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## **A: Research**

### **An empirical exploration of Parental Responsibility for Step-Parents**

**Penelope Russell\*<sup>1</sup>**

#### **B: Abstract**

Parental responsibility is a central concept in the legal framework of child and parent relations in England and Wales, yet its meaning and utility is contested. This article seeks to provide a fresh perspective in order to enhance understanding of the concept, by reference to the views of step-parents obtained in interview. Step-parents' experiences of parenting and views of their parenting role can yield particularly interesting insights into parental responsibility as they may carry out day-to-day parenting yet lack a biological link. Although the acquisition of parental responsibility would be of assistance to a proportion of step-parents, data released by the Ministry of Justice indicates that take-up by step-parents of parental responsibility has been very low. Drawing upon interview data, this paper argues that step-parents may identify parental responsibility with being a parent, not with the activity of parenting. For some step-parents, this is a deterrent to its acquisition. The article concludes by recommending a change of name from 'parental responsibility' to 'child responsibility' to sever the link with parenthood.

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<sup>1</sup> I am grateful to Richard Collier for his comments on an earlier draft of this article. All errors and deficiencies are mine alone.

## **B: Introduction**

### **C: The contested meaning of parental responsibility**

Parental responsibility is an ambiguous and potentially confused concept. The ambiguity is partly a consequence of the wide statutory definition in that the definition encompasses all aspects of being a parent: 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'<sup>1</sup>. Although the statutory definition of parental responsibility and indeed the term itself refers to the rights and responsibilities of a parent, the concept is not synonymous with parentage or parenthood and the complex relationship between parental responsibility, parenthood and parentage has been explored exhaustively in the academic literature by Andrew Bainham,<sup>2</sup> John Eekelaar<sup>3</sup> and Craig Lind and Tom Hewitt<sup>4</sup> amongst others.

The inclusion of responsibilities within the statutory definition is noteworthy. At the time of the creation of parental responsibility, one of the recommendations of the Law Commission was that the title refer to responsibility instead of rights: 'It would reflect the everyday reality of being a parent and emphasise the responsibilities of all who are in that position'<sup>5</sup>. It can be seen that the Law Commission wished to emphasise the functional aspect of the new legal concept of parental responsibility, perhaps due to the greater diversity of family forms in the twentieth century. This was in order to benefit 'all' parents including those who lacked a genetic link with the child. It

was to allow a formal recognition of social parents'<sup>6</sup> involvement in parenting, a necessary step given the greater rates of relationship breakdown and increasing numbers of 'reformed' families.

Arguably the all-encompassing statutory definition allowed the original intentions for parental responsibility to be obscured. Since its creation, judicial interpretation of the concept has tended to focus on the rights aspect (allocating the status of parenthood to unmarried fathers), rather than functional responsibilities<sup>7</sup> (granting the practical benefit of having parental responsibility for social parents which would include the right to consent to medical treatment on the child's behalf). The value of the functional aspect of parental responsibility has been questioned within academic literature. It has been asserted that the grant of parental responsibility 'has in itself no tangible effect on the child's material existence'<sup>8</sup>. Indeed, on occasion, an 'award' of parental responsibility has been made to an unmarried father with section 8 order conditions that prohibited him from using the parental responsibility without the mother's consent, (*Re D(contact and parental responsibility: lesbian mothers and known father)*).<sup>9</sup>

Perhaps as a corollary to this alleged lack of practical significance of parental responsibility, the courts have justified the importance of parental responsibility when granting it by way of order, by reference to parental responsibility conferring 'the status of fatherhood'<sup>10</sup> and a 'stamp of approval'<sup>11</sup>. In a later case, (*Re H*) Thorpe LJ stated 'it is undoubtedly the case that the development of case law in this area over the course of the last

few years has been, and continues to be, towards the grant of what is essentially an acknowledgement of status'.<sup>12</sup> This emphasis on status rather than power represents a weakening of the criteria for the grant of a parental responsibility order (attachment, commitment and reasons for applying) as conceived in *Re H (Minors)(Local Authority: Parental Rights)(No 3)*.<sup>13</sup> It has been argued that this may be connected with the courts trying to reduce the evidential burden on applicant unmarried fathers<sup>14</sup> with the aim of attaching fathers to their children, linked with the rise of the legal status of parenthood in line with the decline of marriage<sup>15</sup>. This judicial shift has been to the benefit of unmarried fathers (genetic parents), some of whom had undoubtedly been feeling disenfranchised because of their lack of automatic parental responsibility. However, it has been contended that because it has 'enabled the courts to make orders to fathers who have no practical contribution to make to the child's life'<sup>16</sup>, this shift has 'robbed parental responsibility of its substantive content'<sup>17</sup>.

### **C: The legal position of step-parents**

Step-parents lack automatic parental responsibility yet, if married to the natural parent, can be required by the court to pay child maintenance.<sup>18</sup> The only acknowledgement of their legal position is provided within section 3(5) Children Act 1989 which authorises them to 'do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare', the very weakest form of authority. This provision gives permission for a step-parent to take action but does not allocate rights; there

is no reciprocal obligation on public authorities providing services for children to provide information or take consent on behalf of the child as there would be when dealing with the holders of parental responsibility. Step-parents may be carrying out daily caring responsibilities for their step-children, such as taking them to the GP for routine medical appointments, yet lack parental responsibility. This is a significant issue for society as step-families are estimated to account for one tenth of all families with dependent children<sup>19</sup> and have been described as the most rapidly growing family type.<sup>20</sup>

Within academic literature, there has been greater call for the recognition of work being done by social parents, including the suggestion of an automatic grant of parental responsibility to all married step-parents.<sup>21</sup> It has been argued that it would be wrong to suggest that parental status must only rest on a biological link: 'It is in the interests of children and society in general that stable families (irrespective of their form) acquire legal recognition'.<sup>22</sup>

Bainham has written of a 'pervasive concern among those caring for children that their status be improved and [of] a strong desire to obtain the full status associated with parenthood'.<sup>23</sup>

Initially step-parents could only acquire parental responsibility by obtaining a joint residence order but since 30<sup>th</sup> December 2005 the acquisition of parental responsibility by step-parents has been made somewhat easier: they are now able to enter into an agreement with the parents rather than having to apply for an order from the court by virtue of section 4A(1)(a) Children Act 1989.<sup>24</sup> This additional method of acquisition of parental responsibility by way of

private ordering could be interpreted as a recognition of the social reality that some step-parents carry out parenting functions on a daily basis in the reformed family. Three matters must be noted however. Firstly, the consent of both parents with parental responsibility is required in order to enter into an agreement. If consent is not forthcoming, the step-parent may seek a parental responsibility order from the court instead<sup>25</sup>. Secondly, within the Act, 'step-parent' is defined as a person who is married to or a civil partner of the child's parent. This means that entering into a parental responsibility agreement is not available to cohabitant step-parents (nearly half of all step-families in this country<sup>26</sup>), nor is this option available to step-parents divorced from the parent of their step-child. Thirdly, the step-parent's spouse or civil partner must have parental responsibility for the child in order for the step-parent to acquire it. This may pose a difficulty for female step-parents as parental responsibility for unmarried fathers is not automatic.

The reasons given in Parliament for the introduction of easier mechanisms for step-parents to obtain parental responsibility were to maintain kinship links between the child and the biological parent and their family, by providing an alternative to the route of adoption in order to reduce the number of step-parent adoptions. John Hutton stated in the House of Commons debate when introducing the bill in March 2001: 'We are also making further changes to enable a step-parent to acquire parental responsibility for a child of his spouse without having to go down the route of adoption'<sup>27</sup>. In a study of step-parent adoptions carried out in 1983 it was found that motivations for adoption included excluding the father from the child's life, as well as allowing

consistency of surname.<sup>28</sup> Stigma surrounding surname is now much reduced and ironically, given Parliament's concerns, the introduction of step-parent parental responsibility agreements has not accelerated the rate of reduction of the number of step-parent adoptions and they remain relatively rare (924 in 2009<sup>29</sup> from a peak of 14,000 in 1974).<sup>30</sup>

On the other hand, Parliament resisted the entire abolition of step-parent adoption because it recognised that a formal vehicle for signifying parental status must be available to those who consider it appropriate for them, in other words that parental responsibility would not provide a route to parenthood. There are other noteworthy differences between adoption and parental responsibility: the latter is revocable and has limited duration whereas parenthood via adoption offers more permanence and greater security. A parental responsibility order offers little more permanence than the old joint residence order as, although the new parental responsibility order does not terminate until the child reaches the age of 18,<sup>31</sup> the order can still be removed by the court on the application by anyone with parental responsibility or, with leave, by the child.<sup>32</sup>

A parental responsibility order under s.4A(1)(b) has been interpreted as only intended to benefit those step-parents in a subsisting relationship with the biological parent, as illustrated by the case of *Re R (Parental Responsibility)*<sup>33</sup> which concerned a step-father's application for a parental responsibility order in respect of his four year old step-son, contested by the mother. In this case, the marriage had broken down and the High Court



Judge Peter Jackson referred to the provision's explanatory notes which state that the new provision was created by Parliament to provide parental responsibility for an incoming step-parent who would be living with the child. He does refer to a possible exception of a much older child but that was not the situation in the case, so the order was refused. It was held that a parental responsibility order would not be awarded to this psychological parent, even though he had 'limitless commitment to [the child] and a strong desire to play as great a part as possible in his life',<sup>34</sup> believing the boy to be his biological child until the marriage breakdown. Instead, ongoing information was to be provided to the step-parent by way of a specific issue order.

Although the judge refused the step-father's s.4A(1)(b) application because there was no subsisting marriage, it can be argued that it was in fact within his discretion to use that provision to grant parental responsibility: the parties' marriage had not yet been dissolved. Worryingly, the denial of parental responsibility to the step-father could have practical consequences for him and the step-child particularly as regular fortnightly contact was taking place, described by the CAFCASS Officer as 'very positive... patient and child focused'.<sup>35</sup> This narrowing of the test by the imposition of an additional requirement of a happy subsisting marriage seems to lose sight of the initial purpose of parental responsibility to support functional responsibilities.

Notably, in the recent case of *R v C*<sup>36</sup> the same judge did grant an application by a step-parent for a parental responsibility order under s.4A(1)(b), stating that a grant of an order to the step-father was 'appropriate in the light of his

commitment and attachment to [the child]<sup>37</sup> However, in this case, the step-father already had the benefit of parental responsibility under Colombian law and the application was not contested by the mother, even though the parties had separated.

Of course, a joint residence order is still available to step-parents as a route to obtain parental responsibility, even if they are not in a subsisting marriage with the biological parent. This was confirmed on appeal by *Re A (A Child: Joint Residence/Parental Responsibility)*<sup>38</sup> where a joint residence order was granted to an unmarried and separated step-father for the purpose of recognising and protecting his relationship with the step-child. For the first two years of the child's life, the step-father had believed himself to be the biological father. He had cut the umbilical cord at birth and treated the child as his son. The strength of his relationship with the child was noted by the court and the joint residence order was granted to ensure that the step-father's role was not marginalised or diminished by the mother, Sir Mark Potter commenting that "the Recorder accepted that H had a real and emotionally significant relationship with Mr A who had lived with him as a father figure until he was two and with whom he had continued to have regular and happy contact".<sup>39</sup>

The factual similarities between this case and *Re R (Parental Responsibility)*<sup>40</sup> are striking, despite the different outcomes. A significant difference between the cases seems to be the involvement of the biological father: in *Re A* (where parental responsibility was granted by a joint residence

order) the man revealed to be the biological father had told the court that he did not seek involvement so it seemed that the step-father would be the child's only father figure, whereas in *Re R* (where parental responsibility was denied under s.4A(1)(b)) the mother and biological father were planning to marry.

These decisions are also interesting because they enable the position of step-parents to be contrasted with that of biological parents. For step-parents, they must establish a subsisting marriage to use s.4A(1)(b) or a strong relationship to obtain parental responsibility by way of a joint residence order; for biological parents, they can simply rely on their genetic link and satisfy the weakened *Re H* criteria.<sup>41</sup> It can therefore be seen that the judicial interpretation of parental responsibility differs according to the category of recipient. In the case of a biological parent, parental responsibility can confer 'the status of parenthood' even if it would have limited practical value; in the case of a step-parent parental responsibility cannot be awarded unless their practical role is sufficiently involved, as the biological link is lacking. That this decision rests solely on the presence or absence of a genetic link demonstrates the extent to which parental responsibility is being aligned by the courts with the status of parenthood, despite the availability of other routes to parenthood. If parental responsibility were granted solely for functional purposes, such a privileging of biology would arguably be unjustifiable.

At the time of the new provision, there were predictions that it would vastly increase the number of marital step-parents of either gender with parental responsibility.<sup>42</sup> This has not come to pass. The agreement has been available since 30 December 2005, yet since then the numbers of agreements and orders for parental responsibility have been consistently very low, at approximately 7,000 each year.<sup>43</sup> When it is considered that there are estimated to be approximately 400,000 married step-families,<sup>44</sup> this is a very small percentage indeed.

	<b>Applications for PR Orders</b>	<b>PR agreements</b>
2006	6,460	678
2007	6,071	719
2008	5,914	739
2009	5,712	804

*Number of applications and agreements by step-parents<sup>45</sup>*

The low numbers of step-parents entering into parental responsibility agreements can be compared and contrasted with the situation of unmarried fathers. Prior to 30 December 2005 they could only acquire parental responsibility by the same methods now available to step-parents, namely by agreement or court order. At that time, take-up was generally agreed to be very low as only a small minority of fathers applied for parental responsibility. The reasons given for this were complex but included ignorance of the law.

For example, a consultation paper of the Lord Chancellor's Department's suggested 'public ignorance' as a reason for the low take up<sup>46</sup>. Indeed, this is supported by empirical research carried out by Ros Pickford: in her research project interviewing unmarried fathers she discovered that her respondents were under the illusion that they had parental responsibility and were surprised and angry when they discovered that they did not.<sup>47</sup> It is questionable whether ignorance of the law would be the reason for low take-up by step-parents given their ambivalent position within the family. It has also been argued that families function on a day to day basis without regard for their legal position; parental responsibility only becomes relevant in the event of relationship breakdown and dispute.<sup>48</sup> The motivation for this project was to explore the reasons for the low take-up by step-parents and to consider the implications for both the legislative framework and for current conceptions of parental responsibility.

### **B: Review of literature researching parental responsibility among step-parents**

There is a paucity of existing research in this area. Three empirical studies of step-parents have taken place. Two involved questioning step-parents about their conception of their parenting role, but both studies only interviewed parents with whom the children spent most of their week and neither focused on step-parent conceptions of parental responsibility.

The first study was an ESRC funded project into step-parent understandings of parenting.<sup>49</sup> By using informal social networks, the researchers interviewed family members of 23 step-clusters. These clusters included resident and non-resident parents; step-parents were only interviewed if the step-child spent most of their time living with them. The study found support for some type of legal recognition of the step-family, but it was unclear whether this should be by way of adoption or parental responsibility. The researchers expressed concern that the imposition of a simplistic normative order may be out of step with the complexities of every day experiences and understandings.

The second study was funded by the Department of Health and had a large sample of 184 step-families.<sup>50</sup> They were recruited by way of schools across Greater London. Members of step-families were asked in questionnaire and interview about a range of issues including child health and wellbeing but also for views of their role. The respondents in this study were all living with their step-child for most of the week: two thirds reported that they did feel like a father (or mother) to their step-child and one third reported that they did not.

A third study researched step-parent adoption.<sup>51</sup> This study used a variety of data sources, namely court records and court staff, social service staff, guardians ad litem and solicitors. The study also interviewed members of families going through the adoption process but these only amounted to ten families. Amongst other things, the study examined the most common reasons for seeking adoption. The study took place between 1978 and 1981;

at that time, reasons for seeking adoption were found to be stigma surrounding surname and a desire to be indistinguishable from other families.

## **B: Methodology**

The present study was conducted in the years of 2011 and 2012.

The study's main aim was to shed light on step-parents' understanding of parental responsibility and, in particular, whether step-parents considered that parental responsibility would be a useful acquisition for them. This included a consideration of the nature of their role and the activities undertaken by them. These issues were explored by means of individual, face to face interviews which were audio recorded, transcribed and then analysed. The interviewees were volunteers, with no financial or other inducement. The study was not externally funded.

The semi-structured interview format was selected as it was hoped that it would elicit nuanced accounts and allow respondents to explore the issues in depth. Set topics representing the key research themes were addressed but flexibility was allowed for the exploration of issues. For example, initially interviewees were asked to describe their family, thereby enabling an introduction to the basic facts of their living arrangements. Care was taken not to suggest terminology for the nature of the relationship.

The study's limitations must be acknowledged. The sample was 24 step-parents, all living in the north of England. Although it cannot be claimed that the study has produced statistically verifiable quantitative data representative of all step-parents, the interview data does offer an insight into step-parents' understanding of their role and of parental responsibility.

An effort was made to interview both male and female respondents. This is because their experiences were considered likely to be different. Firstly, sociological research has demonstrated gendered roles within the family.<sup>52</sup> Secondly, female step-parents are less likely to reside with the child, as most children reside with their mother after the relationship breakdown of their parents. Official statistics show that children are more likely to reside with mother and step-father rather than father and step-mother: Table 2.5 of Social Trends No. 40 shows that the former constituted 86% of step-families in 2007.<sup>53</sup>

It was difficult to categorise adult relationships and to place a limit on those suitable for inclusion in the sample. Becoming a step-parent can occur after the divorce or separation of the natural parents or the death of one of the natural parents. Being a step-parent can include those married to the parent of the child as well as cohabiting and having a sexual relationship with them. Regardless of the relationship status, the arrangements of the reformed families can be wide-ranging and fluid as the child may spend varying amounts of time in different households. Indeed, the European Court of Human Rights has recognised that 'family life' for the purposes of Article 8



can include cohabiting relationships where the parties do not live together.<sup>54</sup>

In the event, it was decided to base inclusion as widely as possible, namely that the step-parent stayed in the same household as the child for at least part of the week. It was not a requirement that they resided with the child.

This meant that the sample included the partners of parents who had regular fortnightly contact with their child, as well as those whose child resided with them for most of the week.

It was considered important that both resident and non-resident step-parents should be interviewed as prior empirical studies have neglected this group of 'live-out step-parents'. This was in order to obtain insight into a range of living arrangements and levels of involvement, from a step-parent with contact who may have limited involvement in the child's life on a daily basis to a fully resident step-parent potentially acting in loco parentis.

Recruitment was initially by a method called 'snowballing'.<sup>55</sup> Personal contacts were used to identify the initial respondents; these then suggested subsequent contacts. This method is traditionally used in social science research to locate respondents who are part of hidden populations and are difficult to locate. It was for example used by the ESRC funded project into step-parent understandings of parenting.<sup>56</sup> However, in this project it was found that snowballing was only of limited assistance in locating step-parents, finding 10 respondents. This was partly because, although step-parents are hidden, they are not members of a closed community: step-parents are no more likely than any other members of the general population to know

another step-parent. Therefore, once personal contacts had been exhausted, it was necessary to use other methods to locate step-parents, namely through advertising via the university email. This yielded some success, finding a further 12 respondents. Two additional respondents volunteered via Sheffield City Council as they were seeking to adopt their step-child.

The methods of recruitment caused an imbalance of gender and social class. More women than men volunteered to be interviewed, with the consequence that 17 step-mothers were interviewed and seven step-fathers. Most of the respondents were identified as middle class (n=19) as opposed to working class (n=5). All were heterosexual. Most were married to the parent of their step-child (n=15). The number of step-children per respondent was evenly split: nine of the respondents had one step-child, nine of the respondents had two step-children and six of the respondents had three step-children. There were no respondents with more than three step-children. Most of the respondents also had a child genetically related to them (n=15): four of the 24 respondents had gone on to have a child jointly with the biological parent of their step-child. The step-children ranged in age when they had first met the respondents: 10 of the respondents first met the youngest step-child when they were of pre-school age, six of the respondents first met the youngest step-child when they were of primary school age and eight of the respondents first met the youngest step-child when they were of secondary school age.

## **B: Results**

The interviewees can be divided into two groups: those who viewed themselves as parent (n=5) and those who did not (n=19). The analysis will start by setting out the views of the former, before moving on to the latter. It will then explore the significance for respondents of normative values and biological ties. The section will finish by a consideration of the respondents' perception of their role and the adoption of a system of boundaries in relation to decision-making, linked with respect for the biological parents' position.

### **C: Those who viewed themselves as parents**

The sample of the interviewees who considered that they are a parent was particularly small. All were male and living in the same household as the child for the entirety of the week, without any involvement of the biological parent of the same gender. Most had lived with the step-child since the child was a baby or toddler. One step-father summarised it neatly:

*I think it's cos we've grown up with each other. Up until recently he's not known that any other than me being his dad.*

*So it's just been normal for us really.*

*Step-father with one step-child of pre-school age*

Two of the interviewees had been referred by the Local Authority as they were in the adoption process. This was for reasons of validation of their role.

*In terms of what it means I think it just sort of solidifies everything. Cos like I say in reality I feel like his dad anyway so just cos I've got a bit of paper saying I'm his dad it sort of doesn't make much of a difference. I think it's more about that bit of stability for Rowan<sup>1</sup> and knowing what happens if anything bad happens.*

*Step-father with one step-child of pre-school age  
whom he is seeking to adopt*

None of the other interviewees had parental responsibility or had taken steps to acquire it even though they had some awareness of parental responsibility. Very few had encountered difficulties as a consequence of not having parental responsibility. Indeed, those who viewed themselves as parents tended to assume that they had it anyway and were surprised when informed in the interview that they did not.

*I would have thought that I have it for both. Because I do look after Michael a lot of the time. So I imagine it for both of them.*

*Step-father with one step-child of pre-school age.*

Those who assumed the role of parent gave detailed accounts of their involvement with schools and medical practitioners. For example, they recounted how school teachers discussed issues with them when they

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<sup>1</sup> All names within this article have been changed so that respondents cannot be identified.

dropped off their step-child or attended parents evening and how schools accepted their signature on consent forms.

*I've taken him to the doctors and it's been absolutely fine. So there's been no issues. No one has ever challenged me on it.*

*Step-father with one step-child of pre-school age*

This lack of challenge by schools and medical practitioners undermines parental responsibility because it allows those caring for children to continue to do so without having to formalise their situation. Arguably, greater awareness of parental responsibility is needed, not only among parents and carers but also among those who provide services for children.

### **C: Those who did not view themselves as parents**

Most of these interviewees were in a situation where both biological parents were still involved in the child's life, either where the step-child simply visited their home for contact or where the child was living with them for most of the week but was older at the date of introduction. Most were female. Of note was the strength of feeling with which they expressed that they were not the step-child's parent.

*I would still not call myself a mother. I would never call myself a mother. Because they had a mother and I can't stand in that person's place.*

*Step-mother with three step-children.  
Their mother had died before she met them.*

*Even though they don't call me mum, I wouldn't want them to  
do as I'm not their mum.*

*Step-mother with two step-children*

One interviewee expressed ambivalence about her role:

*I suppose I do find it a bit hard in that when she's with us you  
are in the role of parent so I'm a bit like a mum but then I've  
always been very very conscious that I don't try to be a mum  
or her mum or try and... I think I'm very aware that my role is  
really big in her life now. She sees more of me than she does  
her grandparents say. But there are places where I have to  
say no you know that's for her mum and dad or you know. I  
suppose for those two days a fortnight I am her mum really. I  
am doing those things for her mum.*

*Step-mother with one step-child of pre-school age*

However, she then went on to make her position clear:

*While there are both parents, I feel very much that I'm aware  
that I know my place. And I don't want to kind of upset her  
mum. Because I'm not her natural parent... You just have to*

*know your limits and say actually I'm not a parent – I'm here but that's not my place I think. That's how I feel.*

In fact, the use of the word 'place' was common among the interviewees, not only as a way of verbalising their own status within the family structure but also of acknowledging the biological parents' status. The interviewees were very aware of their place, namely their position in relation to the step-child.

*I've never – I've always made it quite – you know even when he asked if he could call me 'mum' – I thought that was really sweet but I didn't want to take her place. I didn't want him to think that I was taking her place cos that wouldn't have been right.*

*Step-mother with one step-child*

The place adopted by each step-parent was acquired consensually in order to fit into their two household family. Although the interviewees were unequivocal about their parental role, the one adopted (parental or non-parental) was contingent on their own family circumstances, strongly suggesting that any preconceptions about step-parental roles would be unhelpful.

### **C: Normative values**

All of the interviewees, regardless of the nature of their role, were attached to the idea of two parent families, comprising one mother and one father.<sup>57</sup>

There was a strongly expressed desire to conform to traditional notions of the nuclear family. The female step-parents were very aware of the existence and involvement of the step-child's mother and that greatly influenced them in how they defined their role.

*I feel he has a mother. He doesn't require another mother.*

*So I don't see my role as a parent.*

*Step-mother with one step-child*

It is noteworthy that in this study all of those who viewed themselves as parent were male and most of those who did not view themselves as parent were female. One possible reason for this gender disparity is that female step-parents may find a mother's role harder to fill, given the ideology of motherhood that privileges the genetic link,<sup>58</sup> as articulated by Lady Hale in *Re G (Children) (FC)*<sup>59</sup> where she contends that conceiving and bearing a child creates 'a very special relationship between mother and child, a relationship which is different from any other'.<sup>60</sup>

This hypothesis is supported by the interviewees' verbalisation of their awareness of biological ties. They referred to their lack of a genetic link when seeking a justification for their non-parent role, although this was not posed as an issue by the step-parents who did view themselves as parent.



*Because although he's a big part of my life, I know that I'm not his mum. I recognise that and I would never overstep the boundary. I would never do that and I have always said that and I have always been careful to make sure that John has his time with Joe even though I'm there. It's his son – it's not mine but I am part of his life.*

*Step-mother with one step-child*

It was common for interviewees to refer to the involvement or lack of involvement of one of the biological parents in association with their parental role. For example, one step-father who did view himself as parent said:

*Now Ruth hasn't seen him for two years. So she describes me as her father rather than him.*

*Step-father with three step-children*

*Here he refers to the youngest step-child*

This conformity by these heterosexual interviewees to the traditional configuration of a two-parent family illustrates the influence of the nuclear family as an ideological structure, a conception of family life that retains its power despite changes in the law, such as the liberalisation of parenthood by the Human Fertilisation and Embryology Act 2008, allowing more than two parents in the context of assisted reproduction.<sup>61</sup>

### **C: Boundaries**

Those adopting a non-parental role commonly adhered to a system of boundaries. These were wide-ranging and varied from family to family but were often in connection with hygiene, discipline or health issues.

*If he got sick, then I would have taken him to the out of hours doctor. No, it would never be [taking him to the doctor]. I think [that] we would both feel weird about it. Yeah..... I think that him and me ... we have a system of boundaries. And yeah...*

*Step-mother with one step-child*

There were a number of reasons given for the adoption of clearly defined boundaries. Some interviewees linked their adherence to codes of conduct with their chosen role within the family and their notion of place; others gave practical reasons such as the best use of time.

*Rory did it all. I think that's kind of like a – I think the whole thing of sort of bathing and showering and toileting – it's an intimate thing isn't it. Very much a kind of parental caring thing. And I think because Rory's time with the children was in some way limited, you know it wasn't the same as if they were living with us, it was really up to him because that was his time with them. And I think he very much felt that.*

*Step-mother with two step-children*

The use of boundaries can be a way of managing relationships across two households. They can reflect and reinforce the step-parent's place, thereby minimising the risk of potential conflict and assisting the maintenance of consensual relations with all family members.

### **C: Decision making**

The perception of entitlement to undertake decision making depended on the role adopted. Those who did not view themselves as parent were not comfortable with decision-making and some chose to limit their involvement in parenting activities, leaving decision-making to the biological parents. Phrases commonly used were 'staying low key' or 'taking a step back'.

*So sometimes I find myself in an awkward position because I think well I am the step-parent. I'm not the one whose supposed to be laying - I'm supposed to be following the rules. So I tend ring her mum and say "I'm with her now. And what should I be reinforcing with her? What should I be letting slip? And what shouldn't I be letting slip?"*

*Step-mother with one step-child*

The interviewees tended to defer to the judgement of the biological parents and expressed respect for their position.

*I think of Vanessa and David as my children but I will always refer to them as my step-children. That is out of respect for their mother. It's not to deny the role that I've got in their life.*

*Step-mother with two step-children*

In contrast, the step-parents who viewed themselves as parent did feel entitled to make decisions about their step-child's life. They felt able to make routine decisions about their step-child, without necessarily consulting anyone else, as it was within the parameters of their acknowledged role within the family. They were acting in the role or place of a biological parent so they felt that decision-making was appropriate.

*I don't think I have to ask Trudy if there's anything I can or cannot do. I do feel like his dad.*

*Step-father with one step-child*

Decision-making was an acknowledged consequence of the status of being a parent. Step-parents may be looking after their step-child on a daily basis, yet not feel entitled to make decisions about them. For these interviewees, carrying out parenting activities did not equate to being a parent.

### **C: Reasons for not wanting parental responsibility**

The step-parents who did not view themselves as parent said that they did not want parental responsibility. This was even in circumstances where they

were very involved on a day to day basis. The activity of 'parenting' did not necessarily correlate with the adoption of the role of 'parent'.

*I think I'm happy without it. I think it's nice to have the option but I wouldn't want to have it automatically. I think that's better. Surely with responsibility comes – I could be accountable and that's scary, I think. I think in a different situation – no – if their mum was not around and .. yes I would want it. But in this situation no. Having had my own child I know the difference between – that different feeling of responsibility.*

*Step-mother with two step-children.  
She and their father also have a child together.*

They were anxious not to be seen to usurp the biological parents' rights, by seeking parental responsibility. The interviewees who did not view themselves as parent clearly articulated their fear of over-stepping the mark and linked it with overruling or usurping the biological parent of the same gender. These interviewees wanted to minimise potential conflict by keeping within their place and avoiding decision-making.

*I think that actually had I had the piece of paper I would probably have felt that that would have been usurping her role. And she might have felt – 'what on earth does she think she's doing?' So I think that it might have created for us difficulties –*

*not difficulties that's far too big a word but it would have been less smooth possibly.*

*Step-mother with two step-children*

Another reason given for not wanting parental responsibility was concern about it making decision-making too complicated. Negotiating and resolving issues can be difficult across two households, perhaps comprising four adults.

*I'm not so sure about whether I would want it now cos Louise and Oliver are obviously Peter and their mum's children and that's complex enough without me sort of having sort of my own opinions and my own ideas about it.*

*Step-mother with two step-children*

The interviewees were concerned for all of the family, not only their partner. This extended to concern for their step-child as they recognised the impact that disagreement would have upon their step-child, even if indirect. They were trying to maintain consensual relations with all in the family, particularly the former partner of their current partner.

*I don't mind being responsible. But I suppose you have to understand the whole dynamic of the situation don't you.*

*Step-father with three step-children*

Within this group of non-parental step-parents, this concern to maintain consensual relations was a constant underlying factor affecting their ability to adopt a parental role and engage in decision-making.

*'I try and stay very low key. To start with the little girl especially would say , is she my new mummy? And things like that. And I was trying to keep a step back from that because I know that's very unhelpful to confuse children. There are all sorts of issues and things.'*

*Step-mother with two pre-school step-children*

The interviewees therefore linked parental responsibility with being a parent. Some of them did not feel able to be a parent because of the continuing involvement of the biological parents; allied with this, they often said that they would want it if the biological parents were dead. For example:

**Question:** *You've said that if her mother wasn't around and she was living with you, then it would be different?*

**Answer:** *Yeah, I would feel then that it would be a very different role that I would have. It would then be my place to do those things. I think that would be yeah very very different yeah. It's the feeling that you don't want to undermine the parents. I think that's where I feel that it's important I suppose that I'm there and I'm an important part of her life – but I'm not undermining her mum when she's not around.*

*Step-mother with one pre-school step-child*

Some step-parents were concerned about their lack of legal status, even though they felt that it would be inappropriate for them to have the decision-making powers associated with parental responsibility. They felt that they were in some kind of legal limbo, linked with their lack of biological status within the family.

*I have got absolutely no rights. I did used to worry about things like that because it feels like I have no status – I don't mean status in terms of rights – I have no right at all if something happens. You might have been really important in a kid's life but there's nothing. You never stop being a sister or a mother but you can stop being a step-parent. Or even if James and I had split up, what do you do then? Even then you have no status. And it is hard. I do wonder how much that stops people from fully engaging because a part of you feels that to be a parent you've got to love unequivocally or open-endedly but if you do that the whole thing can be snatched away from you. You really can get it snatched away from you by circumstances that you can do nothing about.*

*Step-mother with two step-children for the last 13 years.*



This invisibility felt by some step-parents could be seen as a reflection of the step-parent role. However, it can also serve to amplify the insecurity felt by step-parents and heighten their perception of the contingent nature of their relationship with the step-child.

### **C: Roles and labels**

The step-parents who did not view themselves as parent were adamant that they were not a parent but were less clear about what their role actually was. They gave a number of different possible definitions of their role including amongst others parent's partner, aunt, uncle, friend, big sister, taxi driver, facilitator and teacher. Some struggled to define their role and expressed frustration with the shortage of vocabulary.

*And you know he'll describe me as his step-mum and I'll describe him as my step-son because we're also both very clear about the fact that he's got his mum and I'm Rosie. And these are different things. But neither of us have the vocabulary to articulate it.*

*Step-mother with one step-child*

For those step-parents who did not view themselves as parent, the shortage of vocabulary was linked with their lack of legal status and their place within a family that does not conform to traditional stereotypes.

*There's a lot of good stuff that goes with it but also a lot of hard stuff that goes with it too. The thing with a step-parent is that feeling that your place isn't like secure. You're not a mum or dad – you're not defined in any way. I'm Andrea I'm not necessarily defined but then I have a big part, I play a big part in her life. It's an odd one I think. Me and her have a very good relationship and I'm really glad for that – it's really nice. Quite often she'll say 'I want you to do this instead of daddy. I want you to put me to bed.' And that's really nice – it's no reflection on him. I feel that when we are together we are a family – we look like a family and we act like a family. But then you're not again. So it is a bit strange really.*

*Step-mother with one pre-school step-child*

Interestingly, a number of the interviewees saw their role in terms of their partner (the biological parent) rather than in terms of the child. These interviewees did not view themselves as parent. Instead, they saw themselves as parent's helper. It reflected the fact that their involvement with the step-child was by virtue of their relationship with the parent.

*I would say more supportive of Dave really. More supportive of Dave. Like I take a step back. If I need to step in where I don't think, I think Dave's um struggling on maybe discipline or he's not, he's getting wound up or something or they're having an*

*argument, I'll step in and I do tend to calm the situation down and I listen to both sides of the conversation.*

*Step-mother with two step-children*

*Joe broke his leg a couple of years ago, this term... Initially I wasn't going to go to the hospital because again I'm not his mum. But I knew the grief that John [partner] would have got if I wasn't there. So I did, to support him. But I wasn't there to support Joe [step-child] – I was there to support John [partner].*

*Step-mother with one step-child*

Some of the step-parents who did not view themselves as parent explained how they had tried to create a new type of relationship with the child, a non-parental one.

*I was friendly at first. I don't know how they viewed me – just a friend of their dad really. But now I just feel that I have to offer them things that neither of their parents offer... I think my role is the academic support person so you know the older one will come to me and talk to me about her maths and all about her subjects and what exams she's got and all that sort of thing. Maybe it's cos I'm a teacher I don't know. She views me as the one to discuss that sort of thing. The younger one she really enjoys school and is quite academic – she thinks it good that I think that's okay. And that seems to be my role.*

*Step-mother with two step-children*

All of the interviewees took pleasure in describing the activities that they were able to share with their step-child, activities in which neither biological parent was involved.

*I think the best thing for the pair of us is certain things that I genuinely feel I brought to his life that neither of his parents have. And most of them are about sort of interests. And cos those are the real tangible things that he and me have er. Like just stupid stuff like watching sport on the telly. His dad hates sport and the two of us got really into the Olympics. We're gonna go together. And so I think it's that. It's being able to bring extra fun experiences to childhood life.*

*Step-mother with one step-child*

The activities were often approved and supported by both biological parents and valued by all because they gave the step-parent a special role within the step-child's life, one that was not necessarily linked with being a parent.

*He was into amateur dramatics and singing. So yes, there was one occasion when he was quite a bit older - he was probably - when would this have been - when he was 14 or 15 - he was in a show with his mum and I was going over to take him and she said well why don't you be in it as well. So we did that together. Yes, that was nice. And I took him to singing*

*lessons. Again because my husband was often out doing the karate in the evenings. And singing was my interest so that tended to work. We would sing to CDs on the way and that sort of thing so we did do things like that.*

*Step-mother with three step-children*

## **B: Discussion**

The interview data illustrates the day to day tensions and negotiated adjustments of balancing the competing needs and demands of a number of family members, across households. Respondents expressed a desire to maintain consensual relations and tried to fashion their own role accordingly, either taking on the role of parent if the biological parent was uninvolved or restricting themselves to a supportive role if to do otherwise might be seen as an attempt to usurp the biological parent. Even those who expressed frustration with their limited decision making chose to subordinate their own interests to those of their partner, step-child and the wider family.<sup>62</sup> This has implications for parental responsibility as it may suggest one of the reasons why step-parents can seem reluctant to take steps to change their legal position. Managing consensual relations within the reconstituted family often takes priority over the promotion of individual interests.

It would appear that the complexities of the step-parent role are ill-suited to fitting into a legal framework as the law's uniform approach struggles to acknowledge the subtle power plays within shared households.<sup>63</sup> Indeed, it could be argued that the legal requirement that consent must be given by all

holders of parental responsibility for acquisition of parental responsibility by a step-parent is superfluous. The respondents linked the adoption of a parental role (and thereby acquisition of parental responsibility) with the involvement or lack of involvement of the biological parent. In families where the step-parent does not adopt a parental role, they would not seek parental responsibility so the consent requirement is unnecessary; in families where the step-parent does adopt a parental role and thereby parental responsibility, the consent requirement may act as a deterrent, as the step-parent may have concerns that, upon being contacted, the uninvolved biological parent could start to cause difficulties. In the latter situation, there are also issues of legitimacy: should a biological parent who has chosen to withdraw their involvement from the child have the right to refuse consent to a grant of parental responsibility to a step-parent who is involved with the child on a daily basis? It could be argued that, from the perspective of the child's welfare, they should not. A possible justification for the consent requirement is that all holders of parental responsibility should consent because any consequent decision-making would be shared between all of them yet this justification is flawed: parental responsibility does not confer a right of consultation<sup>64</sup> as each holder of parental responsibility has the right to act unilaterally save in a few isolated instances such as consent to sterilisation and circumcision (*Re J (prohibited steps order: circumcision)*<sup>65</sup>, change of surname (*Re PC*)<sup>66</sup> and immunisation (*Re C (Welfare of child: immunisation)*)<sup>67</sup>.

Another illustration of the law being a blunt instrument is when the law seeks to categorise step-parents, according to whether or not they are deserving of

parental responsibility. Although this was not a quantitative study, it is still worthy of note that the views expressed did not vary according to whether or not the step-parent was married to the parent of the child. At present, only married step-parents can use the provision under section 4A Children Act 1989 to seek parental responsibility by way of agreement or court order. It is submitted that in the light of the empirical data, this may be an artificial distinction. The nature of the step-parent's view of their role and their desire to have parental responsibility was influenced more by the level of involvement of the biological parents, their living arrangements and step-child's age than by their own marital status.

Indeed, the interview data raises interesting questions about the structure of allocation of parental responsibility to step-parents. At present, it is an opt-in system. It could be argued that this system is not working given the low-take up of parental responsibility by step-parents. However, the allocation of parental responsibility on an automatic basis would pose significant difficulties. Within this study, respondents were emphatic about the nature of their role and whether or not they would feel comfortable having parental responsibility. Based on this empirical data, it is arguable that the automatic allocation of parental responsibility to all step-parents would not be appropriate. Such automatic allocation would not only fail to recognise the ambivalence of the relationship, it would also struggle to define who should be the recipients. Even a system where parental responsibility was automatically allocated to those with whom the child spent the majority of their week (in line with the current system for the payment of child benefit) would be problematic as

arguably residence alone is not reflective of a step-parent's involvement in the day to day life of the step-child, such is the complexity of human relationships.

Whatever system is used to allocate parental responsibility (automatic or opt-in), steps need to be taken to improve its usage within families living consensually. The legal and factual situations are out of kilter as the availability of parental responsibility has no direct link with a child's living situation: step-parents without parental responsibility may be caring for the child on a daily basis (talking to teachers, signing forms and taking them for routine medical and dental treatment) whereas biological parents with parental responsibility may have little involvement with the child and never use it. This causes difficulties for public authorities concerned with the child, most notably educational and medical authorities. Regarding consent to medical treatment, BMA Guidance states that only the holder of parental responsibility can consent to medical treatment, if the child lacks capacity.<sup>68</sup> As the BMA consent tool kit states that emergency treatment can be provided even if consent is not immediately available,<sup>69</sup> it would appear that seeking routine medical help for the child is the most problematic for step-parents lacking parental responsibility. However, the interview data contradicts this: all who had sought routine medical help on behalf of the child were allowed to do so without challenge. Regarding information from the school, this should only be provided to a holder of parental responsibility. However, this may be irrelevant to step-parents as under the Education Act 1996 those without parental responsibility are not excluded as the definition of 'parent' includes



any person with care of the child.<sup>70</sup> Again, a number of the interview respondents had not encountered difficulties with their step-child's school, stating that they routinely attended school, exchanged information with the teachers and signed consent forms.

Those interviewees who viewed themselves as parents wanted to be able to carry on their parenting activities but did not have parental responsibility and were not planning to acquire it. This apparent contradiction is made possible by the actions of doctors and teachers, in allowing step-parents to carry on these functions despite their lack of parental responsibility. If parental responsibility consent requirements were enforced, step-parents would be obliged to formalise their position. Greater awareness of parental responsibility amongst the general population, including those who provide services for children, is required for the system to function effectively. Within the academic literature, concerns have been expressed about a proliferation of parental responsibility and consequent degradation of the concept<sup>71</sup> yet, given the interview data and figures for the take-up of parental responsibility by step-parents, this seems unlikely: the concept is being weakened by underuse, not overuse.

Whether or not the interview respondents wished to seek parental responsibility was linked to whether or not they viewed themselves as a parent. While their view of their role was not reflective of the nature and level of their involvement in the child's life, it did affect their view of parental responsibility: those who considered themselves to be parents assumed that

they already had parental responsibility whereas the converse tended to be true for those who did not consider themselves to be parents. The reasons given for not wanting parental responsibility were connected with their rejection of the label 'parent'. The interviewees aligned parental responsibility with the status of being a parent rather than the level of their functional involvement. This accords with judicial views of parental responsibility and could be said to challenge the Law Commission's initial conception of parental responsibility.

When made aware of the existence of parental responsibility, the respondents associated it with the status of parenthood and, for those who did not wish to be a parent, this was a deterrent to its acquisition. Although not articulated by the respondents in this study, the name 'parental responsibility' may serve the link the concept with the status of parenthood. The name could be changed from 'parental responsibility' to 'child responsibility'. This would tie in with the Family Justice Review recommendation of a 'child arrangements order'<sup>72</sup> implemented in the Children and Families Act 2014.<sup>73</sup> It would focus attention on the child and set the concept free from parenthood.<sup>74</sup> The name would retain 'responsibility' in the title to emphasise the functional aspect of the concept for the benefit of social parents. Although it would not necessarily change judicial attitudes, a name removed from the association of rights of parenthood may serve to influence public perception of the concept and no longer pose a potential deterrent to its acquisition. There would remain the separate allocation of parental status by way of adoption or by the use of parental orders (currently

limited to surrogacy<sup>75</sup>) or by intentional parenthood agreements as suggested by Therese Callus<sup>76</sup>. This would leave child responsibility as a concept available for the functional aspects of parenting by social parents.

## **B: Conclusion**

This article has attempted to provide a fresh perspective by way of empirical data obtained from step-parents in order to enhance understanding of parental responsibility. Despite carrying out day-to-day parenting, step-parents lack automatic parental responsibility so their awareness and views of the legal concept of parental responsibility can provide insight into the operation of this legal concept.

The picture revealed by this research is of incongruity between the legal and factual situations. None of the interviewee step-parents had taken steps to obtain parental responsibility; the reasons were complex and differed according to their identification as parent. This in turn was influenced by the level of involvement of both biological parents and the age of the step-child at first introduction. Some of those who viewed themselves as parent acted as though they had parental responsibility already and were unaware that they needed to formalise their legal position, whereas others in this group chose the route of adoption instead of a parental responsibility order. Those who did not view themselves as parent were not comfortable with decision-making and were anxious not to be seen to usurp the authority of the (biological)

parents. They sought to manage consensual relations within the extended family rather than the consolidation of their own interests.

This study indicates that the legal framework is ill-suited to the complexities of the step-parent role. Given the low statistics for take-up of parental responsibility by step-parents and the views expressed by the interview respondents in this study, it appears that the current legal framework of parental responsibility is not working effectively. A new concept and framework is needed that would enable medical and educational services to recognise fully involved step-parents and allow them to determine from whom they can obtain consent. Legal recognition and formal validation of a step-parent's role should be available that reflects their conception of the nature of the role, namely not purporting to allocate the status of a parent, if that is not what they seek, but reflecting the level of their involvement in parenting. This would make it more likely that step-parents do seek parental responsibility when it is needed, ensuring that the legal position of step-parents does reflect the child's reality.

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<sup>1</sup> Children Act 1989, s 3(1).

<sup>2</sup> A Bainham 'Arguments about Parentage' (2008) 67(2) Cambridge Law Journal 322.

<sup>3</sup> J Eekelaar 'Rethinking Parental Responsibility' [2001] Fam Law 31 (June) 426.

<sup>4</sup> C Lind and T Hewitt 'Law and the Complexities of Parenting: Parental Status and Parental Function' (2009) 31(4) Journal of Social Welfare and Family Law 391.

<sup>5</sup> Law Commission, Family Law Review of Child Law, Guardianship and Custody, Law Com No 172 (HMSO, 1988) at para 2.4.

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<sup>6</sup> M Maclean and J Eekelaar *The Parental Obligation: a study of parenthood across households* (Hart Publishing, 1997).

<sup>7</sup> C Lind 'Responsible fathers: paternity, the blood tie and family responsibility' in J Bridgeman, H Keating and C Lind *Responsibility, Law and the Family* (Ashgate Publishing Ltd, 2008) at p192.

<sup>8</sup> H Reece 'Parental Responsibility as Therapy' [2009] *Fam Law* 39 (Dec) 1167, at p1169.

<sup>9</sup> [2006] EWHC 2 (Fam); [2006] 1 F.C.R. 556.

<sup>10</sup> *Re C and V (Minors) (Contact: Parental Responsibility Order)* [1998] 1 F.L.R. 392; [1998] 1 F.C.R. 52.

<sup>11</sup> *Re H (Shared Residence: Parental Responsibility)* [1995] 2 F.L.R. 883; [1996] 3 F.C.R. 321.

<sup>12</sup> [2002] EWCA Civ 542 at [16].

<sup>13</sup> [1991] *Fam.* 151; [1991] 2 W.L.R. 763.

<sup>14</sup> S Gilmore 'Parental Responsibility and the Unmarried Father - a new Dimension to the Debate' [2003] *CFLQ* 15(1) Jan 21 at p27.

<sup>15</sup> J Dewar 'Family Law and its Discontents' (2000) 14 *International Journal of Law, Policy and the Family* 59 at p61.

<sup>16</sup> J Wallbank 'Clause 106 of the Adoption and Children Bill: Legislation for the 'Good' Father?' (2002) 22(2) *Legal Studies* 276 at p284.

<sup>17</sup> P Harris and R George 'Parental Responsibility and Shared Residence Orders: Parliamentary Intentions and Judicial Interpretations' [2010] *CFLQ* 21 (June) 151 at p163.

<sup>18</sup> *Matrimonial Causes Act 1973*, s.23.

<sup>19</sup> *Focus on Families July 2005*, Office for National Statistics at p 4. In 2001, 10% of all families with dependant children were step-families.

<sup>20</sup> E Ferri and K Smith 'Partnerships and Parenthood' in E Ferri, J Bynner and M Wadsworth (eds), *Changing Britain, Changing Lives* (Institute of Education, 2003).

<sup>21</sup> N Lowe, 'The Meaning and Allocation of Parental Responsibility - a Common Lawyer's Perspective' (1997) 11 *International Journal of Law, Policy and the Family* 192 at p209.

<sup>22</sup> T Callus 'First 'Designer Babies', Now A La Carte Parents' [2008] *Fam Law* 143 at p146.

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<sup>23</sup> A Banhaim ‘Status Anxiety? The Rush for Family Recognition’ in F Ebtehaj, B Lindley and M Richards (eds) *Kinship Matters* (Cambridge Socio-Legal Group, Hart Publishing, 2006) 46 at p58.

<sup>24</sup> Children Act 1989, s4A(1)(a) introduced by s112 Adoption and Children Act 2002.

<sup>25</sup> *Ibid.*

<sup>26</sup> Focus on Families July 2005, Office for National Statistics. In 2001, there were 700,000 step-families. Of these, 400,000 were married couples and 300,000 were cohabiting.

<sup>27</sup> Hansard, HC Deb, vol 365, col 712 (26 March 2001).

<sup>28</sup> J Masson et al. *Mine, Yours or Ours? A study of step-parent adoption*. (Department of Health and Social Security, 1983) at p46.

<sup>29</sup> Ministry of Justice Judicial Statistics 2009.

<sup>30</sup> J Masson et al. *Mine, Yours or Ours? A study of step-parent adoption*. (Department of Health and Social Security, 1983) at p13.

<sup>31</sup> Children Act 1989, s91(7).

<sup>32</sup> Children Act 1989, s4A(3).

<sup>33</sup> [2011] EWHC 1535 (Fam); [2011] 2 F.L.R. 1132.

<sup>34</sup> *Ibid* at [39].

<sup>35</sup> *Ibid* at [23].

<sup>36</sup> [2013] EWHC 1295 (Fam); [2013] 2 F.L.R. 1453.

<sup>37</sup> *Ibid* at [63].

<sup>38</sup> [2008] EWCA Civ 867; [2008] 2 F.L.R. 1593; [2008] 3 F.C.R. 107; [2008] Fam. Law 1006.

<sup>39</sup> *Ibid* at [31].

<sup>40</sup> *Re R (Parental Responsibility)* [2011] EWHC 1535 (Fam); [2011] 2 F.L.R. 1132 at [39].

<sup>41</sup> *Re H (Minors) (Local Authority: Parental Rights) (No 3)* [1991] Fam. 151; [1991] 2 W.L.R. 763.

<sup>42</sup> C Barton ‘Adoption and Children Bill 2001 – Don’t Let Them Out Of Your Sight’ [2001] Fam Law 31 (June) 431 at p431.

<sup>43</sup> Ministry of Justice email dated 8<sup>th</sup> October 2010 from Statistics Analytical Services to the author.

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- <sup>44</sup> Focus on Families July 2005, Office for National Statistics at p4.
- <sup>45</sup> Ministry of Justice email dated 8<sup>th</sup> October 2010 from Statistics Analytical Services to the author.
- <sup>46</sup> Consultation Paper of the Lord Chancellor's Department Court Procedures for the Determination of Paternity and the Law on Parental Responsibility for Unmarried Fathers 1998 at para 53.
- <sup>47</sup> R Pickford *Fathers, Marriage and the Law* (Family Policy Studies Centre for the Joseph Rowntree Foundation, 1999) at p32.
- <sup>48</sup> C Lind and T Hewitt 'Law and the Complexities of Parenting: Parental Status and Parental Function' (2009) 31(4) *Journal of Social Welfare and Family Law* 391 at p398.
- <sup>49</sup> R Edwards et al. 'The Position of Step-Parents - Family Law and Everyday Understandings' [1998] *Fam Law* 28 (Dec) 757.
- <sup>50</sup> M Smith 'Research - New Stepfamilies - A Descriptive Study of a Largely Unseen Group' [2003] *CFLQ* 15 (June) 185.
- <sup>51</sup> J Masson et al. *Mine, Yours or Ours? A study of step-parent adoption.* (Department of Health and Social Security, 1983).
- <sup>52</sup> R Crompton and C Lyonette *Who does the housework? The division of labour within the home: British Social Attitudes 24<sup>th</sup> Report* (National Centre for Social Research, Sage, 2008).
- <sup>53</sup> *Social Trends No. 40 2010*, Office for National Statistics at Table 2.6.
- <sup>54</sup> *Kroon v The Netherlands* [1995] 2 F.C.R. 28; (1995) 19 E.H.R.R. 263.
- <sup>55</sup> C Robson *Real World Research* (Blackwell Publishing, 2011) at p275.
- <sup>56</sup> R Edwards et al. 'Shifting Boundaries and Power in the Research Process: the Example of Researching "Step-Families"' in J Seymour and P Bagguley (eds) *Relating Intimacies, Power and Resistance* (St Martins' Press Inc, 1999) at p14.
- <sup>57</sup> M Fineman *The Neutered Mother, the Sexual Family and other Twentieth Century Tragedies* (Routledge, 1995) at p 145: 'The family is experienced as an institution of primarily horizontal intimacy, founded on the romantic sexual affiliation between one man and one woman'.
- <sup>58</sup> Ann Oakley refers to the 'ideological glorification' of motherhood in A. Oakley *The Ann Oakley Reader* (The Policy Press, 2005) p. 181.
- <sup>59</sup> [2006] UKHL 43; [2006] 4 All ER 241.
- <sup>60</sup> *Ibid* at [34].
- <sup>61</sup> *Human Fertilisation and Embryology Act 2008*, Pt II.

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<sup>62</sup> This would tie in with the feminist ethic of care as initially conceived by Carol Gilligan *In a different voice* (Harvard University Press, 1982) and explored by Jo Bridgeman 'Parental responsibility, relational responsibility: caring for and protecting children after their death' in R Probert, S Gilmore and J Herring (eds) *Responsible Parents and Parental Responsibility* (Hart Publishing, 2009) at p265.

<sup>63</sup> Carol Smart has written about the concept of relationality transcending kinship: 'people existing within intentional, thoughtful networks which they actively sustain, maintain or allow to atrophy' in C Smart *Personal Life* (Polity Press, 2007) at p48.

<sup>64</sup> Children Act 1989, s2(7).

<sup>65</sup> [2000] 1 F.L.R. 571; [2000] 1 F.C.R. 307.

<sup>66</sup> [1997] 2 F.L.R. 730; [1997] 3 F.C.R. 310.

<sup>67</sup> [2003] EWHC 1376 (Fam); [2003] 2 F.L.R. 1054.

<sup>68</sup> Department of Health Reference Guide to consent for examination or treatment London: Department of Health 2009 at Chapter 3.

<sup>69</sup> British Medical Association, BMA Consent Tool Kit Card 7 at para 2.

<sup>70</sup> Education Act 1996, s576.

<sup>71</sup> H Reece 'The Degradation of Parental Responsibility' in R Probert, S Gilmore and J Herring (eds) *Responsible Parents and Parental Responsibility* (Hart Publishing, 2009) at p85.

<sup>72</sup> Ministry of Justice Family Justice Review Final Report 2011 at para 4.15.

<sup>73</sup> Children and Families Act 2014, s12.

<sup>74</sup> C Lind and T Hewitt have argued for the formal fragmentation of parental status in 'Law and the Complexities of Parenting: Parental Status and Parental Function' (2009) 31(4) *Journal of Social Welfare and Family Law* 391 at p400.

<sup>75</sup> Human Fertilisation & Embryology Act 2008, s54.

<sup>76</sup> T Callus 'A new parenthood paradigm for twenty-first century family law in England and Wales?' (2012) 32(3) *Legal Studies* 347.