

Assessing Child Welfare under the Human Fertilisation and Embryology Act: the new law (study)

Abstract:

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The team working on the study were Dr Ellie Lee, Reader in Social Policy, University of Kent (PI), Sally Sheldon, Professor of Law, University of Kent (Co-I), Dr Jan Macvarish, Research Associate, Centre for Health Services Studies, University of Kent (RA),

Infertility is estimated to affect around one in six or seven UK couples (approximately 3.5 million people) and some 35,000 patients make use of IVF each year. Since 1990, infertility services have been subject to a highly complex system of statutory regulation: the Human Fertilisation and Embryology Act (1990) and accompanying Code of Practice issued by the Human Fertilisation and Embryology Authority (HFEA). Controversially, in 2008, the legal requirement in place since 1990 that clinicians providing treatment take account of “the welfare of any child who may be born as a result of the treatment” including “the need of [a] child for a father” was replaced with a new mandate: they must henceforth consider the child’s need for “supportive parenting”.

On the basis of original empirical research conducted within two years of the coming into operation of these changes to s.13(5), this project assessed the impact of the amendment of this provision. We explored the extent to which there is any continuing potential for exclusion of patients seeking infertility treatment services, assessed ongoing tensions or problems in the application of the reworded section, and traced the fit between what Parliament had intended it to achieve and its operation in practice. Our exploration relied on a detailed analysis of the published documentation which accompanied this reform process, and a series of semi-structured interviews which explored the views of clinicians, clinic counsellors and nursing staff.

While s.13(5) generated significant attention following its introduction in 1991, this study represents the largest and most significant discussion of its operation and the first empirical work to be done on it following its reform. It has thus generated a unique data set, which provides a fascinating case study in the translation of law on the books into law in practice.

Summary of study findings

[Download a summary of the findings](#) (PDF – 170k)