



The Honourable Maria Caulfield MP
Parliamentary Under Secretary of State (Minister for Patient Safety and Primary Care)
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EW

20th October 2021

Dear Minister

The UK has been permitting women in same sex relationships to have a family using assisted reproduction for many years. Parliament recognised the need for a more inclusive policy and regulatory framework for these women by removing the phrase ‘the need for a father’ when it updated the Human Fertilisation and Embryology (HFE) Act in 2008.

Some same-sex female couples wish to share motherhood and use assisted reproduction so that one partner gives her eggs to the other, who has an embryo (which is created using donor sperm) transferred and carries the resulting pregnancy. This is variously called ‘intra-partner IVF’, ‘reciprocal IVF’, ‘reciprocal motherhood’ or ‘shared motherhood’ (the latter being the term we consider best reflects the intentions of the parties).

A woman in a same-sex relationship may give her eggs for the treatment of her female partner without the need to be registered as a donor. The Human Fertilisation and Embryology Authority (HFEA) reflects this in its consent forms.

The Problem

In August 2021, the HFEA advised clinics that, in same-sex female couples, the partner whose eggs are intended to be used for the treatment of their partner should be screened as a donor, rather than as a partner. This additional and unnecessary screening adds a significant additional cost to their treatment which heterosexual couples do not have to pay. This contradicts HFEA consent forms which as outlined above do not require the partner to be registered as a donor.

The legal requirement for same-sex partners to be screened as donors is based on Paragraph 7 of Schedule 3A of the Human Fertilisation and Embryology Act 1990:

“In relation to donations of gametes or embryos other than partner-donated sperm or partner-created embryos, licence conditions shall require compliance with the selection criteria for donors and the requirements for laboratory tests laid down in section 3 (donations other than by partners) of Annex III to the second Directive”.

BFS Secretariat

Profile Productions Ltd

Boston House, 69-75 Boston Manor Road, Brentford, TW8 9JJ

t: +44 (0)20 3725 5849 f: +44 (0) 844 507 0578 e: bfs@profileproductions.co.uk

The problem arises with the definition of what constitutes ‘a partner’ in the context of embryos. Specifically, we consider that the issue lies in how the provisions of the Second European Tissues and Cells Directive were transposed into UK law in 2007: ‘*partner-created embryos*’ are defined in paragraph 12 of Schedule 3A of the HFE Act 1990 as ‘*embryos created using the **gametes of a man and a woman** who declare that they have an intimate physical relationship*’.

There is no comparable provision for two women who share an ‘*intimate physical relationship*’. As a result of this law two women who are in a relationship are not considered partners for the purpose of embryo creation, and therefore are required to be screened as donors if one woman carries an embryo created with an egg of the other.

The British Fertility Society (BFS) believes that this is contrary to UK discrimination legislation. In particular, it is a breach of the Equality Act 2010, which amongst other matters, enshrines the right of gay people to not face additional burdens (including in the provision of goods and services) and to be granted equal and fair access to healthcare treatment. It also contradicts the Marriage (Same Sex Couples) Act 2013 and the policy behind it which affords parity and equal treatment of heterosexual and homosexual married couples.

It is unfortunate that the EU provisions led to such a restrictive interpretation of the definition of ‘partner-created embryos’, and that the transposition of this provision into UK law, and consequently into medical practice, occurred without due consideration. This has resulted in an outdated and socially naïve law, which requires patients to undergo tests and procedures which are socially unacceptable and not clinically appropriate. The law should be changed as a matter of urgency.

The BFS believes that it is only a matter of time before a same-sex female couple brings a legal challenge under equalities legislation.

The BFS is aware that the HFEA shares this opinion and that their concerns have been made known to the Department of Health and Social Care.

Temporary solution

The HFEA has already proposed some mitigation for this unsatisfactory situation, however this applies only to patients who had already started treatment on the date of the notification. In such cases, the HFEA states that a risk assessment can be undertaken to assess whether there is a minimal risk to the patients in the egg provider being screened as a partner and not as a donor, and whether the clinics consider it appropriate to continue with treatment without additional tests. The HFEA will not take regulatory action against clinics in such circumstances but expects the risk assessment to be kept in patients’ notes.

The BFS proposes that further consideration should be given by Government as to how the effect of the enforcement of this discriminatory legislation upon patients can be mitigated.

This may include extending risk-assessment-based decision-making to *all* female same-sex couples, and not just those who were already in treatment at an arbitrary time. If a risk assessment concludes that there is minimal risk in the egg provider being screened as a partner and not as a donor, the clinic may consider it appropriate to continue treatment without additional tests and with the informed consent of the patients. Clinics should be allowed to carry out such assessments and act on them without fear of regulatory action.

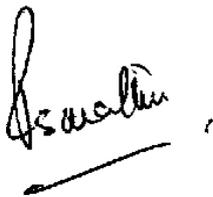
We believe that this would be a proportionate interim response to mitigate the effects of an outdated and discriminatory situation, until an amendment is made to Schedule 3A by Parliament.

The status quo is unacceptable for same sex female couples who are being discriminated against in the way they must now be treated by clinics. These women now need to pay for screening tests which we as fertility care professionals believe do little to mitigate any risks and simply and unnecessarily add to the cost of their treatment.

About the British Fertility Society

The British Fertility Society is a multi-disciplinary professional society that encompasses all aspects of the science and practice of reproductive medicine. The BFS actively promotes the sharing of knowledge, professional development and raising standards of practice. It supports high quality scientific and clinical research in the causes and treatment of infertility and provides professional leadership in the provision and regulation of fertility services. The BFS actively supports fairness in NHS funding of fertility treatment, and equity of access to fertility treatments.

Yours sincerely



Raj Mathur

Chair of the British Fertility Society

Cc Mr Peter Thompson, Chief Executive, Human Fertilisation and Embryology Authority