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COMMENTARY

Can the UK's birth registration system better serve the interests of those born following collaborative assisted reproduction?

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Abstract Current birth registration systems fail to serve adequately the interests of those born as a result of gamete and embryo donation and surrogacy. In the UK, changes to the birth registration system have been piecemeal, reactive and situation-specific and no information is recorded about gamete donors. Birth registration has thereby become a statement of legal parentage and citizenship only, without debate as to whether it should serve any wider functions. This sits uneasily with the increasingly accepted human right to know one's genetic and gestational as well as legal parents, and the duty of the State to facilitate that right. This commentary sets out one possible model for reform to better ensure that those affected become aware of, and/or have access to, knowledge about their origins and that such information is stored and released effectively without compromising individual privacy. Among other features, our proposal links the birth registration system and the information stored in the Human Fertilization and Embryology Authority's Register of Information, although further work than we have been able to undertake here is necessary to ensure a better fit where cross-border treatment services or informal arrangements have been involved. The time for debate and reform is well overdue.

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The advent and increasing prevalence of gamete and embryo donation and surrogacy – or collaborative assisted reproduction – call into question the ability of the UK's birth registration system to serve adequately the interests of those born as a result of such procedures. Although time has witnessed both policy shifts and legislative reform, these have been piecemeal, reactive and situation-specific. Wider debate about the purpose and significance of birth registration has been lacking, as in the White Paper *Joint Birth Registration: Recording Responsibility* (Department for Work and Pensions, 2008) which was driven primarily by policy intentions to engage more unmarried genetic fathers

in financial and other support for their children (for a useful summary see Clapton, 2014). In this commentary, we argue that systematic reform is now both necessary and achievable.

The UK's birth registration system retains much of its original mid-nineteenth century characteristics but has shown itself capable of adaptation, for example to take account of adoption, surrogacy arrangements, civil partnerships and re-registration for transgender individuals. It also enables paternity details to be altered, added or removed following the original registration (Bainham, 2008) including for donor-conceived individuals in limited circumstances (Crawshaw and Wallbank, 2014), and allows the posthumous

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naming of an intended parent ([Human Fertilisation and Embryology Act, 2008](#)). In the process, birth registration has become a record of citizenship and legal parentage alone, obscuring additional functions as a source of information about one's progenitors through recording biological facts ([Bainham, 2008](#)) and as a public health record ([Brumberg et al., 2012](#)). While earlier records were not a guarantee that the named father was also the genetic parent, the law assumed this to be the case. Thus, it was a criminal offence for a husband to be registered as father if the registrant knew him not to be the genetic father, including where donor insemination had been used. When this offence was removed in the case of donor insemination in the 1987 Family Law Reform Act there was, again, no discussion about the implications of removing the record of assumed biological facts.

For individuals conceived following donor-assisted reproduction, the birth registration system fails to record details of their genetic parents where one or both of these is a gamete donor or where multi-parenting arrangements prevail, for example where two female parents and a genetic father share child-rearing responsibilities. In our view this sits uneasily, first with increasingly accepted views that individuals should have the right to know their parents (United Nations Convention on the Rights of the Child; European Convention on Human Rights). Although neither Convention is explicit in who should be defined as a parent, the UN Committee on the Rights of the Child has frequently expressed a view that this should include gamete donors ([Blyth and Farrand, 2004](#)) while, in the *UNICEF Implementation Handbook for the Convention on the Rights of the Child*, [Hodgkin and Newell \(2007\)](#) argue that this should include:

genetic parents (for medical reasons alone this knowledge is of increasing importance to the child) and birth parents, that is the mother who gave birth and the father who claimed paternity through partnership with the mother at the time of birth (or whatever the social definition of father is within the culture).

([Hodgkin and Newell, 2007: 105](#))

Whilst acknowledging that terminology in collaborative assisted reproduction is complex and contested in its everyday use within and by the families and individuals affected, the principle for these purposes is therefore that 'parents' should include:

- those with a linear genetic relationship to the child (i.e. the genetic 'parents' who may variously be the surrogate, the intending/commissioning 'parents' in a surrogacy arrangement, or an embryo or gamete donor);
- those who carried the pregnancy and gave birth even if they are not raising the child (i.e. the birth/gestational 'parent');
- those raising the child or who are otherwise the child's legal 'parents'.

[Hodgkin and Newell \(2007\)](#) state further that in relation to Article 8 of the UN Convention ('right to identity'):

The concept of 'children's identity' has tended to focus on the child's immediate family, but it is increasingly recognized that children have a remarkable capacity to embrace multiple relationships. From the secure foundation of an established

family environment, children can enjoy complex and subtle relationships with other adults and with a range of cultures, to a much larger degree than may be recognized. Thus children's best interests and senses of identity may be sustained without having to deny them knowledge of their origins, for example after reception into state care, through 'secret' adoptions or anonymous egg/sperm donations and so forth.

([Hodgkin and Newell, 2007: 142](#)).

This is supported by research suggesting that for some donor-conceived individuals, their best interests and sense of identity may even be enhanced rather than threatened by having information about the donor, with or without any ongoing relationship ([Blyth et al., 2012](#)). Further, given that all these 'parents' are potentially significant to offspring throughout their lifetime – variously for medical reasons, to better understand their social, cultural and biographical heritage, to satisfy their curiosity, to complete their identity and so on—they arguably have the right to know them all ([Blyth et al., 2009](#)).

Our second concern regarding the UK's system lies in its incongruity with recent UK practice, policy and legislative developments. These promote the rights of individuals to discover information about genetic parents and others genetically related through gamete or embryo donation (including through surrogacy) via the Human Fertilisation and Embryology Authority (HFEA) registers and the government-funded DNA-based voluntary pre-1991 Donor Conceived Register. The UK's current birth registration system increases the likelihood that some of those individuals eligible to exercise these rights may never learn of their entitlement through the failure to allow it to be part of the machinery for meeting what we argue to be the State's human rights obligations to record and provide full parentage information.

The possibility of reforming birth registration is far from a novel concept. Almost a decade ago, a joint Committee of the House of Lords and House of Commons:

... recognize[d] the force of the argument that the fact of donor conception should be registered on a person's birth certificate. This would create the incentive for the parent(s) to tell the child of the fact of his or her donor conception and would go some way to address the value of knowledge of genetic history for medical purposes. Moreover, unlike where children are born through natural conception, assisted conception by its nature involves the authorities and we are deeply concerned about the idea that the authorities may be colluding in a deception. However, we also recognize that this is a complicated area involving the important issue of privacy, as well as issues of human rights and data protection. We therefore recommend that, as a matter of urgency, the Government should give this matter further consideration

([House of Lords and House of Commons Committee on the Human Tissue and Embryos \[Draft\] Bill, 2007: 276](#)).

Although the Committee's sense of urgency has never been reflected in the policies promoted by the three subsequent administrations (Labour 2007–2010; Coalition 2010–2015; Conservative 2015–present), other jurisdictions, such as Argentina, British Columbia (Canada), New Zealand, the Republic of Ireland and Victoria (Australia), have done so.

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