Sex Selection, Child Welfare and Risk: A Critique of the HFEA’s Recommendations on Sex Selection

Juliet Tizzard¹ ²

This paper will examine the recent Human Fertilisation and Embryology Authority public consultation on sex selection. It will review the current regulation on sex selection in the United Kingdom and critically examine the outcomes of the HFEA consultation. The paper will argue that the current ban on embryo sex selection for social reasons and a proposed ban on sperm selection are not justified. There is no evidence for sex selection causing an increase in sex discrimination; creating a slippery slope towards selection for other non-disease characteristics; or promoting a consumerist attitude towards children. The HFEA recommendations to prohibit social sex selection techniques rely upon an unwarranted concern about the risk of the procedures used. Reproductive technologies should be made available to people unless a substantial risk of harm—to the child, the parents or to society—can be identified. There is no such evidence of harm in this case.

KEY WORDS: child welfare; harm; risk; regulation; sex selection.

INTRODUCTION

The ability to select the sex of one’s baby before a pregnancy even begins—by screening embryos—has been available to patients since 1989. But, in the United Kingdom, it has only ever been made available to couples who are at high risk of passing on a genetic condition to their sons, not to those who wish to select the sex of their prospective baby for non-medical reasons.

There are currently two reliable methods of detecting the sex of a baby before it is conceived. Preimplantation genetic diagnosis (PGD), sometimes known as embryo screening, involves the biopsy of an in vitro human embryo to remove

¹Progress Educational Trust, London, United Kingdom.
²Correspondence should be directed to Director, Progress Educational Trust, 140 Gray’s Inn Road, London WC1X 8AX, United Kingdom; e-mail: jtizzard@progress.org.uk.
one or two cells for diagnosis—either for a particular gene mutation or for the presence of the X or Y chromosome which determines the sex of the embryo. PGD is not a straightforward procedure: the patient is required to undergo a cycle of in vitro fertilisation (IVF) (even though she is unlikely to have difficulty conceiving naturally), an invasive, expensive procedure with no guarantee of success. The development of a second reliable method of sex selection, known as sperm sorting, has proved to be more attractive to those seeking sex selection for non-medical reasons. Sperm sorting involves the identification of X or Y chromosome-bearing sperm for insemination and is, therefore, much less invasive and less expensive than PGD. However, sperm sorting has a lower success rate than PGD: about 90% if selecting for females and 75% if selecting for males (Horsey, 2004).

CURRENT SEX SELECTION REGULATIONS

Preimplantation genetic diagnosis is regulated in the United Kingdom by the Human Fertilisation and Embryology (HFE) Act 1990. PGD can be offered to couples, provided that the clinic has been granted a license from the Human Fertilisation and Embryology Authority (HFEA) and subject to the terms of that license. In 1993, the HFEA made an announcement that it would not grant a license for PGD and social sex selection. And so, sex selection by PGD has been prohibited in the UK for more than a decade, although it is available in a number of other countries such as Spain, Australia, the United States and India. Sperm sorting, by contrast, is not subject to statutory regulation in the UK because the use of fresh eggs and sperm (gametes) does not fall within the remit of the HFE Act (the 1993 policy review of sex selection did not conclude that the use of fresh gametes should be regulated by the Act). A clinic could be set up in the UK, therefore, offering social sex selection using sperm sorting to couples.

The prohibition on social sex selection using PGD, which was underlined in a 1999 consultation on PGD, has since become a feature of the HFEA’s Code of Practice. As such, the policy is an established part of the practice of reproductive medicine in the United Kingdom. However, in October 2002, the HFEA published another consultation document on sex selection, this time accompanied by a series of focus groups and a public opinion poll. Why did the HFEA feel the need to conduct another review of sex selection? The report of the review, Sex selection: options for regulation, says:

Since the 1993 consultation, the variety and efficacy of techniques for sex selection has increased significantly . . . Recent data have indicated that the flow cytometry method of sperm sorting in particular has now reached a level of reliability that would make it an attractive option of those who want a child of a particular sex.

The report also suggests that public attitudes to the use of ARTs may also have altered since 1993.