



# All I want for Christmas is... a baby

Having a baby and building a family can be a wonderful stage in life

However, for some, having a family is far from straightforward. For those needing some assistance to conceive, the advances in fertility treatment offer a world of hope.

Fertility treatment can be draining, both emotionally and financially. Those embarking on fertility treatment often come to a clinic having tried to conceive for a long time or without any other option.

For many, preparing for fertility treatment is a thorough process.

Many embark on weight loss/gain programmes, take vitamin supplements, practice yoga and relaxation and look to therapies such as acupuncture, reflexology, aromatherapy and so on. All in a bid to get in tip top shape, ready to conceive and carry a baby to term.

However, the legal implications of fertility treatment are often forgotten.

It is particularly important to understand the legal implications in circumstances where donors are used to conceive a child or there is a surrogacy arrangement.

## DONOR CONCEPTION

Where a sperm donor is used, it is important to recognise that donors in this country are not truly "anonymous". They may be in other parts of the world and it is for this reason that some use donor sperm from other countries or travel abroad for treatment. The implications of which should also be explored in advance of treatment.

Once any donor conceived child is 16 years of age, they are able to request non identifying information about their donor.

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Once they are 18 years of age, they can request identifying information.

If treatment takes place at a licensed clinic, the donor will not be legally responsible for the child. He will not have financial responsibility for the child and will not be named on the both certificate.

If treatment takes place outside of a licensed clinic ie home insemination, there are a number of considerations:-

1. Is the donor sperm safe?
2. It is possible that the donor will be the legal father - is that the intention? As a result, the donor could have financial responsibilities towards the child.
3. Who is to have parental responsibility for the child? That is have a say in the significant decisions that affect the child's life such as religious upbringing, schooling etc.

Parental responsibility can depend on a number of factors such as:-

- Whether the child was conceived via artificial insemination or sexual intercourse.
- Who is named on the birth certificate.
- Whether the donor is to have an ongoing role in the child's life.
- What the relationship status is of the adults involved.

If a known donor is used ie a friend. Careful consideration as to that person's role should be

considered. It is possible to record intentions in a preconception agreement so all adults concerned, know where they stand in terms of duties, responsibilities and any ongoing relationship with the child.

## SURROGACY

Surrogacy arrangements are becoming increasingly common. Exploring the legal implications before treatment is essential.

There are different types of surrogacy. Gestational (where the surrogate's eggs are not used and the child is conceived via IVF) and traditional (where the surrogate is also an egg donor and the baby may be conceived via IUI).

The surrogate will always be the legal mother, even if she is not biologically linked to the child. Who is the legal father or second parent depends on the circumstances. If the surrogate is married or in a civil partnership her consenting spouse or civil partner will be the child's second parent. If the surrogate is not married or in a civil partnership and no legal parenthood forms are signed the biological father will be the legal father. Alternatively, the intended mother or non biological father may be nominated to be the second parent.

Legal parenthood will need to be changed so it is passed to the intended parents once the baby is born by applying for a Parental Order. There are specific criteria that need to be met for such an



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Order to be granted. It is important to take advice as to those criteria to ensure they have been satisfied and if they have not, whether the court may still consider making an Order.

The Law Commissions are reviewing surrogacy law. It is important therefore, before embarking on a surrogacy arrangement that specialist legal advice is obtained to ensure the information on which a decision is based is current.

It is vital, regardless of how a baby is conceived, that the full legal implications are considered before treatment starts. Hopefully the parents can then focus on enjoying their new arrival knowing that the legal aspects have been fully understood and acted upon. ♦

If you require information about the legal implications of fertility treatment and surrogacy, contact Rachel Lemon, the head of Munday's Modern Family Sector. Rachel can be contacted on

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