

Joint Birth Registration: New Labour Pains

The Welfare Reform Bill outlines amendments to legislation relating to the joint registration of births by parents and with a view to promoting parental responsibility in both mothers and fathers but perhaps the most startling aspect of the proposals contained in the June 2008 White Paper 'Joint Birth Registration: Recording Responsibility', is the allocation of controversial responsibilities transferred to registrars, whose role until now, has been for the most part purely administrative.

It would seem then that the Bill aims to proffer justice on the cheap with all the usual rigour of a Legislative that continues to use law to bully and cajole its citizens rather than to exemplify and honour humane codes of conduct. There is however a genuine effort to come to grips with all the various angles the registration issue throws up and an earnest effort made to address them.

At the heart of the Joint Birth Registration ethos is the desire to bring families together, which is a wonderful sentiment; furthermore, it hopes to make fathers more integral to the family unit and make mothers more amenable to allowing fathers who wish to play a role in their child's life the chance to do so. The Bill also hopes to raise awareness about joint birth registration itself so that the process is made easier and vulnerable women and children given the opportunity to seek help during the registration period.

These aspirations might give the impression that the government has great plans to improve our education system, our health care and the standards of living in England but a closer look at the Committee Stage Report tells a very different story. The suggestion that is being put forward is that all our nation's ills can be cured with..... a form.

Yes, you too can have peace of mind, a perfect family and protection from hostile spouses if you just sign on the dotted line? Not quite. In its haste to solve some complex issues which emanate to a large extent from the bowels of our family justice system, the government has tried to solve the riddle of our ailing family courts, but has unfortunately, got it all back to front. The registration process itself should be the end point, the end goal at which families can move on from, either as a whole unit if possible or in any other form, as long as it is in the interests of the child. This last sentiment, the welfare of our little ones, is what drives this Bill but also what destroys it, for in trying to assimilate all the possibilities and probabilities of how those interests manifest themselves, it has found itself floundering at the first hurdle, only to be shot down by opposition members of government and organisations like Justice for Fathers and Gingerbread. The Bill, it seems, cannot please any of the people, any of the time and there is ample reason to believe that this is because it does not actually address the root of the problem.

To see just why it is that the Bill falls far short, the White Paper of June 2008 gives several clues: it details the proposals for joint birth registration and even expresses some of the concerns, many of which I share, in relation to the fallibility of this Bill.

The Paper starts off by explaining the registration process: married mothers and fathers both get automatically registered as the baby's parents when one spouse registers but for unmarried parents, the process is different. If the parents are not married both parents would need to agree to a joint registration and both would need to be present. If that is not possible for whatever reason, one parent will be allowed to register, but they will need to bring with them a statutory declaration of parentage which needs to be signed by both parents (and witnessed by a legal representative). The other option is a jointly made Parental Responsibility Agreement, witnessed by a magistrate or other court officer and registered in a court or court order.

Even at this early stage, the Paper is already on shaky ground and the first question that springs to mind, is why would one automatically assume that a married couple have fathered the child in question? Where legislation seeks to record all biological parents, should this not be subject to

discussion (albeit as a minor point)? Of course, the reality is that most married couples who have newborns produced that life together and only marginally fewer babies each year are born to spouses who are not jointly the biological parents. There appears to be an implied trust in married spouses that they will inform the registrar if there is any deviation from this assumption but the possibility of the oversight here is ignored in the Bill. This clumsy criss-crossing of pragmatic assumption and fluid reality are constantly at odds in this Bill and is what underscores the tremendous confusion within it, primarily because, as will become apparent, the Bill is all about shedding costs and transferring financial burdens away from the government onto individuals. A father who accepts the responsibility for a child then, will be accepted readily. This implicit assumption made by The Paper expressly contradicts one of the supposed main aims of the Bill, which is the right of the child to know the identity of its biological parents.

This also makes for a sticky wicket; The Human Fertilisation and Embryology Act 2008, which details the use of fertility treatment from the most basic circumstances to some more detailed ones is not even considered in the Bill, which in and of itself makes the proposals awkward and incomplete and may find itself in breach of the European Convention on Human Rights' Article 8, which refers to one's rights to a private and family life. The Bill also does not comment upon the effect it will have on adoptive parents or same sex couples. In fact, there are several instances detailed in the Bill, which may end up falling short of Article 8, not least of all because there is serious concern as to the ability of the Bill to protect vulnerable women and children in practice. This is due to the fact that under the new proposal, all fathers including those with criminal records for violence would be contacted so that they may be registered as the father. The worry here is that an already hostile father may take out his frustration on being forced to register on the mother or the child and although Meg Munn MP believes that the registration process should, quite sensibly, have separated functions so that it is the court who deals with these matters, the reality is that the courts are just not fast enough to respond to such dilemmas and the waiting time implied in this process could quite realistically compromise the safety of these women and children.

Understandably, groups like Fathers for Justice, feel that the proposals still lean in favour of the mother as ultimately the lack of presence of the father can mean that registration of a deserving father's name never takes place. The proposals state that a mother may forgo registering the father's name if it would be impossible, impracticable or unreasonable to do so. This exemption clause has caused much debate not least of all because it creates opportunities for the mother to evade her responsibility in naming the father. For the registration to be 'impossible', the father's identity would need to be a mystery to the mother; 'impracticable' relates to a scenario where the father's whereabouts are unknown or he is unable to sign the declaration of paternity and 'unreasonable' would be where the father had been convicted of rape or where the social worker or doctor advises it would be in the best interests of the child and mother not to register the father.

For groups like Gingerbread, who are concerned about vulnerable women being exposed to violence, their doubts as to the Bill's soundness are also relevant and as a result, both Mothers' and Fathers' groups are deeply concerned about aspects of the Bill.

The paradox here is that the registration process is being viewed as a three-way process, firstly as a clerical exercise, which seeks to account for family members and according to the Bill, to ensure that every child knows who their biological parents are (with the possible exceptions of sperm donors, same sex couples and issues arising out of adopted children's circumstances, which again contradicts the Bill's ethos). Secondly, as a way of promoting parental responsibility both in a legal sense and in a pragmatic sense as well as being used to chase up maintenance and thirdly as a mechanism for addressing controversial family dilemmas, like violence and abuse.

The difficulty here lies in obtaining the data for this clerical exercise whilst still remaining within democratic boundaries, which is impossible under the proposal. Already flirting dangerously with

Article 8, unremittingly contradictory in its outlook and oscillating between heavy handed legislation and light touch non-legislative avenues, the suggestions being made do not really have a clear focus, nor can they, bearing in mind that the underpinning principle is financial. John Hutton MP believes penalties will ensure the system works but it is an open secret amongst registrars that penalties are never chased up at the registry office with any success. It is also the case that most mothers and fathers who refuse to register, will not be in a position to pay a £200 penalty and in any event, the suggestion that benefits be halted is in and of itself highly detrimental where the father is using some of those benefits to support the mother and child, even though he does not wish to be registered. In this scenario, the child clearly does not need the register to identify who is father is and if forced to register, it may put off the father altogether from playing an active part in his child's life whether financial or emotional. The heavy handed penalties and suggestions of using registrars as forceful coercive investigators may also cause more problems than we have at present and may put single mothers off from registering completely.

Another suggestion put forward is that registrars attend schools, hospitals and doctors' surgeries, so that they might hover over single mothers, waiting for the right moment to swoop in and bombard them with leaflets, advertisements and silent threats about what they can expect if they don't register with the fathers in question. I hear that MI5 offered to train up the registrars in the art of mortal combat, but the suggestion, oddly enough, was not popular with the registrars. In fact, many registrars expressed deep concern over having to act as quasi-judicial figures, sensing out mothers and cross-examining them with beady eyes and emotional blackmail. The issues they would have to deal with would range from disgruntled mothers who did not want fathers to be a part of their child's life to women who had been exposed to high levels of violence and who in some cases may be in need of help. Quite simply put, registrars would need to be superhuman to deal with all these issues; indeed, they would need to be fully qualified as lawyers, doctors, psychiatrists and social workers. In a system where those who are professionally trained to carry out these tasks seem less and less able to do so, to appoint clerical staff to take on such gargantuan responsibilities, could only be the work of a government that no longer cares about its people.

So, the Bill wants to make registration offices into mini court rooms, to spend inordinate amounts of tax payers' money to train up registrars to act as superheroes for the nation (or the 7% and falling single mothers demographic who register alone and whom the Bill specifically targets), inform and educate the public on the registration process with yet more flyers (just to add to the destruction of a tree-rich nation at the same time) and lie in wait to pounce on vulnerable mothers just to make our country look aesthetically more pleasing within the pages of its balance sheets.

The registration process is not without its life lines; hospitals already work with them to share information about births and families, so why not just allow the doctor to fill out a readymade form and get the mother to sign it after she has given birth (and after a respectful and reasonable time period where she has been able to hold and feel her baby and enjoy the moment, so perhaps just before she is discharged)? If Daddy is there, he can sign too. No extra cost, no fuss. If fathers are not registered, they should have the opportunity to do so and it should be made easy for them unless there are pressing reasons why he should not, just as there may be pressing reasons to take parental responsibility away from a mother if she is truly unable to look after her child. This however, should be highlighted way before the registration process and should be dealt with not by registrars, but by vetted, independent medical practitioners who have a great deal of experience.

So whilst both mothers and fathers complain that the Bill is one-sided, it is only because the Bill creates an optical illusion which ultimately it has done to avoid the real issue the Bill sneakily addresses: the true state of our economy.

The government has given birth to a monster, but will they register in time?