

### Should rapists gain parental responsibility?

The ITV programme Loose Women faced a backlash last September from a poll entitled “is it ever a woman’s fault if she is raped?” The viewers’ response to the poll was 88% “no” and the help centre Rape Crisis unequivocally responded that rape is the fault of the rapist, no matter what the situation. This poll followed comments made in the Sunday Times by the Pretenders singer Chrissie Hynde, who said that victims have to “take responsibility”.

As a paternity testing company who deals with the issues surrounding Parental Responsibility and on occasion has been required to help victims of this crime, the programme sparked a complex internal debate: The question posed was, “if a child is born as a result of a rape situation, should the biological father be able to claim any parental rights”?

The complications are that; i) the mother may keep the rape conceived child, abort the pregnancy or place for adoption, ii) there may or may not be a conviction for rape (due to genuine innocence or lack of evidence – which does not in itself imply unquestionable innocence) and iii) biological fatherhood may need to be proven by use of a DNA test. In the latter instance women may sometimes choose not to report the event and to have a DNA test to first see if the biological father is in fact their boyfriend or husband.

The moral reaction among our staff was clear, the man should not be allowed to have anything to do with the baby, the mother or her other family members. However, the man may wish to play a part in the upbringing of the child. It may also be that his family, such as the child’s paternal grandparents may also wish to have a role. It may be that the mother cannot properly care for the child and that despite the crime or alleged crime, the biological father can provide a stable family environment. Does he now have any right to be involved with the child?

In general, the UK courts take the view that each child has the right to know his/her biological father and the manner of the conception is not taken into account. It may well be that a convicted rapist may be able to claim Parental Responsibility for a child if he was/is for example married to the mother, makes a statutory declaration of parentage or gains a court order to that effect. There is nothing in UK law to prevent him doing so. This means that a victim could be in a position where she has to consider and/or accede to the wishes of the man who raped her when raising the child and it is the continual involvement and reminders through contact with this man that may have lasting emotional effects on the mother.

In the US there is much state by state case law regarding this issue and thirty one states have adopted legislation to restrict the parental rights of rapists, which includes a) allowing the mother to place the child for adoption without the consent of the father, b) limitation of visitation rights, c) limitation of visitation and custody and d) termination of all parental rights. However, in all but 5 states these restrictions are dependent upon a conviction which in itself creates an issue; most rape



cases in the US do not result in conviction.

In the case of rape conception, a woman may feel pressured to relieve herself from all reminders of the incident, although some women may suffer the trauma of the abortion longer than the trauma of the rape” according to US evidence (1). Fears of social rejection may also influence the mother’s decision and may also have a negative effect on the way people treat the child if they were to know of the circumstances of how the child was conceived.

The right to Parental Responsibility is a fundamental right for a biological father but should not be considered absolute. In our opinion, there are wider psychological issues that must also be considered.

(1) Bitar, K. (2010). The Parental Rights of Rapists. DUKE JOURNAL OF GENDER LAW & POLICY, 19, 275–302.

Ms Kate Donkin (Psychology Intern) and Dr Neil Sullivan, General Manager, dadcheck.

[dadcheckgold.com](http://dadcheckgold.com)

[sales@dadcheckgold](mailto:sales@dadcheckgold)

0191 543 6334

**[www.dadcheckgold.com](http://www.dadcheckgold.com) | Tel 0191 543 6434 | Email [sales@dadcheckgold.com](mailto:sales@dadcheckgold.com)**

dadcheckgold is a trading name of Complement Genomics Ltd,  
The Durham Genome Centre, Park House, Station Road, Lanchester, Co. Durham, DH7 0EX.

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