

Sperm donors given rights of contact – surely not?

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Back in February, the Daily Mail front page reported a case which we were involved in, in which two sperm donors were given permission to apply to court to argue for rights of contact with their genetic offspring. The case created a storm – with the HFEA and British Fertility Society issuing press statements to reassure worried fertility patients, and widespread media coverage. But was there any real cause to worry?

The case involved two lesbian couples who had conceived children with sperm donated by men they knew. Since 2009, lesbian parents have been able to register as parents on their children's birth certificates, just as heterosexual couples conceiving with donor sperm have been able to do since the 1980s. Since the lesbian parents in this case were civil partners, they fell within the protection of the law on gamete donation. This says that married couples are the legal parents of a child born through artificial insemination, whether or not they conceive at a licensed clinic. Like other parents who conceive with donated eggs or sperm, the lesbian parents in this case were therefore the children's legal parents. Correspondingly, the sperm donors had no legal rights or responsibilities.

However, the men knew the parents and had some involvement in the early months of the children's lives, before relationships broke down. Seeking a parental role, the men applied to the family court for rights of contact with their genetic offspring, against the wishes of the parents. Since legally they were sperm donors, they had no standing to make such an application and the court had to decide whether to hear their applications (something which in the legal world is known as seeking 'leave' to make an application).

The High Court decided that they should have their day in court. The landmark ruling represents the first in which the court has given leave to gamete donors to seek rights of contact, and this was why the case had so much attention. But the court did not – contrary to what the Daily Mail said – give the donors the right to see the children. All it decided was that they should be allowed to argue their case. Whether they get any contact is a separate question, to which the answer is not going to be made public.

The ruling does in principle influence the legal position in respect of other gamete donors. Egg or sperm donors who can show a sufficient connection with a child they help to conceive could in theory now obtain the court's leave to make an application for contact with the child against the parents' wishes. This goes against the grain of donation law which otherwise



excludes gamete donors from having any legal claims.

But there is no serious cause for alarm for most fertility patients. The ruling would be exceptionally unlikely to affect parents of children conceived with donors through licensed clinics, where those donors have had no opportunity to meet the children. Such donors would not be able to establish the 'connection' with the child that the donors in this case had. Even in the unlikely event that a donor discovered the identity of the family he or she had donated to, this would not automatically create a platform for a court application to seek rights of contact.

The case could, however, have an impact for parents conceiving with known donors (including relatives) where there may be a greater degree of ongoing contact between the donor and the child conceived. If the donor is known to the family and has the opportunity to build a connection, this could now create a platform for him or her making a court application. The case therefore offers a warning to anyone conceiving with a known donor: agreeing everyone's roles at the outset and thinking things through very carefully is critical. Parents should not rely on the fact that the law allows them to go on the birth certificate to protect them on its own. The family court has very flexible powers, and if the parents and their donor fall out, the court may well decide that protecting a child's existing connection with a known donor is more important than preserving the parents' legal autonomy. The answer is avoiding those kinds of disputes happening by going into any known donation arrangement with everyone's eyes wide open and matched expectations about the role the donor will play.