

Lesbian and gay fostering and adoption in the United Kingdom: Prejudice, progress and the challenges of the present

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Abstract: *Since the 1980s, the fostering and adoption of children by lesbians and gay men in the United Kingdom has gained considerable acceptance in legislation and policy. This paper traces these changes, particularly those occurring during the New Labour period of 'liberal equality'. Despite this progress, as evidenced by the backlash from some leaders of the religious and political right, it is argued that prejudice continues. Within this context of new opportunities, but continued prejudice, this paper identifies two important areas for adoptive parents, foster carers and social work practitioners: firstly, the challenges that might confront gay and lesbian young people and secondly, the process by which gay and lesbian people are assessed as potential carers by fostering and adoption agencies.*

Keywords: *foster care; adoption; legislation; prejudice; gay men; lesbians; assessment*

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Introduction

A sea change in law and policy has occurred in the past decade in respect of sexuality and child care in the United Kingdom (UK). At the close of the last Conservative administration, lesbians and gay men were subject to a series of legislative prohibitions. For example, Section 28 of the Local Government Act, 1988 stated that local authorities should not 'promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.' The discourse enshrined within this legislation functioned as a powerful moral force, with notions of 'pretended family relationships' permeating other aspects of the law (Logan, 2001). The Adoption Act 1976 outlawed the adoption of children by unmarried, including lesbian and gay, couples. Likewise, despite developments in equal opportunities policies, there remained an absence of legislation making discrimination on the grounds of sexual orientation illegal. Much of this has now been swept away. The Adoption and Children Act (2002) finally put an end to the notion of the 'pretend family' (Cosis-Brown and Kershaw, 2008); Section 28 was repealed in 2003; and lesbians and gay men can now become registered as 'civil partners' under the Civil Partnership Act, 2004. Significantly, the fostering and adoption of children by lesbians and gay men is now firmly established in some regions of the United Kingdom (Manchester City Council, 2007; Hicks, 2005a).

Despite all of this, the recent furore surrounding the introduction of the Equality Act (Sexual Orientation) Regulations 2006, is a salutary reminder of the opposition and potential backlash to equality that still exists among some sections of UK. The introduction of the new regulations, aimed at outlawing discrimination against gay people by businesses and service providers, sparked off a furious response from some senior clergy in the Catholic Church and Conservative Party backbenchers. They accused the Government of 'railroading' through gay equality laws that will force Catholic adoption agencies to close (BBC, 2007). A Conservative Member of Parliament, Bill Cash, accused the government of 'giving more preference to those who stand for gay rights than those who are concerned with conscience, with family and with religion' (REF). The head of the Catholic church of England and Wales, Cardinal Cormac Murphy-O'Connor also accused the government of 'an abuse of parliamentary democracy' by rushing through the regulations (BBC, 2007). These responses and those of organisations like the Christian Institute (Christian Institute, 2002a, 2002b) resonate with those levied at the repeal of Section 28 more than five years ago.

In consequence, although there have been positive developments in equality rights generally, and specifically the rights of lesbians and gay men to foster and adopt, the words of Cosis-Brown written in 1992, may still have some relevance:

social workers and clients live in a world which hates, fears and is fascinated by homosexuality. Social work takes place in this context. (Cosis-Brown, 1992, p.216)

We are now in a position where legislation in the UK, in relation to the protection of some areas of lesbians and gay men's lives, may be more liberal and permissive than 'public opinion' (Cosis-Brown and Kershaw, forthcoming). The insidious nature of the 'corruption' or 'contamination' theory of homosexuality is still held by some and is particularly inflammatory for those working in the child care field and with the young people with whom they work (Logan, 2001). This paper traces the ideological and legal past that provides the backdrop for the most recent developments in lesbian and gay fostering and adoption. Having established the current context, which offers new opportunities alongside the continuation of prejudice, two important areas for adoptive parents, foster carers and social work practitioners have been identified: firstly, the challenges that might confront gay and lesbian young people and secondly, the process by which gay and lesbian people are assessed by fostering agencies as potential carers. The paper addresses each of these in turn.

Prejudice and progress

With regards to equal rights for lesbians and gay men, parallels can be drawn from the fight for equal rights for women and racial minorities. However, unlike race and gender, homosexuality has been centrally defined by discourses of morality (Warner, 1993). Social conservatives draw upon a set of beliefs, ideological positions and institutional practices that have been sanctioned by religion, medicine, law and culture and which specify the nature of heterosexual superiority and homosexual inferiority (Fish, 2007). Homosexuals have been viewed as inherently threatening to institutional heterosexuality, to children, to family life and to morality. Such perspectives are evident in legislation which historically has constructed homosexuals as criminals, deviants and mentally ill. Even when homosexuality was decriminalised by the 1967 Sexual Offences Act, homosexuality was still regulated and confined to the private domain. As indicated above, section 28 blatantly determined that same sex families were inferior as they were *pretended* family relationships rather than real ones (Fish, 2007).

In addition, lesbians and gay men have long been denied the opportunity to enjoy a family unit that involves children. They have often lost custody cases, been denied access to fertility services and been barred from jointly adopting children.

This ideology of heterosexism has been acutely borne out in the debate about the rights of lesbians and gay men to foster children. The privileged (and taken for granted) status of heterosexuality means that it is seen as natural, normative, morally neutral and ideal and is therefore the preferred living arrangement in which to bring

up children. In contrast, fears abound that if children were to be raised by same sex couples it would be detrimental to their development, they would be subject to sexual abuse and bullying, or would grow up lesbian or gay themselves.

The 1976 Adoption Act allowed the adoption of children by single people and by the late 1980s a few lesbians and gay men had been successful in their applications to become foster or adoptive parents. However, many had not been open about their sexuality fearing it would jeopardise their chances of approval, so the practice remained hidden (Logan, 2001; Hicks, 2005a). In 1988, Skeates and Jabri published the first UK report on fostering and adoption by lesbians and gay men. They argued that opposition to lesbian and gay foster care and adoption was founded on stereotypical and discriminatory assumptions. When lesbian and gay applicants were open about their sexuality they did not receive positive responses from agencies. Further research carried out in the early 1990s highlighted that when lesbians and gay men were approved as carers they either did not have children placed with them or were expected to take disabled children or to provide only short term fostering or respite care (Hicks, 1996). In contrast, when social workers were able to speak on the subject, they indicated that lesbian and gay carers made valuable contributions to serving the best interests of children (Skeates and Jabri, 1988). However, this, and evidence that children raised by lesbian or gay carers are no more disadvantaged than those raised by heterosexuals, (Tasker and Golombok, 1991; Golombok, 2000) was conveniently ignored. A consultation paper on family placement published by the former Government in 1990 under the Children Act, 1989 specifically addressed sexuality in relation to foster care:

It would be wrong to arbitrarily exclude any particular groups of people from consideration. But the chosen way of life of some adults may mean that they would not be able to provide a suitable environment for the care and nurture of a child. No one has the 'right' to be a foster parent. 'Equal rights' and 'gay rights' policies have no place in fostering services (Department of Health, 1990, para 16)

The 'gay rights' phrase provoked much protest from many individuals and child care organisations and was subsequently removed. However, the scope for discrimination remained against lesbians and gay men whose 'chosen way of life' may have been considered inappropriate for foster care. The White Paper on Adoption (Department of Health, 1993) reaffirmed the Government's position that the adoption of children should be the prerogative of heterosexuals (preferably married couples). Although lesbians and gay men could apply to adopt as single applicants, many local authorities remained reluctant to approve or use (known) lesbian or gay carers for fear of the widespread public and media criticism that this may have evoked (Hicks and McDermott, 1999). Since the late 1980s and early 1990s there has been what Hicks has termed a 'quiet revolution' whereby lesbians and gay men have 'pushed against social, legal and state practices to achieve their desires to foster

or adopt children' (Hicks, 2006, p.763). For a detailed analysis of the trajectory of this debate and subsequent developments, see Hicks (2005a).

Eventually, in 2002, after prolonged debate, the Adoption and Children Act was introduced, replacing the Adoption Act 1976 to bring adoption law in line with the Children Act 1989. For the first time, unmarried couples, including lesbians and gay men, were allowed to adopt jointly. Not surprisingly, there was considerable opposition to the inclusion of lesbian and gay couples. Arguments were made that married heterosexual couples are always best for children and that adoption by same sex couples should be outlawed, used only as a last resort or in particular circumstances, demonstrating that the prejudice of the past has continued (Hicks, 2005a). Baroness O'Cathain, speaking for the Conservative Party during the parliamentary debate on the Adoption and Children Bill in the House of Lords, clearly asserted the view that lesbian and gay families are a threat to society and family values:

By extending the category of would be adopters to include homosexual couples of both genders and cohabiting heterosexuals, I contend that the Bill is now being used as an instrument of social engineering ... Is it political correctness? Is it social engineering? Or – perish the thought – is it the permanent downgrading of marriage and the family? I repeat that it is the children that I am concerned about. (House of Lords debate on Adoption and Children Bill, 16 October 2002, column 882-3, cited in Hicks, 2005b)

The Christian Institute was particularly active in opposing this legislation and funded publications which they distributed to every adoption panel in the UK, arguing that to place children with lesbian or gay carers would mean they would suffer stigma and/or psychological or sexual damage (Christian Institute, 2002a). Morgan (2002) went on to claim that 'homosexual adoption is now unquestioned in social work orthodoxy' (Morgan, 2002, p.9). In response, Hicks notes that

whilst most of these claims lack substance and are easily disputed, 'their arguments cannot be so easily dismissed as they draw upon and reinforce homophobic ideas about gay parenting held by many, including some social work professionals' (Hicks, 2005a, p.51).

Whilst much of the debate has, in the main, focussed on adoption, the same questions and issues are relevant to foster care within a wider context of prejudice. The Fostering Services Regulations and National Minimum Standards (Department of Health, 2002) for foster care value equality and diversity whilst the recent Green Paper, *Care Matters* (DfES, 2006) reiterates this position.

The challenges facing lesbian and gay young people

In general, the debate on lesbian and gay fostering and adoption has focussed on the rights or otherwise of adults to become carers and parents. However, it is also important to consider lesbian and gay young people as little attention has been given to their particular needs (Mercer and Berger, 1989). Social workers and foster carers may find themselves working with young people in the 'looked after' system who identify as lesbian or gay. These young people may be struggling to come to terms with their sexuality. Adolescence can be a difficult time for any young person, irrespective of their sexual orientation, yet lesbian and gay young people have to negotiate peer group pressure and gender stereotyping within the context of feeling different. In addition, young people in the 'looked after' system will be troubled in other ways and may be coming to terms with loss and separation from their family. For some young people, their sexual orientation and its consequences may be the reason for their separation (Logan, 2001).

The discrimination, social stigma, and prejudice attached to being a young gay male or lesbian can have a profound impact on psychological adjustment and well-being. As a consequence they are a 'high risk' population for social, psychological and health concerns (Hippler, 1986), and are at increased risk of drug abuse, depression, suicide, pregnancy and HIV infection (Gibson, 1989; Remafedi et al., 1991). Findings from a recent survey into homophobic bullying in schools (Stonewall, 2007) are a chilling reminder of the deeply entrenched stigma and prejudice to which young lesbians and gay men are subject. *The School Report*, the largest poll of its kind ever conducted in Great Britain, reported that homophobic bullying was extensive in Britain's schools (Stonewall, 2007). It found that 65% of lesbian and gay pupils had experienced homophobic bullying, including verbal and physical bullying and death threats. Alarming, 30% of lesbian and gay pupils said that adults (including teachers or support staff) were responsible for homophobic incidents in their schools and half of teachers failed to respond to homophobic language when they heard it.

Given this context, it is hardly surprising that the process of developing a positive sexual identity can be long and complex and whilst some young people may acknowledge feeling different many do not 'come out' until their early 20s (Savin-Williams and Rodriguez, 1993). 'Coming out' can be one of the most difficult and potentially traumatic experiences a gay person undertakes (Moses and Hawkins, 1982) and is vividly illustrated by the words of one young person:

Why can't we say why we are hurting? I was desperate. I wanted to tell you how much I needed your help but I couldn't. I was convinced that the only way I could be accepted was to remain hidden. I was sure that no-one would love me if they knew. I was desperate. I couldn't continue. I withdrew from school and almost killed myself. (Baker, 1985).

Despite being a 'high risk' population, the needs and experiences of lesbian and gay young people remain either ignored or unmet (Logan, 2001). A number of authors have argued, in relation to lesbian and gay youth, that social workers and other personnel are ill informed or even discriminatory, that agencies lack relevant policies, and that lesbian and gay youth face silencing and denial of their sexual orientation (Saperstein, 1981; Vergara, 1984; Hunter and Schaecher, 1987; Mallon, 1992; Sullivan, 1994). Some caution needs to be exercised here as these arguments were made in an earlier period and in a different country. However, professional intervention may be improved if some of the fundamental recommendations made by Mercer and Berger (1989) are followed. These include: continuing education and training on the topic of lesbian and gay identity formation; challenging homophobia; and making appropriate referrals for adolescents who identify themselves as lesbian or gay. More recently O'Brien (1999) in her research into social work practice with lesbian and gay young people, concluded that 'heteronormativity' is continually constructed and homosexuality pathologized within everyday practices of social work.

Unlike in the USA the needs of young people and their sexual identity have been acknowledged in law in the UK through the Children Act, 1989 and its accompanying standards and guidance. This includes for example the statement that:

The needs and concerns of young gay men and women must ... be recognised and approached sympathetically (DoH, 1991, p.97).

and that

Gay men and women may require very sympathetic carers to enable them to accept their sexuality and develop their own self esteem (DoH, 1991, p.98)

The Fostering Services National Minimum Standards (Department of Health, 2002) reiterates that foster care services should meet the needs of lesbian and gay young people by stating that fostering agencies had to ensure that:

...each child and his/her family have access to foster care services which recognise and address her/his needs in terms of gender, religion, ethnic origin, language, culture, disability and sexuality. (Department of Health, 2002, p.11)

The process of accepting, understanding and promoting the human rights of lesbian and gay young people has reflected changing mindsets more broadly with regard to lesbians and gay adults. However, there are also hostile voices towards both young people and adults who are gay and these have been given expression through harassment and violence. One placement agency, the Albert Kennedy Trust, was established following the death of a 16 year old child who had run away from

a local authority children's home in 1989 and who died whilst trying to escape from a gang of homophobic bullies. The Trust provides foster placements to young lesbians and gay men (Albert Kennedy Trust, 2008) and a service consistent with the relevant Regulations and Minimum Standards (Department of Health, 2002). As in other areas of child welfare, this is an example of the independent sector pioneering innovative services which the public sector may implement more widely (Sellick and Howell, 2004; Manchester City Council, 2007).

The process of assessment: The experiences of lesbian and gay applicants

Since fostering and adoption by same sex couples gained legal and policy legitimacy, the debate has moved on and different issues are now being raised. The current Government's stance is clearly one of 'no discrimination'. Some commentators claim that this position underestimates the complexity of social work practice particularly in the assessment and support of lesbian and gay foster carers and adopters (Hicks, 2000, 2005a). The issues raised earlier in this paper indicate that changes in the law are not alone sufficient to change general attitudes. Within a wider context of prejudice and stereotypes, social workers may be left not knowing *how* to work with lesbian and gay applicants. The debate has shifted from whether or not lesbians and gay men are suitable as carers, to a more critical examination of the *process* of their becoming approved, and the extent to which social work practice continues to reinforce and perpetuate the superiority of heterosexuality. Research into the experiences of prospective lesbian and gay carers highlights the 'heteronormativity' underlying social work practice, a practice which continues to uphold the 'gold standard' of married heterosexual carers, and which, at best, accepts that lesbians and gay men can appropriately foster or adopt so long as they prove themselves to be no different to heterosexual carers, but at worst, perpetuates the notion that lesbian and gay carers are second best or a last resort (Hicks, 2005b and 2005c).

Early research into the experiences of lesbian and gay applicants has shown that they were often subjected to more scrutiny than heterosexual applicants (Hicks, 1996; Ricketts and Achtenberg, 1990). Social workers often knew very little about lesbian or gay lives and either failed to address sexuality at all or focussed on it to the extreme (Hicks, 1996; Cosis-Brown, 1998). Evidence from both social workers and lesbian and gay carers and applicants suggest that 'normalising' strategies were being used in the assessment process, particularly in relation to gender concerns. So social work home studies explored how applicants would provide appropriate gender role models, if they knew members of the opposite sex and whether they would ensure that their children came into contact with a range of both men and women. In Hicks' view, the pre-occupation with problematic gender roles or social

development is actually about maintaining and promoting traditional views of both the family and roles of men and women (Hicks, 2000).

Recent publications which explored the roles and perceptions of male foster carers (Newstone, 2000; Wrighton, 2006; Wilson *et al*, 2007) suggest that a traditional view of gender tasks endures amongst foster carers themselves. For example Wilson and her colleagues found that men chose to deal with 'masculine' issues such as contact with the police (Wilson *et al.*, 2007). A male foster carer in Newstone's exploration of men as role models commented that 'men are different from women and need to provide a role model that gives a child a balanced view of society' (Newstone, 2000, p.37). This may seem a dated and disputed view but it is clear that many fostered children and young people have been maltreated by men in a position of trust. Male foster carers, including those who are gay, are well-placed to compensate both for the harm experienced by children and the distorted image of men as carers. As Sellick and Connolly noted in their national survey of independent fostering agencies 'male foster carers can provide positive and compensatory care to children whose experiences of men has been distorted by harmful events' (Sellick and Connolly, 2002, p.113).

Even when practitioners are supportive, open-minded and able to think beyond traditional boundaries, there is still much confusion about *how* to assess lesbian and gay applicants, and social workers struggling with assessments are a feature of all related research (Hicks and McDermott, 1999; Brooks and Goldberg, 2001; Ryan, 2000; Ryan *et al*, 2004). In these studies social workers were unclear about how to talk about sexuality. Should they ask different questions of lesbian and gay applicants when an 'equality' stance usually means asking the same of everyone? Hicks argues there is a need to move on from 'sameness' models, which suggest that lesbian and gay carers are 'just like' heterosexuals, towards acknowledging the different experiences that being a lesbian or gay carer may bring (Hicks, 2005a). Central to the assessment of lesbian and gay applicants are explorations of their experiences of adolescence, how their sexuality has impacted on their lives and family relationships, and how they deal with prejudice and discrimination. Questions related to these issues *do* need asking, albeit in a holistic sense and in the context of caring for some one else's child. Hicks (2005a) hopes that as lesbian and gay carers gain more experience, they will feel less need to argue they are simply 'just as good as heterosexual carers' and instead can point to their differences, thereby promoting new ideas about family and kinship practices.

Recent research in the USA supports this position (Goldberg *et al.*, 2007). In a study of 35 lesbian couples seeking to adopt, three key areas related to agency and worker inclusion and acceptance were identified. Firstly, lesbian applicants noted having their relationships validated and valued and of being 'respected and welcomed as same sex couples' (p.56). Secondly, they appreciated evidence of positive attitudes towards the gay community through, for example, the publication of images of same-sex couples in recruitment material on agency websites. Thirdly, these lesbian

applicants valued the professional nature of the agency. They particularly appreciated their assessment and the support they received in 'explicitly preparing them for the challenges that they would face adopting as a couple' (p.57).

Conclusion

Despite the historical and on-going context of prejudice, the policy agenda has shifted significantly, particularly over the past decade. There is now a legislative framework in place which protects and promotes the interests of lesbian and gay young people and lesbian and gay adults wishing to foster or adopt. We have come a long way since the early 1980s when lesbian and gay fostering and adoption was largely unheard of and sexuality not even broached on general social work education courses. Whilst opposing voices and forces remain, the current Government's 'non-discriminatory' stance means that lesbian and gay fostering and adoption is well established in some regions of the UK. As this paper has indicated however, legislative and policy change does not remove the challenges for social workers. These challenges include, offering sensitive and appropriate support to gay and lesbian young people who are 'looked after', as well as assessing gay men and lesbians who apply to become foster carers. Within this complex social context, many social workers, foster carers, parents and young people believe that real progress has been achieved in the world of adoption and fostering.

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