

Family Law

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In Practice: Adoption for Gay and Lesbian Couples

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The practice of adoption in North America and Europe has changed dramatically over the past few decades. This has led to more diverse groups of individuals being approved for adoptive parenthood (D Brodzinsky, *Psychological Issues in Adoption, Research and Practice* (Oxford University Press, 2005)). As part of this shift there are an increasing amount of gay and lesbian couples in England and Wales who are putting themselves forward to adopt children. The increase has been facilitated by a change in the law in 2005, which allows same sex couples to adopt jointly. This article will examine current legal and social practices in the adoption system and evaluate the extent to which gay and lesbian couples still experience discrimination.

While researching this issue as a Visiting Scholar at the Centre for Family Research (University of Cambridge) I met many people who had been through the adoption system and had adopted or tried to adopt children. I also had discussions with representatives of organisations who are key players in this area, for example, the British Association Adoption and Fostering (BAAF), Lesbian and Gay Foundation (LGF), New Family Social and Stonewall. I spoke to them about the issues which they had encountered when advocating on behalf of homosexual couples as well as what these couples themselves saw as the problems that they had come across.

The law

The Adoption and Children Act 2002 marked a turning point for gay and lesbian couples wishing to adopt children in England and Wales. The legislation, which came into force in 2005, allows same sex couples to adopt children jointly for the first time. This was followed by a series of laws aimed at achieving equality for same sex couples. For example, under the Equality Act (Sexual Orientation) Regulations 2007, lesbian and gay couples cannot be discriminated against by adoption agencies. The Civil Partnership Act 2004, which came into effect in 2005, enabled same sex couples to obtain legal recognition of their relationship, in a way which reflected the same level of commitment as marriage does for heterosexual men and women.

In addition, there are also several regulations, guidelines and regulatory bodies which monitor fair practice within adoption agencies. Most of these have been set up to counter discrimination in the system as well as variations in performance in meeting the needs of children. The National Minimum Standards for England and Wales state:

'Plans for recruitment will specify that people who are interested in becoming adoptive parents will be welcomed without prejudice, will be given clear written information about the preparation, assessment and approval procedure and they will be treated fairly, openly and with respect throughout the adoption process.'

All this of course has been extremely useful in making our adoption system fairer. However, many of the potential adopters I interviewed maintained that the system and law had not changed sufficiently. Indeed, almost all the adopters I spoke to thought that the law had not been effective in eliminating discrimination by religious groups.

The question of whether religious organisations offering adoption services can discriminate against homosexual couples has been subject to much litigation this year. In *Catholic Care (Diocese of Leeds) v Charity Commission for England and Wales (Equality and Human Rights Commission Intervening)* [2010] EWHC 520, the High Court allowed an appeal from Catholic Care, a charity offering adoption services, against a decision of the Charity Tribunal. The Charity Tribunal had upheld a decision of the Charity Commission to refuse consent to a proposed change of objects of the charity. The aim of the proposed changes was to allow Catholic Care to limit its adoption services to individuals who are heterosexual.

The High Court held that Catholic Care was entitled to rely on reg 18 of the Equality Act (Sexual Orientation) Regulations 2007, which afforded to charities generally an exemption from the prohibition of discrimination on grounds of sexual orientation. Mr Justice Briggs stated that he proposed to direct the question of whether the appellant should be permitted to adopt the proposed objects to the Charity Commission to decide. His Lordship set out various principles for the Charity Commission to consider in making its decision. Any changes to the Charity's objects allowing it to discriminate had to have regard to the Art 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Accordingly such changes could not be justified unless they were proportionate and supported by 'particularly convincing and weighty reasons' (*EB v France* [2008] 47 EHRR 21, [2008] 1 FLR 850).

Following the High Court's decision, the Charity Commission recently ruled that Catholic Care may not restrict its adoption services to married heterosexual couples (Charity Commission for England and Wales, *Catholic Care (Diocese of Leeds)*, 21 July 2010). Catholic Care had argued that the financial assistance it received from the Roman Catholic Church and other Roman Catholic supporters would not be made if the charity provided its adoption services to persons who were not heterosexual. Catholic Care stated that it therefore had to be allowed to discriminate in order to continue providing its services. After a careful analysis of the legal position, the Charity Commission concluded:

'The Commission notes the unsatisfactory nature of some aspects of the adoption system. In particular, there is clearly difficulty for voluntary adoption agencies in providing the service they do without subsidising from their own sources of funding the work which is only partly funded by the local authority. However, the fact that some donors will not fund the work if the charity accepts same sex couples as prospective parents does not justify the proposed discrimination.'

The decision has resulted in anger and condemnation from religious groups who feel that it is wrong for homosexual couples to adopt children. However, despite the prejudices and difficulties that clearly still exist, research suggests that as a country we are actually becoming more tolerant of homosexuality. The most recent Social Attitudes Survey shows that only 36% of people thought that same-sex relationships between two adults were 'always or mostly' wrong. This figure is down from 62% in 1983 (<http://www.natcen.ac.uk/study/british-social-attitudes>). While older people may be less accepting than younger ones, the trends showed that groups of all ages had become more liberal in their outlook towards same-sex relationships.

Prejudices

Despite the protection of the law and changing attitudes, many social workers assume that the best place for children to be adopted is within a traditional family setup. Over half of the social workers I interviewed demonstrated a clear prejudice against gay couples adopting children. None of them were aware of the research done in relation to gay parenting by psychologists. It seems, then, that unfortunately the change in the law has not rooted out strong prejudices within the system. Rebecca Seal's article in *The Observer* (R Seal, 'The rise of the gay dad', 25 October 2009) analyses the experiences of several gay men who have adopted children in the last few years. Her findings seem to be that sometimes social workers can impose a hierarchy of adopters in which married heterosexual adopters with money are at the top and single gay men are at the bottom. The names of the people she refers to in her article have been changed to protect their identity. In the article, Paul, a 49-year-old gay man states that:

'There was a lot of prejudice in the adoption system, even though it's now allowed and the law states that you must treat everyone the same and with respect. There are still individuals who have difficulty getting over the fact that their values and mindset don't fit with what they have to do in their job. And now there's clearly prejudice when people realise the set up. There's what I call mummy prejudice -- the boys misbehave in public and one of us dads will berate the child, and you get a clear sense from groups of women out with their kids that once those boys get home their mum will sort it out.'

Unfortunately, Paul's experiences are not uncommon. Many of the homosexual couples attempting to adopt who I spoke to had experienced similar prejudices and sometimes much worse. Several gay couples stated that they had been asked questions about their sex life and the style of décor in their homes. On the face of it, such questions seem deeply inappropriate. Furthermore, many social workers I spoke to as part of my research stated that it would be much better for a child's development if that child was adopted by a heterosexual couple, since many children in care have difficult backgrounds. Indeed typical issues in many care proceedings in which the outcome is adoption include domestic violence, drug abuse, non-accidental injuries, sexual abuse and long-term neglect. Such a background will often mean that children awaiting adoption will need more than good enough parenting. However, there is no evidence to support the view that homosexual couples cannot deliver such high-quality parenting.

The research

The research in this area has tended to focus on the outcomes for children raised by gay and lesbian parents, but not necessarily on children who have been adopted. However, the questions related to whether homosexual couples make good parents remain the same. There have been many studies comparing the outcomes for children from same sex and heterosexual households. These studies have looked at many issues, including the risk of sexual abuse, the risk of bullying, the effect of adoption on school performance, as well as issues dealing with the mental health and emotional behaviour of children placed in adoption. These studies have focused on children of all ages. None of the studies has shown significant differences between the two groups of children. Tasker (2005), for example, found that children with lesbian and gay parents have similar psychological outcomes to children of heterosexual parents, and their experiences of family life are also similar. Golombok and Tasker (1996) also found that children brought up in a lesbian household had more open relationships with their mothers and were more secure than their counterparts in heterosexual families.

When I spoke to social workers who had concerns about gay and lesbian couples adopting, one of the issues that regularly came up was whether children adopted into such households lack male or female role models. However, the research shows that most children, regardless of family structure, will be surrounded by both male and female role models at school, in the community and among family and friends. Moreover, single parents make up 25% of households in the UK and so children of homosexual parents are not alone in having parents of one sex.

Conclusion

There is no doubt that research from psychology illustrates that children who have grown up with gay or lesbian parents are not likely to be at any disadvantage than those who have grown up with heterosexual parents. Although the law has changed to allow gay and lesbians to adopt, there is still a huge amount of prejudice which creeps in when social workers are interviewing potential adopters.

This prejudice often seems to be grounded in a lack of training and awareness about the research in this field. What is therefore needed is a more uniform system of training and education. Furthermore, many homosexual couples still don't know that they can now adopt children jointly. A new drive toward making such couples aware that this is a possibility is also essential if we are to achieve equality and fairness in the system. Homosexual adopters represent a useful resource and the pool of potential adoptive parents needs to be expanded to keep pace with the growing number of children who are waiting to be adopted. Although social attitudes toward homosexuality have slowly become more tolerant, there is to my mind a long way to go before fairness is achieved in matters such as adoption.