



# ARE YOU MY BABY?

By Liz Bottrill

Our new experts from Laytons Solicitors address the legal issues around starting a family.



**"The question of who, in law, is or are the parent(s) of the child born is, as a moment's reflection will make obvious, a question of the most fundamental gravity and importance. What, after all, to any child, to any parent, never mind to future generations and indeed to society at large, can be more important emotionally, psychologically, socially and legally than the answer to the question: Who is my parent? Is this my child?"**

Not my words, but the words of the most senior Judge in the Family Courts of England & Wales. But what prompted him to ask this question? Isn't it obvious who the parents of a child are?

The changing nature of social relationships and developments in medical science all combine to make the question of who is the legal parent of a child a legal minefield.

Take for example a surrogacy arrangement where the surrogate is using donor eggs. There is a genetic mother (the egg donor), a gestational mother (the surrogate) and the social/psychological mother (the female intended

parent). Who will be the legal mother when the child is born? In the same scenario, where donor sperm is used, who is the father? The genetic father will be the sperm donor; the social psychological father will be the intended father. There is no gestational father, but what if the surrogate is married, or in a civil partnership? Does her partner have any parental rights over the child when it is born?

What of an assisted reproduction scenario? Does the egg, sperm or embryo donor have any parental status when the child is born?

A moments reflection does indeed demonstrate the question "who are the parents" is far more complex than it might first look.

The law is beginning to grapple with these complicated questions to try and establish rules to create certainty for all involved. But certainty can only come at the cost of flexibility and inflexible rules create unexpected and unintended results.

For example, in a surrogacy arrangement, the law is established that the woman who gives birth is always the legal mother. If she is married, or in

a civil partnership, her partner is the father or legal second parent unless they did not consent to treatment. For that situation to be changed in law, and for the intended parents to become the child's legal parents, the Court has to make a parental order in favour of the intended parents. This can only be done 6 weeks after the child is born and only if one of the intended parents provided the egg or sperm used in the pregnancy. If this and several other conditions are not satisfied then the Court cannot make a parental order and other options will have to be considered, e.g. adoption.

In situations of assisted reproduction, the consent forms signed before treatment begins, seek to confer parental status on those whom it is intended will be the child's parents at birth. However, there are a myriad of consent forms needed to cover the ever-increasing range of possibilities depending on the particular family circumstances. Completing the right consent forms at the right time becomes more difficult bringing with it the possibility of unintended consequences as regards legal parentage at the time of the birth.

The law is different still for couples who embark upon their quest for a family through a private arrangement outside a clinic environment, or if there is an international dimension. Often when treatment begins, mistakes have already been made which create difficulties further down the road. The last thing any couple want at the end of their long journey to becoming a family is to find that they are holding a baby for whom they are not the legal parents. They must then face complex legal proceedings to try and rectify a position that could have been avoided if the right steps had been taken prior to commencing treatment.

Liz Bottrill is a Partner in the Family Law Team at Laytons Solicitors with over 25 years' experience in the field. She has a particular interest and expertise in the law relating to children and fertility. For more information visit Layton's website [laytons.com](http://laytons.com)