

GUIDANCE ON FINANCIAL IMPLICATIONS FOR THOSE WHO MAY WISH TO TRACE FAMILY MEMBERS THROUGH THE UK DONORLINK REGISTER

UK DonorLink has taken the advice of Brearleys Solicitors who in turn have been advised by specialist barristers, Cherie Booth QC and Professor Aileen McColgan (for UK law except Scotland) and Aidan O'Neill QC (Scots law) on legal issues which may affect those wishing to contact adults genetically related as a result of donor conception through the UK DonorLink Register.

This guidance is concerned with men who have donated their sperm and children born as a result of that donation and not women who have donated their eggs. This is because there is a legal presumption that the woman who is carrying or who has carried the child is its sole mother regardless of the source of the fertilised egg. The possibility of any contrary legal interpretation, and as a consequence there being rights and obligations arising out of the relationship between the biological child and its egg donor “mother”, is extremely unlikely. In the unlikely event of that legal interpretation being overturned then the same guidance relating to donor fathers would apply equally to donor “mothers”.

The Law as it applies to England, Wales and Northern Ireland (and which in this guidance shall be referred to as English Law) is different from the Law in Scotland (which in this guidance shall be referred to as Scots Law).

The UK DonorLink Register is for:

- Donor-conceived adults (born as a result of the use of donated sperm, eggs or embryos prior to August 1991) aged 18 and over.
- Donors of eggs, sperm and embryos who donated before August 1991.
- Genetically related half or full siblings aged 18 or over.

It follows that any child traced or who traces its biological father through the Register will be over 18. The chief legal concerns therefore are those relating to (1) any possible obligation of the biological father to provide financial support to his adult child and (2) any rights of inheritance of the adult child or the biological father against the estate of the other. This brief guidance therefore is concerned with those potential issues.

DUTY TO PROVIDE FINANCIAL SUPPORT

English Law

A biological father has a potential obligation to provide financial support to his adult biological child but only up to its 20th birthday and only then in limited circumstances. Applied to cases where the adult child is brought into contact with its biological father through the Register, the possibility of that biological father as a consequence having to provide financial support for the adult child would be exceptional. The adult child would have to be undergoing education or training. All the circumstances of the case (including importantly the fact that there had been no contact between biological father and child and no actual dependency up to that point)

would have to be considered and there would have to be special circumstances which would justify such support.

Scots Law

Under Scots Law a biological father has an obligation to provide financial support for his child even in a case where there has been no actual relationship between them, for example where they have been brought together via the UK DonorLink service or via some other means. That obligation normally ends on the child's 18th birthday but will continue thereafter but no later than the child's 25th birthday as long as the child is reasonably and appropriately undergoing further education or training.

Unlike English Law no account will be taken of the fact that there has been no relationship or dependency on its biological father during the child's life.

INHERITANCE

English Law

An adult child and its biological father (whether traced through the Register or otherwise) each have certain rights of inheritance against the other's estate in the case of death and where the deceased has not left a will. The extent of those rights is governed by the Intestacy Rules. It would be advisable therefore for any adult child who wishes to contact, or is contacted by, its biological father or for any biological father seeking to contact, or being contacted by, his biological child through the Register to seek legal advice with a view to making a will. The Intestacy Rules will not

apply where there is a properly drawn valid will setting out the individual's wishes as to the disposal of the whole of his or her estate.

The making of a will or the reviewing of an existing will should therefore prevent any unforeseen or involuntary inheritance consequences following any parties making contact through the Register.

There are, however, rights for certain persons to make a financial claim against the estate of a deceased person (whether or not the deceased person has made a will). Such claims are normally made by spouses, partners, children and others who were usually financially dependent on the deceased prior to his or her death. There are no reported cases featuring an adult child born as a result of donor conception medical procedures pursuing a successful financial claim against the estate of its biological father but in a typical case where there has been no relationship throughout the child's life it is considered that the risk of any such claim succeeding would be small. In a typical case a biological father similarly would be unlikely to succeed in any claim against his deceased adult child's estate since he would have to show there was a pre-existing relationship of dependence on the adult child.

Scots Law

The relevant law in Scotland is totally different from that in England and Wales. Any child under Scots law has an automatic right to share in its biological father's estate on death. This includes a child conceived as a

result of donor conception medical procedures where there is no connection with and no dependency on the biological father.

Unlike the situation in England and Wales, it is not possible to avoid the “traced child” inheriting by the making of a will. A will cannot override a child’s right to inherit its share of its biological father’s estate.

The law in Scotland, unlike England and Wales, takes no account of the fact there has been no relationship between the biological father and the child throughout the child’s life.

Under Scots law, on the death of a child where there is no will and where there are no surviving spouse or civil partner or surviving issue on death the child’s estate will be divided between its siblings and parents or where there are no siblings the parents will inherit the whole. Unlike a child’s automatic right to share in its biological father’s estate on death, which cannot be avoided by the father, it is possible for a child to prevent its biological father inheriting by the making of a will. The position here is similar to that under English Law. A child wishing to trace or who has traced its biological father through UK Donor Link or otherwise, should seek a legal advice with a view to making a will or reviewing an existing will to avoid any unforeseen or unintended inheritance consequences.

The law in relation to these issues is complex. This brief note can only be regarded as general guidance dealing with the typical situations of biological children and biological fathers seeking to make contact with each other through the Register. Each case will depend on its own facts. UK DonorLink and its advisers cannot accept any responsibility for any persons acting upon it. Those who are affected by or are concerned about the issues raised in this note or any other legal aspects should contact their own solicitor or can email confidentially janeleadbetter@brearleyssolicitors.com (English Law only)