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Baby Gammy: the responsibilities of ART professionals in international surrogacy

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The 'Baby Gammy' case has sparked worldwide interest and comment. At the time of writing at least some of the 'facts' of what happened, when, and why remain contested. However, as Sascha Callaghan and Ainsley Newson note in their commentary (see BioNews 766), the case highlights troubling issues that have been exercising the minds of some of us for some time (1-4).

Among the key questions that Callaghan and Newson ask are: whether it is 'reasonable [for rich countries] to outsource reproductive requirements to countries where women from deprived backgrounds can obtain a slice of the baby marketplace?' and 'whether selling reproductive services between countries is moral?'; the latter begging the question of whether selling reproductive services anywhere is moral.

While the 'Baby Gammy case' has unleashed global outrage, it would be naïve to think that any national or international body is going to take action soon to address the problems associated with international surrogacy. In 2011, the Hague Conference on International Private Law began to consider the possibility of drawing up internally accepted standards and regulations for international surrogacy similar to those in operation for international adoption (5). However, the formulation of such regulations, if they ever materialise, is a long-term rather than a short-term undertaking (6-8), with the Conference deferring until Spring 2015 a decision on whether and how to pursue this project.

In the meantime, given the divergence of regulatory arrangements between different countries (where they exist), unilateral action by individual governments is likely to perpetuate or aggravate existing problems that have resulted in commissioning parents and babies being stranded – sometimes for years – in both geographical and legal limbo. In the UK, proposals to reform the well-intentioned but ill-conceived laws on domestic surrogacy by removing some of the 'push' factors that drive the international surrogacy market, by legitimising domestic commercial surrogacy, relaxing the requirements for granting a Parental Order, or reducing the rights of surrogates through the introduction of binding pre-conception contracts and transferring legal parentage earlier, are likely to bring about their own problems.

Regardless of their partiality to external regulation, a number of major fertility professional bodies, such as the American Society for Reproductive Medicine, British Fertility Society, European Society for Human Reproduction and Embryology, and the Fertility Society of Australia, nevertheless recognise that
responsible fertility care involves paying due regard to the interests of fertility patients, donors (in this case also including surrogates) and children born as a result of fertility procedures. While there will continue to be debate about the precise parameters of such interests (for example, whether the interests of children born as a result of fertility procedures can be secured where they are prevented from knowing the identity of genetic parents or where their conception has been the result of a commercial transaction), there should be little argument with the fundamental principle of 'First do no harm'. Most surrogacy arrangements involve gestational surrogacy and are therefore dependent on the services of an IVF clinic, with attendant professional staff.

Professional bodies and leaders in the field have both the opportunity and the responsibility to be proactive in promoting acceptable standards of care for patients, donors, surrogates and children, wherever IVF services are provided. They can do this by raising these issues as a matter of priority within the global umbrella body, the International Federation of Fertility Societies.

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