Status and anomaly: Re D (contact and parental responsibility: lesbian mothers and known father) [2006] EWHC 2 (Fam), [2006] 1 FCR 556

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parental responsibility – parental status - same-sex parenting – donor father – legal terminology – sexual family – care/dependency

Introduction

> Parental responsibility to a third, outside the family individual, in any situation, potentially undermines the completeness of the nuclear family unit. It is a signal of anomaly.
>
> (Dr Claire Sturge quoted by Black J in *Re D*, para. 61)

This case comment seeks to examine the family form rhetoric in the High Court case of *Re D (contact and parental responsibility: Lesbian mothers and known father)* [2006] EWHC 2 (Fam), [2006] 1 FCR 556. Specifically, the comment seeks to relate the concept of the two-parent 'sexual family' (Fineman, 1995, pp.143-176), as the means of legitimising and organising familial relations, to the decision in *Re D.* In *Re D*, the High Court granted a restricted form of parental responsibility to the applicant and child's biological father, Mr B. The respondents, Ms A and Ms C—a lesbian couple who are D's co-mothers and primary carers—objected to the application. By awarding Mr B a contingent form of parental responsibility, Judge Black felt that he

was taking a 'creative' approach to parental responsibility that would accommodate Mr B's need to be recognised as D's father, as well as reflecting the 'paramount position of the family comprising the two mothers and the [child]' (para. 93). *Re D* is a notable case for several reasons. Firstly, it directly situates parental responsibility in the context of parental status and recognition, as opposed to its more traditional presentation as a practical tool for parent*ing*. The 'creative' use of parental responsibility in *Re D* further reflects the current inadequacy of legal terminology in a society where parenthood increasingly occurs outside the confines of the traditional nuclear family. This has contributed to the growing significance of obtaining an award of parental responsibility in the absence of any alternative recognition or grant of status that may better suit a particular parenting role. Secondly, while arguably affording further and welcomed legal recognition to same-sex parenting and families, the judgment in *Re D* emphasises the limited form of this increased recognition and its dependence on a sexually intimate *couple* as opposed to care and/or dependency relations. Thirdly, in positioning Mr B as a potential threat to the security of the primary family unit, we see a shift in legal attitude towards fatherhood, which has traditionally been constructed as fomenting family security. This shift however is perhaps of limited applicability, materialising only when the child is already located within a sexual family unit. In *Re* D, we also see a legal deference to the significance and recognition of genetic fatherhood, begging the question, to what extent have dominant notions of fatherhood really changed?

Background and Legal Issue

The history of *Re D* is that Ms A and Ms C decided they would like to raise a child together. Wanting the child to have a father figure, they advertised for a man who would be interested in (physically) fathering a child with them. Mr B came forward and in 2000, D was born after sexual intercourse took place between Ms A and Mr B. It is unclear from the case how the parties reached their decision to pursue the arrangement, or to what extent they explicitly discussed how parental status and roles would be manifest. However, no formal agreement was made and when D was born conflict soon arose when it became clear that there was disparity in relation to the envisioned extent of Mr B's direct involvement with D. Mr B expected to have much more of a parenting role than Ms A and Ms C intended. Although seeking to encourage a direct father-child relationship between Mr B and D, Ms A and Ms C wanted this to be through 'relatively infrequent visits and benign and loving interest' as opposed to 'something of the role of the absent parent after divorce' (per Black J at para. 5).

The parties first came to court in 2001 when Mr B applied for contact with D and a parental responsibility order under the Children Act 1989. At this time, there was a considerable amount of mistrust and resentment between the two parties. This was attributable to not only their disparate visions, but also Mr B's excessive and often inappropriate reactions to the conflict, such as incessant phone calls, frequent accusatory postcards and claims that he would oust Ms C (D's non-biological mother) when he obtained parental responsibility for D. The presiding judge, Black J, indicated that he would not be prepared to award Mr B parental responsibility at this stage. Mr B's application for parental responsibility was therefore adjourned. However, Black J did make provision for limited monthly contact between Mr B and D. While Mr B's behaviour since D's birth had not been helpful, Black J was

encouraged by his more recent efforts to regain control of his emotions, such as by attending counselling. Black J felt that although it was important that any decision he made regarding contact should reflect and foster the security of D's primary family unit with Ms A and Ms C (para. 9), Mr B was still an important figure in D's life and that it would be in D's best interests to have contact with him (para. 10). By the time *Re D* reached the court again in 2006, the issue of contact between Mr B and D—which had been increased over time by agreement between the parties—had been reasonably settled. The legal issue now in polarised dispute was whether Mr B should be granted parental responsibility, alongside Ms A and Ms C. Given D's current living arrangements and Ms A and Ms C's opposition to Mr B having parental responsibility, applying for a parental responsibility order from the court under section 4(1)(c) of the Children Act 1989 was the most appropriate course of action for Mr B. Whether or not to award him the order was the legal issue in *Re D*.

Considering Parental Responsibility

Obtaining Parental Responsibility

It is worth here considering how particular adults obtain parental responsibility, to help stress the significance of the concept of the sexual family in the legal regulation of families. While the legislative framework is somewhat flexible (see sections 2(5)-(7) and 3(5), Children Act 1989)—and certainly more so than that of parentage—it still reflects an ideological preference for the (biological and/or legal) sexual family by making it more straightforward for those who are within its boundaries to obtain parental responsibility. To demonstrate, women who give birth are automatically

granted parental responsibility (section (2)(1) and 2(2)(a), Children Act 1989), as are married fathers (section 2(1), Children Act 1989). As D's full biological mother, this is how Ms A obtained parental responsibility. Biological fathers, who like Mr B were not married to the child's legal mother at the time of birth, can directly apply for parental responsibility and have been able to do so since the Children Act 1989 came into force. They can either make a formal agreement with the child's mother (section 4(1)(b), Children Act 1989), or apply for a parental responsibility order or a residence order from the court (sections 4(1)(c) and 12(1), Children Act 1989). While much attention has been given to the difference between how married and unmarried fathers obtain parental responsibility (see Sheldon 2001), it is important to recognise that *only* biological fathers—as opposed to social parents and carers— have been able to apply directly for parental responsibility since the enactment of the Children Act 1989. In addition, since 1 December 2003, if an unmarried biological father jointly registers the child's birth with the mother, he will automatically be granted parental responsibility upon registration (section 4(1)(a), Children Act 1989).[1] Therefore, while the Children Act 1989 may have entrenched the 'naturalness' of the marital family unit, the biological imperatives of the sexual family unit have also been afforded special recognition. Similarly, under recent legislative reforms, step-parents and civil partners are now entitled to apply directly for parental responsibility under the newly inserted sections 4A and 4A(1) of the Children Act 1989. Clearly these new reforms give welcomed legal recognition to non-biological parents who undertake a parenting role with respect to a partner's 'natural' child—but *only* if they have a legally valid partnership with that person.

[1] This legislative reform was not retrospective. Therefore, even if Mr B was named as D's father on her birth certificate (which is not discussed in the case), he still has to take formal action in order to obtain parental responsibility.

Non-biological parents, who like Ms C do not have a legally recognised relationship with a child's natural parent, have tended to rely on residence orders to obtain parental responsibility (see *Re G (Children)* [2005] EWCA (Civ) 462). In *Re D*, Ms A and Ms C were awarded a joint residence order (section 12(2), Children Act 1989) at the conclusion of the 2001 hearing. Although section 114 of the Adoption and Children Act 2002 amends section 12 of the Children Act 1989 to enable the court to direct that a residence order made in favour of any person who is not a (biological) parent to continue in force until the child reaches 18, how this will affect *joint* residence orders is not yet clear. Therefore, it may well be that unlike Ms A's permanent award of parental responsibility, Ms C's current award of parental responsibility is dependent upon the joint residence order remaining in force. If Ms C were to become Ms A's civil partner, and apply directly for parental responsibility, her award would remain in force until otherwise directed by the court, as with the parental responsibility orders awarded to unmarried biological fathers. In other words, for a parental responsibility award not to be contingent on another award under the children Act 1989 being in place, the adult must be within the boundary of the sexual family unit, either through a biological connection, or by formalising their intimate relationship with a child's 'natural' parent.

The Concept of Parental Responsibility

Before we discuss the desirability of Mr B being granted the order, it is worth first considering the actual concept and purpose of having parental responsibility. Parental responsibility was introduced into statute by the Children Act 1989. Its introduction was intended to signal a shift in emphasis from parental power and rights, to parental care (see Lowe and Douglas, 2007, pp. 369-70). The relationship between parental

rights and responsibilities has been addressed in detail by various commentators since the Children Act 1989 came into force (see McCall Smith, 1990; Eekelaar, 1991, 1994; Bainham, 1994). What is important for the purposes of this comment is to appreciate that the introduction of parental responsibility was intended to foster the notion that,

> …the duty to care for the child and to raise him to moral, physical and emotional health is the fundamental task of parenthood and the only justification for the authority that it confers.
>
> (Department of Health, *Introduction to the Children Act 1989*, HMSO: 1989: para.1.4)

It would seem to follow then that the function of parental responsibility is to enable someone to act as a parent by legally conferring to them the ability to make decisions about a child's care and upbringing. In other words, vest someone with the legal authority to act as a social parent. However, as the very definition of parental responsibility suggests, parental rights and responsibilities remain intertwined terms (see further Bainham, 1999, pp.33-35; Lowe and Douglas, 2007, 377-408):

> … 'parental responsibility' means all the rights, duties, powers, responsibility and authority which by law a parent of a child has in relation to the child and his property.
>
> (Section 3(1) of the Children Act 1989)

Practically, we can easily see how rights and responsibilities may be acted on simultaneously, particularly in the context of a parent(s) seeking to exercise their care of the child without the interference from the state or another parent(s). However, as Lowe and Douglas note, the judiciary have further endorsed the idea that parental

responsibility confers not just rights as well as responsibilities, but also a type of *status* (2007, p.375). Black J made early reference to this in *Re D* by quoting Butler Sloss LJ in his elaboration of the concept from the Children Act 1989 definition:

> Parental responsibility is a question of status and is different in concept from the orders which may be made under s 8 in Pt II of the Children Act. The grant of the application declares the status of the applicant as the father of that child. It has the important implications for a father whose child might for example be the subject of an adoption application or a Hague Convention application. In each of those examples, a father with parental responsibility would have the right to be heard on the application.
>
> (Para. 20, quote from *Re H (a minor) (parental responsibility)* [1998] 2 FCR 89)

Whether or not we agree that parental responsibility should (or does) confer a type of status, what is clear is that the status is contingent upon being able to exercise certain 'rights'. *Re D* then is particularly noteworthy, given that Mr B was granted (at his own suggestion) an award of parental responsibility that prescribed how and when he could exercise his parental 'rights' in relation to D's education and medical treatment. These are two significant areas of a child's upbringing, and parental responsibility is needed if an adult is to be entitled to make related decisions or be consulted (see section 2(7), Children Act 1989). Having parental status through legal parentage does not create similar entitlements. We can therefore appreciate the significance of an award of parental responsibility for someone who wants their parental status to mean more (even if not day-to-day care) than having their name on a birth certificate, or having a certain status with respect to succession law. An award of parental responsibility is of even more significance when that person's parental role is in dispute, or where parental relationships are likely to break down (see para. 48).

However, under the award granted in *Re D*, Mr B could not visit or contact D's school without the prior written consent of Ms A or Ms C, nor contact any health professional involved in D's medical care without similar consent. Given that D's schooling and medical care were two of the main areas of conflict between the parties, we are left questioning the tangible effects of granting him this particular parental responsibility order. While his award evidently creates other 'rights' beyond the medical and education context (see Bainham, 1999, 33-35), most of these were not in dispute.[2] *Re D* therefore, is perhaps the first case to really locate parental responsibility in the context of pure status, given that his award was effectively 'stripped of practical effect' (per Black J, para. 21). This leaves us questioning whether or not Mr B should really have been granted the award given the fundamental nature of the pre-conditions, or why Black J did not instead regulate the award through a 'prohibited steps' or 'specific issue' order (section 8, Children Act 1989)?

The Decision: Awarding Parental Responsibility Orders

Traditionally, the decision whether or not to award a parental responsibility order has been based on a consideration of the unmarried biological father's 'commitment', 'attachment' and 'motivation' (see *Re H (minors) (rights of putative fathers) (No 2)* [1991] FCR 361; sub nom *Re H (minors) (local authority: parental rights)* [1991] 2 All ER 185), guided by whether or not the order is in the child's best interests (section 1, Children Act 1989). Perhaps because of the amorphous nature of the best interest principle, the courts have concentrated heavily on these three material considerations (per Black J, para. 25), and a parental responsibility order tends to be awarded where the biological father has some sort of 'positive relationship' with the child (see further

[2] Note that the ability to consent/object to an adoption was another significant 'right' considered by Black J (paras. 21 and 94). This issue shall be addressed in the discussion section.

Sheldon, 2001, p.103). Given the various precedents, the Child and Family Court Advisory Support Service (CAFCASS) officer recommended that this was a case where the biological father should be granted parental responsibility,

> Mr B clearly has a positive relationship with the child, he has demonstrated commitment and given the length of time of his involvement, he is not a threat to Ms A and Ms C's relationship.
>
> (para. 26)

However, Black J took the view that this was not a sophisticated enough analysis of the situation and the 'novel' issues it presented. Black J, instead ordered that expert evidence should be obtained, and a consultant child and adolescent psychiatrist, Dr Claire Sturge, was asked,

> …to consider the sociological and psychological impact (both in the short and long term) of granting the father parental responsibility (i) on the child (ii) on the primary family unit and (iii) on society's perception of the family.
>
> (para. 28)

While Black J acknowledged the increased legal recognition of same-sex families in his ruling (para. 30-32), he was receptive to the anxieties held by Ms A and Ms C about the extent to which society would recognise and accept their 'family', particularly the role of Ms C as D's (non-biological) co-mother (para. 33 and 64). Although there is not space in this short comment to discuss the psychiatrist's report in full, it is worth noting that in the absence of any conclusive research as to whether awarding Mr B parental responsibility would or would not be in D's best interests with respect to her development and identity formation (para. 70-74), Dr Sturge

instead focussed her report on whether awarding Mr B parental responsibility would affect the security and integrity of D's primary (sexual) family unit with Ms A and Ms C. Dr Struge did not make a specific recommendation, but did voice her opinion in evidence that 'the risks of Mr B having parental responsibility outweighed the benefits' (para. 84), and that Mr B's practical commitment to D would be unaffected by parental responsibility (para. 71). Black J provided in his judgement a string of quotes from Dr Sturge's report that reflect her concerns that awarding Mr B parental responsibility would cause tension with D's primary (sexual) family unit, and 'signal anomaly' to both D and society at large. These are worth quoting in full to help demonstrate how family form became the integral consideration of D's best interests in the case, rather than substantive parenting, which instead received nominal attention:

> The more her father is in evidence, the less clear D will be about what constitutes her family and how viable the unit within which she lives is.
>
> The more her father is around, the more likely that others will treat the "central" family as incomplete and seek to include the father e.g. in school decisions and medical treatment.
>
> A third parent (and I use the word advisedly) will be confusing for D. Her sense of security will be strongest if she is clear that responsibility for her lies within her "nuclear" family.
>
> (para. 81)

Despite these concerns however, Dr Sturge (like Black J) is sympathetic to Mr B's need to have an officially recognised role in D's life,

> What would solve this would be if the father could receive official recognition in some way but not be allowed to involve himself in the nitty gritty of D's life-the parenting couple having rights above his in this area as is, for example, seen in special guardianship.
>
> (para. 83)

Similarly, the CAFCASS officer (who thought it in D's best interests to award the order) saw the application as being more about meeting Mr B's emotional need to be recognised as D's parent, than affecting the current practicalities of his relationship and contact with D (para. 85). Indeed, he suggested that an award of parental responsibility might, in meeting his need to be recognised, encourage less day-to-day interference from Mr B. This again reflects the irony of the award in *Re D*—that Mr B should be granted an order that has traditionally been seen as a practical tool for parenting, to enable him to take a step back from D's daily care. While Black J may regard his decision as a 'creative' approach to parental responsibility, we do have to consider what kind of precedent he has created. To what extent has he shifted the boundaries and purpose of an award of parental responsibility? Alternatively, given the fine-balance of the award being, or not being in D's best interests, we also have to wonder why Black J thought it better to award an order 'stripped of practical effect' as opposed to deciding that a non-contingent award should be granted, or that the application should be denied?

Concluding Discussion

Considering Alternative Decisions

A useful way of analysing the decision in *Re D* may be to consider what the judge could have otherwise decided. As aforementioned, Black J could have either 1) granted the order without the preconditions, 2) granted the order without the preconditions, but have attached a section 8 order to it, or 3) denied the application. While the second option may effectively seem the same as the actual decision, there are subtle but important differences. Granting a contingent order inherently changes the boundaries of the award, and as Black J said in his conclusion, 'reflect[s] the fundamental nature of these restrictions on Mr B's parental responsibility' (para. 91). If Mr B fails to meet the conditions, the whole question of whether or not he should have parental responsibility would likely have to be reconsidered by the court. Similarly, should circumstances change with respect to D's education and medical treatment, an entirely new order not premised on the original contingencies would have to be applied for. Alternatively, regulating the award with a section 8 order indicates that as a father with a 'positive relationship' with his biological child, Mr B is entitled to the 'rights' emerging from parental responsibility, but that particular circumstances—in this case, his past behaviour and his relationship with D's primary carers—have resulted in the court ordered restrictions being necessary to ensure D's best interests. If circumstances were to change, the restrictions could then be amended or removed. Such a decision may have better reflected the legal precedents relating to parental responsibility orders and have encouraged the case to be more about D's welfare than the needs of the adults involved and family form. A consideration of why granting the order without any regulation, or denying the order, may not have been viable alternatives, will elaborate such a claim.

Dismissing the Application and Legal Terminology

There are few cases whereby a parental responsibility order has been refused, indicative of the reality that few men without some sort of 'positive relationship' with their child apply for one (Sheldon, 2001, p.103). Although Mr B has been referred to occasionally as a '(known) sperm donor' (para. 53), this hardly adequately reflects the situation now. Under current precedents then—as referred to by the CAFCASS officer—we can appreciate why Black J did not simply dismiss the application when *Re D* reached the courts again in 2006. Furthermore, we should perhaps not underestimate the reality that unlike most resident parents, parental responsibility is often sought by a non-resident parent not to enable that adult to undertake the day-to-day care of the child, but to give them certain entitlements that legal parentage does not currently convey. While *Re D* focussed particularly on schooling and medical care in this context, another pertinent entitlement referred to, was the fact that if Mr B did not have parental responsibility, his consent to an adoption application would not have to be obtained (para. 94). While the Adoption and Children Act 2002 allows a same-sex partner to adopt a partner's biological child without severing the partner's parentage (section 51(2)), the parentage of the child's other biological parent (if known) will be disengaged. Therefore, if Ms C applied to adopt D in the future, and Mr B did not have parental responsibility, he would legally not have to be notified, nor his consent obtained. Black J felt that this would have been inappropriate given the level of commitment that Mr B had shown to D (para. 94), the lack of formal agreement before D was born compounding the need for a sensitive consideration of these issues.

The difficulties surrounding the adoption issue similarly reflect the inadequacy of legal concepts and terminology in the context of parenthood and increasingly disparate families. These shortcomings were acknowledged in *Re D* by both Black J

and Dr. Sturge (see paras. 22, 33-34, 57). However, the end decision in the case fails to substantially reflect these concerns and instead indicates that an award of parental responsibility should be tailored to meet 'novel' parenting situations, whether or not this award offends the originally intended purpose of parental *responsibility*. While reforms such as section 51(2) of the Adoption and Children Act 2002 and proposed amendments to the parentage provisions in the Human Fertilisation and Embryology Act 1990 (see Department of Health, 2006, para. 2.69) are clearly important and welcome, they merely scratch the surface of a much-needed review of legal categories related to parenthood and families. For instance, legal parentage could be reconsidered in a much more substantial way than permitting two people of the same sex to hold the status. Recently, Ontario's Court of Appeal allowed a child to have three legally recognised parents in the context of a similar situation to *Re D* (A.A. v B.B., 2007 ONCA 2). A reform such as this would have removed the precarious need for Ms C to have to adopt D in the first place, and have kept this aspect of parental recognition a *parentage* as opposed to a *parental responsibility* issue. Similarly, rethinking both what parentage is grounded on and what it is to mean in practical terms could be a useful endeavour, encouraging the legal terminology in this area to better reflect empirical reality and stop cases like *Re D* becoming so 'zero-sum'.

Awarding a Non-Contingent Award and the Sexual Family

What then of Black J's decision not to award a non-contingent parental responsibility order? Ultimately, this reflects the extent to which the concept of the sexual family orders legal considerations of familial relations. Black J distinguished *Re D* from the previous case-law, which dealt mainly with granting parental responsibility in the context of the child being raised solely by its mother, as opposed to a pre-formed

sexual family. Granting parental responsibility to Mr B then would effectively acknowledge the existence of the 'anomalous' parent-number-three. While not wishing to deride the fears Ms A and Ms C had regarding the difficulties they will face in gaining acceptance of their family unit, the discussion in the case does stand testament to the assumption that a child should have two parents. In other words, that Black J felt the need to so distinguish the case, as opposed to presenting his concerns in the context of D's best interests because of, say the tense relationships between the parties, reveals the underlying significance of the sexual family concept; that numbers rather than substantive parent*ing* is what is seen to promote the best interests of the child. Would Black J have been as reserved about awarding the parental responsibility order in 2006 had it been a single woman (heterosexual or lesbian) who had come to this arrangement with Mr B? If Mr B had behaved in the same fashion with a single mother, would this have been discussed in the context of threatening the security of the child's 'primary family unit', or would a non-fettered parental responsibility order have been assumed to be in the child's best interests, under the mantra of 'two-is-better-than-one'? Although these questions are clearly speculative, it is useful to think through them and to reflect on the fact that the 'security' of a similarly derided family unit—that of the single parent—would likely have received trifling attention. The worrisome numbers of contact orders being granted to a violent ex-partner of a resident parent perhaps indicative of this assertion (see Eriksson and Hester, 2001; Smart and Neale, 1999, chapter 8).

The Significance of Genetic Fatherhood

A final issue of significance is how *Re D* relates to dominant socio-legal notions of fatherhood. Firstly, it is interesting that Mr B should be posited as a potential threat to

familial security. This compares greatly to the socio-legal rhetoric that from the mid-1980s has traditionally constructed fathers as cementing family security. Various pieces of legislation have been enacted to reflect this idea by encouraging the designation of a 'father' to a family unit (see Child Support Act 1991; Human Fertilisation and Embryology Act sections 13(5) and 28; Human Fertilisation and Embryology (Deceased Fathers) Act 2003). Evidence of this supposition can still be seen in recent case law, such as Judge Hedley's ruling in *Re R (Contact: Human Fertilisation and Embryology Act)* [2001] 1 FLR 247 where he awarded parentage to a man (B) who had no biological connection to the child, and no relationship with the child's mother when she undertook the course of fertility treatment that resulted in the child's conception (overturned in *Re R (A Child)* [2003] EWCA Civ 182 and *In Re D (A Child Appearing by Her Guardian Ad Litem) (Respondent)* [2005] UKHL 33). The mother in this case, Ms D, had not told the fertility clinic doctor about the end of her relationship with B, and as Sheldon writes,

> Speculatively, it would appear that the granting of rights to Mr B might thus be seen as a way of imposing appropriate and responsible (male) control over her, the need for such control being further mandated by her mental and emotional fragility.
>
> (Sheldon, 2005, p.357)

Interestingly, Hedge J was not convinced of the permanency of Ms D's relationship with her new partner, Mr S. In other words, he was viewing Ms D and her child as being a single-parent family unit, as opposed to a sexual family unit. Therefore, in drawing attention to this possible shift in legal rhetoric on fatherhood, we must not loose sight of the fact that it may well be of a very limited nature, materialising only when the child is already located within a stable sexual family.

Secondly, the shift may also be limited in that it is coloured by a growing emphasis on biological (genetic) fatherhood. While it should ideally be the private prerogative of individuals to order their own familial affairs, it is interesting that Ms A and Ms C wanted the 'father figure' in D's life to be biologically related, particularly if they wanted the man to have more of an uncle-like as opposed to parental relationship. It may well have been that (non) access to formally regulated donor insemination under the Human Fertilisation and Embryology Act 1990, whereby sperm donors waive their parentage (section 28(6)), was the deciding practical factor (see Millns, 1995). However, that D's conception came about through sexual intercourse as opposed to self-insemination indicates that on some level, the biological connection was important for Ms A and Ms C, perhaps representing a level of permanency that a social 'father figure' might not? Given the legal acknowledgment of biological fatherhood, such a belief could certainly be understood. It also reflects the many interconnected, and sometimes contradictory notions that we have of parenthood, in the context of whether it is the biological, legal or social ties that matter. Furthermore, that Black J did not simply accept the expert evidence of Dr Sturge—in that the award would unduly put at risk the security of D's primary (sexual) family unit—indicates a similar legal attachment to biological fatherhood and the belief that it should be afforded legal recognition. While understanding Black J's concerns about the adoption issue and precedent, his award simultaneously represents a prioritising of Mr B's biological parentage over that of Ms C potential legal parentage. Again, as aforementioned, Black J was acting in the context of inadequate legal terminology. However, his end decision and references to D's 'mother and her mother's [partner]' (para. 9 and 10), as opposed to D's 'mothers',

does reveal an underlying bias towards biological parenthood and a somewhat reluctance to see a social parent as a 'real' parent.

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