

## Paternity Fraud, a blow to the stomach...

Increasingly entering common parlance is the term “paternity fraud” which is the naming of a man as being the biological father of a child by that child’s mother, when in fact, she knows he is not the father.

Paternity fraud is a subset of “mis-attributed paternity”, where a child has been fathered by one man, but is actually the child of another and that mis-attribution is deliberate rather than accidental. In other cases the male may have agreed to bring up the child of another (e.g. from a previous relationship or adoption), but in others, the male mating tactic of cuckoldry has occurred and the male is unaware that the child he is bringing up is not his. While this metaphor can be taken a little too far (since the child is genetically linked to the mother and does not generally expunge the half siblings from the house), it is a common term in evolutionary biology, where it is applied to unwitting males who make a significant parental investment in off-spring which are not genetically related to them.

The motivation for paternity fraud includes; a) false claims from either parent with the objective of avoiding or receiving child maintenance payments, b) mothers who wish to hold their family together rather than discourage parental investment from the incumbent male or expose her infidelities or c) males who wish to avoid responsibilities, whether these be financial or familial or indeed, cover up their own indiscretions from their spouse or partner.

As to the frequency of paternity fraud, then there are no clear figures and one should be aware of often mis-quoted data from mis-paternity studies where subjects had a reason to take the DNA test. These data are valid in their own right but are not applicable to paternity fraud. The emotive headlines we often see in the popular press, which potentiate the urban myth of increasing paternity fraud in UK society, does us all little service and there is no verifiable evidence that paternity fraud is on the increase. However, it does occur.

DNA profiling provides evidence of biological relationships and as responsible test providers, we are acutely aware that with the prospect of incontrovertible evidence, people who are contemplating or indeed, driven to, paternity fraud may attempt to obfuscate the procedure. Accordingly, procedures are in place to minimise this possibility.

In fact, paternity fraud is not a new concept, it has been with us for generations and our literature and law is littered with reference to it. It is also mentioned several times by Shakespeare in his various works, where the husband of an adulterous wife, the “cuckold”, is often seething with underlying suspicion. For example, when Iago addresses Othello (III.iii.165); *“That cuckold lives in bliss, who certain of his fate loves not his wronger, but O, what damned minutes he tells o’er, who dotes yet doubts, suspects yet fondly loves (1). To which Othello replies..”Oh, misery!”*. It is the “Oh misery” that is instructive, the discovery of a paternity fraud has been described as “a blow to the stomach”.

The origin of paternity fraud dates from the 1576 Poor Act, when the law required mothers with illegitimate children to name the father in order to ensure that he supported her financially, thus placing a lesser burden on the Parish Poor Law Overseers. They ensured weekly payments from the named “father” by issuance of “bastardy bonds” and which thus created the first opportunity for paternity fraud, as blackmail and perjury

then became rife. The law was repealed in the “New Poor Law” of 1834 in order to save poor men from unsuitable marriages and then, a woman with an illegitimate child was sent to the workhouse without financial compensation.

These days paternity fraud may be pursued using the tort of deceit (on the balance of probabilities that the intention was fraudulent) and is not a criminal matter unless a false statement is knowingly made on a public document, such as on a birth certificate or perhaps in information provided to the CMA. There have been a handful of cases which have reached the courts and where damages have been awarded to the male for “indignity, mental suffering/distress, humiliation” or “emotional hurt”, though there are also cases where this approach has been unsuccessful (2). It has not yet been possible however, for the male to retrieve maintenance payments, as the court takes the view that bringing up a child confers benefits as well as costs.

Paternity fraud has thus been with us for generations and is of course hard to completely eliminate, but the use of an accredited DNA testing procedure makes it difficult for this to remain undetected and also provides unequivocal evidence to support cases involving the tort of deceit. In the UK the use of the rather explosive paternity fraud accusation is relatively modest; this is largely due to the judicious use of accredited paternity testing.

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(1) The modern text...The man who knows his wife is cheating on him is happy, because at least he isn't friends with the man she's sleeping with. But think of the unhappiness of a man who worships his wife, yet doubts her faithfulness. He suspects her, but still loves her. [http://nfs.sparknotes.com/othello/page\\_142.html](http://nfs.sparknotes.com/othello/page_142.html), accessed 10<sup>th</sup> May 2017.

(2) P v B (Paternity: Damages for Deceit) [2001] 1 FLR 1041; A v B (Damages: Paternity) [2007] 2 FLR 1051; *Webb v Chapman* [2009] EWCA Civ 55.

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