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Article

UK surrogates' characteristics, experiences, and views on surrogacy law reform

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ABSTRACT

What are surrogates' views on their experience with surrogacy, their understanding of the law, and views on legal reform? We conducted an online retrospective survey of women who underwent treatment as gestational surrogates in two UK-regulated IVF centres between March 2014 and October 2021. Forty-seven surrogates responded outlining their experiences with surrogacy in the England/Wales legal context, their understandings of the law, and thoughts on potential law reform. The surrogates ranged in age, occupation, and household income. Most surrogates were white, British women. While almost half were family members or friends of the intended parents, the largest category met the intended parents through a non-profit surrogacy organization. Two-thirds of the respondents had given birth to a baby as a surrogate. Surrogates generally do not view themselves as the mother of the child that they carry and support proposals for reforms that would recognize the intended parents as legal parents from birth. More ambivalence is apparent in relation to expenses and payments, though advertising is generally supported. Draft new legislation is expected to be introduced in the UK in 2023, and the results of this study could inform public and parliamentary debates to come in the UK and elsewhere. Moreover, the results from this survey can assist the development of good practice models for care on the surrogate pathway.

KEYWORDS: Outdated, Surrogacy, Surrogate, Law reform, Parenthood, Expenses, Advertising

I. INTRODUCTION

In the UK, the number of people seeking to have children through domestic surrogacy has increased year on year.[1] Simultaneously, the proportion of same-sex male couples using surrogacy has risen, likely reflecting broader societal changes, including legal changes

[1] My Surrogacy Journey (3 August 2021) 'Surrogacy Trends for UK Nationals' <https://www.mysurrogacyjourney.com/blog/surrogacy-trends-for-uk-nationals-our-exclusive-findings/> accessed 3 October 2022; K. Horsey and others, 'First Clinical Report of 179 Surrogacy Cases in the UK: Implications for Policy and Practice' (2022) 45(4) *Reproductive Biomedicine Online* 831–8.

allowing same-sex couples to apply for parental orders (2008), legalization of same-sex marriage (2013), and greater social acceptance of non-traditional families, including those created by surrogacy.[2] However, the existing law is increasingly outdated and fails to recognize the realities of modern surrogacy, and a project for law reform is currently underway.[3] Though this project is inevitably UK-centric, as many jurisdictions are also considering whether or how to (re)regulate surrogacy, the UK reforms will likely have wider ramifications. In addition, should UK surrogacy be made more 'attractive', this will impact the number of cross-border surrogacy arrangements entered by UK citizens.

Few studies have been undertaken on who UK-based surrogates are, how they navigate surrogacy, and their experiences of the processes involved.[4] Still, fewer have assessed surrogates' views and understanding of the legal space they occupy, or on potential law reform.[5] The aim of this study was to better understand the characteristics and experiences of surrogates receiving treatment at one UK clinic.[6] Additionally, it sought to discern surrogates' views on the law as it applied to them, and on proposed legal reforms, particularly in relation to parenthood, expenses, and advertising.[7]

The current UK law recognizes the surrogate as the legal mother at birth.[8] If she is married or in a civil partnership, her spouse/partner will usually be the legal father/legal parent. Legal parenthood may be transferred post-birth from the surrogate (and her spouse/partner) to intended parents via a 'parental order', subject to certain criteria.[9] Once granted, a revised birth certificate is issued, with the intended parents retrospectively listed as the parent(s) from birth, resolving both the child's and the family's identity.[10]

Though it is a widely held perception, it is not illegal to pay a surrogate. However, third parties may not financially profit from initiating, brokering, or arranging surrogacy.[11] Solicitors may not draw up agreements between intended parents and surrogates,[12] and advertising for/as a surrogate is prohibited.[13] In this context, various non-profit surrogacy organizations – with differing models of operation – have emerged, providing support for surrogates and intended parents. Organizations may charge membership fees to cover costs and engage in forms of 'soft' advertising.[14] Additionally, many intended parents find information about surrogacy from 'independent' online sources/social media groups.

[2] See e.g., L. Blake and others, 'Gay Fathers' Motivations for and Feelings about Surrogacy as a Path to Parenthood' (2017) 32 *Human Reproduction* 860–7; S. Golombok and others, 'Parenting and the Adjustment of Children Born to Gay Fathers through Surrogacy' (2017) 89 *Child Development* 1223–33; N. Carone, R. Baiocco and V. Lingiardi, 'Single Fathers by Choice Using Surrogacy: Why Men Decide to have a Child as a Single Parent' (2017) 32 *Human Reproduction* 1871–9; M. Smietana, 'Procreative Consciousness in a Global Market: Gay Men's Paths to Surrogacy in the US' (2018) 7 *Reproductive BioMedicine and Society* 101–11; S. Hemalal and others, 'Same-Sex Male Couples and Single Men Having Children Using Assisted Reproductive Technology: A Quantitative Analysis' (2021) 42(5) *Reproductive Biomedicine Online* 1033–47.

[3] Law Commission (Consultation Paper No 244) and Scottish Law Commission (Discussion Paper No 167), 'Building Families through Surrogacy: A New Law' A joint consultation paper, 6 June 2019 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/Surrogacy-consultation-paper.pdf> accessed 3 October 2022.

[4] E. Blyth, '"I Wanted to Be Interesting. I Wanted to Be Able to Say 'I've Done Something Interesting with My Life'": Interviews with Surrogate Mothers in Britain' (1994) 12 *Journal of Reproduction and Infant Psychology* 189–98; O. van den Akker, 'Genetic and Gestational Surrogate Mothers' Experience of Surrogacy' (2003) 2 *Journal of Reproduction and Infant Psychology* 145–61; K. Horsey, *Surrogacy in the UK: Myth-Busting and Reform: Report of the Surrogacy UK Working Group on Surrogacy Law Reform* (Surrogacy UK, November 2015); K. Horsey, *Surrogacy in the UK: Further Evidence for Reform: Second Report of the Surrogacy UK Working Group on Surrogacy Law Reform* (Surrogacy UK, December 2018).

[5] Horsey (2015) and (2018), ibid.

[6] Over 8 years of a surrogacy programme in two UK centres (London Women's Clinic, London, Cardiff).

[7] Law Commission (n 3).

[8] Human Fertilisation and Embryology (HFE) Act 2008, section 33.

[9] HFE Act 2008, section 54 and 54A.

[10] Though cf A. Brown and K. Wade, who indicate different types and purposes of 'identity' in this context ('The Incoherent Role of the Child's Identity in the Construction and Allocation of Legal Parenthood' *Legal Studies*, published First Look online 20 July 2022).

[11] Surrogacy Arrangements Act (SAA) 1985, section 2.

[12] *JP v LP & Others* [2014] EWHC 595 (Fam).

[13] SAA 1985, section 3.

[14] HFE Act 2008, section 59.

The complexity of the law and misunderstandings about what is legally permissible have generated pervasive 'surrogacy myths'.[15] Indeed, a 2022 survey of the British public found 74% of the people did not know surrogacy is legal in all four nations.[16] Intended parents often perceive domestic surrogacy as fraught with risk and uncertainty.[17] That a surrogate might decide (or threaten) to keep the child is inevitably a popular trope in television dramas and fiction, reinforced by the law recognizing the surrogate as the legal mother. Further, the belief that parental orders may be refused where intended parents have recompensed above the norm expenses also pervades,[18] despite no evidence in practice, and the family courts' paramount obligation being to protect the child's lifelong welfare interests.

In 2018, the Department of Health and Social Care (DHSC) issued guidance for those undertaking surrogacy and those who offer care and support.[19] It recommends working with one of four surrogacy organizations endorsed as reliable, founded on the premise that risks associated with surrogacy are reduced because of the support offered and the checks required (including medical and criminal checks) for all parties. Recognizing that some people will enter independent, friendship-based, or intrafamilial arrangements, the guidance suggests that 'you may wish to follow the process that an organization would support you with,' maintaining the organizational support model as good practice. Though the Human Fertilization and Embryology Authority (HFEA) regulates fertility treatment provision, it does not regulate other aspects of surrogacy. HFEA guidance highlights that clinics may not find surrogates for intended parents, reiterating that the four DHSC-endorsed organizations are 'a good place to start'. Taken together, state support for surrogacy is evident, as is an implicit preference for domestic arrangements.

The number of children born through domestic surrogacy is inevitably small. Ministry of Justice data reveal the number of parental orders granted to applicants in England and Wales increased from 117 in 2011 to 435 in 2021, peaking at 444 in 2019.[20] The number in Scotland is even smaller: 24 across calendar years 2020 and 2021.[21] Despite this, over the past 15 years, surrogacy has gained visibility, in part prompted by concerns about increasing numbers of cross-border commercial arrangements with some intended parents not subsequently applying for parental orders upon their return.[22] These are required to transfer legal parenthood even where birth certificates issued in another jurisdiction recognize the

[15] Horsey (2015) (n 4).

[16] Progress Educational Trust, 'Fertility, Genomics and Embryo Research: Public Attitudes and Understanding' (2022) <https://www.progress.org.uk/engagement/resource/fertility-genomics-and-embryo-research-public-attitudes-and-understanding/> accessed 3 October 2022.

[17] See Horsey (2015) and (2018) (n 4); Law Commission (n 3); V. Jadva, N. Gamble and H. Prosser, 'Cross-border and Domestic Surrogacy in the UK Context: An Exploration of Practical and Legal Decision-making' (2021) 24 *Human Fertility* 93–104; C. Fenton-Glynn, 'International Surrogacy Arrangements: A Survey' *Cambridge Family Law Centre* (2022) <https://www.family.law.cam.ac.uk/survey-international-surrogacy-arrangements> accessed 3 October 2022.

[18] M. Brazier, A. Campbell and S. Golombok, 'Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation' Report of the review team (1997, Cm 4068) <https://webarchive.nationalarchives.gov.uk/ukgwa/+/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4009697> accessed 3 October 2022; Law Commission (n 3); K. Horsey and S. Sheldon, 'Still Hazy After All These Years: The Law Regulating Surrogacy' (2012) 20 (1) *Medical Law Review* 67–89.

[19] Department of Health and Social Care (2018a) 'The Surrogacy Pathway: Surrogacy and the Legal Process for Intended Parents and Surrogates in England and Wales' <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/the-surrogacy-pathway-surrogacy-and-the-legal-process-for-intended-parents-and-surrogates-in-england-and-wales> accessed 3 October 2022; Department of Health and Social Care (2018b) 'Care in Surrogacy: Guidance for the Care of Surrogates and Intended Parents in Surrogate Births in England and Wales' <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales> updated 2019, 2021 (accessed 3 October 2022).

[20] Ministry of Justice, Family Court Statistics Quarterly: January to March 2022 (30 June 2022) <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2022> accessed 3 October 2022.

[21] Scotland National Records Office, Vital Events Reference Tables 2021 (28 June 2022) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2021> accessed 3 October 2022.

[22] O. Boycott, 'Unregistered Surrogate-born Children Creating 'Legal Timebomb', Judge Warns' *The Guardian*, 18 May 2015.

intended parents as the legal parents. If an order is not granted, intended parents have no formal legal relationship with the child(ren), resulting in issues regarding inheritance, citizenship, travel abroad, and the ability to give medical or educational consents.[23]

These issues, among others, led to calls for legal reform aimed at making domestic surrogacy a more attractive option for UK-intended parents and reflecting social change and the lived reality of families.[24] Such campaigns in turn engendered ministerial support for surrogacy as a 'legitimate form of family building'[25] and funding for the Law Commissions' ongoing law reform project. Following some delay, their final recommendations and draft legislation are expected in spring 2023. It is hoped that the experiences and views of the surrogates in this study will help to inform the proposed reforms, including public and parliamentary debate.

II. METHODS

The study received ethical approval from the Research Ethics Advisory Group at Kent Law School, University of Kent.[26] A cross-sectional survey was designed and sent in October 2021 to all surrogates treated at London Women's Clinic, where embryo transfer occurred between March 2014 and October 2021. Prior to survey distribution, eligible participants were sent a letter of introduction to the project, accompanied by a Project Information Sheet explaining the study's intention and introducing the lead researcher.

The survey was designed and written in Microsoft Forms. Questions were branched to stratify respondents depending on how many surrogacies they had undertaken and the clinical outcomes of those journeys. A mixture of multiple choice, rating, open answer, and Likert scale questions was included. The draft survey was reviewed and amended by the clinic's Medical and Clinical Directors, an external expert in the field, and two surrogates.

All but two of the 110 surrogates treated within the specified timeframe were contacted. One had moved and lost contact with the clinic, and contact details were not held for the other. The link to the survey was subsequently sent by email – three emails bounced and so the survey details and Project Information Sheet were sent by post. Follow-up letters were sent to the four surrogates who originally received postal communication, including the Project Information Sheet. One was returned by the postal service and none of the other six surrogates responded, so they were also excluded from the study. Of the 100 remaining potential participants, 47 responded to the survey by 26 November 2021.

Data from closed questions were analysed with descriptive statistics. Qualitative analysis of the free-text answers was conducted using an inductive coding method to identify key analytical themes, which involved an iterative process, before assigning primary codes, then grouped into final thematic strands. More than one code could be assigned per open-answer response and thus patients could overlap across themes. Counts of primary codes and final concepts were recorded.

III. RESULTS AND DISCUSSION

Of the 47 respondents, nine had been a surrogate elsewhere prior to undertaking treatment at London Women's Clinic and one had entered a surrogacy arrangement in the past but not

[23] DHSC (2018a) (n 19).

[24] Horsey 2015 and 2018 (n 4); A. Alghrani and D. Griffiths, 'The Regulation of Surrogacy in the United Kingdom: The Case for Reform' (2017) 29 (2) *Child and Family Law Quarterly* 165–86; C. Fenton-Glynn, 'Outsourcing Ethical Dilemmas: Regulating International Surrogacy Arrangements' (2016) 24 (1) *Medical Law* Review 59–75; Law Commission (n 3).

[25] See Hansard (House of Commons) 'Surrogacy: Government Policy' 21 January 2020, Volume 670: Col 68WH. This is also reflected in the language used in the DHSC guidance documents (n 19).

[26] Approval dated 21 October 2021.

progressed to treatment. One respondent was acting as a surrogate elsewhere at the time of the survey. Six had switched their care to London Women's Clinic with the intended parents after starting treatment elsewhere. The reasons for this were varied, including not wanting to travel abroad for treatment during the Covid-19 pandemic, and long wait times for donor eggs. In another case, the first clinic refused to treat the surrogate due to her body mass index.

Ten respondents remained anonymous, while 37 provided their names and consent to a follow-up interview. Forty (85%) became pregnant following treatment in the clinic, with 31 (66%) having at least one live birth. Of the 37 identifiable surrogates, 30 (81%) had become pregnant and 25 (67.6%) of these delivered a baby. One went on to undertake two subsequent surrogacy journeys at London Women's Clinic, successfully delivering a baby both times.

1. Who were the surrogates and how did they experience treatment?

A. Sociodemographic characteristics

The mean age of surrogates in our study at the time of their first embryo transfer at the clinic was 36.2 years.[27] This is relatively high and the age range (23–65 years) broader than seen in previous studies.[28] In the 37 identifiable surrogates, the median and mode age was 36 years, and the mean was 36.9 years. Ten of the 37 non-anonymous surrogates were over 40 years when they underwent embryo transfer.

The higher mean age may be accounted for in part by the fact that, in our study, two mothers acted as surrogates for their adult daughters. Additionally, in overseas surrogacy destinations, where most surrogacy arrangements are agency-organized, surrogates' ages are closely prescribed and therefore will generally be lower. UK law sets no requirements about who surrogates should be. The four DHSC-endorsed non-profit organizations stipulate that surrogates should be 21 years or over, with one stipulating a minimum age of 23 years. Two organizations give no maximum age at which women will no longer be accepted as surrogates, though one sets this at 40 years and another at 43 years for a first-time journey or up to 45 years for a sibling journey. One says that 'older surrogates [should] find a clinic that will be happy to work with them before becoming a member.'[29]

Ten of the 47 total respondents had experienced gynaecological, obstetric, or fertility issues in the past. Most (62%) were married at the time of their treatment, with a further three in a heterosexual relationship and one in a same-sex relationship. Twelve (26%) were single and two were divorced or separated from a previous partner. Most had their own children. More single women acted as surrogates in our study than in comparable studies. This may be attributable, at least in part, to the fact that having a single surrogate allows one intended parent to appear on the original birth certificate alongside the surrogate in the UK context.[30]

Forty-five surrogates answered a multiple-choice question asking them their ethnic group (defined by Office of National Statistics categories). Of these, 36 (77%) described

[27] The median age was 36 years. Removing an 'outlier' (age 65 years) reduced both the median and mean age to 35.5 years.

[28] Blyth (n 4); P.M. White, 'Hidden from View: Canadian Gestational Surrogacy Practices and Outcomes, 2001-2012' (2016) 24 *Reproductive Health Matters* 205–17; S. Yee, C.V. Goodman and C.L. Librach, 'Determinants of Gestational Surrogates' Satisfaction in Relation to the Characteristics of Surrogacy Cases' (2019) 39 (2) *Reproductive Biomedicine Online* 249–61.

[29] This is consistent with the recent guidance from the American Society of Reproductive Medicine that surrogates be aged 21–45 years (Practice Committee of the American Society for Reproductive Medicine and Practice Committee of the Society for Assisted Reproductive Technology, 'Recommendations for Practices Using Gestational Carriers: A Committee Opinion' (2022) 118 *Fertility and Sterility* 65–74).

[30] Though this potentially solves parental responsibility issues and impacts who can register the birth, it should be noted that a PO would need to be granted for the surrogate's legal parenthood to be removed.

themselves as 'White English, Welsh, Scottish, Northern Irish, British'. Two (4%) were 'mixed Black and white Caribbean', two 'African' (4%), one 'Caribbean' (2%), one 'any other Black/African/Caribbean background' (2%), one 'any other Mixed/Multiple ethnic background' (2%), and two 'any other ethnic group' (4%), where one woman self-described as 'Black' and another as 'Latin American'.

Regarding occupation, 12 surrogates identified as being in nursing, midwifery, or health care, seven were in teaching or childcare professions, and 11 in business administration, management, or accounts. Three were solicitors. Other roles included civil servant, police staff, a registrar, a hotelier, a retail role, two students, and two 'stay-at-home moms'. Respondents were also asked about their household income (multiple-choice in ranges; see Table 1). In the 44 answers given, the range was from 'below £29,900' (the average national wage at the time) to 'above £160,000'. Most responses (85%) indicated household incomes below £70,000. Four surrogates said their household incomes were above £80,000.[31]

Stratifying the 14 women who said that they were single, divorced, or separated from a husband/partner, indicated a household income range from 'below £29,900' to '£120,001–£140,000'. Among these single/separated surrogates, 13 had a household income below £70,000 at the time of treatment and eight had a household income below £50,000. Of the four who received less than the average national wage at the time, one was a student, one a teaching assistant, one self-employed, and the other an administrative assistant.

Some studies have suggested a differential in socio-economic situations of surrogates compared to intended parents, specifically that surrogates tend to have lower levels of education and/or are less likely to hold professional roles.[32] This is also a widely held perception and popular trope. Our respondents reported a diverse range of professional occupations, though most fell into categories of health care, education, or business administration. Only four reported no occupation (two were students), which distinguishes this study from others.[33] Less than a quarter of our respondents reported income below the national average, while 85% reported income below £70,000. Just under 10% reported incomes above £80,000, with one reporting above £160,000. The highest proportions of lower reported household incomes were found within the single women who responded to the study, which is not surprising. Surrogates were not asked about the comparative incomes of intended parents so no socio-economic comparison can be drawn, though future work to be published from a survey of intended parents at London Women's Clinic may enable us to determine whether any disparities exist. Given the cost of private fertility treatment, as well as additional costs incurred in reimbursing surrogates' expenses, it is reasonable to speculate that many of the intended parents are relatively high earners.

B. Treatment relationships

Twenty-six (55%) of the surrogacies were for heterosexual couples, while 19 (40%) were for same-sex male couples,[34] one for a single woman, and one for transgender intended parents.[35] Thirteen (28%) of the 47 surrogacy journeys were intrafamilial, mostly

[31] Given the different professions identified, it is unclear if all respondents gave an answer reflecting *personal* or *household* incomes, suggesting that both should have been asked for in the survey. Because of this, it is unclear what weight can be given to these answers.

[32] J.C. Ciccarelli and L.J. Beckman, 'Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy' (2005) 61 *Journal of Social Issues* 21–43; O. van den Akker, 'Psychosocial Aspects of Surrogate Motherhood' (2007) 13 *Human Reproduction Update* 53–62.

[33] For example, in 2019, Yee, Goodman and Librach (n 28) reported 19% 'homemakers' and 21% manual labourers among a Canadian cohort of surrogates, with 36.6% having a family income of <C$50,000.

[34] It has been shown that the proportion of same-sex male IPs accessing surrogacy in the UK has increased in recent years: see e.g., My Surrogacy Journey and Horsey and others (n 1).

[35] Both intended parents in the couple were transgender, one male-to-female and one female-to-male.

Table 1. Surrogates' household income

Income range	No.	% This question ($n = 44$)	% Respondents ($n = 47$)
Below £29,900	11	25	23
£29,901–40,000	13	30	28
£40,001–50,000	6	14	13
£50,001–60,000	7	16	15
£60,001–70,000	3	7	6
£70,001–80,000	–	–	–
£80,001–90,000	1	2	2
£90,001–100,000	–	–	–
£100,001–110,000	1	2	2
£110,001–120,000	–	–	–
£120,001–140,000	1	2	2
£140,001–160,000	–	–	–
Above £160,000	1	2	2

incorporating sisters of one of the intended parents (10 in total; four sisters of a male in a heterosexual couple, three sisters of a male in a same-sex couple, three sisters of the intended mother). In two arrangements, the intended mother's own mother acted as a surrogate. In arrangements where the surrogate was not a family member, 10 surrogates described themselves as 'friends', 'best friends', or 'old friends' with at least one intended parent.

Several other studies have indicated that fewer surrogates are usually friends or family members of the intended parents, with a range of only 5–20% of surrogates falling into these categories.[36] The HFEA states that a friend or family member being a surrogate 'can be a good solution as there should already be a lot of trust'.[37] The greater proportion of family/friend surrogates in our survey may be explained by the fact that the study was retrospectively undertaken in the context of private clinical provision, rather than relying on self-enrolment or organization/agency or internet-based recruitment.

More than half the surrogates in our study met their intended parents through non-profit organizations or online, which is unsurprising in the UK context. Fifteen met through a non-profit organization, while nine said they met 'online' (so-called 'independent' surrogacy). The non-profit organizations represented were COTS (three surrogates), Surrogacy UK (nine surrogates), Brilliant Beginnings (one surrogate), the National Fertility Society (one surrogate), and Nappy Endings (one surrogate).

Most surrogates (60%) used embryos created using a donor egg, while 38% used embryos created from the intended mother's egg. In the 19 same-sex male couples, all but one used a donor egg: The surrogate for the remaining same-sex male couple used her own eggs.[38] The total number of embryo transfers undertaken by each surrogate ranged from one to four. Of the three surrogates who underwent four embryo transfers, all became pregnant, but only two went on to deliver. Of the 27 women who had only one embryo transfer, 89% became pregnant and 63% delivered.

[36] Blyth (n 4); S. Imrie and V. Jadva, 'The Long-term Experiences of Surrogates: Relationships and Contact with Surrogacy Families in Genetic and Gestational Surrogacy Arrangements' (2014) 29 (4) *Reproductive Biomedicine Online* 424–35; V. Jadva and S. Imrie, 'Children of Surrogate Mothers: Psychological Well-being, Family Relationships and Experiences of Surrogacy' (2014) 29 *Human Reproduction* 90–6; V. Jadva, S. Imrie and S. Golombok, 'Surrogate Mothers 10 Years On: A Longitudinal Study of Psychological Well-being and Relationships with the Parents and Child' (2015) 30 *Human Reproduction* 373–9; E.S. Lorenceau and others, 'A Cross-cultural Study on Surrogate Mother's Empathy and Maternal-Foetal Attachment' (2015) 28 *Women Birth* 154–9; Yee, Goodman and Librach (n 28).

[37] HFEA, 'Surrogacy' <https://www.hfea.gov.uk/treatments/explore-all-treatments/surrogacy/> accessed 3 October 2022.

[38] She was the only surrogate in this sample to use her own eggs, though this was still undertaken as an IVF surrogacy, with clinical egg retrieval undertaken and fertilization in vitro, before embryo transfer.

Table 2. Surrogates' experiences in the clinic setting

Experience considered	Very Satisfactory/ satisfactory (%)	Neither satisfactory or unsatisfactory (%)	Not very satisfactory/ unsatisfactory (%)
Your welcome/first visit to the clinic	85.1	4.3	10.6
Organization and coordination of your treatment	76.5	8.5	14.9
Your relationship with the nursing team	80.8	14.9	4.3
Clinical/medical processes	85.1	10.6	4.3
Appropriateness of counselling offered	70.2	21.3	8.5
Ease of understanding consent procedures and forms	91.5	4.3	4.3
Your experience of the embryo transfer/intrauterine insemination procedure	91.5	4.3	4.3
The way the clinic communicated with you throughout the process	74.5	14.9	10.6
Ability to contact someone when necessary	74.5	12.8	12.8
Any follow-up undertaken of you	51	29.8	19.2

C. Experiences at the clinic

Respondents were asked to rate their experience at London Women's Clinic, first in relation to various aspects of their time there, with answers chosen from a 5-point Likert scale ranging from 'not very satisfactory' to 'very satisfactory' (Table 2). Secondly, they gave an overall rating score for their experience with the clinic, ranging from 1 to 10. The median score was 9/10 (mean = 8.2/10; mode = 10/10).

Respondents were given free-text space to share comments about their clinical experiences. Most surrogates were very satisfied. Unsurprisingly, those with negative comments shared more detail about these than those with positive experiences. Some had mixed responses; for example, one of the women who provided negative comments about the clinic also described her treatment at a satellite centre as 'overall great' and said the team there 'was very caring, understanding, empathetic and readily available'. Another (in respect of a second journey) said: 'Organisation was much better for this journey, although how pressured and busy the staff were was very evident to us as a team.' In general, negative comments related to non-provision of basic information, privacy and information sharing, lack of direct communication, language use,[39] and lack of empathy. Where surrogacy treatment was felt to be a more personalized experience, with value placed on what surrogates do, satisfaction scores and clinic ratings were higher.

D. Birth experiences

Surrogates generally reported their birth experiences as good, though some were affected by Covid-19 restrictions and some by procedure. Birth experiences were not within the clinic's

[39] Some of the themes picked up in relation to language use are echoed in Z. Mahmoud and E.C. Romanis, 'On Gestation and Motherhood' *Medical Law Review* (online first August 2022) <https://doi.org/10.1093/medlaw/fwac030>.

control, as surrogates are signed over to the National Health Service (NHS) for antenatal treatment and care once pregnant. Generally, however, it is reassuring to see no negative experiences reported, as have been seen before,[40] and hopefully this is attributable to the DHSC guidance for health care providers being observed.[41]

Almost all the 31 births (94%) took place in an NHS medical setting, while two were home births. Only one hospital was used by more than one surrogate for the birth. On 16 occasions, both intended parents were present at the birth (including the home births) and the solo intended parent was also able to attend. On 12 occasions, only one partner had been there. On two occasions, neither intended parent was present: one because the hospital had not allowed them to attend a Caesarean section and the other because of Covid-19 restrictions at the time. In this latter case, they were given their own side room to care for the baby immediately and care was handed over in the recovery suite. Generally, no major problems about the handover procedure were reported, though one surrogate said 'I had to do everything as if I was the mum' and two others mentioned the hospital having no specific procedures in place to deal with surrogacy:

> Hospital didn't really know how to go about the whole thing as there was nothing in place legally yet authorising them (intended parents) to make decisions for their baby. I was discharged and baby wasn't so hospital didn't want me to leave.
>
> Baby couldn't leave the hospital untill (*sic*) I did, baby's last name was down as mine and all the medical staff asked me for permission for his tests.

E. Contact and communication

Thirty of the 31 surrogates who gave birth remain in touch with the parents, with 22 reporting contact to occur 'more than eight times per year' (including one who said contact was 'every day'), three between five and eight times per year and four between one and four times per year. The other surrogate described contact as 'Phone and messages due to covid (sic) in person once or twice a year', suggesting at least one to four times per year. Unsurprisingly, six family members were among those who reported the highest amounts of ongoing contact, as well as six who had originally described themselves as 'friends'.

Most respondents reported high levels of happiness when asked 'how happy you were with the communication (including e.g. openness, trust, warmth) you had with the intended parent(s) at different points of your journey' and 'tell us how happy you were with the frequency of contact you had with the intended parent(s) at different points of your journey'. For both questions, one surrogate said she was 'very unhappy' with these aspects in the period directly after the birth and ongoing. On closer analysis, this was the same respondent, who also reported only being 'neither happy or unhappy' with communication, 'somewhat happy' with frequency of contact while trying to conceive, and 'somewhat unhappy' with both while pregnant.

F. Surrogates' own children

Only one of the respondents had never given birth before being a surrogate. Forty-five women answered a question about their 'own child(ren)'s experience of your surrogacy journey', with 80% calling their children's experience 'positive'. None said 'negative'.

[40] L. Taylor, 'Surrogate Families Made to Hand Over Babies in Car Parks' *BioNews* 877, 14 November 2017.

[41] DHSC (2018b) (n 19). It is to be hoped that the recent publication from the Royal College of Nursing, 'Transitions from Fertility to Maternity Care' 28 September 2022 <https://www.rcn.org.uk/Professional-Development/publications/transition-fertility-maternity-care-uk-pub-010-338> accessed 3 October 2022; will also continue driving improvements in this respect.

No discernible differences were seen depending on children's age, though some respondents said that their children were too young to understand (fully) at the time. From free-text answers, it appears that surrogates' own children were widely spread in age, with different reasons for their positive experiences. For example:

> My kids love the dads and baby. They both felt very involved.
> They were 13&11 so able to understand and were very supportive.
> The children met the intended parents, had all their questions answered and had no concerns.
> My daughter was 19 so positive experience for her.
> My child was only 12-18 months old so was unaware really but knows all about it now and it's all a positive story.
> "My children were very happy about me being a surrogate and it is often talked about now."

Surrogates were very clear about the value of openness in discussions with their children and positive reinforcement of the idea of surrogacy was seen in both intrafamilial/friend and non-familial/friend surrogacies:

> We've been open from the start. We think being honest and open about things with our children allows for trusting relationships with our children, and would always want their consent and opinions before we started the next steps. We always teach them to be kind and to help people anyway we can and so they were really happy about it.
>
> I kept my children informed of the surrogacy process and took their lead about how much they wanted to talk about it. They were very accepting of it and were quite excited at the possibility of it working. However, they were also disappointed when it did not work. I would also like to think that they now have a more informed and open-minded view of family/fertility etc.
>
> They were very young, 4 and 2 at birth of surrogate babies but we have always been open and honest with all children involved and they have all been great about it all and all get on really well.

2. Legal aspects and perspectives on reform

A. Understanding legal motherhood

The survey asked 'Before entering into a surrogacy agreement, did you know that you would be the legal mother if you gave birth to a child?' Forty-five respondents answered, with 100% saying yes. It is unsurprising that all surrogates who responded were aware that they would be the legal mother at birth. Nearly a third of surrogates worked with a non-profit organization, where the legal aspects of arrangements are fully explained. It is also not uncommon for surrogates who meet intended parents online to have previously worked with an organization. We also know that nine respondents had been surrogates elsewhere before on at least one occasion.

When asked for their views, most surrogates did not think they should be the legal mother at birth, nor did they consider themselves the mother.[42] Thirty-four said they did not think that a surrogate should be the legal mother at birth, seven were undecided and four said that

[42] See also, S. Yee, S. Hemalal and C.L. Librach, '"Not My Child to Give Away": A Qualitative Analysis of Gestational Surrogates' Experiences' (2020) 33 (3) *Women Birth* e256–265.

Table 3. Reasons given as to why the surrogate should be the legal mother at birth

1	As no court proceedings have taken place there needs to be someone to make decisions if necessary
2	This gives her the option to remain the legal guardian should she change her mind
3	Because you created that life
4	For reasons of postpartum depression and inability to separate

they thought surrogates should be the legal mother (reasons in Table 3). One respondent who said the surrogate should not be the legal mother added 'I think it should be the IPs but there should be an opportunity to contest that to protect surrogates.'

Reasons for being 'undecided' about whether the surrogate should be the legal mother fell into three main categories. First, some explained it by logistics. For example, one said that when there were 'two dads' as in her case, she saw no need for there to be a legal mother. Another explained:

> My brother, his wife and I were 100% confident that I had no desire to be the baby's parent so the idea of being the legal mother at birth felt like just a formality.

Secondly, some concern was expressed about power relationships, reasoning that legal motherhood is how a surrogate retains control:

> I think some IPs treat surrogates badly, once the surro (sic) is pregnant. The question of who is the mother is sometimes the only power a surro (sic) holds in order to make sure her expenses are paid and her wishes regarding birth are listened to. But in general I don't think surros (sic) should expect to be mother at birth, it's a pain.

> Being the legal mother may give the woman protection from any intended parents who do not act in good faith toward the woman following a positive pregnancy test e.g. not paying expenses, not showing up to appointments or other points in the agreement. Intended parents who decide to abuse the situation believing "we will have our baby regardless of our conduct" may be encouraged to improve behaviour if they knew there was still a process. I would hope that all intended parents would behave well and this view is only to highlight the vulnerability of the surrogate. Plus given it is the surrogates (sic) body and the IPs (sic) baby - if the rights are afforded before a live birth what implications might there be on decisions or expectations during the pregnancy e.g. covid vaccine whilst pregnant.

> Because otherwise there is no opportunity to contest exploitation/coercion or other unethical practices.

Thirdly, some said that there may be a difference depending on genetic origins. For example:

> I think it should depend on where the egg and sperm come from. If they are both from intended parents then legal responsibility should be direct to them.
> If embryo is not at any point yours then you are not the parent. If the egg is then I'm undecided as part is u (sic).

Similarly, 29 of the 34 women who answered that the surrogate should not be the legal mother gave reasons for this. Twelve referenced not being connected to the child

genetically/biologically (e.g. 'not my egg', 'the IPs egg and sperm', 'not my DNA', 'not my biological child'). Seventeen distanced themselves without mentioning biology (e.g. 'not my child' or the 'baby was never mine' – this also appeared in some answers that referenced the biological link), with many general references to the parties' intentions or to 'fairness'. Three respondents specifically mentioned not wanting parental responsibility, including not having to 'worry about arrangements after the birth (in hospital)' or having to give consent to medical treatment for the baby. Some specific comments included:

> I believe the intended mother should be the legal mother at birth. The thought that the surrogate could actually refuse to hand over the baby causes the intended parents unnecessary worry.
>
> Surrogacy procedures need to be reformed and recognised. CAFCAS (sic) do not help and accuse you of giving up your baby for adoption which is not the case. The IP should be allowed to go straight on the Birth Certificate and court proceedings should be able to be done pre birth.
>
> We go into it knowing that the child is someone else's. To be told that you are the mother at birth and to make potentially difficult choices is not fair on the person giving birth and should fall within reason to the IP unless directly affecting the birthing persons (sic) health.
>
> The surrogate enters into the agreement to help another couple create a family. At no time does that surrogate consider the child to be theirs.

Given that all but one of the surrogates had not used their own egg, reliance on the lack of a genetic link as justification for not being the legal mother is unsurprising and shows the value of the option of gestational surrogacy in helping women make the decision to become a surrogate.

B. Views on the Law Commissions' proposals

The survey included a section on proposals made by the Law Commissions in their 2019 consultation paper. It outlined some of the main proposals, with the discussion focusing on those related to legal parenthood, advertising, and payments in a surrogacy arrangement. Respondents were then asked for their views on these issues and what, if any, reforms they would support. In general, there was a great deal of support for reform, with several respondents saying reform would 'provide clarity' or 'reassurance' to, or 'protect' the parties involved. The clearest expression of this came from one surrogate who said:

> Changes are needed. The current laws are insufficient and outdated.

The 'pathway to parenthood'

On legal parenthood, the survey explained that the:

> Law Commissions are proposing a new 'surrogacy pathway' that means that, where certain steps are followed, the intended parent(s) will be able to be a child's parent(s) from birth, unless the surrogate objects. Intended parents who do not follow the 'pathway' would still need to go to court to obtain a parental order transferring legal parenthood to them.

The steps that would provide intended parents access to the 'pathway' (including medical checks, criminal record checks, the provision of independent legal advice, and counselling for

all parties) were outlined before asking respondents whether they agreed with the proposal. Forty-five respondents answered the question; 39 said that they agreed, four said they did not know and only two said they did not agree.

A follow-up question asked for reasons for the responses. Three of the four respondents who said that they did not know if they agreed with the 'pathway' proposal explained their reasons: The first said she did not know enough to be able to decide. The second said that she was concerned that compulsory criminal record checks might put off potential surrogates. The third explained that the steps required for the pathway

> were taken during my experience anyway but I'm afraid of it turning in to a scary process rather than a pleasant experience for all.

One of the two respondents who said that they did not agree with the proposal explained she thought that details of surrogacy journeys should not be stored on a national registry. The other disagreed because it would be a 'very long and unnecessary process'. This suggests that neither in fact disagreed *in principle*.

Thirty-one respondents gave reasons for supporting the proposal. These were analysed and divided into four themes: the pathway is sensible/pragmatic (nine respondents), the pathway best reflects surrogates' ambitions/understanding of their role (seven respondents), the pathway enables intended parents to have rights/responsibilities from the outset (11 respondents), and the pathway better reflects all participants' – including babies' – best interests (three respondents).[43]

While this would not be unexpected in a survey of intended parents, it may surprise many that surrogates support intended parents having legal parenthood from birth. Even the two surrogates who stated that they did not agree with the proposed pathway did not do so because they thought that they should be the legal mother themselves. Interestingly, one respondent said that it would be important to 'recognise that [the] surrogate still has control of her care and body' and another respondent mentioned that a surrogate should retain the right to object if the pathway were to be implemented.

Views on advertising

Respondents were asked who (if anyone) should be able to advertise in respect of surrogacy: surrogates, intended parents, non-profit organizations, and clinics. Each was given a 5-point Likert scale ranging from 'strongly agree' to 'strongly disagree'. A 'don't know' option was also included.

Responses were generally positive towards allowing advertising in surrogacy (Table 4). The strongest support was for non-profit surrogacy organizations being able to advertise, followed by support for intended parents, and the lowest support, though still over half, for surrogates themselves being able to advertise.

Conversely, over a quarter of respondents disagreed or strongly disagreed with clinics being able to advertise for surrogates, with the lowest number of objections relating to non-profit organizations. The highest proportion who 'strongly disagreed' about advertising was found in relation to surrogates (13%). It seems, therefore, that surrogates support advertising about surrogacy in general, but many would not want it to come from surrogates themselves, that is, advertising themselves as a potential surrogate.

[43] One answer was excluded due to the respondent having evidently misunderstood the question. Compared with the question on legal motherhood, there was less reference here to biological/genetic connection, with only two respondents mentioning this.

Table 4. Who should be able to advertise for/as surrogates?

	Agree/strongly agree (%)	Do not know/ neutral (%)	Disagree/ strongly disagree (%)
Potential *surrogates* should be able to advertise	51	29	20
Intended parents should be able to advertise if they are seeking a surrogate	73	13	13
Non-profit organizations should be able to advertise for surrogates	77	11	11
Clinics should be able to advertise for surrogates	56	19	26

Views on expenses and payments

As the Law Commissions made no concrete proposals in relation to expenses and/or payments in surrogacy arrangements, four different potential models were put to the respondents. These were assessed according to a 5-point Likert scale ranging from 'strongly agree' to 'strongly disagree'. A 'don't know' option was also included (Table 5). On the question of whether only surrogates' expenses incurred by virtue of the pregnancy should be recoverable, or whether surrogates should be able to receive any additional sums and, if that were to be the case, whether payments should be set in law or agreed between the parties, a greater disparity of answers was seen.

As can be seen, there is considerable overlap between the answers given, which appears somewhat contradictory in places. For example, 51% of the respondents agreed or strongly agreed that surrogates should only be reimbursed for pregnancy-related expenses, though 52% and 50% agreed/strongly agreed that surrogates should be able to receive a modest payment on top of expenses, or that payment should be allowed at a price agreed between surrogate and intended parents, respectively. This may be because of a misreading of the words 'should only' in the first option. The idea that surrogates should be reimbursed for expenses *and* receive a modest payment on top received the highest level of favourable support. Overall, it was clear that the option with the least support was for payment to be allowed at a standard rate set in law. Taken together, over 60% of the respondents either disagreed (18.6%), strongly disagreed (11.6%), or were neutral (30%) towards this option. It is interesting to note that none of the beyond-expenses models were approved of as strongly as advertising (by those other than surrogates).

Given the disparity of answers and seeming contradictions, it will be useful to further explore surrogates' views on expenses/payments in follow-up studies. It would be interesting to see if and how answers differentiate between intrafamilial and friendship-based surrogates and others, and to interrogate more deeply the reasons behind these answers. Nevertheless, this range of results mirrors the Law Commissions' pre-consultation findings: They acknowledged that the question of what money a surrogate should be able to receive is one on which 'stakeholders have strongly held and sometimes opposing views'.[44] Our survey results indicate that not only the Law Commissions' wider consultation respondents but also surrogates themselves, perceive the idea of payment (beyond an expenses-only model) in a variety of

[44] Law Commission (n 3), para. 14.1.

Table 5. Surrogates' views on expenses and payments

	Agree/strongly agree (%)	Do not know/ neutral (%)	Disagree/strongly disagree (%)
Surrogates *should only* be able to be reimbursed for expenses they incur by virtue of the pregnancy ($n = 45$)	51	27	22
Surrogates *should be* able to be reimbursed for all expenses incurred and receive a modest payment on top ($n = 44$)	52	27	20
Payment for surrogacy *should be* allowed, at a standard rate set in law ($n = 43$)	33	37	30
Payment for surrogacy *should be* allowed, at a price determined by agreement between the surrogate and the intended parents ($n = 44$)	50	23	27

ways. It will be very interesting to see what the final recommendations of the Commissions are in this respect.

It is perhaps noteworthy that the option in our survey that received the least support was the suggestion that payment for surrogacy should be allowed at a standard rate set in law, since this is the accepted practice for gamete donation, with the HFEA setting out the sums available for 'compensation' to egg and sperm donors in its Code of Practice.[45] In that context, the idea of a fixed sum was controversial at the time of its introduction but appears now to be widely accepted. Nevertheless, half the surrogates in our survey supported payment, where the sum is agreed between the surrogate and intended parents in a private arrangement, and over half supported the idea of reimbursed expenses plus a modest payment on top. In the context of a supported 'Pathway to Parenthood', it may therefore be time to consider moving beyond the expenses-only model.

IV. WHAT CAN WE CONCLUDE FROM THIS STUDY?

While some studies have examined surrogates' post-birth experiences,[46] few have considered the surrogacy process from surrogates' perspectives and none have done so in the context of potential law reform.

For the future, it would be useful to get a clearer picture of differences in dynamics and understandings and how the process – clinically, socially, and legally – is navigated in different types of surrogacy arrangements (such as heterosexual couples coming to surrogacy after failed IVF vs. same-sex male couples vs. single people vs. intrafamilial or friendship-based arrangements, etc.). Such individualized care is outlined in the DHSC best-practice

[45] 9th edition, Guidance Note 13.

[46] See e.g., Z. Berend, 'The Social Context for Surrogates' Motivations and Satisfaction' (2014) 29 (4) *Reproductive Biomedicine Online* 399–401; Imrie and Jadva (n 36); V. Soderstrom-Anttila and others, 'Surrogacy: Outcomes for Surrogate Mothers, Children and the Resulting Families-A Systematic Review' (2016) 22 *Human Reproduction Update* 260–76; V. Jadva, 'Postdelivery Adjustment of Gestational Carriers, Intended Parents, and their Children' (2020) 113 (5) *Fertility and Sterility* 903–07.

guidelines for health care professionals dealing with surrogacy.[47] Future work focusing on the experiences and views of intended parents will also be valuable, in terms of seeing the perspective from both sides. Also, though we know that children born from surrogacy fare well in a psychological development sense, it would be interesting to glean the views of children who experience surrogacy, either by being born through surrogacy or as the existing child of a surrogate, especially on the law.[48]

Draft new surrogacy legislation is expected in 2023, and the results of this study could inform the inevitable public and parliamentary debates that will follow in the UK, as well as elsewhere.[49] Moreover, the results can assist in the development of good practice models for clinical care on the surrogate pathway. On a day-to-day basis, our findings demonstrate the need for clinic staff involved in the provision of IVF surrogacy to be aware of the official positions on surrogacy, as well as different approaches adopted by the non-profit surrogacy organizations and other sources of support in the UK. They should also keep abreast of the law, and be aware of potential future legal changes, and when the time comes, public and parliamentary debate, as part of being able to offer the best individualized care possible to surrogates, in the best interests of all concerned.

CONFLICT OF INTEREST

The authors have no conflicts of interest to declare.

[47] DHSC (2018b) (n 19).

[48] Work on this is underway – see the 'Children's Voices in Surrogacy Law' project <https://childrensvoices.le.ac.uk/> accessed 3 October 2022.

[49] See e.g., Aotearoa Te Aka Matua o te Ture | New Zealand Law Commission, 'Te Kōpū Whāngai: He Arotake | Review of Surrogacy, where the final report and recommendations to government were published in May 2022 <https://www.lawcom.govt.nz/our-projects/review-of-surrogacy> accessed 3 October 2022; the Oireachtas Joint Committee on International Surrogacy, which published its final report in July 2022 <https://www.oireachtas.ie/en/committees/33/international-surrogacy/> accessed 3 October 2022; and even the result of the recent referendum in Cuba, where wide-ranging definitions of 'family' were accepted (see 'Cubans Vote in Favour of Family Law Reform that will Allow Same-sex Marriage' *The Guardian*, 26 September 2022).