

# Surrogates and intended parents in the UK

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## Introduction

Surrogacy has been practised in the UK for many years yet only a handful of studies have examined how it affects those involved. In recent years, the UK has seen a rise in the number of people seeking surrogacy arrangements abroad.<sup>1</sup> One of the difficulties in evaluating the impact of surrogacy for the individuals involved is the great variability in the way in which surrogacy is accepted, legalised and practised in different countries.<sup>2</sup> These factors are likely to have an impact on the psychosocial experiences of intended parents, surrogates, and the resultant child. Furthermore, the increase in the number of surrogacy arrangements taking place across national borders and jurisdictions means that the impact of surrogacy for those concerned needs to be discussed and evaluated at a global level.<sup>3</sup>

In practice, there are two different ways in which a surrogate may achieve pregnancy, these are distinguished by whether the gestating surrogate's own egg is fertilised (traditional surrogacy, also referred to as straight or genetic surrogacy), or not (gestational surrogacy or host surrogacy). In traditional surrogacy the surrogate is inseminated (naturally or artificially) with the sperm of the intending father so the child is genetically related to him and to the surrogate who carries the pregnancy. In gestational surrogacy the intending couple (or single person) may use their own gametes, or those of a donor, for in vitro fertilisation (IVF), and the resulting embryo is then transferred to the surrogate, who is (usually) genetically unrelated to the child she carries. (It is possible that the surrogate is a relative, e.g. sister, of the intended parent and therefore may have a genetic connection to the resultant child.) The use of donor gametes will be influenced by medical reasons, as well as whether the intended couple are a heterosexual couple, same sex couple, or a single man or woman. Furthermore, the chosen surrogate may be someone previously known to the intended couple, that is, a friend or family member, or someone who was previously unknown, that is, someone who was found through a surrogacy organisation, agency or

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\* DOI 10.7590/221354016X14803383336608

<sup>1</sup> As other articles in this collection show; see e.g. N. Gamble/H. Prosser, at p. 257; E. Jackson, at p. 197.

<sup>2</sup> Accounts of surrogacy arrangements in 25 countries are provided in K. Trimmings/P. Beaumont (eds.), *International Surrogacy Arrangements* (Oxford: Hart Publishing, 2013).

<sup>3</sup> See N. Gamble, 'A better legal framework for United Kingdom surrogacy?', in S. Golombok/R. Scott/J.B. Appleby/M. Richards/S. Wilkinson, *Regulating Reproductive Donation* (Cambridge University Press, 2016).

clinic. In countries outside the UK it is possible for the surrogate to remain anonymous during and after the pregnancy, this has been referred to as a 'closed' surrogacy arrangement.<sup>4</sup> Thus, there are many diverse ways in which surrogacy can be practised and each of these raises different questions for the people involved. Terminology can be a contentious issue, and can ascribe different meaning for different people.<sup>5</sup> Here, I refer to the person who commissions a pregnancy as the 'intended' or 'intending parent(s)'. The woman who gestates the pregnancy for the intending parents will be the 'surrogate' and children born as a result of a surrogacy will be called 'surrogacy children'.

## Surrogates and the gestational connection

In cases of surrogacy, children may or may not have a genetic connection with their parents; however they all lack a gestational connection with their mother. How important is this gestational connection for parents and children? The term 'prenatal attachment' has erroneously been used to describe the mother's relationship with her unborn child. In the psychological literature, the term 'attachment' is used to refer to the reciprocal relationship that develops between the child and the mother (or other attachment figures) whereas the mother's relationship with the child is referred to as 'bonding'. Thus the prenatal relationship between the mother and her unborn child should be described and conceptualised as an emotional bond.

Researchers have examined and discussed whether surrogates develop a bond with the unborn child that they gestate. Studies of surrogates from different countries have documented that the surrogate is able to distance herself from the foetus, such that she is aware from the outset, and through the pregnancy, that the child she carries is not her own.<sup>6</sup> Whilst this detachment from the foetus may make the process of handing over the child easier, it has been suggested (including by the British Medical Association)<sup>7</sup> that this could lead to the surrogate putting her own health or the unborn child's health at risk by

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<sup>4</sup> H. Ragoné, *Surrogate Motherhood: Conception in the Heart* (Oxford: Westview Press, 1994).

<sup>5</sup> V. Jadva/S. Imrie, 'Children of surrogate mothers: psychological well-being, family relationships and experiences of surrogacy', *Human Reproduction* 29 (2014), 90.

<sup>6</sup> Y. Hibino/Y. Shimazono, 'Becoming a surrogate online: "message board" surrogacy in Thailand', *Asian Bioethics Review* 5 (2013), 56-72; E. Teman, *Birthing a Mother* (Berkeley: University of California Press, 2010); H. Ragoné, *Surrogate Motherhood: Conception in the Heart* (Oxford: Westview Press, 1994).

<sup>7</sup> British Medical Association, *Changing Conceptions of Motherhood. The Practice of Surrogacy in Britain* (London: British Medical Association, 1996). Also see M. Agnafors, 'The harm argument against surrogacy revisited. Two versions not to forget', *Medicine, Health Care and Philosophy* 17 (2014), 357-63.

engaging in harmful behaviours such as smoking or drinking although no studies have found that surrogates do engage in such behaviour.

Even in traditional surrogacy where the surrogate uses her own egg, she sees a surrogacy child as different to a child in her own family.<sup>8</sup> The main factor here appears to be the intention for the pregnancy to be a surrogacy pregnancy.<sup>9</sup> While earlier research on UK surrogates found that surrogates tend to act either as traditional or gestational surrogates,<sup>10</sup> more recent studies have found that some women have carried out both types of surrogacy arrangements.<sup>11</sup> These surrogates do not appear to have greater or fewer difficulties in handing over the child according to the type of surrogacy that they have undergone.<sup>12</sup> The preference for traditional or gestational surrogacy has also been found to be dependent on other factors. For example, traditional surrogacy requires fewer hospital appointments and hence time away from the family, and is also cheaper for the intended couple who may not be able to afford IVF treatment required for gestational surrogacy. Furthermore, in the UK, surrogates may choose the couple first and then undergo the type of surrogacy arrangement that the couple needs, suggesting that the strength of the relationship with the couple may be important for surrogates in deciding which type of surrogacy to pursue.<sup>13</sup>

Much of the research on surrogates has examined their motivations and characteristics.<sup>14</sup> Many women give altruistic reasons for being a surrogate.<sup>15</sup> Even in countries where commercial surrogacy is allowed, financial incentives are often mentioned in combination with motivations such as wanting to help

<sup>8</sup> Jadva/Imrie, 'Children of surrogate mothers' 2014 (n. 5).

<sup>9</sup> Z. Berend, 'The romance of surrogacy', *Sociological Forum* 27 (2012), 913-36.

<sup>10</sup> O. van den Akker, (2003) 'Genetic and gestational surrogate mothers' experience of surrogacy', *Journal of Reproductive and Infant Psychology* 21(2): 145-161; V. Jadva/C. Murray/E. Lycett/F. MacCallum/S. Golombok, 'Surrogacy: the experiences of surrogate mothers', *Human Reproduction* 18 (2003), 2196-204.

<sup>11</sup> V. Jadva/S. Imrie, (2013) 'Children of surrogate mothers: Psychological well-being, family relationships and experiences of surrogacy', *Human Reproduction* 29(1), 90-96.

<sup>12</sup> S. Imrie/V. Jadva, 'The long-term experiences of surrogates: relationships and contact with surrogacy families in genetic and gestational surrogacy arrangements', *Reproductive BioMedicine Online* 29 (2014), 424-35.

<sup>13</sup> V. Jadva/S. Imrie, 'Relatedness for surrogates and their families', in T. Freeman/S. Graham/F. Ebtehaj/M. Richards, *Relatedness in Assisted Reproduction: Families, Origins and Identities* (Cambridge University Press, 2014).

<sup>14</sup> J.C. Ciccarelli/L.J. Beckman, 'Navigating rough waters: an overview of psychological aspects of surrogacy', *Journal of Social Issues* 61 (2005), 21-43.

<sup>15</sup> Ragoné, *Surrogate Motherhood* 1994 (n. 6); 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', *Journal of Reproductive and Infant Psychology* 12 (1994), 189-98; Jadva et al., 'Surrogacy' 2003 (n. 10); O. van den Akker, 'Psychosocial aspects of surrogate motherhood', *Human Reproduction Update* 13 (2007), 53-62. See also N. Smith, this issue, at p. 247.

a childless couple and enjoyment of pregnancy.<sup>16</sup> The main motivation for Indian surrogates has been reported to be financial gain though some also acknowledge that they are doing something noble.<sup>17</sup> Our UK study of surrogates found that they were primarily motivated by wanting to help a childless couple.<sup>18</sup> Other reasons mentioned included enjoying being pregnant and experiencing pleasure from their own family that they wanted others to experience. For example,

‘I enjoy being pregnant which is a good, a good start [laughs] and I think I’d feel absolutely devastated if I couldn’t have had my children...’

‘... I saw a programme on telly and just thought that was something I could do, it was a documentary [...] Just the fact that on that documentary there were so many women that so desperately wanted children and couldn’t have them and I fell pregnant for [child] very, very quickly and basically sailed through pregnancy, sailed through labour. My labour with [child] was only three and a half hours which is really quick for a first labour and she was big as well...and I thought, you know, this is something that I could easily do for other women and I didn’t want any more children I knew that. So yeah I just thought I’m gonna do it, so I did...’

Some studies have explored whether surrogates have particular characteristics that enable them to act as surrogates. In the early 1990s, Braverman and Corson examined psychopathology and personality characteristics in eleven gestational surrogates, sixteen intending mothers and sixteen intending fathers as they embarked on a surrogacy programme at a clinic in the US.<sup>19</sup> They found that surrogates had lower self-esteem and lower self-confidence when compared to intending mothers and displayed narcissistic needs that were fulfilled by their role as surrogates. A later study of forty-three women who were planning on being surrogates found that, in comparison to population norms, surrogate candidates were more assertive and more resilient to stress whilst also showing lower levels of anxiety and higher feelings of contentment and self-worth.<sup>20</sup>

<sup>16</sup> Ragoné, *Surrogate Motherhood* 1994 (n. 6); Hibino/Shimazono, ‘Becoming a surrogate online’ 2013 (n. 6).

<sup>17</sup> S. Karandikar/L.B. Gezinski/J.R. Carter/M. Kaloga, ‘Economic necessity or noble Cause? A qualitative study exploring motivations for gestational surrogacy in Gujarat, India’, *Journal of Women and Social Work* 29 (2014), 224-236.

<sup>18</sup> Imrie/Jadva, ‘The long-term experiences of surrogates’ 2014 (n. 12), 424-35.

<sup>19</sup> A.M. Braverman/S.L. Corson, ‘Characteristics of participants in a gestational carrier program’, *Journal of Assisted Reproduction and Genetics* 9 (1992), 353-57.

<sup>20</sup> T.D. Pizitz/J. McCullaugh/A. Rabin, ‘Do women who choose to become surrogate mothers have different psychological profiles compared to a normative female sample?’, *Women and Birth* 26 (2013), e15-20.

According to the authors these attributes enabled these women to manage their surrogate role which requires them to be emotionally strong to deal with the surrogacy arrangement. In terms of psychological health after the birth of the child, some UK surrogates report minor difficulties in the weeks following the birth which dissipated over time, and the majority of surrogates do not experience psychological problems six months<sup>21</sup> to one year following the birth.<sup>22</sup> In the longer term, our own research has found that surrogates do not have psychological problems ten years following the birth of the child.<sup>23</sup> Notably, studies assessing the psychological well-being of surrogates have largely been carried out in the US and UK. As yet, little is known about the impact on the psychological health of surrogates in other countries.

## Surrogacy families

In terms of the outcomes for surrogacy families, the UK Longitudinal Study of Assisted Reproduction Families has been following up parents with a child born using surrogacy in comparison with children born through egg donation, sperm donation and natural conception.<sup>24</sup> Families were first seen when the child was aged one year,<sup>25</sup> and subsequent data were collected when the children were aged two,<sup>26</sup> three,<sup>27</sup> seven, ten,<sup>28</sup> and most recently at age fourteen.<sup>29</sup> The study examined aspects of parenting associated with warmth, sensitive responding and disciplinary control. These dimensions of parenting have been found to be associated with positive and negative outcomes for chil-

<sup>21</sup> *Ibid.*; van den Akker, 'Psychosocial aspects of surrogate motherhood' 2007 (n. 15).

<sup>22</sup> Jadva et al., 'Surrogacy' 2003 (n. 10), 2196.

<sup>23</sup> Imrie/Jadva, 'The long-term experiences of surrogates' 2014 (n. 12), 424-35; V. Jadva/S. Imrie/S. Golombok, 'Surrogate mothers 10 years on: a longitudinal study of psychological wellbeing and relationships with the parents and child', *Human Reproduction* 30 (2015), 373-9.

<sup>24</sup> S. Golombok/L. Blake/P. Casey/G. Roman/V. Jadva, 'Children born through reproductive donation: a longitudinal study of psychological adjustment', *Journal of Child Psychology and Psychiatry* 54 (2013) 653-60.

<sup>25</sup> S. Golombok/C. Murray/V. Jadva/F. MacCallum/E. Lycett, 'Families created through surrogacy arrangements: parent-child relationships in the first year of life', *Developmental Psychology* 40 (2004) 400-411.

<sup>26</sup> S. Golombok/F. MacCallum/C. Murray/E. Lycett/V. Jadva, 'Surrogacy families: parental functioning, parent-child relationships and children's psychological development at age 2', *Journal of Child Psychology and Psychiatry* 47 (2006) 213-222.

<sup>27</sup> S. Golombok/C. Murray/V. Jadva/E. Lycett/F. MacCallum/J. Rust, 'Non-genetic and non-gestational parenthood: consequences for parent-child relationships and the psychological well-being of mothers, fathers and children at age 3', *Human Reproduction* 21 (2006) 1918-1924.

<sup>28</sup> Golombok et al., 'Children born through reproductive donation' 2013 (n. 24).

<sup>29</sup> Golombok et al. (forthcoming 2017); E. Ilioi/L. Blake/V. Jadva/G. Roman/S. Golombok, 'The role of age of disclosure of biological origins in the psychological wellbeing of adolescents conceived by reproductive donation: a longitudinal study from age 1 to age 14', *Child Psychol Psychiatry* (2016), DOI: 10.1111/jcpp.12667.

dren. Observational assessments were also used to assess mother–child and father–child interactions. In the latter three phases, the children were also interviewed about their family relationships, and those who were aware of their surrogacy origins were asked what they understood about their conception and how they felt about it. The children’s teachers were asked to complete questionnaires in order to obtain an independent assessment of the children. This research has found few differences in parents’ psychological wellbeing, the quality of parent–child relationships and child outcomes during the pre-school years between surrogacy families and a comparison group of families where parents had not had any medical assistance in conceiving their child, suggesting that families in which a mother lacks a gestational connection to the child are similar to those where she does not. At the age seven assessment, children born using surrogacy showed higher adjustment problems (as measured by the Strengths and Difficulties Questionnaire), in comparison to children born using gamete donation, although, and importantly, all children were found to score within the normal range showing that they were not experiencing any psychological problems. Furthermore, this difference disappeared by the time the children were aged ten years. No differences were found in the quality of parenting between surrogacy, gamete donation and natural conception families at age ten,<sup>30</sup> or at age fourteen. At fourteen, intending mothers showed less negative parenting and reported greater acceptance of their adolescent children and fewer problems in family relationships when compared to mothers in families created using gamete donation. These more positive findings could be due to surrogacy parents being highly committed to their role as parents given their difficult and relatively controversial journey to parenthood.<sup>31</sup> It is important to note that the surrogacy children in the longitudinal study were all aware of the circumstances of their birth and all intended parents had used domestic surrogacy and become legal parents of the child. The extent to which these factors contribute to child outcomes is unclear.

The majority of research examining surrogacy families has focused on families headed by heterosexual couples. Much less is known about families headed by gay couples who use surrogacy to have a child. Bergman et al. interviewed forty gay men (from forty couples) who had a child using surrogacy.<sup>32</sup> The men were recruited through a single surrogacy agency based in California, USA. They found that these men tended to be highly affluent, experienced a similar transition to parenthood as other parents and felt very proud and positive about becoming parents. A separate study of fifteen gay couples who were

<sup>30</sup> Golombok et al., ‘Children born through reproductive donation’ 2013 (n. 24).

<sup>31</sup> Golombok et al. (n. 29).

<sup>32</sup> K. Bergman/R.J. Rubio/R.J. Green/E. Padron, ‘Gay men who become fathers via surrogacy: the transition to parenthood’, *Journal of GLBT Family Studies* 6 (2010), 111–41.

seeking surrogacy at a clinic in Connecticut, USA, found that gay men choosing surrogacy were in a committed relationship and had carefully considered becoming fathers with the vast majority reporting that their families were supportive of their decision to use assisted reproduction.<sup>33</sup> Whilst these studies shed some light on the motivations and characteristics of gay men using surrogacy, it is essential that more is understood about the processes within these families including what impact it has on the children. As yet, no study has assessed family functioning and child outcomes for gay men who have used surrogacy to have a child. A study of parenting and child development in gay father families created by surrogacy is currently being conducted at the Centre for Family Research.

There is also a dearth of research on single men using surrogacy. Although the prevalence of such arrangements is unknown, the media have reported cases in the US and UK. In the UK, a single man cannot obtain legal parentage of a child born using surrogacy via a parental order.<sup>34</sup> However, he can obtain parentage in other ways and surrogates have been found to be carrying out traditional surrogacy for single men.<sup>35</sup> For example, a surrogate involved in the study by Imrie and Jadva reported that her name remained on the child's birth certificate. She felt the relationship with the single intended father and his child was different when compared to other couples that she had also helped as a surrogate, specifically, she felt that the single intended father sought more contact from her. Much more research is needed to increase understanding of single men becoming parents using surrogacy.

Although not widely practised, some fertile heterosexual couples and single women may use surrogacy through choice because they do not want to undergo the pregnancy themselves (sometimes referred to as 'social surrogacy'). Reasons for this appear to include the impact a pregnancy would have on the woman's career or her body as reported by an article in *Elle* magazine in 2014.<sup>36</sup> It is not known how prevalent social surrogacy is. A doctor in San Diego, quoted in the article by *Elle*, stated that social surrogacy made up less than 5% of his 2,500 cases. Social surrogacy raises questions over who should and should not have access to surrogacy. Society's attitudes to this type of surrogacy may be more

<sup>33</sup> D.A. Greenfeld/E. Seli, 'Gay men choosing parenthood through assisted reproduction: medical and psychosocial considerations', *Fertility and Sterility* 95 (2011), 225-29.

<sup>34</sup> Though this position has recently been declared incompatible with human rights law in *In the matter of Z (a child)* (No. 2) (2016) EWHC 1191 (Fam). See also K. Horsey, this issue, at p. 193; N. Gamble/H. Prosser, this issue, at pp. 257, 272.

<sup>35</sup> Imrie/Jadva, 'The long-term experiences of surrogates' 2014 (n. 12).

<sup>36</sup> S.E. Richards, 'Should a Woman Be Allowed to Hire a Surrogate Because She Fears Pregnancy Will Hurt Her Career?', *Elle* (17 April 2014).

negative as the reasons for using surrogacy shift from an inability to carry a baby to choosing not to carry a baby.

## The children of surrogacy

Surrogacy in the UK and the US share some similarities in that the surrogate and intended parents are often in contact with each other and can sometimes develop close relationships that last beyond the arrival of the baby.<sup>37</sup> This relationship, typically maintained between the surrogate and the intending mother,<sup>38</sup> can continue as the child grows up and comes to understand their birth using surrogacy.<sup>39</sup> Children who are aware of their surrogacy origin report positive feelings about their birth and towards their surrogate saying, for example, 'I think she is kind and she's lovely and funny'.<sup>40</sup> Although surrogacy children may be comfortable discussing surrogacy within their family it is possible that they may find explaining their birth to their friends and peers more challenging. For example, one ten-year-old child said:

'...some people at school sometimes bring it up, and they ask me [if] I'm adopted and I'm like [bored voice] "No, I'm surrogate, don't let me explain it, it takes forever" because I just can't tell anybody, well I can, but I just can't put it in the right words and they just don't understand me, and looking at me like I'm some weird person [laughs] so I try not to tell.'

Child born through surrogacy from Golombok et al. (unpublished data)

It is possible that the positive feelings about surrogacy that have been observed amongst ten-year-old children may change as children grow older and gain a more sophisticated understanding about their birth. Furthermore, as children enter the period of adolescence, where identity development gains more relevance, they could form a more critical view of their surrogacy birth.<sup>41</sup> However, data from the most recent phase of the Longitudinal Study of Assisted Reproduction Families has found that surrogacy children do not feel negative

<sup>37</sup> A. Braverman/P. Casey/V. Jadva, 'Reproduction through surrogacy: the UK and USA experience', in M. Richards, G. Pennings and J.B. Appleby (eds.), *Reproductive Donation: Practices, Policies and Bioethics* (Cambridge University Press, 2012).

<sup>38</sup> F. MacCallum/E. Lycett/C. Murray/V. Jadva/S. Golombok, 'Surrogacy: the experience of commissioning couples', *Human Reproduction* 18 (2003), 1334-42.

<sup>39</sup> V. Jadva/L. Blake/P. Casey/S. Golombok, 'Surrogacy families 10 years on: relationship with the surrogate, decisions over disclosure and children's understanding of their surrogacy origins', *Human Reproduction* 27 (2012), 3008-14.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*; L. Blake/P. Casey/V. Jadva/S. Golombok, "'I was quite amazed": donor conception and parent-child relationships from the child's perspective', *Children and Society* (2013), DOI: 10.1111/chso.12014.



about their birth, instead they feel indifferent or unconcerned about being born in this way. For example, one 14-year-old said;

‘Mum would always say “Oh Auntie [surrogate’s name] helped us give birth to you” and I’d be like “Oh okay, that’s nice, fine, normal, whatever”.’  
(Adolescent born through surrogacy).

Some children suggested that they felt pressured to have particular feelings about their birth and how despite this, they felt neutral or indifferent about it. This may be because they were aware of the controversial nature of their surrogacy birth:<sup>42</sup>

‘Like, not bothered. But then, sort of, I feel like I should, but I don’t. That I should, like, feel like something, feel that I should be, like, more aware of it.’  
(Adolescent born through surrogacy)

For intending couples and surrogates who remain in contact with each other, the type of contact they maintain, and the closeness of the relationship formed, can vary from an exchange of letters or cards once or twice a year to frequent phone calls and family gatherings.<sup>43</sup> These get-togethers can involve the intending parents’ family and the surrogate’s family, such that the children from the respective families also grow up knowing each other.<sup>44</sup> A study of thirty-six children of surrogate mothers aged between twelve and twenty-five years found that children of surrogates generally felt proud of their mother’s role as a surrogate. Just under half were in contact with the surrogacy child with 40% referring to the surrogacy child as a sibling or half-sibling.<sup>45</sup> Surrogates who were no longer in contact with the intended parents reported being happy with this decision, provided that this had been decided from the outset. In contrast, some surrogates whose contact was stopped by the intending parents, despite an initial agreement to keep in touch, have been found to report feelings of disappointment.<sup>46</sup> It is not known whether or not contact with the surrogate is important for the child’s social and emotional development and whether the type of surrogacy, that is, traditional or gestational, mediates this relationship.

<sup>42</sup> Ilioi et al. (n. 29).

<sup>43</sup> Jadva et al., ‘Surrogacy families 10 years on’ 2012 (n. 39); Jadva/Imrie, ‘Children of surrogate mothers’ 2014 (n. 5).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Imrie/Jadva, ‘The long-term experiences of surrogates’ 2014 (n. 12), 424-35; Ciccarelli/Beckman, ‘Navigating rough waters’ 2005 (n. 14).

## Going abroad and remuneration

The UK has seen a rise in the number of surrogacy arrangements taking place abroad, which may partly be attributed to the recent change in law enabling gay couples to obtain legal parentage of the child via a Parental Order.<sup>47</sup> It is thought that increasing numbers of intended parents may be going to India or the US for surrogacy although it is difficult to know the exact number.<sup>48</sup> When parents go abroad they may not know who their surrogate or egg donor is. The process of going abroad may put an additional psychological strain on intended parents. On the other hand, it is possible that dealing with a clinic or a surrogacy agency, rather than the surrogate directly (as is usually the case in the UK), may lessen anxiety during the pregnancy. It is also not known how children will feel about having a surrogate and possibly an egg donor who is from a different country, culture and ethnicity to their parents, and what, if any, information they would want about such surrogates.<sup>49</sup>

There are a number of reasons why intending parents may look to go abroad for surrogacy. A survey carried out by Surrogacy Australia found that the most common reason for Australian intending parents going abroad for surrogacy was because they were concerned about the risk of the surrogate keeping the baby if the surrogacy was undertaken in Australia.<sup>50</sup> Just under half of the 217 Australians surveyed thought that asking a surrogate to carry 'for love', that is, for altruistic reasons, seemed an unfair exchange. Other reasons included finding no-one suitable to act as a surrogate, and that surrogacy in Australia was a lengthy and complicated process. At the time the survey was carried out, most Australians were going to India for overseas surrogacy with an estimated two hundred births in 2012 attributed to Indian surrogacy. It is possible that British intending parents would have similar reasons for going abroad for surrogacy to those in Australia, as the legislation regarding payment is similar. The Brazier report expressed great unease about commercial surrogacy and recommended that only reasonable expenses should be received by the surrogate.<sup>51</sup> Concerns included how the child would feel about significant sums of

<sup>47</sup> Gamble, 'A better legal framework' 2016 (n. 3).

<sup>48</sup> M. Crawshaw/E. Blyth/O. van den Akker, 'The changing profile of surrogacy in the UK – implications for national and international policy and practice', *Journal of Social Welfare and Family Law* 34 (2012), 267; 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).

<sup>49</sup> Braverman/Corson, 'Characteristics of participants' 1992 (n. 19).

<sup>50</sup> S. Everingham, 'Use of surrogacy by Australians: implications for policy and law reform', in A. Hayes/D. Higgins (eds.), *Families, Policy and The Law: Selected Essays on Contemporary Issues for Australia* (Melbourne: Australian Institute of Family Studies, 2014).

<sup>51</sup> *Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation, Report of the Review Team* Cm 4068 (1998) (London: HMSO) ('the Brazier Report'); also see M. Wells-Greco/M. Wells-Greco, 'United Kingdom', in K. Trimmings/P. Beaumont (eds.), *International Surrogacy Arrangements* (Oxford: Hart Publishing, 2013), for arrangements in the UK.

money changing hands and whether commercialisation would lead to exploitation of surrogates. Currently we do not know how payment to surrogates may impact on the surrogate and on the child's feelings about their surrogacy birth.

Most surrogates in our study were happy with the current law allowing only reasonable expenses as they felt that it prevented women from receiving large sums of money whilst also providing some flexibility in the amount received.<sup>52</sup> However, the surrogates in this study had been critical of other aspects of legislation including the need to have their name on the birth certificate. Several surrogates felt it unfair that the intended parents who provided their gametes could not be named on the birth certificate and had to acquire legal parentage of their own biological child through a legal process.<sup>53</sup> For example, as one surrogate said:

'If it is host surrogacy and the egg is the mother's and the sperm is the dad's then I see no reason at all why I have to be on the birth certificate, at all, I just find that just stupid, that's just bizarre. And then the whole adoption thing, I just think, is just ridiculous as well. Again it's probably different if it was straight surrogacy, but from my point of view, from host [gestational] surrogacy, both [intended parents] should have been on the birth certificate from the very beginning and they shouldn't have had to adopt their own child.'

Surrogate mother from Jadva and Imrie (unpublished data)

Some surrogates also raised concerns over the delay in transferring legal parenthood. Currently the surrogate has legal responsibility for the baby in the period before the Parental Order is granted. This can be particularly problematic if the baby requires emergency medical care or if any decisions about the baby's health need to be made in the months leading up to the Parental Order being granted.<sup>54</sup> From the intended parents' perspective it is possible that having a surrogate who is motivated by money may appear less of a threat as the surrogate may be seen to be less likely to want to keep the child and to maintain contact with the intending parents following the birth.

In terms of the amount of money received by the surrogate, there appear to be minimal differences between surrogates from countries that have an altruistic model to those who use a compensated model. For example, in the UK the surrogate may receive £15,000, and in the US typical amounts are between

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<sup>52</sup> Jadva/Imrie (n. 11).

<sup>53</sup> See also N. Smith, this issue, at p. 237.

<sup>54</sup> *Ibid.*

\$20,000 and \$30,000.<sup>55</sup> Thus it appears that the difference between the UK and the US may sometimes hinge on terminology – ‘altruistic versus compensated’ – rather than the amount a surrogate receives. Of course, not all UK surrogacy arrangements involve large sums of money and, as discussed above, most surrogates have been reported to be motivated by a desire to help others, rather than for financial reasons. In cases where the amount received by the surrogate is perceived to be high, then intended parents and surrogates may be put in a very difficult position jeopardising their chances of obtaining a Parental Order. This scenario is perhaps more common for intending parents who go abroad to access commercial surrogacy, although as yet, no intended parent has been denied a Parental Order because of the amount the surrogate has received.<sup>56</sup> It is not illegal for surrogates to be paid in the UK, though in practice intended parents and surrogates may feel that it is.<sup>57</sup> In the UK, it is thought that not all parents seek a Parental Order when they return home as some countries allow the intended parents to be named on the birth certificate,<sup>58</sup> although according to British law these parents would not be considered legal parents.<sup>59</sup> Studies are needed to assess the impact for the couple of using surrogacy abroad and of raising the child once they return home. It is not known for example, how intended parents who choose not to obtain a Parental Order, and so would not be legal parents of the child, would be affected in their role as a parent. Does the uncertainty over their legal parentage make them feel less secure in their parental role? Do they keep the surrogacy birth secret from their family and friends given that they had not formally disclosed it to the authorities, and if so, what impact does this have on family relationships and on the child? Also, how may the surrogacy child feel about their surrogate or donor being from another country or of a different race or culture? For those families who choose to stay in contact with their surrogate, how do families maintain a relationship across different countries and cultures and does contact taper off over time in the same way as it has been found to do for British parents who had carried out domestic surrogacy arrangements?

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<sup>55</sup> N. Gamble/H. Prosser, ‘The “Brilliant Beginnings” of surrogacy reform in the UK’, *BioNews* (27 August 2013); also see N. Gamble/H. Prosser, this issue, at pp. 262, 264.

<sup>56</sup> N. Gamble/H. Prosser, this issue, at p. 270.

<sup>57</sup> Gamble, ‘A better legal framework’ 2016 (n. 3).

<sup>58</sup> Crawshaw et al., ‘The changing profile of surrogacy’ 2012 (n. 48).

<sup>59</sup> A. Blackburn-Starza, ‘International surrogacy arrangements need parental orders’, *BioNews* 707 (3 June 2013).

## Conclusions

Whilst studies have found that, on the whole, surrogacy does not lead to psychological problems for either surrogacy families or surrogates involved in domestic surrogacy arrangements in the UK and US, many questions remain unanswered. Although some children born using surrogacy in the UK appear comfortable with the circumstances of their birth, their views as they grow up and gain a clearer understanding of what and who was involved may change. It is of paramount importance that their perspective is evaluated and ultimately taken into account in the practice and regulation of surrogacy. In addition, the question of how contact with the surrogate and her family may affect the surrogacy family needs to be better understood. For example, is it desirable for children to have contact with the surrogate as they grow up? For those who have no contact or do not know their surrogate, is it in their best interests to have access to identifying information about their surrogate when they reach adulthood? The impact of surrogacy for surrogates also needs to be better understood in the context of the country in which they reside. The increase in the number of people going abroad for surrogacy means that surrogacy must be evaluated globally. This raises many complications. Legislation and practice differ between countries and perceptions of surrogacy differ between different cultures and the various communities within them. As the practice of surrogacy evolves, so does the need for more empirical research in order to fully evaluate this form of assisted reproduction for surrogates, the intending parents and the resultant child.

This article has drawn upon material from within, Vasanti Jadvā, 'Surrogacy: issues, concerns and complexities', (adapted) pp. 126-139, from Susan Golombok, Rosamund Scott, John B. Appleby, Martin Richards, Stephen Wilkinson (eds.), 'Regulating Reproductive Donation', (2016) (c) Cambridge University Press 2016, reproduced with permission.