

Surrogacy law in the UK: ethical considerations



INTRODUCTION

Surrogacy is legal in the UK, but there is continued debate about its ethical implications in the context of a fast-growing fertility industry, globalisation, and social change.

In spring 2023, proposals for new surrogacy laws will be put forward by the Law Commission of England and Wales, and the Scottish Law Commission, following a wide-ranging review.

The review addressed how surrogacy should be regulated, the legal parentage of children born via surrogacy, compensation for surrogates and issues arising in international surrogacy. This briefing note summarises practical, legal, and ethical considerations to support informed debate on these issues.

Surrogacy has been recognised by successive UK governments as a legitimate way to create a family.¹ However, most laws that apply to surrogacy in the UK were introduced over 30 years ago, and were influenced by concerns about “the artificial family” and the need to protect women from exploitation in commercially driven arrangements.² Significant changes have occurred in society since then, including a dramatic growth in the fertility sector and access to fertility treatments, as well as greater acceptance of diverse family forms.³ Some UK judges, parliamentarians, and people with personal and professional experience of surrogacy argue that the laws are difficult to enforce in practice, and that those involved in surrogacy in the UK face unnecessary legal, practical, and emotional hurdles.⁴ Additional complications can arise when people travel to access surrogacy in other countries.⁵

Wider debates around surrogacy have been concerned with ethical questions, such as:

- How should the interests and welfare of surrogates, intended parents, and future children be weighed up and safeguarded?
- Under what circumstances can or might surrogacy give rise to exploitation?

- What needs to be in place to enable surrogates to make truly autonomous choices about becoming a surrogate, managing their pregnancy and birth, and giving up parenthood of the baby?
- Does surrogacy raise risks of objectification or commodification of surrogates (and women's bodies generally), or the children born through surrogacy?
- Do the motivations of surrogates matter; for example, how important is it that surrogates act altruistically? Should surrogacy be paid or compensated in any way?

SURROGACY IN THE UK AND BEYOND

Surrogacy is an arrangement where someone agrees to become pregnant and give birth to a child with the intention that another person or couple will be that child's parent(s). Surrogacy can be arranged with the involvement of a surrogacy organisation or independently, between family members or friends, or through informal online forums.

Surrogacy takes two main forms:

- In **partial** surrogacy (also known as traditional or straight surrogacy), sperm from the intended father or a sperm donor and the surrogate's own eggs are used. Partial surrogacy can be facilitated in a fertility clinic, but insemination is often carried out in non-clinical settings.⁶
- In **full** surrogacy (also known as gestational or host surrogacy), eggs and sperm from the intended parents and/or donors are used, and there is no genetic link between the surrogate and the baby. Full surrogacy involves having *in vitro* fertilisation (IVF) in a fertility clinic.

HOW COMMON IS SURROGACY?

There is no centralised data collection of surrogate pregnancies and births in the UK. The most comprehensive source of data is applications for parental orders, whereby legal parenthood is transferred from a surrogate to the intended parents (*see section on The attribution of parenthood*). The number of parental orders granted by courts in England and Wales has increased from 117 in 2011 to 424 in 2021.⁷ Increasing numbers of children are born to UK intended parents through surrogacy abroad, about half of applications for a parental order in 2021 related to international surrogacy arrangements.⁸ Not all intended parents go through the process of obtaining a parental order, however, for various reasons including a lack of awareness, the cost, and inability to fulfil the eligibility requirements, particularly following international arrangements.⁹ It has been estimated that the true number of children born through surrogacy to UK intended parents every year is closer to 500.¹⁰

The available evidence suggests that where UK intended parents pursue international arrangements, this nearly always involves full surrogacy, while in the UK it has been estimated that around a quarter to a third of arrangements involve partial surrogacy.¹¹ This often involves insemination being carried out at home without the involvement of professionals. While this potentially saves on costs, it might not involve the same level of screening, information and counselling offered in a licensed clinic in the UK.¹²

WHY DO PEOPLE WANT TO HAVE CHILDREN THROUGH SURROGACY?

Surveys exploring the reasons people pursue surrogacy have found that most people had experienced infertility and other health or physical barriers to having a child; many also wanted a genetic connection with the child and/or to be involved in a child's life from conception. Some people cited difficulties with the fostering and adoption system, such as uncertainty, waiting times and eligibility.¹³

Of 207 intended parents in the UK surveyed in 2018:

- 147 were in a heterosexual couple unable to get pregnant or carry a pregnancy.
- 57 were in a same-sex male couple.
- 2 were single, one male and one female.¹⁴

In 2019 - the first year that single parents were eligible to apply for parental orders - there were 38 applications from this group. In 2020, there were 20 applications from single parents.¹⁵

WHAT DO WE KNOW ABOUT SURROGATES IN THE UK?

The same 2018 survey found that, of 103 surrogates in the UK:

- About half had carried more than one surrogate pregnancy.
- Nearly all had children of their own.
- Most of them had completed their family before becoming a surrogate.
- Most of the surrogates (94) had met the intended parents through a surrogacy organisation or online support group or forum.
- 10 had been a surrogate for a friend or family member.

A study involving surrogates treated at one UK fertility clinic found that they came from a range of occupations, including nursing, midwifery or healthcare, teaching or childcare professions, business administration, management or accounts, and law. Their household incomes ranged from below £29,900 to above £160,000, with most being under £70,000.¹⁷

Reasons given for becoming a surrogate often include the love of being a parent and wanting to help others have the same experience, enjoyment of pregnancy and birth, knowing or having known people with fertility problems, or having had fertility problems themselves.¹⁸

COSTS AND ACCESS TO SURROGACY

The costs of surrogacy can be considerable. Surrogacy organisations advise intended parents to budget between £20,000 and £80,000 for arrangements in the UK. Costs can depend on factors such as expenses incurred by the surrogate (for example, for lost income), legal advice, and the type and extent of fertility treatment. IVF for surrogacy is not usually covered by the NHS and private clinics generally charge more for surrogacy IVF than for non-surrogacy IVF.¹⁹ With international surrogacy arrangements, costs vary considerably depending on the destination. Estimates range, for example, from around £40,000 in Ukraine and Georgia, to £240,000 in some US states.²⁰

Awareness of surrogacy as an option and access to support and advice, as well as cultural acceptability, can also be factors that affect access to surrogacy. A recent Ipsos survey of UK adults found that only 26% were aware that surrogacy was lawful in the UK.²¹ Internationally, countries vary in whether they allow single individuals, LGBTQI+ families, and/or unmarried couples to access surrogacy.

BOX 1. WHAT ARE PEOPLE'S EXPERIENCES OF SURROGACY IN THE UK?

Many people with personal experience of surrogacy in the UK have emphasised the value of the relationships formed in the process - often talking in terms of extended or 'bonus' family, lifelong friendships, networks, and communities.²² They also talk about positive feelings and values such as trust, gratitude, and pride.²³

While contact between surrogates, intended parents, and surrogate-born children can taper off over time, research has shown that surrogates, intended parents, and children born through surrogacy are generally satisfied with their relationships for at least ten years after birth.²⁴

CURRENT LAW AND PROFESSIONAL GUIDANCE

Surrogacy in the UK is governed by the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Act 2008. The latter introduced amendments on process and criteria for parental orders.²⁵ The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 made single people eligible for parental orders.

PROFESSIONAL GUIDANCE

The Human Fertilisation and Embryology Authority (HFEA) regulates IVF and donor insemination treatments, which must be carried out in licensed fertility clinics in the UK. The HFEA Code of Practice expects clinics to ensure that those involved in surrogacy:

- Have received sufficient information and understand the legal implications of surrogacy arrangements well enough to be able to give informed consent to treatment.
- Have the opportunity to discuss the implications of treatment with a qualified counsellor with knowledge of surrogacy arrangements.²⁶
- Undergo (as other IVF patients do) a welfare of the child assessment before treatment is offered. This requirement applies to all parties: intended parents, the surrogate, and the surrogate's partner if they have one, and should take into account the risk of a breakdown in the surrogacy arrangement.²⁷

The Department of Health and Social Care's guidance on care in surrogacy emphasises healthcare professionals' duty of care to the surrogate and the need to raise any concerns around their welfare or the welfare of the future child.²⁸

FACILITATION AND PROMOTION OF SURROGACY

Under current legislation, it is an offence for an intermediary to profit financially from facilitating or negotiating a surrogacy arrangement. There are organisations in the UK that connect potential surrogates and intended parents, as well as offering practical, emotional, and legal support and advice (the main organisations are COTS, Surrogacy UK, Brilliant Beginnings, and My Surrogacy Journey). However, they must do this on a not-for-profit basis.²⁹

Non-profit surrogacy organisations are allowed to promote their services generally, but it is an offence to advertise either for a surrogate, or to be a surrogate.³⁰ Otherwise, these organisations are not subject to regulation or oversight, and they differ in the models of support they offer.

LEGAL AND ETHICAL ISSUES

The 2023 Law Commissions' review of surrogacy law is an opportunity to consider and address aspects of surrogacy that have raised ethical, legal, and practical issues. These include how parenthood is attributed in surrogacy, the issue of whether or how surrogates should be compensated, and complexity around international surrogacy arrangements.

THE ATTRIBUTION OF PARENTHOOD

Surrogacy raises significant questions about what makes someone a parent, on what basis someone acquires parental status and responsibilities to the child, and how best to safeguard the future child's interests.

CURRENT LEGAL SITUATION

Under current UK law, the birth mother is a legal parent when the baby is born, whether or not they are genetically related to the child or intend to keep the baby.³¹ As a legal parent, the surrogate is legally responsible for registering the birth, and is listed on the birth certificate as the birth mother.

If the surrogate is married, their spouse will be registered as the second parent. While intended parents usually assume care of the baby immediately after birth, there is no formal recognition of their relationship with the child until a parental order is granted (see below). This means that intended parents might need to involve the surrogate, as the legal parent, in decisions such as whether to consent to medical treatments or routine immunisations for the child.

If the surrogate is not married, one of the intended parents can be registered as the second legal parent, provided they are genetically related to the child (typically the intended father if their sperm was used). A child in the UK cannot have more than two legal parents.

BOX 2. WHY IS LEGAL PARENTHOOD IMPORTANT?

The status of legal parent confers parental responsibility, and has implications for:

- Who the child has contact and lives with (residence).
- Obligations to support the child financially (child maintenance).
- Inheritance rights.
- Who can bring and defend proceedings about the child, for example, if there is a conflict.
- Nationality and citizenship rights (*see section on International surrogacy*).

PARENTAL ORDERS AND CONSTRAINTS ON THE COURTS

In order to change who has legal status as parents and/or parental responsibility, an application must be made to a UK court. Provided at least one intended parent is genetically related to the surrogate-born child, legal parenthood can be acquired (and removed from the surrogate) through an application for a parental order. This process aims to ensure as far as is possible that the surrogate has freely consented to the transfer, and that the child's best interests are safeguarded. The law sets out a number of conditions for parental orders to be granted. A social worker from the Children and Family Court Advisory and Support Service (Cafcass) is appointed to assess the arrangement and establish whether these conditions have been met.³²

The conditions include:

- The surrogate must consent to the transfer of legal parenthood.
- The application must be made between 6 weeks and 6 months after the birth of the child.
- Any payments to the surrogate must not exceed "reasonable expenses incurred" (*see section on payments*).
- The child must be living with the intended parents, and one or both of the intended parents must be domiciled in the UK.³³

Alongside the need for the surrogate's consent, the welfare of the child is the paramount consideration.³⁴ In practice, courts have awarded parental orders even in cases where some of these conditions have not been met, particularly in relation to payments and the 6-month deadline for applications, citing the child's best interests as a justification.³⁵

Intended parents are strongly encouraged to apply for a parental order. Those who do not, risk not having the right to make important decisions in relation to the child (*see Box 3*).³⁶ In cases where a parental order could not be granted, alternative formal arrangements can be made, such as courts granting a Child Arrangements Order and parental responsibility to one or both intended parents (though the surrogate would typically remain a legal parent in these scenarios). If intended parents are not considered to meet key criteria such as genetic relatedness to the child, the only alternative route to legal parenthood is to apply for adoption.³⁷

UNCERTAINTY, DELAY, AND PROPORTIONALITY OF PROCESS

The process of awarding a parental order usually takes around 6-9 months, but sometimes longer.³⁸ The period before a parental order is granted has been described by intended parents as an uncertain and stressful time.³⁹ If surrogate children are born abroad, intended parents might face additional waiting time before they are able to return home with the child.⁴⁰ It has also been questioned whether it is fair to subject intended parents through surrogacy to a formal post-birth assessment when other parents who go through assisted reproduction, or are able to conceive naturally, are not assessed in this way.⁴¹

THE SIGNIFICANCE OF THE GENETIC LINK

Some intended parents cite the possibility of having a genetically related child as a key motivation for going through surrogacy.⁴² However, through using donated gametes, surrogacy can also technically be used by intended parents who are unable to use their own sperm or eggs.⁴³ 'Double donation' involving the use of both donor eggs and sperm, is permitted in fertility treatment through licensed clinics in the UK.⁴⁴

There is debate around the role of a genetic link as a criterion for parental orders. Some hold that it is an important safeguard to protect the children and birth parents, for example, in the context of international surrogacy where contact with the surrogate and information about genetic origins can be lost.⁴⁵ Others argue that the requirement in parental order applications for a genetic link to the child is discriminatory as it excludes those who are infertile from being recognised as the child's natural parents, despite their intentions and involvement in conception, birth of and care for the child.⁴⁶

BOX 3. VIEWS ON PARENTHOOD

The available research suggests that the majority of surrogates in the UK would prefer an arrangement where intended parents are automatically recognised as legal parents at birth.⁴⁷ Some surrogates have expressed discomfort with the period of limbo following birth where the surrogate holds unwanted legal responsibility and there is no guarantee that intended parents would not pull out of the arrangement, leaving them to care for the child or give it up for adoption. Intended parents have also expressed concern that the surrogate could change their mind.⁴⁸

There is very limited evidence of the views of children born through surrogacy, but some small studies are emerging. Focus groups held over the summer of 2022, involving 23 children, 5 of whom had been born through surrogacy, found that most of the children thought the intended parents should automatically become the legal parent at birth. Views differed on whether the surrogate should be able to change their mind about giving up the baby.⁴⁹

PAYMENT OR COMPENSATION FOR SURROGACY

The issue of whether payment or compensation for surrogacy should be permitted has been particularly divisive. Though current laws aimed to prevent surrogacy in the UK on commercial terms, enforcing this in practice has involved practical and legal, as well as ethical, challenges. Some have concerns about the wider effect on public values and attitudes of allowing surrogacy to be paid, for example, that it might devalue or degrade pregnancy, childbirth, and women's bodies.

HOW DOES PAYMENT FOR SURROGACY WORK?

Among the countries that permit and regulate surrogacy, rules vary on the extent to which payments or compensation for surrogacy are allowed. Forms of payment that might be permitted range from: reimbursement for financial expenses incurred as a result of surrogacy; compensation for non-financial costs such as inconvenience and pain; and payments that leave the surrogate better off than they would have been without taking part in the surrogacy arrangement.

CHALLENGES ARISING IN THE CURRENT UK LEGAL SYSTEM

While the laws setting out what is required for a parental order stipulate that payments to the surrogate must not exceed "reasonable expenses incurred", there is no further clarity on what kind of expenses should be considered reasonable. Moreover, courts have held the child's best interests as paramount and as a result authorised a range of payments, including in cases where intended parents have used surrogacy services in countries where outright payments to surrogates are permitted (see Box 4).

BOX 4. EXAMPLE - PAYMENT FOR INTERNATIONAL SURROGACY

In the case of *Re X & Y (Foreign Surrogacy) 2008*, a British couple paid 235 Euros per month to their Ukrainian surrogate during the pregnancy, as well as 25,000 Euros when the children (twins) were born.⁵⁰ Though these payments exceeded the surrogate's 'reasonable expenses', they were retrospectively authorised by the High Court, citing the interests of the children as the paramount consideration, and a parental order was made.

PAYMENT, COERCION, AND EXPLOITATION

Payments to surrogates have been subject to considerable debate. Concerns include the potential for payment to constitute an undue influence on the decision to act as a surrogate, particularly in the context of economic and social inequalities and where surrogates' opportunities for social and economic advancement are limited.⁵¹ Some argue that payment for surrogacy raises risks of exploitation or coercion, for example, by creating the potential for intermediaries or abusive partners to profit.⁵² Others have raised concerns about the impact on children born as a result of arrangements involving financial transactions, and the risk that such arrangements might amount to the sale or trafficking of children under international law.⁵³

BOX 5. ALTRUISM AND PAYMENTS

The Nuffield Council on Bioethics has previously explored the value of altruism in the donation of bodily material.⁵⁴ We have argued that systems based on altruism and systems involving some form of payment are not necessarily incompatible, and there are ethically significant differences between offering compensation that aims to facilitate altruism, and payment that acts as a direct incentive.

BOX 6. VIEWS ON PAYMENT

The evidence available on views of UK surrogates suggests that the decision to act as a surrogate is often driven by altruism. Many are in favour of a system where outright payments for surrogacy are not permitted but where some form of compensation for expenses relating to the pregnancy is allowed.⁵⁵ In one small study on the views of surrogate-born children and surrogates' own children, most expressed a strong dislike towards payments for surrogates, particularly children of surrogates. Views were mixed about the effects on children of any payments made.⁵⁶

A 2022 Ipsos survey found that, in a sample of the general UK public:

- 39% thought that reasonable expenses should be paid to surrogates.
- 25% believed that a surrogate should receive a salary in addition to reasonable expenses.
- 9% believed a surrogate should not be paid at all.⁵⁷

INTERNATIONAL SURROGACY

The number of UK intended parents travelling abroad for surrogacy appears to be increasing. There is significant variation between destination countries in terms of how surrogacy is regulated and facilitated, in some cases causing significant challenges for intended parents returning to the UK with a surrogate-born child, and for courts assessing whether the criteria for parental orders have been met. Distance, language, and cultural differences - as well as socioeconomic inequalities, and the role of intermediary agencies - can also impact on the experiences of surrogates and intended parents.

LOCATIONS AND DIRECTION OF TRAVEL

Around half of UK surrogacy parental order applications involve surrogates based in other countries. In 2020-21, these applications involved 145 surrogates in England and 149 in other countries (76 in USA, 44 in Ukraine, 7 in Canada and 32 in other non-UK countries).⁵⁸ India and Thailand were previously among the most popular destinations for UK citizens seeking surrogacy but both countries have now banned foreign nationals from accessing surrogacy services, following a number of high profile cases which attracted national controversy.⁵⁹ Only intended parents who live in the UK are eligible to apply for a parental order and become legal parents in the UK. A small number of known cases where non-UK intended parents have pursued surrogacy in the UK have involved complex and protracted legal processes.⁶⁰

WHY DO PEOPLE TRAVEL ABROAD FOR SURROGACY?

Reasons cited by intended parents for their chosen destinations include availability of surrogates, ease of setting up arrangements, pre-birth protections and/or contracts, and the opportunity for intended parents to be named on the birth certificate (even if that birth certificate is not recognised under UK law). Some felt that the legal certainty over parenthood in the US offered better protection for surrogates and therefore was a more ethical option.⁶¹ Agencies in some destination countries also promote their surrogacy services as a lower cost alternative.⁶²

BOX 7. CASE STUDY - WHAT DO WE KNOW ABOUT SURROGATES ABROAD?

The research exploring the views and experiences of surrogates involved in cross-border surrogacy is generally limited to small studies or specific geographical areas. One example involving interviews with 96 surrogates in India (before their ban on foreign nationals accessing surrogacy) found significant socioeconomic inequalities between intended parents, surrogates, and local intermediaries, although surrogates were not generally from the poorest segment of the population. In particular, they found that local medical doctors had significant power and control during pregnancy, imposing restrictions on surrogates' freedom of movement and decision-making. Surrogates did not generally express negative feelings about this relationship, many citing trust in the care they received. Many did however regret that they had not been allowed to see the baby or meet intended parents after birth and felt this revealed that the trust they had placed in doctors was not reciprocal.

The main motivation cited by surrogates was to improve living conditions for themselves and their children. Some also expressed a preference for surrogacy over other employment options, such as industry work, where they had experienced being underpaid and harassed.⁶³

VARIATION IN LEGAL FRAMEWORKS AND PROTECTIONS

Countries vary in whether and how they regulate surrogacy, for example, around whether payments are allowed, whether surrogacy contracts are enforceable, and who is recognised as a parent when the child is born. Some countries where intended parents from the UK are known to travel for surrogacy, such as Nigeria and Ghana, have no legal framework governing surrogacy.⁶⁴ Intended parents and surrogates who are based in the UK may also travel abroad for IVF treatments. Depending on the destination country, different legal frameworks apply and practice can vary, for example, around consent processes and multiple embryo transfer (which is associated with higher risk multiple pregnancies).⁶⁵

Specific issues can arise around protections for surrogates and surrogate-born children if intended parents withdraw from the arrangement. In countries where a surrogate is not considered the legal parent, this can result in children being born with no nationality and limited protections.⁶⁶

There is potential for UK parents to access surrogacy abroad as a way to circumvent the values that inform UK law and practice, for example, around payments, or sex selection for non-medical reasons.⁶⁷ A particular concern for some is the use of eggs or sperm from anonymous donors, which is not permitted in the UK (where donor-conceived children can request identifying information about the donor when they become adults) but is offered in some other countries.⁶⁸ This means that children might not in the future be able to access information about their genetic origins.⁶⁹

PRACTICAL AND LEGAL CHALLENGES

People travelling abroad for surrogacy can face practical and legal challenges, particularly relating to establishing the child's nationality and applying for a parental order. UK law considers the surrogate to be the legal parent whatever the situation in the country where the surrogacy arrangement took place.⁷⁰ In practice, a surrogate-born child could be left for long periods in a foreign country whilst waiting for a passport or travel documentation in order to be allowed to enter the UK.⁷¹ Difficulties can also arise in establishing whether the criteria for awarding a parental order have been met, for example, where contact cannot be made with the surrogate to ensure they have consented to the transfer of legal parenthood.⁷²

Some have suggested that UK law reforms could incentivise more people to pursue arrangements with surrogates based in the UK, by creating a regulated pathway that would result in intended parents being given legal parenthood at an earlier stage.⁷³

RELATIONSHIPS AND CONTACT

Cross-border surrogacy can also result in more limited scope for direct contact with the surrogate during pregnancy and after birth. Research suggests that there is less continued contact between UK intended parents and surrogates based in other countries during pregnancy and after the child is born, particularly where there are language or cultural differences, and sometimes because intermediary agencies restrict contact.⁷⁴ This can have implications for surrogate-born children's future access to information about origins and potential for meaningful contact with the surrogate, and with genetic half-siblings in some cases (*see section on the Health and well-being of surrogate-born children*).

HEALTH AND WELLBEING OF SURROGATES, SURROGATE-BORN CHILDREN, AND INTENDED PARENTS

SURROGATES

Being a surrogate involves taking on the risks associated with pregnancy and birth, including miscarriage and ectopic pregnancy, pre-eclampsia, bleeding, gestational diabetes, and birth trauma.⁷⁵ The maternal death rate in the UK is around 10.9 in 100,000, but it is substantially higher in some of the countries where intended parents from the UK travel to for accessing surrogacy.⁷⁶

IVF treatments can be physically and emotionally demanding, involving a significant time commitment, invasive procedures, and potential side effects of drugs. The success rate of IVF is relatively low (up to 35% depending on the age of the surrogate).⁷⁷ There is a lack of evidence on how surrogates experience IVF failure and pregnancy loss. Some suggest strong altruistic motives can make surrogates vulnerable to stress, potentially exacerbated by the knowledge of the costs involved in repeated IVF attempts.⁷⁸ The transfer of multiple embryos and multiple births is associated with an increased risk of health problems for patients and their babies, and is generally discouraged in the UK. However, it is sometimes offered in clinics abroad (*see section on International surrogacy*).⁷⁹

There is limited evidence around surrogates' mental health more generally. It has been suggested that hormonal events in the body following birth, combined with separation from the baby, may increase a surrogate mother's risks of experiencing postnatal depression (which typically affects about 1 in 10 women in the general population) and/or postpartum psychosis.⁸⁰ However, the available evidence indicates that, whilst surrogates may find the weeks following the birth difficult, they do not tend to experience psychological problems in the longer term. The evidence suggests that surrogates tend to find surrogacy a positive experience overall, and do not regret having acted as a surrogate.⁸¹ While surrogacy organisations in the UK do offer emotional support to surrogates, some

have pointed to a lack of specialist counselling services in this area.⁸² It has been found that healthcare staff are not always well informed about the current guidelines on caring for surrogates during pregnancy and birth, and surrogate-born children, in the period before parental orders have been made.⁸³

SURROGATE-BORN CHILDREN

There is no current evidence to show that surrogacy has negative health effects on surrogate children in the UK.⁸⁴ Whilst it has been suggested that the psychological and emotional states of the surrogate could impact on the development of the fetus - for example, through epigenetics - there is no conclusive evidence of this happening.⁸⁵

Studies have found that, in general, surrogate-born children in the UK seem to have no difficulties with social integration or cognitive and emotional development.⁸⁶ It has also been found that family type (including same-sex parents), and the use of surrogacy and other reproductive technologies, has no apparent effect on children up to the age of 14 in terms of adjustment problems, psychological well-being, and self-esteem, when compared to peers. However, less is known about the effects of cross-border or commercial surrogacy, and the views of surrogate-born people as adults.⁸⁷

Research suggests that telling children about their origins (including the use of donor gametes in conception) at an early age is associated with better outcomes for adolescents' identity formation, well-being, and family relationships.⁸⁸ Surveys have found that most parents had told, or intended to tell, their surrogate child about how they had been conceived. However, one study found that not all children born through partial surrogacy had been told that they were genetically related to the surrogate.⁸⁹ One survey of UK surrogates found that 71 out of 85 surrogates had maintained contact with the surrogate child.⁹⁰ A small study exploring the views of surrogate-born children and the children of surrogates, found that most of the children were in favour of openness about origins (including about the use of egg and sperm donors) with a strong emphasis on truth and not concealing information. Children felt this information should be available as early as possible to 'normalise' the idea. Contact between surrogates and families formed through surrogacy was seen as important and valuable. However, it was also emphasised that this might not be equally important for everyone.⁹¹

INTENDED PARENTS

For intended parents, the decision to pursue surrogacy can follow a physically and emotionally difficult process of being diagnosed with infertility, sometimes after extensive medical procedures or unsuccessful fertility treatments.⁹² Others may face stigmatisation in their efforts to form a non-traditional family.⁹³ The Department of Health and Social Care guidance highlights the potential for negative attitudes among healthcare professionals to cause intended parents distress, and emphasises the importance of compassion, sensitivity, and maintenance of dignity.⁹⁴ In cross-border surrogacy, intended parents may have to wait abroad for the outcome of a parental order application, potentially affecting their mental health as well as the parent-child relationship in the early months of the child's life (see section on *International surrogacy*).⁹⁵

AUTONOMY AND CHOICE IN SURROGACY

ENTERING INTO A SURROGACY ARRANGEMENT

The decision to become a surrogate can be influenced by a number of factors, including access to support and information, the relationship between the surrogate and the intended parents (and the power balance within that relationship, or between these parties and intermediaries involved),⁹⁶ current life and financial situation, and family relationships (see section on *Payment of compensation for surrogacy*).⁹⁷ Some argue that the ability of potential surrogates to make autonomous decisions can be curtailed by the wider cultural and social context, such as gender inequality and social norms, and that in this context surrogacy should not be permitted.⁹⁸

CONCEPTION AND PREGNANCY

Surrogates and intended parents might have common or conflicting interests and values relating to decisions

around pregnancy and birth. Examples include decisions around fertility treatment, the number of embryos to be transferred, the surrogate's lifestyle during pregnancy, whether to have prenatal screening, and what happens if the results show the baby might have a health condition. The extent to which abortion and/or fetal reduction is permitted and available can also be a factor in decision-making.⁹⁹ Decisions can also include preferences for the birth, such as whether to have a planned caesarean section.¹⁰⁰

Guidance in the UK says that the surrogate's wishes must take priority in relation to treatment happening to her body.¹⁰¹ Elsewhere, such as in California, such decisions may be included in a contract drawn up between intended parents and the surrogate at the outset of the arrangement.¹⁰²

AFTER BIRTH

Opinions differ about whether the surrogate should be able to change their mind and decide to keep the baby after birth.¹⁰³ In the UK, surrogates have to consent to a parental order before legal parenthood can be transferred. However, if disputes arise and/or the surrogate refuses to consent, courts will make a decision about who the child should live with (based, for example, on an assessment of their best interests). Such disputes are very rare but have, in some cases, resulted in care of the children being given to the intended parents, and in other cases, to the surrogate.¹⁰⁴

CONCLUSIONS

Surrogacy raises complex ethical and legal issues which may become more pressing as the number of people able and willing to undertake surrogacy arrangements increases. The evidence we have considered suggests that there is a need for law reform, to help address some of the ethical, as well as practical and legal, issues that arise in this context, and particularly in relation to:

- The process by which legal parenthood is transferred from the surrogate (and the surrogate's partner) to the intended parent(s), and the potential stress and uncertainty this can cause for all parties.
- The question of whether and what level of compensation or payment should be permitted for surrogacy and the need to balance the practical challenges associated with enforcing any restrictions with the need to safeguard against exploitation or coercion, as well as considering the impact on wider public values.
- The international context, such as difficulties arising from the variation in regulatory approaches to surrogacy, socioeconomic inequalities, and the variable potential for direct contact and ongoing relationships.

In considering changes to surrogacy law and practice in the UK, the emerging evidence, experiences, and views of UK surrogates and families created through surrogacy will be key. However, it will also be important to take into consideration the limitations of this evidence, and voices that might currently be missing - such as surrogates in destination countries, those involved in informal surrogacy in the UK, and children born through 'commercial' surrogacy.

Further ethical issues to consider include the need to enable and respect surrogates' autonomy throughout the surrogacy process; and to safeguard the health and well-being of all parties.

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