

From modern workplaces to modern families – re-envisioning the work–family conflict

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From modern workplaces to modern families – re-envisioning the work-family conflict

Dr Michelle Weldon-Johns

The Modern Workplaces Consultation 2011 set the foundations for the current revisions to work-family rights in the UK. They are underpinned by a desire to make modern workplaces more flexible and responsive to the needs of working families. The Children and Families Act 2014 implements, in part, the consultation's proposals, but falls far short of its most significant recommendations. Nevertheless, it does extend access to work-family rights to some alternative working family models. The analysis undertaken here, however, indicates that this is limited to families that most closely conform to the dual-partnered working family model. Drawing from Fineman, Herring and McGlynn's references to relationships of care, it is argued that instead of re-branding current rights the government should re-envision the concept of the family and family care. It is only through renegotiating the categories of caregiving recognised in law that the needs of modern working families will genuinely be met.

Keywords: Children and Families Act 2014, shared parental leave, working families, work-family conflict

Introduction

The Children and Families Act 2014 c.6 (CFA) Parts 7-9 revise the current package of work-family rights, implementing, in part, the proposals originally contained within the Modern Workplaces Consultation (HM Government, 2011) (MWC) and the government's responses (HM Government, 2012a and 2012b). The government's aim as stated within the consultation was to 'create a society where work and family complement one another,' and to facilitate a culture change towards more 'flexible, family-friendly employment practices' (HM Government, 2011, p.2). In doing so the aim was to create modern workplaces which responded to and reflected employees' caring commitments. Despite these aims, the changes contained within the CFA and the Shared Parental Leave Regulations 2014, SI 2014/3050 (SPLR) fall far short of this. However, the CFA does make notable extensions to the types of families covered by the legislation by including intended parents in surrogacy, extending rights to adoptive families and extending the right to

request flexible working to all employees. While this suggests that the legislation is extending the traditional work-family concept beyond the nuclear family model, this analysis shows that this limited recognition of modern families and caring relationships remains constrained to those which most closely accord with that traditional family norm. Instead of re-branding the package of rights, it is argued here that the focus should be on re-envisioning the concept of the family, and the relationships of care, underpinning the legislation. Examples will be drawn from both Sweden and the USA where the working carer has a more defined role in certain instances, in order to critically consider the ways in which work-family legislation can encompass the diversity of caring arrangements. It is argued that such an approach may offer a more appropriate understanding of the work-family conflict which better addresses the competing needs of working carers. This would make work-family rights more effective, and help the UK government to achieve its goal of becoming 'the most family friendly government in the world,' (HM Government, 2012a, p.3).

Re-envisioning the work-family concept

The family can be, and is, defined in many different ways, reflecting varying familial relationships and perceptions of what constitutes a family unit (Diduck, 2003, pp.20-43; Hantrais, 2004, p.1). However, this diversity has not always been recognised within social and family policy, where a standard understanding of the family is often used (Wasoff & Hill, 2002, pp.172-173). It has long been accepted that law is generally constructed around the nuclear family model (Diduck, 2003, pp.21-25; McGlynn, 2006, pp.23-27), within which adults feel under an obligation to care and support each other and their children, and children ultimately equally feel under an obligation to support their parents (Dallos & Sapsford, 1997, p.162). However, how this is achieved can differ greatly.

Traditionally, the nuclear family model has been exemplified by the male breadwinner working family model with the male norm reinforcing it (McGlynn, 2006, pp.23-27; O'Donovan, 1993, p.30; Stang Dahl, 1987, pp.12-13). This model is underpinned with the gendered presumption that women are, and will remain, primary caregivers, thus exemplifying McGlynn's (2000) 'ideology of motherhood', which she argued reinforced traditional gender roles by privileging the mother-child caring relationship. Also inherent within this model is the separation of earning and caring responsibilities, with those in the labour market being viewed as 'unencumbered workers' with no caring responsibilities (James, (2007), p.177). Care is, therefore, viewed as something which is undertaken by carers outwith, and independent from, the paid labour market. McGlynn (2006) refers to this model as the 'dominant ideology of the family' (pp.23-27; see also 2000,

pp.42-43). In doing so, McGlynn recognises that while there are different conceptions of the family, it is this notion of the family which pervades everyday discourse and is replicated and legitimated not only by law and policy but most aspects of society (2006, p.24). Despite this, work-family legislation, in principle, aims to support the dual earner-carer working family model which recognises the equal sharing of earning and caring roles (Crompton, 1999, pp.205 and 207; Gornick and Meyers, 2003, pp.12 and 91-92; Rapoport & Rapoport, 1969 p.7; Rapoport & Rapoport, 1976, p.9 and p.14). In contrast with the previous model, working carers are accepted as encumbered workers with the expectation that they will equally have caring responsibilities in addition to their labour market commitments. Nevertheless, in practice this remains significantly gendered, with work-family legislation continuing to reinforce mothers' primary caring role (Weldon-Johns, 2011 and 2013). Within this one and a half earner-carer working family model there is some recognition of the caring commitments of working persons, but there is still a distinction between responsibilities for care. While both partners are engaged in the paid labour market they have different labour market attachments (Bonney, 1988, p.90), with one partner adopting a full-time continuous employment role and the other a part-time earning and caring role (Crompton, 1999, p.205; Gornick and Meyers, 2003, p.91). While this suggests that the legislation has recognised a role for earner-carers, the notion of the unencumbered worker, and the dominant ideology of the family, remains unchallenged and recognition of the caring role remains limited and significantly gendered.

While these models are useful in explaining the tensions and difficulties inherent in the relationships between work and care commitments, they are inherently limited because they focus solely on the relationships of care within the nuclear family model. In doing so, they reinforce the 'myth' that this family model is representative of family life (Diduck, 2003, pp.21-25), and fail to recognise that the family is a changing, fluid concept and not a statically determined construct (Hantrais, 2004, pp.1-2 and 38; Hantrais and Letablier, 1996, pp.63-79; McGlynn, 2006, pp.27-30; McKie, et al., 2005, pp.12-14; Neale, 2000, pp.1-3; Smart, Neale & Wade, 2001, pp.16-17). Furthermore, they reinforce the exclusivity of parenthood, and parental care (Bartlett, 1984, p.879). This is particularly problematic in the work-family context as caring relationships continually change and evolve, and such an approach fails to appreciate all of the family care responsibilities and relationships that working families may have throughout their lives.

Recognising the diversity and plurality of family forms instead of reinforcing the nuclear family model has been advanced by McGlynn (2006, pp.39-41) in her examination of families in the European Union, with reference to Bainham's (1995 and 2000) 'value pluralism' analysis of family law and Finch's (1996) argument that family law and policies should facilitate flexibility and diversity instead of prescribing family

life. This approach would be useful because it would focus on caring relationships and thus encompass a variety of caring scenarios without having to conform to particular notions of 'the family'. In doing so, it would reflect the social reality of many working people with caring commitments, which law should arguably recognise and regulate. Such an approach is also evident in Fineman's (1995) analysis of the family, in which she argues that it should be defined in terms of relationship of care as opposed to traditional gendered roles (pp.230-232 and 234-235); and Herring's (2013) focus on caring relationships, as opposed to categories of carers/persons cared for. Herring (2013, p.4) argues that this focus on caring and caring relationships is preferable because of the interdependency of the relationships, the tendency to assume carers are only caring for older people, and that that language ignores the fact that everyone needs care. These moves away from the gendered and sexual family unit are significant in this context because they prioritise and focus on caring relationships. By adopting a more fluid, and encompassing, notion of care which focuses on caring relationships as opposed to pre-determined and preferred (sexual) familial relationships, the law could better respond to work-family needs and conflicts. It is argued here that such an approach should underpin work-family legislation because it would better reflect and respond to the work-family conflicts experienced by working carers.

In order to best address the work-family conflict the working family model should be based on the presumption that all working persons are earner-carers, irrespective of their familial status and/or relationships. This requires an acceptance of working persons as inherently encumbered. Such an approach is important because it recognises that all working persons are likely to experience some caring responsibilities throughout their working lives. If work-family policy, and employment law more generally, assumes that working persons are inherently encumbered it can challenge the continued focus on male worker norms and the stigma surrounding working carers. Such an approach could start to represent a 'fundamental restructuring of the integration of care and employment' as advocated by Herring (2013, pp.327). Broadening the categories of rights holders encompassed within the legislation could start to value alternative caring relationships, and acknowledge that carers' employment rights need to be recognised in the context of a move away from the traditional male breadwinner model (Herring, 2013, pp.247-259). Such an approach is reflective of Bartlett's research which challenged the concept of exclusive parenthood in the USA following the breakdown of the nuclear family (Bartlett, 1984, pp.879-963). Bartlett (1984) argues that in some instances this approach can have negative implications for the child, and that it would be better to recognise these other familial and emotional relationships as opposed to reinforcing that only one set of parents or parent should hold parental rights. While this analysis primarily considers this issue from a family law and

childcare perspective, these arguments also have resonance in the wider work-family context, which adopts a similar understanding of caring relationships. Murray's (2008, pp.385-455) analysis of the networked family also underscores the relevance of efforts to legally recognise non-parental carers in the work-family context. While Murray is also primarily concerned with addressing this issue from a broader American family law and childcare perspective, she also considers the similar approach underpinning the Family and Medical Leave Act 1993, which contains both childcare and care leave rights.¹ Murray (2008) argues that 'its view of caregiving is crabbed and unrealistically focused on parenthood as the locus of caregiving ... The Act is oblivious to caregivers who provide care, but otherwise do not cohere with normative understandings of parenthood ... expanding our understanding of caregiving would reconcile family law with the reality of family experience' (pp.385-455 and 408-409). Similar issues are also raised by Baroness Hale (2014) in her examination of English law responses to parental rights in the context of new families constructed using assisted conception techniques. While the focus of this present article is not limited to persons in a parenting role, Hale's examination of the challenges experienced by the various actors involved in assisted conception, and subsequent caring relationships, highlights the limited categories of persons considered to be parents in this context. The fact that the law continues to rely on a dual-partnered, nuclear family, ideal of parental relationships reinforces that new and emerging family models, and relationships of care, are not envisaged let alone accommodated within the legislation. While it is accepted that the legislation cannot necessarily provide for every possible family dynamic, these various attempts to re-conceptualise care and challenge the notion of the exclusivity of parental care, and care within the nuclear family model, are a useful starting point. They recognise that the current definitions of the working family, and caring relationships, are too narrow, and support the argument that any concept of the family within work-family legislation must recognise this diversity in order to enable all working families to address their various caring commitments.

This article uses this underpinning analysis of the family to identify alternative working family models which encompass a range of increasingly prevalent working families and caring relationships. This includes additional atypical dual-partnered working family models now covered by the CFA, as well as intergenerational, multi-household, and lone parent working family models. The next section will examine the parameters of these working family models and the specific challenges that they face addressing work-family commitments as compared with traditional nuclear families. The following section will analyse the extent to which these models are encompassed within the CFA, with reference to approaches adopted in

¹ The right to family leave entitles a working person to 12 work weeks of unpaid leave in order to care for a child during their first year, or the first year following their adoption. The right to medical leave, also 12 weeks of unpaid leave per year, can be used to care for a seriously ill child, parent or spouse. This is discussed further below.

Sweden and the USA, which recognise the role(s) of working carers in certain specified instances. While it is clear that the CFA attempts to include alternative working family models, it is evident that this is only in so far as they can be assimilated with the traditional nuclear family model. The final section draws conclusions from this analysis and it is argued that the concept of the family still needs to be re-envisioned in order to fully appreciate and address the work-family commitments of all working families.

Atypical dual-partnered working families

While the traditional dual-partnered working family has always been the subject of work-family legislation, other atypical dual-partnered working families have only been included to varying degrees. The categories of atypical dual-partnered working families included here reflect those specifically identified within the legislation, namely: adoptive families, surrogate families, and reconstituted families. Adoptive families, in this context, refer principally to dual-partnered adopters with childcare responsibilities. Surrogate families refer to the intended parents in surrogacy situations. Reconstituted families refer to those consisting of cohabiting persons, married or not, with at least one child from a previous relationship, where those original family relationships have ended in divorce/separation (Neale, 2000, pp.5-8). They can also encompass those where the biological parents were not in a relationship prior to or following the birth of the child.

In contrast with the other alternative family models discussed below, these models are similarly based on narrow relationships of care and focus solely on the nuclear family model with two resident parents with, or with the expectation of, childcare responsibilities. Given that the current focus of work-family legislation has been on variants of this model, it could be assumed that these atypical dual-partnered working family models and their caring commitments will be fully supported within the legislation. Indeed, given the similarities between these families and the nuclear family model, particularly as regards caring commitments, it is important that they equally are able to address their work-family conflicts. However, it is also important that their specific situations are recognised given the different needs that they also have, particularly with respect to adoptive parents and intended parents using surrogacy arrangements which have very distinct pre-placement, pre-natal and pre-conception needs (see for instance *Mayr v Bakerei und Konditorei Gerhard Flockner OHG* (C-506/06) [2008] ECR I-1017).

Intergenerational working family models

Inherent within the traditional nuclear family model is the division of parent and child relationships from those of other extended family members (Nicholson, 1997, p.31). The intergenerational, or extended (Goode, 1965, p.44; Nicholson, 1997, p.29; Parsons, 1955, p.10 – although he argues that this type of family is atypical), working family model instead recognises a broader understanding of the family which may be more appropriate in this context. While this working family model has sometimes been viewed as an extension of the nuclear family model (Nicholson, 1997, p.29), it has also been interpreted as encompassing other members of their extended family group who generally live together (Goode, 1965, p.45), but could also include persons who live independently of the working carer. In this sense, this working family model recognises the interdependence of such relationships (Bumpass, 1990, pp.491-492), which extend beyond the primary family unit/household. In this respect it is also reflective of Herring's (2013, p.4) acknowledgement of the interdependence of caring relationships.

While this model can encompass a range of caring relationships, this analysis will focus on relationships of care between different generations of the same family. This includes working carers with eldercare or other familial care responsibilities, which represented 46% of carers of sick, disabled or elderly persons in England and Wales in 2009/10 (Office for National Statistics, 2011, Table 3.1). It also encompasses situations where grandparents are providing care for grandchildren alongside working parents. Such relationships can exist where the primary working family model is a lone parent one, with the grandparent or other caregiver taking the role of the absent parent (Murray, 2008, p.393; discussed further below). However, they are not limited to such family models and can exist alongside a traditional dual-partnered working family model (Murray, 2008, pp.390-394), with working grandparents providing additional care. This would recognise what Murray (2008) refers to as '[t]he reality of working life is thus that parents do not care for their children on their own. Instead, they routinely rely on non-parental caregivers to assist them in providing care,' (p.394). This caring scenario accounted for around 20-25% of families with children under school age in the UK in 2005 (Gray, 2005, Table 1); and 21% of working grandparents across Europe in 2004 (Hank and Buber, 2009, Table 1, p.60). Nevertheless, the position of working grandparents caring for their young grandchildren is also overlooked. León (2005) recognises the phenomenon and notes that 'many grandparents with childcare responsibilities are still in paid work, which gives a different, and often neglected, dimension of the reciprocities and fluctuations between different forms of work,' (p.215).

It is clear that working grandparents and other carers experience the same conflicts between work and family life as do working parents. Gray (2005, pp.571-573) argues that this is reinforced by the potential tension between UK government policies to increase employment rates of over 50s and the important role

grandparents provide in childcare. This is also reinforced by carers more generally who acknowledge that their caring responsibilities have affected their ability to undertake paid work (Office for National Statistics, 2011, 37% indicated that they could not work because of their caring responsibilities, Table 4.14), and who identify flexibility in employment as the key factor in enabling them to combine both (Office for National Statistics, 2011, 68% of carers noted that flexible working was the most important thing enabling them to continue to work while caring, Figure 4.11). Research conducted by Wheelock and Jones (2002, p.458) also indicates that many previously working grandparents (mainly grandmothers) gave up paid employment in order to care for grandchildren. This suggests that they also experience work-family conflicts and given the invisibility of them as carers the only option available is to leave the workplace. This trend is reflected in research conducted in Australia by Goodfellow and Lavery, (2003, pp.17-18). It is also characteristic of working carers, 39% of whom left paid employment altogether in order to undertake care (Office for National Statistics, 2011, Figure 4.8). This is somewhat at odds with Hutton and Hirst's (2000, p.31) analysis of research which suggests that persons undertaking informal care do not generally make significant changes to their employment relationships, at least in the first instance. This could be because care needs are not necessarily ongoing and instead carers require shorter-term periods of absence to respond to care needs. It could also be because of concerns regarding their labour market attachment and/or ability to return to work following a period of caregiving. What is clear is that more can be done to enable working grandparents and other working carers to better address their work-family conflicts. Goodfellow and Lavery (2003, p.19), with reference to Australian research, note that there has to be greater recognition of the role that grandparents undertake in providing care in the development of family policy including childcare and workplace reform. The same is equally true of working carers more generally. It is similarly argued here that work-family legislation must recognise, and value, all caring relationships in order to enable intergenerational working carers to provide care without having to leave the paid labour market.

Multi-household and Lone parent working family models

Multi-household and lone parent working family models represent two sides of the same coin in terms of alternative family care relationships. On the one side are multi-household working families which encompass those circumstances in which parents are no longer, or never were, living together in the same household, but share childcare responsibilities (Borrell, 2010, p.470). This working family model embodies similar caring commitments to those found within the nuclear family model (Borrell, 2010, p.475), but focuses on the

relationships of care between non-resident parents and children. This approach is useful because it recognises co-parenting but negates the need to consider whether there is a (marital) relationship between the parents. Such an approach which focuses solely, or at least primarily, on the relationship between the child and their parent would appear to be more appropriate than focusing solely on the resident parent and inhibiting co-parenting. In doing so it would recognise working parents as earner-carers qua their relationship to a child and not as interdependent on the relationship with the other parent.

While it is not always the case, the focus here will be on non-resident working fathers sharing caring commitments with resident mothers, as they experience the most challenges accessing work-family rights. It is estimated that non-resident fathers accounted for 17% of fathers with dependent children younger than 16 in 2009/10, and around 84% of them at that time were economically active (Poole, Speight, O'Brien, Connelly, & Aldrich, 2013, p.3). The majority of such non-resident fathers are in regular contact with their children with 59% of them being in touch with their children at least once a week, and 49% regularly having their children stay with them at weekends or during school holidays (Poole et al., 2013, pp.7-8). While these figures do not necessarily indicate that these families adopt the multi-household working family model, it is clear that a number of non-resident parents do share caring commitments with resident parents on a regular basis. It is argued here that where resident and non-resident parents wish to share responsibility for childcare, the legislation should provide the framework which supports their choices as opposed to inhibit them.

The other side of this coin is lone parent working families. Unlike the previous model, this working family model presumes that there is no relationship of care between the non-resident parent and the child. The resident parent is consequently the sole caregiver in this instance. Lone parent households accounted for 18.9% of families in 2014 (Office for National Statistics, 2014b), and 65.7% of those lone parent families had dependent children and were in work (Office for National Statistics, 2014b). Of those in work 33.5% were in part-time work and 25.6% were in full-time work (Office for National Statistics, 2014a, Table KS107UK). This suggests that a large proportion of lone parent families are working families with childcare responsibilities. What it does not show is how they are addressing these and whether they are relying on a network of carers, such as the intergenerational working family, for support. Discussions of the lone parent working family model will also make reference to the inter-relationships between these family models. What is evident is that their work-family needs are different to those in dual-partnered working families and the legislation must recognise this, without inhibiting co-parenting where it exists.

These alternative working family models identify a range of caring scenarios that are distinct from the dual-partnered working family model but which arguably should equally be supported by work-family

legislation. Within the Modern Workplaces consultation the government appeared committed to creating a culture change by making workplaces more flexible and responsive to work-family conflicts. In order to achieve this goal, the changes now contained within the CFA and the SPLR must arguably enable all working families with caring commitments to negotiate and create an effective balance between work and family care responsibilities.

Modern Workplaces: the Children and Families Act and the Shared Parental Leave Regulations

CFA provides the framework for changing the overall composition of the package of work-family rights in the UK, with the SPLR outlining the detail. The package of rights will be changed in four main ways. Firstly, by replacing the current right to additional paternity leave and pay with the right to shared parental leave and pay. This enables qualifying working parents to opt-in to the shared parental leave framework when the mother either gives notice curtailing her maternity leave or returns to work (SPLR, Regs.4-6). Since parents have to opt-in to access this right mothers can still choose to utilise their full maternity leave entitlement instead. Both working parents must qualify for shared parental leave by satisfying the following conditions: they must have, or expect to have, the main responsibility (alongside the other parent) for caring for the child; the mother must be entitled to maternity leave or pay or allowance; the mother must have given notice curtailing her maternity leave/pay/allowance or returned to work; they must comply with the notice and evidentiary requirements; both must have 26 weeks continuous service by the 15 week before the expected date of birth; and both must satisfy the earnings test which requires them to have worked for at least 26 out of the previous 66 weeks and to have earned a minimum weekly amount (Regs.4-5 and 35-36). Having satisfied these conditions, working parents can, in principle, share 52 weeks leave (Reg.6), 39 of which are paid, however, this is reduced in practice by the 2 week compulsory maternity leave period (Employment Rights Act 1996 (ERA) c.18 s.72(3)). Leave may be taken as continuous blocks (Reg.13), as is currently the case, or can be in non-consecutive blocks of leave for a minimum of one week with the employers' agreement (Reg.14). It may also be taken concurrently (Reg.7(5)), but previous proposals for more flexible part-time leave options have not been included in the legislation (MWC, 2011, pp.19-20).

Secondly, the CFA Part 8 extends the right to accompany expectant mothers to two ante-natal care appointments to working fathers/partners. The right entitles working fathers or partners to up to 6.5 hours unpaid leave per appointment (CFA, s.127 inserting s.57ZD into the ERA). This is a day one right enabling all working fathers or partners to attend such appointments irrespective of their labour market attachments

(CFA, s.127 inserting s.57ZD into the ERA). Thirdly, and perhaps most significantly, the CFA Part 9 revised the right to request flexible working to encompass all employees, thus removing specific conditions relating to defined caring relationships. Fourthly, the categories of dual-partnered working families specifically covered by the legislation are extended, in principle, to recognise the different ways in which families are constituted. These changes have the potential to re-envision how families can address work-family conflict. However, the subsequent analysis of the legislation from the perspectives of the alternative working family models identified previously demonstrates that the legislation fails to genuinely address the caring challenges of modern families.

Atypical dual-partnered working families

Adoptive and reconstituted working families both enjoyed access to work-family rights prior to the changes enacted by the CFA and the SPLR. The reconstituted working family model in particular has always been afforded the same access to rights as the traditional nuclear family model, with the mother's partner a constant alternative to the biological father. This position is retained in the CFA and the SPLR (Reg.3(1)(a)), reinforcing the primacy of dual-partnered working family models.

Adoptive parents have also been entitled to work-family rights on a similar basis to dual-partnered working families; in particular they are entitled to adoption leave and pay which is comparable to maternity leave and pay (Paternity and Adoption Leave Regulations 2002, SI 2002/2788, Part 3). However, the maternity rights have always been more generous. The MWC proposed extending the rights of adoptive parents to fully mirror these rights (HM Government, 2012a, pp.7 and 34-35), and these proposals were enacted by the CFA, as discussed below. In addition, rights are also extended to those in foster to adopt scenarios (CFA ss.121-122), thus ensuring that potential adopters can also take leave during this important stage of the process of entering the family, which is arguably more beneficial than waiting until the adoption has been finalised. Intended parents in surrogacy situations are also specifically included, and are similarly entitled to adoption leave and pay (CFA ss.121-122). This is an important change to the legislation because previously they were not entitled to access any work-family rights, while the surrogate could utilise her full entitlement to maternity leave since qualification is based on being pregnant and notifying the employer of that fact, the expected date of childbirth and the intended start date of the leave (ERA, s.71; Maternity and Parental Leave etc Regulations 1999, SI 1999/3312 (MPLR), Reg.4). This scenario highlights the problems inherent with the traditional biological family model underpinning the previous legislative framework, and

still prevalent in the wider European context. The focus on the gestational aspects of motherhood as opposed to genetic, or more significantly in this context, social care exposes the limitations of legislative approaches thus far (Caracciolo Di Torella and Foubert (2015)). This is entirely consistent with McGlynn's (2000) seminal analysis of the jurisprudence of the CJEU which reinforced the 'dominant ideology of motherhood.' What is particularly notable is the conflation of maternity and motherhood in cases following *Hofmann v Barmer Ersatzkasse* (184/83) [1984] E.C.R. 3047 (McGlynn, (2000), pp.39-40), and the continued conflation of such roles in contexts such as this. While there is always a health and safety justification for granting the woman bearing a child leave following childbirth, the continued focus on this person as the 'rightful' holder of subsequent childcare rights needs to be challenged. This is important in the current context because it identifies the value in adopting a wider understanding of care because the biologically determined concept of who a mother is and what motherhood entails extends far beyond that which is, or should be, biologically necessary. As Caracciolo Di Torella and Foubert (2015) also argue, it is important and necessary to recognise the realities of who is caring for the child in the period following the compulsory maternity leave period, and move away from these unhelpful presumptions and expectations regarding who should and/or does care. The CFA attempts to redress this imbalance by ensuring that the person caring for the child is able to take time off work in order to do so. In this regard, the legislation appears to recognise that the situation for adopters and intended parents in surrogacy situations is different from that of biological families and so requires an alternative response and options for leave. The changes to the legislation in some ways reflect this, but are likely to be limited in practice.

The first change is to remove the continuity of employment qualifying conditions for adoption leave, thus also providing adoptive parents with a day one right to leave. This change was supported within the MWC and during the Children and Families Bill's progress through parliament on the basis that adoptive parents similarly require a day one right to leave (HM Government, 2012a, p.34; Hansard, 2013c, The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Jo Swinson), col.706). This is perhaps all the more important given its extension to foster to adopt scenarios and intended parents in surrogacy situations. This recognised the potential implications for both (potential) adopters and the child if the adoption was delayed or fell through because they were unable to utilise leave at the appropriate time. The Paternity and Adoption Leave (Amendment) Regulations 2014, SI 2014/2112 Reg.7 removes Reg.15(2)(b) which specifies that adopters must have 26 week continuous service by the end of the week in which they were notified of the placement. Adoptions taking place on or after the 5 April 2015 will consequently be available to working adopters as a day one right. This removes the inconsistencies between

adoptive and biological parents, and recognises that adoption, in this respect, should be assimilated with the entry of a biological child into the family.

The second change is to enhance statutory adoption pay to reflect the framework of statutory maternity pay. Instead of all 39 weeks being paid at the statutory level, s.124 CFA amends s.171ZN of the Social Security Contributions and Benefits Act 1992 (SSCBA) and from 5 April 2015 entitles adoptive parents to 90% of their normal salary for the first 6 weeks with the remaining weeks being paid at the statutory level. This again redresses the inconsistent and privileged position afforded to biological parents and recognises the importance of leave at this time from a childcare, as opposed to a health and safety/biologically determined perspective. Adoptive leave and pay is thus recognised as being equally as important as maternity leave following a child's entry into the family.

The third change corresponds with the extension, more generally, of the right to accompany expectant mothers at ante-natal appointments. Section 128 CFA, inserting ss.57ZJ-S into the ERA, entitles adopters from 5 April 2015, including those in foster to adopt scenarios, to attend up to 5 introductory meetings of up to 6.5 hours each, with joint adopters being entitled to attend 2 such meetings with them. The primary adopter is entitled to payment when attending these appointments; however the joint adopter is only entitled to unpaid time off. While this is an important recognition of the pre-placement needs of adoptive working families, it is limited in practice. The restrictions on the length and number of appointments may not be sufficient in practice where, for instance, multiple meetings are required, such as when the adoption is particularly complex or siblings are being adopted. A more flexible approach for adopters would be more appropriate in practice.

In addition, the distinction between primary and joint adopters is arguably an artificial construct in this context in order to assimilate adopters with the dual-partnered working family model, which, as noted previously, is inherently problematic. This distinction between primary and secondary carers is particularly problematic in the adoption context because both are joint adopters and as such presumably both should attend these meetings. Support for this position was advanced by Ceri Goddard, chief executive of the Fawcett Society, during the committee stage of the Bill: 'The reality is that it is hugely important to recognise that it is not one of you adopting; it is two of you ... it is in the best interests of the child, without a doubt, to have both parents involved as soon as possible,' (Hansard, 2013b, Col.131). While it is equally desirable for both parents to be involved as soon as possible irrespective of the way in which the child enters the family, the points made by Ceri Goddard here are very important because they recognise that adopting a child is notably different from biological entry into the family. In particular, given that there are no considerations of ante-

natal care needs or of maternity leave or post-natal recovery, both parents should equally be entitled to work-family rights. There is no need to require them to conform to artificial traditional family norms. The rights to shared parental leave, should the adopters qualify for this, would provide them, in principle, with greater flexibility and enable them both to take time off following the child's placement with the family (SPLR, Part.3). However, more flexibility in terms of being able to attend pre-placement meetings and a day one right to shared parental leave would have offered adoptive families with more realistic solutions to their potential work-family conflicts. Nevertheless, this begins to recognise the diversity of family forms and that the responsibility to care for a child is similar irrespective of the circumstances surrounding their entry into the family.

Intended parents in surrogacy situations are also entitled to take time off work in order to accompany the surrogate to attend ante-natal appointments (CFA s.128 inserting s.57ZE(7)(e) into the ERA). The right entitles them to a maximum of 6.5 hours unpaid leave to attend two ante-natal appointments (CFA s.128 inserting s.57ZE(1)-(3) into the ERA). The right would be available to either or both of the intended parents, thus enabling both parents to attend; however, it affords them much more limited rights than those available to other working parents. Whereas pregnant employees are entitled to paid time off work to attend all such necessary appointments (ERA, s.55), and at least one adoptive parent can attend up to 5 paid meetings (ERA, s.57ZI), intended parents in surrogacy are not entitled to any equivalent rights to paid leave. It will undoubtedly be the case that these working parents will want to attend appointments involving the transfer of embryos, sperm or artificial insemination of the surrogate, not to mention any additional appointments throughout the pregnancy, which could be more complex or require attendance with specialists, particularly in the early stages and pre-conception stages. Furthermore, irrespective of the biological connection that exists between the intended parents and child, the intended parents have a vested interest in the continuing development of the baby, which they may only be able to experience during such appointments. Limiting their right to time off to attend only two unpaid appointments following conception fails to acknowledge the very different circumstances surrounding the pregnancy and the implications of those for such working parents-to-be. In doing so, it treats them both as secondary carers and fails to appreciate that it is important for them to be involved in the pre-natal period, not to mention the pre-conception stages. Furthermore, by failing to provide them with a right to paid leave it suggests that this type of family formation is not afforded the same value as more traditional methods.

The same is equally true for all intended working parents using assisted conception techniques. It is notable that the legislation does not similarly encompass their distinct experiences. Perhaps this is a

consequence of the presumption that the family model will correspond with one of the identifiable models once conception has occurred. In particular, the pregnant woman would be entitled to paid time off to attend ante-natal appointments and their partner would equally be entitled to unpaid leave to accompany them to two ante-natal appointments (CFA, s.127 inserting s.57ZD into the ERA). However, such an approach is problematic because it fails to appreciate the distinct and challenging circumstances facing such working families and their greater needs for support in the pre-conception period. In particular, it obscures the fact that irrespective of whether or not they experience a successful pregnancy, they still require a significant degree of support and accommodation while undergoing treatment. A similar right to paid time off to attend such appointments, for both intended working parents, would be beneficial as it would recognise and value the experiences of such working families.

The legislation needs to recognise more realistically the work-family challenges faced by all adoptive parents and intended parents in surrogacy situations, as well as families using other assisted conception techniques. Distinctions should not be drawn between primary and secondary carers in the way that it has been here. At a minimum all such working parents-to-be should be afforded the right to attend up to 5 paid appointments. This would challenge the focus on dual-partnered traditional family arrangements and start to genuinely recognise the distinct work-family conflicts that they face.

While the CFA makes an attempt to recognise alternative working family models, it is clear that this is limited in practice. These alternative atypical dual-partnered working family models are only recognised in so far as they conform to the traditional norm, even when this does not make sense for that working family model. By doing so the legislation fails to effectively address the specific care needs facing these working families. This poses the question of whether the legislation can encompass any other alternative working family models that are even more distinct from that traditional norm.

Intergenerational working families

Intergenerational care has previously been recognised to a limited degree. Persons with eldercare responsibilities were included within the former package of work-family rights in so far as care situations fell within the scope of the right to request flexible working for adults in need of care.² The same was not true for grandparents caring for grandchildren or other relationships of care. The extension of the right to request flexible working to all employees has potential implications for intergenerational care. This would provide

² As previously contained within Flexible Working (Procedural Requirements) Regulations 2002, SI 2002/3207; Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, SI 2002/3236

working grandparents, and other intergenerational carers, with the framework to request changes to their working arrangements in order to undertake a caring role. This was reinforced by the Parliamentary Under-Secretary of State for Education, Edward Timpson, during the second reading stage of the Bill who noted that this would enable working grandparents to change their working arrangements and so undertake care (Hansard, 2013a, Col.60). However, there are limitations inherent within this right. As it is only a right to request such changes, it does not guarantee that grandparents, or other intergenerational carers, will be able to secure changes in their working arrangements in order to accommodate care, which may ultimately drive them out of the workplace because of the responsibilities for care that they feel towards their children and grandchildren, as indicated in the research undertaken by Goodfellow and Lavery (2003) discussed above. In addition, it does not specifically address the needs of intergenerational carers and so does not necessarily respond to all of their work-family needs. Nevertheless, the revised right to request contained within s.80G(1)(a) ERA requires the employer to ‘deal with the application in a reasonable manner.’ This, alongside the ACAS Code of Practice (2014) *on handling in a reasonable manner requests to work flexibly*, may facilitate a greater dialogue between employers and employees and make it easier to accommodate such requests.

In addition, the fact that any accepted request results in a permanent change to terms and conditions can also be problematic for intergenerational working carers whose needs may vary over time, or whose needs would be better met by taking a period of temporary leave. Although, the legislation, in principle does not prohibit temporary changes to working arrangements, it is not obvious that such changes can be made. These additional care responsibilities could be addressed by making it clearer to employees that the right to request flexible working can include temporary changes so long as these are clearly indicated in the initial request, which in itself may be problematic as circumstances can change in unforeseeable ways. Being able to respond to changing care needs is perhaps the most significant factor affecting working carers’ choices surrounding work and caring decisions. ACAS (2014, p.5) has suggested that employers and employees could also agree informal requests in these circumstances, thus avoiding the need to make permanent changes. While this can enable working carers to better address their needs, these encompass the same limitations noted previously.

While the extension of the right to request flexible working may address some of the care needs of intergenerational carers, it does not fully address their position and the type of support that they may provide in varying circumstances. In particular, it does not address the supportive role that working grandparents may undertake when the child’s father is not involved or where the mother dies. Nor does it consider the

circumstances in which intergenerational carers have to provide full-time care but only for a short period of time, for instance when someone is very ill. In these circumstances, full-time temporary leave may be more appropriate, such as some form of family care leave. During the passage of the Bill through parliament the TUC (2013, paras.8 and 35) and Working Families (2013, para.2.6) supported access to parental leave for alternative carers supporting mothers such as grandparents, recognising that they play an important role in childcare, particularly when parents are no longer together. The same is also true of other intergenerational carers.

This can be compared with the position in both the USA and Sweden where intergenerational care is recognised to some extent by enabling working carers to take leave in order to care for ill persons in certain circumstances, thus providing them with greater rights to undertake care for specified periods of time. In the USA the Family and Medical Leave Act 1993 (FMLA) entitles employees to a total of 12 normal work weeks of unpaid leave, for either family or medical purposes, during any 12 month period (§§ 102(a)(1) and (c)). The employee can utilise this leave in order to care for their child, spouse or parents if they have a serious health condition defined as: illnesses, injuries, impairments, or physical or mental conditions which involve inpatient care or continuing treatment by a health care provider (FMLA, §§101(11), 102(a)(1) and (2)). Working carers are, consequently, only afforded the right to leave in serious medical situations and are not entitled to provide care in more general terms. Those who are entitled to leave can take it on an intermittent basis or on a reduced leave schedule, thus enabling employees to utilise the leave over an extended period of time in order to better address their work-family conflicts, although such flexibility is only permitted when it is medically necessary (FMLA, § 102(b)(1)).

While family leave in the USA provides some intergenerational carers with opportunities to address their work-family conflicts, these are limited primarily to eldercare situations. The rights cannot be taken by grandparents unless they are *in loco parentis*.³ Murray (2008, p.387), in her analysis of caregiving in the USA, identifies that this is a significant gap in the legislation which does not necessarily reflect the realities of caregiving in practice. Despite this it has been argued that the legislation addresses '*a diversity of special needs within a formally gender-neutral framework ... assumes employees to be heterogeneous, embodied, encumbered, sometimes specially needy, but also equally entitled,*' (Vogel, 1995, p.116). This is an interesting analysis of the legislation because it appears to reflect the wider conception of the family and

³ 29 CFR 825, § 825.122(c)(3); For a discussion of this see *Martin v Brevard County Public Schools, No.07-11196, D.C. Docket No.05-00971 CV-ORL-22-KRS, (11th Circuit, 30 September 2008)*

family care advocated above, particularly with regards to recognising working persons as inherently encumbered with caring responsibilities.

In Sweden intergenerational care is also recognised in two distinct ways. Firstly, the right to care leave is contained within the Carers Leave Act 1988 (CLA) and is available to insured persons who are caring for another insured person who is terminally ill (3 and 4 §§). In some respects this is narrower than the US right because it is limited to terminally ill persons and equally does not provide intergenerational working families with the right to care leave more generally. However, in contrast with the US right it is not restricted to persons within the nuclear family model. The category of persons included here extends beyond familial relationships and also encompasses close friends and neighbours. This is significant because it reflects a wide understanding of the caring relationships that exist and persons that are relied upon for care.

Secondly, in Sweden the unspecified alternative working carer can utilise certain rights to temporary parental leave in lieu of the gender-neutral working father or parent (Parental Leave Act 1995, 1§; National Insurance Act 1962, Ch.4, 2§). Where the father is not entitled, has relinquished his right, the mother has died or the father is not allowed to utilise the right, an alternative working carer can exercise the right to paternity leave (NIA 1962, Ch.4, 10§). This is an important extension of the right because it recognises that the mother and the family require the same additional care and support that would otherwise be provided by the father following a child's entry into the family.

The extension of the right in these terms to potentially include working grandparents is equally significant because as Gray identifies, research shows that grandparents are more likely to provide care when parents are separated (Gray, 2005, p.563). This is important because it shows that grandparents fill the gap left by the absent parent and thus play a significant role in childcare. A similar extension of the right to paternity and shared parental leave in the UK to include specific alternative carers in circumstances where the father is equally unable to access leave or support the family, or where either parent dies, could help working families in the UK who are facing similar circumstances and thus recognise intergenerational care. Furthermore, by providing working families with the rights to care leave, it recognises that in some instances it will be more appropriate for caregivers to be temporarily absent from work in order to provide care, as opposed to changing their working arrangements in order to accommodate care. In this respect, the UK rights are somewhat limited because they do not extend care leave rights to intergenerational working carers.

It is notable that in Sweden, the right to parental leave more generally is reserved solely to working parents. While this complies with the Parental Leave Directive 2010/18/EU, it appears to draw distinctions between those forms of leave which are taken concurrently, and those which can be undertaken by either

parent. In this way the legislation attempts to mirror the care situations in dual-partnered families when these do not exist for whatever reason. Consequently, while the legislation enables intergenerational care, it only does so in order to reproduce dual-partnered care relationships.

The UK has adopted a similar position regarding shared parental leave, namely that it should be reserved solely for working parents. However, this is not necessary in order to comply with the Parental Leave Directive 2010/18/EU since the UK retains the separate right to unpaid parental leave which implements this (MPLR). During the Bill's passage through parliament there was an attempt to address this to some extent by extending the right to shared parental leave to other carers in exceptional circumstances such as the death or illness of the mother. However, this was withdrawn following discussions in which it was argued that such an extension was inappropriate since the rationale behind the leave was to encourage both parents to share responsibility for care (Hansard, 2013c, cols.707-710). While it is important to support this principle and try to encourage greater participation by working fathers and promote cultural change, it fails to recognise that greater flexibility here would also address the work-family conflicts of those families where there is no other parent with whom to share such responsibilities, particularly given that they are likely to be the most vulnerable and in need of support.

The extension of the right to request flexible working will improve the position of some intergenerational working families and enable them to better address their care needs while remaining in work. However, because the legislation does not specifically address intergenerational care, the problems that such carers face remain unchallenged. This could be addressed by extending the categories of rights holders in certain situations, thus enabling working families to have greater control over who can care. Such an approach reflects the focus on caring relationships as opposed to pre-defined and preferred familial relationships (Herring, 2013), discussed above. This could be limited to exceptional circumstances, adopting a similar approach to that used in Sweden. This approach would ensure that shared parenting objectives are not undermined, while recognising the role of alternative carers in these situations. This could address the challenges facing intergenerational working families and lone parent working families, where alternative family members undertake the role of the absent parent. While this could be viewed as an attempt to assimilate with the dual-partnered norm, it would be a better alternative for such working families than being overlooked entirely by the legislation.

In addition, introducing the right to family care leave like that available in both the USA and Sweden, which enables working carers to take a period of leave in order to care for a dependent, could help address some care needs and prevent such carers from leaving the labour market. This could similarly be limited to

seriously ill dependents as in both of these countries, but it would better address intergenerational care needs if it encompassed care needs more generally. This could operate as an equivalent flexible right to unpaid parental leave, although it would be beneficial if there were a paid element. The introduction of a right such as this would challenge the focus on childcare leave and equally value the care produced by other carers.

While in some respects these changes seek to assimilate the dual-partnered working family model norm, it is notable that the legislation does not specifically facilitate intergenerational care. This reinforces the narrow focus on the traditional nuclear family model within the legislation and the disconnection between that and the realities of care, underscoring the importance of the need to move away from this family model.

Multi-household and Lone parent working families

In the MWC the government claimed that ‘each parent will qualify in their own right for leave and pay,’ (HM Government, 2012a, p.5). Nowhere is this more important than in the context of multi-household and lone parent working families who both face challenges conforming to the dual-partnered working family norm, and thus negotiating their work-family conflicts. They also face challenges because they represent opposing working family models, and rights which are supportive of one model are often detrimental to the other. This was particularly evident in the proposals advanced in the MWC regarding flexible parental leave.

In the MWC it was proposed that the right to flexible parental leave would be available to all parents, not just those in dual-partnered working families. This proposal was made in the context of other proposals entitling working fathers to a non-transferable ‘daddy month’ and the leave being available on a part-time basis (HM Government, 2011, pp.18-26). The position of lone parent working families was specifically addressed and it was recommended that the full period of flexible parental leave would transfer to them automatically (HM Government, 2011, p.20). Given that they do not have a partner with whom to share the leave, having the ability to use it flexibly such as on a part-time basis could have enabled lone parents to utilise more of their leave and return to work thereafter (Working Families, 2013, para.2.1). While this would have ensured that lone parents were able to benefit fully from the package of rights, it would have been problematic for non-resident working fathers and could have undermined co-parenting by reinforcing traditional assumptions regarding care. Not only would this have undermined the role of non-resident parents,

but it would have specifically penalised them for not conforming to the traditional dual-partnered family model.⁴

However, the CFA reverses this position and instead excludes lone parents from its scope by focusing solely on dual-partnered working families. The qualifying conditions require both parents to satisfy conditions in order for the family to have access to shared parental leave (SPLR, Regs.4-5), meaning that lone parent working families will be unable to satisfy these. While it could be argued that lone working mothers would still be entitled to maternity leave, and unpaid parental leave would be available to either, this omission underscores the primacy given to the dual-partnered working family. It fails to recognise that lone parent working families would also benefit from the flexibility that shared parental leave could have afforded them. In addition, the limitation of shared parental leave, and the right to accompany at ante-natal appointments, to parents or partners fails to appreciate the caring relationships that exist alongside lone parent working families, and the support given by alternative carers, as discussed above in relation to intergenerational care.

In contrast, the right to shared parental leave would, in principle, be available to multi-household working families. The right is available to the biological father or the mother's partner (SPLR, Reg.3), which means that the non-resident father could share the leave, but ultimately it is the mother's choice with whom to share it. In addition, the non-resident father will have to show that they share the main responsibility for the child's care with the mother (SPLR, Regs.4-5). This may be challenging for non-resident fathers to establish, particularly if the mother has a new resident partner who also cares for the child. Furthermore, it assumes that working parents are in a position to negotiate the sharing of care commitments, which may be difficult for non-resident fathers where all of the power and choice is with the working mother. A non-transferable 'daddy month', as originally proposed, may have helped such fathers to engage in care on their own terms as well as facilitate a dialogue between separated parents regarding childcare responsibilities.

In contrast, the reconstituted family appears to have greater support in practice, as opposed to biological relationships across multi-household families. This is arguably somewhat at odds with the underpinning principles of the CFA more generally, and the family law reforms contain therein which are based on the presumption that involvement of both parents post-separation is in the best interests of the child.⁵ While there is support for this arrangement in the family law context, the work-family legislation continues to reinforce the traditional dual-partnered family and does not fully support joint parenting in multi-household

⁴ While there was overwhelming support for the transfer of leave to lone parents, 8% of respondents did identify these potential problems for non-resident fathers: HM Government, 2012a, p.22

⁵ CFA, s.11 amending s.1 Children Act 1989 and also discussed by the Children's Minister during the passage of the Bill through parliament: Children and Families Bill Press Release, Annex A; Children and Families Bill, Second Reading, 25 February 2013, Col.55

scenarios as is envisaged here. In contrast, the current framework of the package of rights may inhibit parents negotiating and sharing leave in these circumstances. If the overall objective of the legislation is to ensure that the different areas of law and practice affecting children are joined up, then it must ensure that different family models, such as these, are adequately supported by all aspects of the legislation.

The original aims of entitling each parent to individually qualify for leave and pay are far from the reality of the rights in practice. The inherent problem with the CFA is that it offers nothing of substance for either of these working family models. This is particularly the case because the legislation is premised on relationships of support inherent within the traditional nuclear family. Even where multi-household families could share leave, the negotiations are fundamentally different because the parents have no obligations of support for each other which could inhibit decisions regarding childcare. The same is true of lone parent working families because they have to make decisions regarding how to balance work and care commitments in the context of them being the only breadwinner. Even where the intergenerational working family model provides support, this is not the same as the dual-partnered working family model, and nevertheless is equally invisible in this context. The continued focus on the dual-partnered nuclear working family model fundamentally undermines care undertaken in these alternative working family models.

Conclusion

Despite the recognition of the diversity of the family within family law, and policy and academic support for focusing on caring relationships as opposed to traditional family models and roles (Herring, 2013), this examination has shown that the dual-partnered nuclear working family model remains the enduring family model inherent within work-family legislation. In doing so, the CFA makes assumptions regarding relationships of care and support within working families that does not reflect the reality of their caring needs, and the relationships between the parties involved in care. It is evident that the exclusive focus on this working family norm is problematic for all of the atypical working families examined here.

Alternative dual-partnered working families are recognised to some extent within the CFA, with adoptive parents being placed on an equal footing with biological parents, which is a positive extension of these rights. However, this is limited with rights only benefitting such families in so far as they comply with the traditional nuclear family norm. There is only limited recognition of their pre-placement and, in the case of those using assisted conception techniques, pre-conception needs. The position is particularly problematic for joint adopters, who are afforded only a secondary role in this context and intended parents in surrogacy situations, with no genuine recognition of their pre-placement needs let alone their pre-conception ones.

Instead of the CFA trying to accommodate these family models within the current legislative framework and family norms, it should embrace these differences and offer more appropriate solutions, such as enhanced rights to paid leave to attend appointments in the pre-placement (and pre-conception) stages.

The extent to which the CFA recognises inter-generational working families differs depending on the types of care responsibilities envisaged here. For working grandparents the extension of the rights to request flexible working to all employees enables them to now make such requests to address work-family commitments. The same is not necessarily true for other working carers who are likely to have qualified previously as persons caring for adults in need of care. The greatest challenge for such working families is that the different work-family conflicts that they may experience make it much more difficult for them to assimilate with currently recognised working family models. Consequently, a specific right to care leave, as an equivalent to the right to parental leave and an extension of current rights to include alternative carers in lieu of working fathers, or mothers, in specified instances would recognise at least some of the varying care responsibilities that different working families experience throughout the course of their working lives. In contrast with the previous family models, enabling these families to assimilate with the dual-partnered aspects of the traditional nuclear family model could better enable such families to address some of their care responsibilities.

In contrast with the previous two models, the specific needs and circumstances of lone parent working families are entirely excluded from the scope of the CFA. Not only does this fail to recognise the potentially positive benefits of being able to use childcare leave more flexibly for lone parents, but it also ignores the possible extended care arrangements and relationships that exist alongside lone parent working families. While the CFA in principle would encompass multi-household families, the framework is more supportive of re-constituted families. This is reinforced by the omission of specific rights for working fathers, which may have provided non-resident fathers with a basis for asserting work-family rights. In contrast, the legislation assumes a dual-partnered co-resident relationship in which parents are able to, and do, negotiate caring responsibilities in the context of their own reciprocal relationships of care. This seems to prioritise the sexual relationships between parents, with the relationships of care towards the child being secondary. Work-family legislation must extend beyond the dual-partnered co-resident norm in order to better address these work-family needs.

It has been argued throughout that the work-family concept must, consequently, be re-envisioned as previously advocated by Fineman (1995), Herring (2013) and McGlynn (2006) to encompass broader relationships of care, which should be defined according to responsibilities for care and not pre-

defined concepts of who should care. In this regard, alternative working family models must be acknowledged and recognised within the work-family framework. This requires redefining the categories of rights holders to reflect a range of caring scenarios; the individualisation of qualifying conditions for work-family rights; and specific recognition of the caring needs and experiences of alternative working family models. Significantly, it requires a move away from dependence on the dual-partnered working family model and the emergence of a more fluid concept of modern working families. There needs to be an acceptance that working persons are inherently encumbered with various and changing caring responsibilities. The legislation must become more flexible and able to adapt to these changing needs if the government wants to retain working carers in the labour market. Otherwise, while it may be the case that we are moving towards modern workplaces in the UK, it is clear that current legislation fails to respond to the needs of modern families.

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