil partnership at the time of conception, both are considered parents. Under the Human Fertilisation and Embryology Act 2008, same-sex couples in civil partnerships are the legal parents of children born with sperm or egg donation, protecting donors who wanted to remain unidentified. The complexity unfolds when informal donations are made to same-sex couples not in a civil partnership in this case only the women bearing the child can become a legal parent.

In addition, on January 31st this year, rights were given to men who would like some say in their biological children's upbringing, where no competing contractual agreement is in place. [This came about through a High Court ruling](#) [in [S v. D & E](#) [2013] EWHC 134 (Fam)].

Without a formal agreement in place (such as a legally signed document rather than a handshake in the pub) it is difficult to argue convincingly for either case. It might seem totally reasonable for a sperm donor to contact his biological progeny, and last week's ruling now allows fathers to do exactly this, through applying for full contact rights. The often competing rights of the family and the donor have to be weighed against each other to ensure that the child's best interest is always at the centre of any decision.

Conversely, if the donor is only offering his DNA, why should he be held responsible,

either financially or otherwise, when he has never shown any inclination to be a father? In the recent case of Mark Langridge (the gay friend of a single lesbian, who offered his assistance with her wish to be a mother), he was sent a bill from the Child Support Agency for the maintenance of the two children he fathered, despite wishing to remain no more than a donor.

If he was to donate today, he would have a more conceivable argument that he was not the legal parent under the 2008 Act, and therefore had no responsibility towards the children at all.

The latest High Court ruling does clear up matters relating to biological fathers that want some role in their children's lives. But what it fails to do most, is stress the need for private arrangements to be agreed in writing, preferably with professional advice, that has everyone's rights in mind.

Sperm donation, either to a gay or a straight couple, is not to be taken lightly as the consequences last for the lifetimes of all involved. It is essential all parties are agreed on how the arrangement stands. Being a donor can be extremely rewarding, but only if an established and legally robust agreement is in place to protect all involved.

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