

The UK's antiquated laws on surrogacy: a personal and professional perspective

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COTS (Childlessness Overcome Through Surrogacy)

Introduction

What follows is an edited version of the speech I made at the 'Surrogacy in the 21st century: rethinking assumptions, reforming law' conference on 6 May 2016, regarding changes to the antiquated laws surrounding surrogacy in the UK. What I say here is drawn from my personal experience as a surrogate, as well as my experience in setting up and running COTS (Childlessness Overcome Through Surrogacy), the UK's oldest surrogacy agency.¹

My Story

Over 30 years ago in 1983, I was just an ordinary young mum at home with two small children when I first caught a snippet about surrogacy on breakfast television. Up until that point I had never heard of it or considered for one minute that some women struggled to have children. I just took my own fertility for granted.

I met my husband Geoff when I was fifteen, we got engaged and bought our first flat when I was eighteen. We married at nineteen and had our first baby at twenty and second at twenty-four. Both my pregnancies were straightforward. My first birth was awful as I was young and naïve, unprepared for the pain of labour, and I felt very much out of control. My son was born with the cord around his neck but he was fine after a few minutes. I was so anxious in hospital that I discharged myself the next day, against medical advice. But once I was home it was more relaxed and I was able to establish breast feeding.

Nine months later I suffered very badly from post-natal depression – so much so that I sold all my baby things as I decided I couldn't go through all that pain again. But time is a great healer and after a couple of years I felt maternal once again. This time I opted for a home birth. It was this experience that changed the course of my whole life thanks to the most amazing skills of one special midwife, whom I am still in touch with today. She cared for me throughout my pregnancy and my daughter Anouska was born in our own bed with Geoff and our two mums present. Labour was short and totally controlled

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¹ See www.surrogacy.org.uk/.

with just Entonox as light pain relief. The love in that room is something I shall never forget; I was on a high for months after.

That evening we watched an in depth documentary reporting about a commercial surrogacy agency running in the United States of America. They were recruiting in the UK hoping to start operating here. Geoff, my mum and my grandma also watched, it was very interesting and provoked quite a bit of discussion – all positive. The seed was planted: I wanted to help an infertile couple achieve their dream and, in doing so, I could help my own little family financially. It was something I could do from home so to me it was a win-win situation.

I sent an application letter off to the agency, heard nothing for approximately a year by which time personal finances had improved somewhat, but by this time I was hooked on the idea. I loved the pregnancy and birth but did not want any more children myself. We were blessed with our two children, one of each, we felt our family was complete so Geoff had a vasectomy, we were that sure.

With this particular agency surrogacy was arranged anonymously so I never met the foreign couple I was matched with. Two inseminations later I was pregnant. On 4 January 1985, 'Baby Cotton' was born in the midst of a media frenzy. I was vilified by the press. Shocking hurtful headlines were written every day. But in my heart of hearts I genuinely always thought I had done a good thing. If the shoe had been on the other foot, I just hoped there would have been someone out there to help me. I personally believe us Brits have a tendency to react badly to any new innovation, we tend to hate it before we know much about it. Robert Edwards and Patrick Steptoe received a lot of abuse when Louise Brown was born in 1978, as did her parents. All pioneers seem to get it in the neck. Where would we be without IVF today?

The courts had acted quickly whilst I was in labour and Baby Cotton was made a ward of court which meant neither I nor the agency could take her home. It took seven days for her parents to fight for custody in the High Court.² Those seven days were the worst days of my life, not knowing Baby Cotton's fate and wondering how her new parents were coping. Knowing their daughter was born but being unable to scoop her up in their arms, just awful. The agency boss had neglected to do her legal homework – she just abandoned them to sort it out themselves and left them with massive court costs to fund. I later found out that not surprisingly she had previously worked in demolition!

Six months later The Warnock Committee report was published with recommendations to ban commercial surrogate parenting in the UK and to make it illegal to advertise or pay a surrogate mother.³ As a consequence, surrogacy was driven underground. In 1988 we founded COTS with just a few very committed

² The case became known as *Re C (a minor)* [1985] FLR 846.

³ See K. Horsey, this issue, at p. 181.

members. As Chairperson I was in the front line defending surrogacy on numerous occasions on TV, radio and newspapers, it was tough.

In order to help break new frontiers and because I couldn't help myself, I became a host surrogate for friends I had met through COTS, delivering their twins in 1991. As you can imagine I was wary of the press by then, not being quite as green as I was before. So it came as a complete surprise to me to be hailed more as a heroine than a villain this time around. Obviously both these journeys were so completely different but at the end of the day I was still carrying a child for someone else. Working with a couple I knew and liked, having that close contact and support all the way through, sharing my pregnancy in full with them was marvellously refreshing after the coldness and isolation of the first arrangement. As for the birth, even though it was a C-section with an epidural, it was one of those magic moments that will remain with me for life. Their faces when they held their twins for the first time is imprinted in my heart forever. This time I could complete the circle, witness first-hand the rewards of our extraordinary journey together. There is this most amazing bond that connects your lives forever more.

It brought home to me how much I had missed and been cheated out of not ever meeting Baby Cotton's parents. To this day I have no idea who or where they are. Anonymous surrogacy is abhorrent to me now.

One of the other most rewarding experiences about being a surrogate is the impact your gift of a child has on a family, it's like a ripple effect in the water. Not only do you create a mother and a father, but also grandparents, aunts and uncles, cousins, nieces, nephews and siblings in some cases.

I was very lucky to be invited to visit one of the biggest commercial agencies in the USA run by Bill Handel. It was a bitter-sweet experience for me to see surrogacy run so efficiently with all the medical protocol and legalities in place, it is very impressive. They have a highly qualified psychologist employed full time to run all the counselling and monthly group support meetings. I attended one of these and sat in a room with at least twenty surrogate mums all at different stages. It was very moving to hear each of their individual stories. In the state of California where he is based, surrogacy contracts are enforceable, the child is automatically recognised as the intended parents' – not the child of the birth mother – in both host and traditional surrogacy before he/she is born. A surrogate is paid a set fee and her expenses are managed by the agency. Of course it costs a fortune but people feel protected.

We at COTS have done our best on a shoestring budget to guide couples and surrogates through the complex journey that is surrogacy. Our lessons have been hard learned over the years, we have had our fair share of criticism and experienced first-hand a few disasters when members have chosen to ignore our guidelines. By 2000 after a gruelling interview in my own home by Martin Bashir for the *Panorama* programme concerning a Dutch couple's mistakes, I was burnt out both physically and emotionally and retired from COTS. I have of course always remained in the background.

In 2015, after a lot of persuasion, I took over the chair once more – only to discover that whilst surrogacy is now very acceptable in society, nothing has really changed. We have all the same problems. A dire shortage of surrogate mothers coming forward; a surplus of infertile couples, none of whom will help themselves by doing publicity; confusion of some court officials, who don't seem to know how to handle parental orders; hospital staff imposing restrictions unsure how to handle a surrogate birth and the discharge procedure afterwards.⁴

The Future

At this time there is no set protocol for maternity hospital staff to follow, no set protocol for the court officials to follow when a parental order application appears on their desks. Some of these bumbling officials' mistakes lead to expensive, stressful delays for couples obtaining their parental orders.

The UK's laws regarding surrogacy are antiquated. They need to catch up with medical and social advances. I think we should be allowed to advertise for surrogates in the same way we ask for egg, organ and blood donors. I personally believe that we should consider paying a surrogate a set fee as compensation for all her time and effort, plus minimal expenses. That way there would be more transparency and everyone would know where they stand. There has always been a double standard in this area as IVF clinicians can charge a fortune which patients have to pay whether the treatment is successful or not, whereas some of our surrogates go through a hellish amount of suffering, jabbing themselves with fertility drugs or suppressing their natural cycles; many have had miscarriages, ectopic pregnancies or several C-sections due to the high number of twins born. But they will not receive any recompense until an arrangement is successful. It is a huge undertaking. Everyone is allowed to be paid except the surrogate, whose commitment is the longest and the hardest. As for married surrogates doing IVF 'host' surrogacy still having to put their husband's names on the birth certificate – this is just an outright lie and a ludicrous situation.

Education is needed for all involved and maybe it should start in secondary school where children need to know that statistically any one of them in the classroom could find themselves experiencing difficulty conceiving. It is a growing problem which will only get worse as time goes by.

The lack of surrogates we feel is down to the inability to advertise, alongside advances in social media such as Facebook. Some women tend to act independently via Facebook, rather than getting the support of an agency like COTS, as they can find their own couples a lot more easily on the internet than in the

⁴ See 'NHS hospitals forcing surrogate families to hand over newborn babies in car parks due to "dire and outdated" laws', *The Independent* (29 October 2016).

old days when COTS was the only organisation involved. The problem with this is the temptation to cut corners by forgoing medical or police checks and life insurance cover. Women and intended parents can rush into an arrangement instead of taking their time to befriend and get to know who they are working with. And they can and do charge what they like. These arrangements – if they go wrong – could set surrogacy back years, as the media are still interested in the sensationalism of any negative story.

I feel we need to adopt the best aspects from the US commercial agency but without the huge price tags or commercialism. It would be perfect if surrogate births could be pre-registered so that parental orders can be obtained quickly without huge expense, at birth. It is not just the new parents who want to sort it out, a surrogate needs closure for herself too.

Strangely infertility recently touched my own family as my son and his wife struggled to conceive their children naturally, eventually having twins through IVF at Bourn Hall Clinic. Now, my daughter who has had three girls naturally with her ex-husband is struggling to have her fourth child with her new partner. She is also booked into Bourn Hall as she appears to have stopped ovulating. That brought it home to us that infertility has no bounds – just about anyone can be affected.

Baby Cotton was 31 this year, the twins were 25 in June. After three decades I still feel as passionate about surrogacy as I did, the first day I heard about it. In September 2016 we reached an incredible milestone. Our one thousandth surrogate baby was born through the help of COTS. Now that really is something to celebrate.

The conference on surrogacy law reform was a very interesting day where many gifted speakers presented, but for me the main event was the introductory speech by Baroness Mary Warnock. She was my nemesis; it was her findings that stuck an oar into surrogacy way back in 1985. She has now completely changed her views and deeply regrets that she did surrogacy a grave disservice. She admits she was swayed by public opinion at the time and the laws passed were a knee jerk reaction to a new concept. Any pioneer gets all the flack.

Fears about the effect on the children born through surrogacy have also been unfounded. The findings of a study of surrogate children from birth to sixteen years of age conducted by Professor Susan Golombok has clearly shown that being a surrogate child has had no detrimental effect on the children. In fact, just the opposite – they positively flourish. This was very heartening to know as we have always believed this to be true, but to have an eminent Professor confirm it was just amazing, so reassuring.

COTS aims for the future of surrogacy regulation are as follows:

1. There should be compensation paid to a surrogate mother for inconvenience. Plus, her genuine expenses.
2. To advertise for a surrogate should be legal.
3. The agreement between the parties should be recognised.
4. Parental orders should be pre-registered before the birth.

Conclusion

To conclude, I thought it might be useful to hear an account from an older surrogate child's perspective. This is an interview with Alice, one of the IVF host twins I was lucky enough to give birth to. She is 25.

1. When were you told you were a child born through surrogacy?

'My twin brother Oliver and I were the first surrogate twins born in England through host surrogacy in 1991. Our surrogate mother was Kim Cotton, the chairperson of COTS and Britain's first surrogate mother. I have known I am a surrogate child for as long as I can remember as my parents were always open about it. I wouldn't change this for the world.'

2. Did it have any effect on you?

'Due to being Britain's first surrogate mother, the media have followed Kim for years and we were front page news when we were born. While we were growing up, we appeared in various media forms which when I was younger, it was fun, and I am so grateful for getting to experience that. Before my brother and I were born, surrogacy and IVF was almost an impossible source of pregnancy and my mother fought scientists and the media to have us with Kim's help. Growing up knowing this taught me to be extremely proud of whom I am and where I came from, as well as the strength everyone involved in our birth showed. As a person, surrogacy has not affected me in any negative way. I have grown up in a normal family household, having a normal childhood, and now feel as 'normal' an adult as anyone else.'

3. Did you tell your friends or discuss it openly with anyone outside of the family?

'During school, we had to do assignments/projects in certain classes and over a couple of years, I did two presentations to my class at the time, explaining surrogacy and where I came from. Mum and Dad had never hidden surrogacy from us so for me, it was normal to talk about it with anyone and was something to be proud of.'

4. What were their reactions?

'Many of the children when I was younger did not understand the concept of surrogacy and would always ask questions. I used a couple of old articles from when we were babies to show them my birth and they found the media side pretty 'cool'. As I grew older and did other assignments, people started to have their own views and opinions on it and there were class debates. It was interesting to hear other people's views on surrogacy, but at the end of the day, I believe you cannot ever doubt the gift of a life.'

5. Are you in touch with your birth mother/genetic mother?

'Yes, both my brother and I are in contact with Kim. We both live in New Zealand now but are friends on Facebook and catch up every time we come back home to the UK. We have grown up being in touch with Kim and her family which has been really great.'

6. How would you describe your relationship with her and her children?

'Despite not seeing each other often now, whenever we do, our relationship is close with Kim and her husband. Kim's children always accepted us too and we have always had a friendly relationship with them.'

7. Has being a child born through surrogacy caused any difficulties for you? What are the positives? Do you feel special in any way as a child born through surrogacy?

'No, being a surrogate child has never caused me any difficulties. It doesn't really impact your life on a daily basis. Only when you think about how much your parents and surrogate mother actually went through to have you, do you feel how special, wanted and loved you are growing up, and now.'

8. What is your relationship like with your parents? Has surrogacy affected this at all?

'I have a normal close relationship with my mum and dad. Surrogacy had not affected this and we were brought up 'like everyone else'. The only difference from a normal birth, is that there is so much more to surrogacy in the form of emotions, want and love.'

9. We have celebrated the birth of the 1000th child born through surrogacy and COTS. What do you think about that?

'I think that this is absolutely fantastic. To have been able to have helped in the process of that many surrogate births, of that many children to couples who otherwise would not be able to experience the joy of having their own children, is priceless. To carry a child for nine months for another human being is one of the most selfless and brave things a person could ever do.'

10. Do you know any other children born through surrogacy? If not, would you like to?

'One of my best friends that I grew up with in the UK is a surrogate child through straight surrogacy. She is still in contact with her surrogate mum too and has been brought up 'in the open' about it. We talk about it openly and are both comfortable with how we came into being.'

11. Do you have any particular message for members of COTS, including surrogates and couples who are hoping to become parents through surrogacy or who already have children born through surrogacy?

'To the surrogates, you are truly amazing and selfless. You give a gift that can never be equalled. Without women like you, the world would not be as bright. I am thankful every day for my mum and Kim, for fighting science and the media, and to Kim for carrying my brother and I for nine months, only to give my mum the biggest gift in the world. To the families, treasure your precious babies for they are the most special of all.'