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Gay Male Couples: Raising & Adopting a Family

To raise a family is something everyone should have the option to do, but this is not always straight forward. For gay couples, laws and regulations regarding this area are very important and can make or break that wish to build a family with their partner. While lesbian partners now have new recognition of parental rights under the Human Fertilisation and Embryology Act 2008 (See our article on the same), this article focuses on how gay male couples follow the route of adoption.

Due to high profile cases, such as Madonna and Angelina Jolie, running into difficulties in adopting children, adoption has been an issue at the forefront of the public eye for some time. By way of background, since 2005, a gay couple are able to apply jointly for adoption of a child and (while the Catholic Church took issue and lost about this) since the end of 2008 due to the Equality Act 2006, no adoption agency can reject the application on grounds of sexuality, therefore placing the homosexual couple in the same position as heterosexual couples.

The standard process through an adoption agency can be gruelling. Should they not meet any specific criteria then they will either have to adapt their lives to accommodate this or withdraw from the process. While there still remains a high demand for people to adopt, the need to protect the child's welfare, with the new family is still paramount, even if this results in a slowing down the process, which usually takes in excess of a year.

An alternative is for gay couples to seek a surrogate mother and apply for an adoption order after birth. While the task of finding a surrogate mother is not always easy, the process of adoption if all parties consent is much easier than the standard adoption process, but of course the pitfalls are greater if problems arise. The Children and Adoption Act 2005 that applies governs:

- An application for an adoption order can only be made after the child has lived with the proposed adopters for a 10 week period with no incident;
- All parties with parental responsibility must give their consent to the adoption;
- Advance consent of the mother may be given before birth provided it complies with the prescribed rules;
- The consent of the mother must not be given in the 6 week period immediately after birth;
- The consent of the parents permits the agency to follow this line with greater ease; and,
- If the biological father of the child is one of the persons in the adopting gay couple then this also makes the process easier.

Once the adoption order is made, the parental responsibility is removed from the mother entirely and new responsibility is given to the gay adopting gay couple. The mother will not be able to make decisions over the child or be liable for child maintenance.

Many legal care proceeding trials have been fought and lost over the issue of removing the mother's parental responsibility without her consent and is not something lightly entered into by the father. Ultimately, in these circumstances not only will the gay couple not be able to have sole parental responsibility for the child but only share it through exerting the biological father's rights. The father may also be liable for child maintenance.

Andrew Spearman - LGBT Client Manager

Andrew is your first point of contact with our firm should you wish to ask anything or engage our services. He has a great deal of experience in client care and can establish quickly how we can be of assistance to you. As a further role he ensures that throughout your interaction with us, the firm's ethos of friendly, straight forward, legal advice that you can understand is provided and he is always available to offer assistance if your solicitor is engaged.



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