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## **'What are children's 'best interests' in international surrogacy?'**

**by Marilyn Crawshaw, Patricia Fronck, Eric Blyth and Andy Elvin,**

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Almost twenty five years after the United Nations Convention on the Rights of the Child came into force in 1990, social workers are identifying new threats to the rights and needs of children. New family forms resulting from surrogacy arrangements are now possible because of cutting-edge medical technologies and the growing global market in 'medical tourism'. Jurisdictions across the world are challenged to respond appropriately – especially where commissioning parents are either unclear about the law or are determined to circumvent it. The burgeoning numbers of commercial brokers and doctors with financial interests, and pressure from within the consumer lobby and the fertility industry to loosen international and domestic restraints on surrogacy arrangements, mean that these new challenges require new responses to ensure the best interests of the children involved are adequately catered for.

Earlier this year, BASW's Project Group on Assisted Reproduction (PROGAR) convened a high level roundtable meeting in London to focus on international surrogacy. The breadth of attendance reflected the complexity of the situation with representatives from the Department of Health, Immigration Service, Office of the Children's Champion, Foreign and Commonwealth Office, Department for Education, Passport Office, the Human Fertilisation & Embryology Authority (the UK fertility treatment regulator), Children and Family Court Advisory and Support Service (Cafcass), Children and Families Across Borders (CfaB), International Social Services, National Association for Guardians ad litem and Reporting Officers (NAGALRO),

College of Social Work, International Federation of Social Workers, legal representatives, academics and consumer groups. A substantial increase in commercial surrogacy arrangements was reported between UK citizens and clinics in India, Eastern Europe and the US in particular, despite the ban on commercial surrogacy *within* the UK. Although more than one thousand babies are reported to be brought into the UK every year, only a small number of parents subsequently apply to a court for a Parental Order to ensure they both have full legal parental status. The reasons for this are far from clear and there is no information about what happens to these children when parents register them with the NHS, apply for school places, passports and so on. There are also cases dealt with by family courts when couples separate and parents find they have no legal status in relation to the child.

In the UK, only couples who are married, in a civil partnership or 'in an enduring relationship', at least one of whom is genetically related to the child, are eligible to apply for a Parental Order. They must make the application within six months of the birth of their child, in both genetic (using the egg from the surrogate and the sperm from the commissioning father) or gestational surrogacy (using an embryo from the sperm of the commissioning father and the egg of the commissioning mother or donor). The couple must meet other criteria such as residency in the UK and paying only 'reasonable expenses' to the surrogate. In the small number of jurisdictions around the world where commercial surrogacy is legal, different rules can apply: in some countries, commissioning parents are named on birth certificates; in others, adoption orders are made before a child leaves the country of birth. Regardless, couples bringing a surrogate child into the UK are required to apply for a Parental Order before parenting status can be legally recognised.

The roundtable meeting grappled with the challenge of incomplete data being held on Parental Orders (following both domestic and international surrogacy), the number of children brought into the country and lack of inter-agency and inter-departmental collaboration on policy and practice development. Members of PROGAR had previously uncovered information gaps that made it difficult to

ascertain the countries where surrogates are accessed, types of couples using surrogacy and so on and conduct follow up research into how the children and families fare.

There is still much to be learnt about domestic and international, commercial and altruistic surrogacy arrangements, all of which are used by UK citizens. Although long term data are elusive, outcomes are likely to be variable. Social work can draw on its experience to contribute understanding of where potential risks may lie for both adults and children.

Social workers have long understood the importance to children of knowing about and having access to information about their biological relatives and their biographical and cultural story. This is also acknowledged in the UN Convention on the Rights of the Child and is a central principle of UK family law. However, some countries that permit surrogacy do not require clinics to maintain robust and transparent records for the child to access in years to come of who gave birth to them and whether a gamete donor was also used. Even in the UK, the surrogate child's birth certificate will always record the woman giving birth as the legal mother but neither this certificate nor the Parental Order (if one is granted) indicate whether a donor was also involved.

Social work's long history of commitment to human rights is also important when considering the potential for exploitation of the child, the surrogate and her family and the commissioning parents. Three recent examples highlight the serious adverse outcomes of unregulated surrogacy. An Australian man and his partner claimed to have become parents through international commercial surrogacy (though it is now alleged they purchased the child) and then abused the child and made him available to an international paedophile network. A convicted Israeli paedophile lives with his daughter produced through overseas commercial surrogacy and the authorities have been unable to remove her. A UK woman allegedly desperate for another child added to her family of three adopted children by procuring sperm through the internet and impregnating her teenage daughter.

Internationally recognised human rights conventions for both children and adults set out the right to be free of exploitation. Thus, International Social Services (ISS) and the International Federation of Social Workers (IFSW) have declared international surrogacy as a particular focus of interest. The Hague Conference on Private International Law has also been deliberating as to whether to develop an international convention on surrogacy (which PROGAR supports) similar to that for intercountry adoption which has been in place for some time

When considered through a children's rights lens, international surrogacy contrasts with intercountry adoption in several ways. There is no requirement for ensuring commissioning parents are aware of the risks, for approving arrangements or for assessing the parties involved prior to leaving the country. Neither is there any parenting preparation required on how best to meet the particular needs of children created through surrogacy, for example in relation to birth identity and heritage, and no follow up or longer term support for families. Although the Foreign and Commonwealth Office has recently reissued a statement warning parents to seek legal advice prior to entering arrangements, much more is needed.

There are of course differences as well as similarities between adoption and surrogacy. In surrogacy, a child is intentionally created whereas a child placed for adoption is not (generally speaking). For many surrogate children, a biological relationship exists with at least one of the commissioning parents but such links are rare in adoption. Emerging evidence suggests that outcomes are best for surrogate children when good relationships are built between surrogates and commissioning parents both during and following pregnancy. Such opportunities are more difficult to achieve in adoption and surrogacy across borders. Both practices share the potential for secrecy and for false or misleading information to be provided about birth circumstances, and there will be at least one adult involved in the pregnancy and birth who is not involved in raising the child. There can be risks to an adopted or surrogate child's health and well-being from the physical health of the pregnant woman and the quality of the medical care available during pregnancy and delivery.

And the history of both international and domestic adoptions have taught us that parenting desires alone are not always sufficient for raising happy, healthy children.

However 'solutions' promoted by some interest groups to encourage more couples to use domestic surrogacy are often lacking in evidence and not without their own problems. They include relaxing domestic restrictions such as lifting the ban on payment as a criterion for applying for a Parental Order, allowing advertising, transferring legal parentage earlier and making surrogacy contracts enforceable. Greater understanding is required about the reasons couples seek overseas surrogacy arrangements and why so few apply for Parental Orders. It may also be time for stronger incentives for Parental Orders such as making passport applications dependent on them being in place.

Social workers are the professionals with arguably the greatest experience in child welfare matters. To date, the dominant voices in debates about surrogacy have been from doctors, lawyers, ethicists, brokers and commissioning parents. Social work needs to assert its expertise and contribution to domestic and international research, policy and legislation to ensure a better understanding and management of the risks and benefits of surrogacy as they relate to the interests of children and families.

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