

**INTERNATIONAL SURROGACY ARRANGEMENTS:  
A SURVEY**

**Claire Fenton-Glynn**

**April 2022**

**CFL** | CAMBRIDGE  
FAMILY LAW

---

## Table of Contents

<b>1</b>	<b><i>Introduction</i></b> .....	<b>4</b>
1.1	<b>Methodology</b> .....	<b>4</b>
1.2	<b>Participants</b> .....	<b>4</b>
<b>2</b>	<b><i>Experiences of parents through surrogacy</i></b> .....	<b>5</b>
2.1	<b>Profile of participants</b> .....	<b>5</b>
2.1.1	Age of future and intended parents .....	5
2.1.2	Sexual Orientation of future and intended parents.....	5
2.1.3	Marital status of future and intended parents.....	6
2.1.4	Jurisdiction where surrogacy arrangements were undertaken .....	6
2.2	<b>Motivations for surrogacy</b> .....	<b>7</b>
2.3	<b>Choice of jurisdiction</b> .....	<b>8</b>
2.4	<b>Using an Agency or Intermediary</b> .....	<b>11</b>
2.5	<b>Finding a surrogate</b> .....	<b>11</b>
2.6	<b>Costs and expenses</b> .....	<b>11</b>
2.6.1	Types of costs and expenses .....	11
2.6.2	Costs and expenses paid.....	12
2.6.3	Plans of future intended parents with regard to costs .....	14
2.7	<b>Information on surrogacy arrangements</b> .....	<b>14</b>
2.7.1	How information was obtained .....	14
2.7.2	Difficulties in obtaining information .....	15
2.7.3	Further information that would have been useful .....	15
2.8	<b>Difficulties experienced in the surrogacy journey</b> .....	<b>16</b>
2.8.1	Difficulties before entering into the surrogacy agreement.....	16
2.8.2	Difficulties travelling back to the United Kingdom, or with regard to legal parenthood .....	16
2.8.3	Difficulties for parents through surrogacy travelling back to other jurisdictions .....	17
2.8.4	Obtaining legal parenthood in foreign jurisdictions.....	17
2.9	<b>Other information</b> .....	<b>18</b>
2.10	<b>Conclusions</b> .....	<b>19</b>
<b>3</b>	<b><i>Experiences of Legal Practitioners</i></b> .....	<b>20</b>
3.1	<b>Profile of participants</b> .....	<b>20</b>
3.2	<b>Difficulties experienced during the surrogacy journey</b> .....	<b>20</b>
3.2.1	Difficulties before the conclusion of the surrogacy agreement .....	20
3.2.2	Difficulties after entering into the surrogacy agreement.....	21
3.2.3	Difficulties after the recognition of legal parenthood .....	23
3.3	<b>Identifying significant issues</b> .....	<b>23</b>
3.4	<b>Other information</b> .....	<b>25</b>
3.5	<b>Conclusions</b> .....	<b>25</b>
<b>4</b>	<b><i>Experiences of surrogacy agencies</i></b> .....	<b>26</b>
4.1	<b>Difficulties in relation to foreign administrative systems or courts</b> .....	<b>26</b>
4.2	<b>Difficulties in relation to issues of nationality and travel of the surrogate child</b> .....	<b>26</b>
4.3	<b>Difficulties not described above</b> .....	<b>26</b>
<b>5</b>	<b><i>Contributions from third parties</i></b> .....	<b>27</b>

<b>5.1</b>	<b>Interest in surrogacy .....</b>	<b>27</b>
<b>5.2</b>	<b>Legal concerns about surrogacy arrangements.....</b>	<b>27</b>
<b>5.3</b>	<b>Further information.....</b>	<b>28</b>

*This survey was undertaken as a part of a project funded by the Foreign, Commonwealth and Development Office.*

*This report was prepared by independent researchers who are solely responsible for its content. It does not reflect HM Government policy. HM Government is not responsible for the information and views expressed in this report, or for any use which may be made of it. The publication of this report shall not constitute or be deemed to constitute any representation by HM Government.'*

# 1 Introduction

## 1.1 Methodology

From 18 February to 30 April 2021, Cambridge Family Law conducted an online survey to discover information concerning the international surrogacy market. The survey sought information from those who had become parents through surrogacy; individuals or couples intending to enter into a surrogacy arrangement in the future; legal practitioners; surrogacy agencies; surrogates; or “other”.

Based on the capacity in which they were completing the survey, participants were directed to different sets of questions, designed to elicit information concerning their experience of surrogacy.

Participation was anonymous: at no stage were participants asked for their name nor contact details.

## 1.2 Participants

In total there were 168 participants in the survey. While this is obviously a small sample size, nevertheless, clear trends emerged in the answers given.

Thirty per cent of responses (n 43) were from parents through surrogacy, of which 38 per cent (n 26) were UK residents, and 62 per cent (n 27) were resident in another jurisdiction. Another 9 per cent (n 12) were individuals or couples intending to enter into a surrogacy arrangement in the future.

Nineteen per cent (n 27) of participants were legal practitioners, operating in the United Kingdom, as well as Germany, Georgia, Malta, New Zealand, South Africa, Ukraine and the United States of America; while 10 per cent (n 14) were surrogacy agencies, working in Georgia, Mexico, Ukraine, and United States of America.

Thirty per cent of responses (n 43) were from those in the category of “other”, who categorised their interest in surrogacy as, *inter alia*, “academic”, “professional”, “researcher”, and “feminist”.

The final 1 per cent of responses (n 2) were from individuals who had acted as surrogates. Given this low number, it is difficult to draw any significant conclusions from these responses.

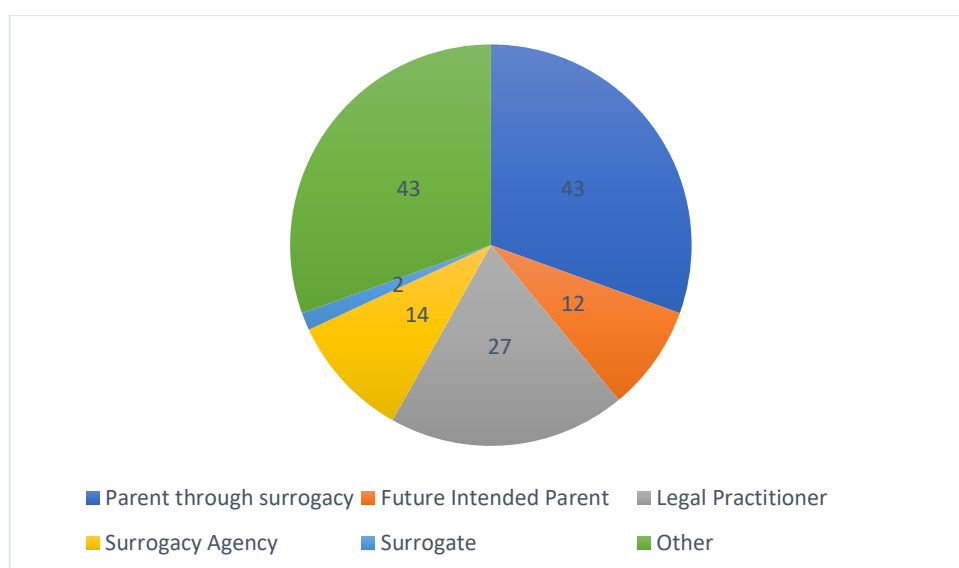


Figure 1: Participants' involvement in surrogacy

## 2 Experiences of parents through surrogacy

### 2.1 Profile of participants

#### 2.1.1 Age of future and intended parents

Of the 55 participants who were either parents through surrogacy, or future intended parents, 9 per cent (n 5) were in the 25-34 age range; 49 per cent (n 27) were 35-44 years old; 35 per cent (n 19) were 44-55 years old; and 7 per cent (n 4) were over 55 years of age.

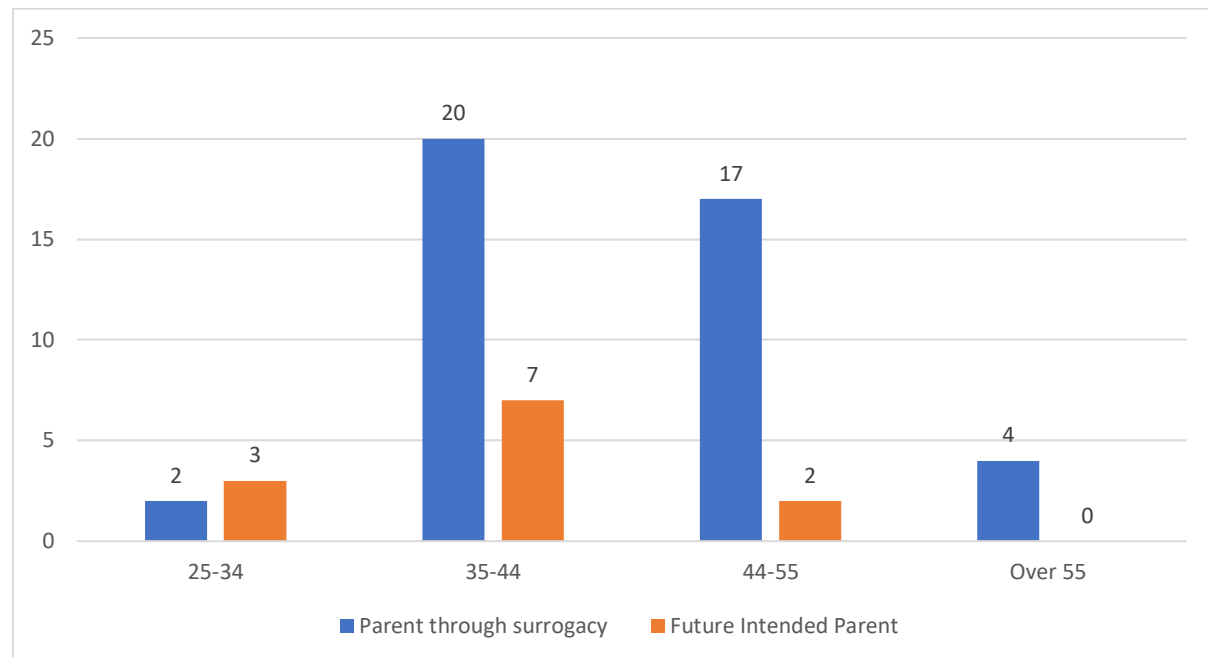


Figure 2: Age of parents through surrogacy and future intended parents

#### 2.1.2 Sexual Orientation of future and intended parents

Participants were asked their sexual orientation, with the options of “heterosexual”, “homosexual”, “other”, or “prefer not to say”.

Fifty-eight per cent (n 32) reported as “homosexual”; 38 per cent (n 21) as “heterosexual”; and 4 per cent (n 2) as “other”.

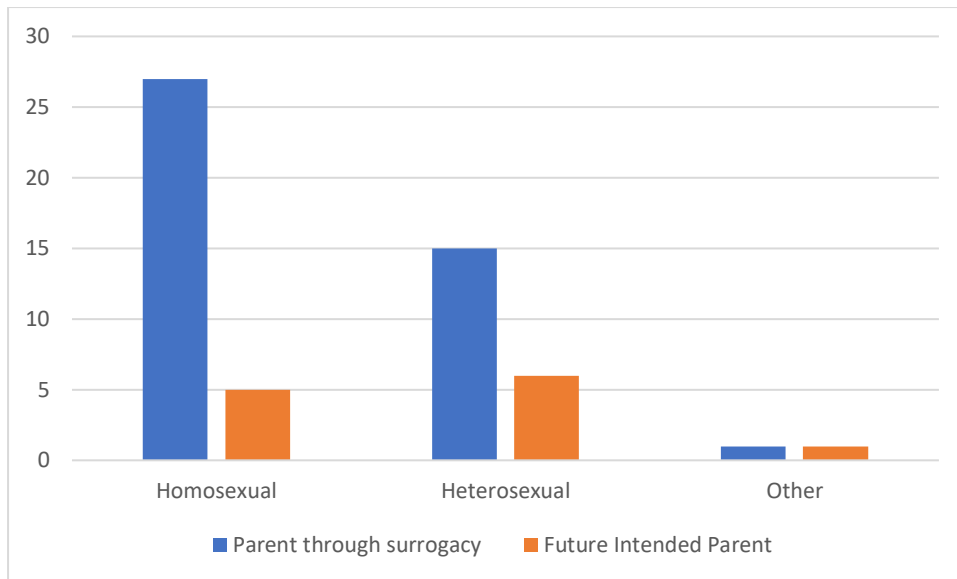


Figure 3: Sexual Orientation of parents through surrogacy and future intended parents

### 2.1.3 Marital status of future and intended parents

Eight-two per cent (n 45) of participants reported as married or in a civil partnership (or equivalent); 13 per cent (n 7) were single; 2 per cent (n 1) were in a cohabiting relationship; while 4 per cent (n 2) preferred not to say.

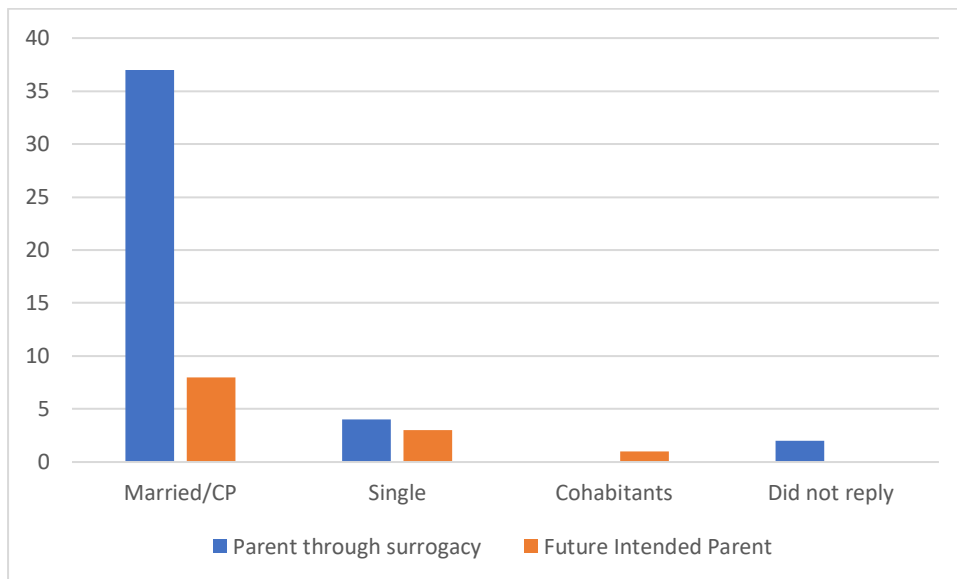


Figure 4: Marital Status of parents through surrogacy and future intended parents

### 2.1.4 Jurisdiction where surrogacy arrangements were undertaken

Of the parents who had gone through surrogacy, 32 reported their marital status, sexual orientation and destination jurisdiction.

Of these, 9 were in opposite-sex marriages or civil partnerships (or equivalent). 5 went through surrogacy in Ukraine; while one each went through surrogacy in Russia, Georgia, USA (Illinois), and the United Kingdom.

The other 23 participants identified as being homosexual. Nineteen went through surrogacy with a partner: 17 in a marriage, civil partnership or equivalent; 2 in a cohabiting relationship. The two in cohabiting relationships both travelled to the USA (California and Massachusetts), while of those in marriages, civil partnerships or equivalents, 7 went to the USA (with the states of Colorado, Idaho, Kansas, Minnesota, Ohio, Oregon, Pennsylvania, Texas mentioned as destinations)<sup>1</sup>. Of the rest, 4 went through surrogacy in Canada, 2 in the United Kingdom, 2 in Mexico, and one each in Georgia and Thailand.

Interestingly, two individuals who reported being in a same-sex relationship (one in a marriage, civil partnership or equivalent; another in a cohabiting same-sex relationship) reported travelling to Georgia and Ukraine respectively to undertake a surrogacy arrangement, but did so as single applicants. One of these participants noted that they chose that jurisdiction because surrogacy was legal there, and although this did not extend to same-sex couples, there were loopholes which could get around this.

## 2.2 Motivations for surrogacy

**Both parents through surrogacy, and those who intended to enter into a surrogacy arrangement in the future, were asked their reasons for entering into a surrogacy arrangement.<sup>2</sup>**

Several who responded gave more general reasons for turning to surrogacy, including to found or complete a family, and that it was the “best and preferable option for us to become parents”. Others highlighted the opportunity that surrogacy gives for intended parents to be involved with the child from the moment of conception, noting that they wanted “to participate in the entire process (pregnancy through birth)”, or to have “a complete experience of paternity and live all the life stages of my child”.

The remaining motivating factors can be divided into four main categories: fertility; biology; legal certainty; and lack of alternative options.

Issues concerning **fertility** were one of the most commonly mentioned reasons for pursuing surrogacy. On the one hand, physical barriers to carrying a child were noted, including multiple miscarriages, an inability to conceive, and more general “health issues”.

For others, the issue was not physical infertility, but social infertility: the inability to conceive a child naturally in that particular family form. Same-sex couples noted that it was their “only real option” as “other alternatives [were] not available or practical for our relationship”, or that “other options were closed to us”. Finally, some single men noted that they had turned to surrogacy as the only way of achieving parenthood, stating that they chose surrogacy as they were “not in a relationship and desperately wanting fatherhood”, or “being gay and single [this] was one of the few options”.

The importance of a **biological link** with the child was also a motivating factor for some intended parents: wanting “to have a child that was genetically ours”. While most responses on this point referred merely to the importance of the biological/genetic connection to the child, one participant also noted the legal consequences of this: “that having a genetic connection to any child would help strengthen our family's legal status.”

**Legal** considerations in general were a motivating factor for several intended parents in their choice to pursue surrogacy, emphasising the “legal certainty” that a surrogacy arrangement brings with it, especially if undertaken in a jurisdiction outside the United Kingdom. It was noted that surrogacy “offered the best guarantees” to become a parent, and therefore was preferable to other options.

---

<sup>1</sup> Note that some participants had gone through several surrogacy journeys, and thus mentioned multiple jurisdictions.

<sup>2</sup> Note that participants were asked to provide a freeform response, and several participants noted a number of factors which contributed to their choice of surrogacy.

In particular, many participants highlighted the difficulties with the adoption system as a motivating factor for choosing surrogacy. Adoption was described as “very difficult”, and “arduous and hard”, leading one participant to describe being “wary of fostering or adoption” as a whole. The time taken to complete the adoption process was also mentioned as an impediment, with one participant reported having waited five years for an adoption, before turning to surrogacy. Adoption was also seen as being a more restrictive process – both national or international – with particular mention made of eligibility criteria which exclude same-sex couples. Participants noted that adoption was either impossible in their own country, or so restricted that “the prospect of it actually occurring [is] very slim”.

### 2.3 Choice of jurisdiction

#### **Parents through surrogacy and those planning to enter into a surrogacy arrangement were asked why they choose a particular jurisdiction for their surrogacy journey.**

For many, legal considerations were key to their decision-making process, with participants noting the importance of legality, simplicity, and a well-established legal framework and legal precedents. Participants suggested that a straightforward process, with a good legal setup, was important, allowing them to have confidence in the process. Transparency was also an important factor, with one participant in particular noting that they “[d]idn’t need to hide anything” about their arrangement. This can be contrasted with one comment about the UK system where the participant noted that “it can take many years to find a suitable surrogate due to our outdated regulation around advertising and compensation.”

The legal certainty of the arrangement was also noted as an advantage, in the US in particular. The existence of pre-birth orders in some jurisdictions was seen as a significant benefit, as was the knowledge that a judicial decision from that country would be respected in the home jurisdiction, and allow recognition of legal parenthood. Several participants linked the certainty of the legal process and the knowledge that both the surrogate and intended parents were protected, and that “nobody would be exploited or taken advantage of”. Having said this, one respondent noted the lack of legal rights for the surrogate as one of the motivating factors in choosing their jurisdiction, though this may have been referring to the right to make a claim to parenthood, rather than the surrogacy arrangement in general.

On the other hand, some participants highlighted the lack of legal certainty in their chosen jurisdiction – for example, certain provinces in Canada – as one of the biggest drawbacks, with one response stating that “until the court order after birth we were really nervous as the change of filiation was done after birth”.

Eligibility of intended parents was also raised as a significant consideration, in particular for same sex couples, but also for unmarried couples, and single parents. Cost was another factor that was regularly mentioned, either as a positive – low cost, affordable, all-inclusive packages – or a negative – with many highlighting the US as the most expensive option. Interestingly, nationality and immigration concerns were rarely mentioned, and far more participants seemed concerned with the distance of travel to the jurisdiction in question, rather than any legal consequences that may come with this journey.

Health care provision was also mentioned by several participants, noting relevant medical expertise and world class IVF. The ability to communicate with health care providers was also mentioned – both as a positive and a negative, depending on the jurisdiction chosen.

Some participants also highlighted the importance of professionalism in their choice of jurisdiction, noting the advantages of working with an experienced agency, and the “trust given to us by the company that managed the whole process”. On the other hand, a lack of professionalism was noted as a downside to some jurisdictions – in particular, in some Canadian provinces – with some participants having to weigh up the disadvantage of a lack of professional process with other desirable characteristics of the system – for example, the altruistic model, which several participants highlighted as a key contributing



factor to their choice of jurisdiction. Interestingly, only two responses noted the relationship with the surrogate as being a motivating factor in choosing their jurisdiction.

Likewise, word of mouth did not arise very frequently as a reason for choosing a particular jurisdiction. Only two responses stated that they had known someone else enter into a surrogacy arrangement in that jurisdiction – though of course this does not mean it was not a factor that also contributed to the decision-making of other participants, albeit to a lesser extent.

In the following table, the responses of participants are summarised according to the jurisdiction chosen. Not all responses are set out in full, but have been edited for clarity and to group like ideas together.

<b>Country</b>	<b>Advantages</b>	<b>Disadvantages</b>
Canada <sup>3</sup>	Altruistic model Good relationship with surrogate Eligibility criteria	Cost Lack of professionalism Uncertainty regarding legal parenthood
Georgia	Eligibility criteria Affordable Legal certainty Known others who had gone through the process	
Mexico	Language Eligibility criteria Judicial oversight Medical expertise Trust in the process	Cost
Russia	Medical expertise Known others who had gone through the process Legality of surrogacy	Language barrier Bureaucracy

<sup>3</sup> Note that Canada is a federal jurisdiction, with different laws in different provinces.

Thailand	<p>Eligibility</p> <p>Process similar to the US</p> <p>Low cost</p>	
Ukraine	<p>Lower cost/affordability</p> <p>Did not have to pay anything in advance</p> <p>All inclusive packages</p> <p>Not too far to travel</p> <p>Medical expertise</p> <p>Clear legal framework</p> <p>Legality of intermediaries</p> <p>Guaranteed result (birth of a healthy baby)</p>	
United Kingdom	<p>Country of residence</p> <p>Simplicity (as a resident)</p> <p>Immigration concerns</p>	<p>Outdated regulation</p> <p>Difficult to find a surrogate</p>
United States of America <sup>4</sup>	<p>Professionalism</p> <p>Legal certainty</p> <p>Pre-birth procedure</p> <p>Recognition of judicial order in own jurisdiction</p> <p>Legally and ethically sound</p> <p>Well-established legal framework</p> <p>Confidence in the process</p> <p>Language not an issue</p>	<p>Cost – at times prohibitive</p> <p>Distance to travel</p>

---

<sup>4</sup> As with Canada above, the USA is a federal jurisdiction, with different laws in different states.

	Protection for both surrogate and intended parents  Citizenship for children  Good relationship with the surrogate  Medical expertise	
--	---	--

*Table 1: Reasons behind choice of jurisdiction*

## 2.4 Using an Agency or Intermediary

**Parents who had gone through surrogacy were asked whether they used an agency or intermediary to facilitate their surrogacy.**

Eighty-nine per cent (n 31) who responded reported that they had used an agency, and only 11 per cent (n 4) had not.

Likewise, individuals or couples who intended to enter into a surrogacy arrangement in the future overwhelmingly reported that they planned to use an agency or intermediary (91 per cent (n 10)).

## 2.5 Finding a surrogate

**Parents who had gone through surrogacy were asked how they found their surrogate.**

Of the 33 participants who responded, 85 per cent (n 28) found their surrogate through an agency. Another 6 per cent (n 2) found their surrogate through a relative or friend; while 3 per cent (n 1) found a surrogate through a surrogacy organisation, 3 per cent (n 1) through social media, and 3 per cent (n 1) independently.

## 2.6 Costs and expenses

### 2.6.1 Types of costs and expenses

**Participants were asked what the sums of money paid to the surrogate and/or agency were for, and what types of expenses they paid to each.**

In relation to the surrogate, participants noted the following categories of costs/expenses:

- Living expenses
- Medical expenses
- Loss of earnings
- Support for childcare
- Maternity clothing
- Transport
- Lodging
- Medical insurance
- Life insurance
- Compensation for having a caesarean
- Compensation for undergoing medical procedures

In relation to the agency/intermediary, the following categories of costs/expenses were recorded:

- Health/medical costs
- Costs of artificial reproductive treatment
- Surrogate finder’s fee/matching process
- Legal services
- Insurance expenses
- Egg donation expenses
- Payments to meet the needs of surrogate
- Management of escrow account
- “Consultation fee”
- Providing accommodation to surrogate

### 2.6.2 Costs and expenses paid

**Parents who had gone through a surrogacy arrangement were also asked how much they paid, either to the surrogate, or to the agency.** The sums given were largely ballpark figures, and the way they were calculated varied – for example, monthly payments, lump sum payments, base fees, expenses.

Despite these discrepancies, we have tried to summarise the information given in the table below, but with the warning that it should not be taken to indicate definitive figures for surrogacy in any of these jurisdictions.

Country	Surrogate	Agency
Canada	CDN\$5,400 – CDN\$28,000	None – CDN\$15,000
Georgia	USD\$400 – USD\$500 per month, plus final lump sum	USD\$8,000 – USD\$60,000
Mexico	None – expenses	USD\$60,000
Russia	USD\$15,000	USD\$15,000
Thailand	-	€70,000
Ukraine	€6,500 – USD\$45,000	USD\$5,000 - €40,000
United Kingdom	£15,000 – £16,000	None - £300
United States of America	USD\$25,000 – USD\$40,000	USD\$12,000 – USD\$100,000

*Table 2: Range of costs paid in surrogacy*

It is interesting to note that some parents who had gone through a surrogacy arrangement were unaware of the sums being paid to the surrogate; rather, they simply paid the agency for an “all inclusive” package that did not specify the breakdown of payments.

It is important to emphasise that while these price ranges seem to indicate significantly larger sums being paid to agencies, as opposed to surrogates (except in the jurisdictions of Canada and the United Kingdom where commercial surrogacy is prohibited), when we look at the individual arrangements, this is not necessarily the case. In many arrangements, particularly in Ukraine, and surprisingly the United States of America, the largest payments are being made to the surrogate, while agency fees are slightly less.

<b>Country</b>	<b>Surrogate</b>	<b>Agency</b>
Canada	Expenses only	CDN\$6,000
	None	CDN\$5,000
	CDN\$600	None
	€13,000	None
	CDN\$28,000	CDN\$15,000
Georgia	USD\$500 per month plus final lump sum	USD\$60,000
	USD\$500 per month, plus USD\$12,000 lump sum	USD\$8,000
	Unknown	USD\$44,000
Mexico	None	USD\$60,000
	Expenses, and some extra	Undisclosed
Russia	USD\$15,000	USD\$15,000
Thailand	No	€70,000
Ukraine	€6500	€23,000
	USD\$45,000	USD\$5,000
	€19,500	€7,000
	€15,000	€5,000
	€20,000	€7,000
	Unknown	€40,000
United Kingdom	Expenses as incurred	None
	£15,000, plus £2,500 for caesarean section	None
	£16,000	£300
USA	USD\$25,000	USD\$12,000
	USD\$25,000	USD\$100,000
	USD\$38,000	USD\$100,000
	USD\$40,000	USD\$60,000
	USD\$40,000	USD\$20,000
	USD\$35,000 base fee plus expenses	USD\$20,000
	USD\$35,000	USD\$24,000
	USD\$25,000 – USD\$35,000	USD\$20,000 – USD\$30,000

	USD\$25,000, plus medical expenses	USD\$18,000
	USD\$32,000	USD\$30,000
	€35,000	€20,000

Table 3: Specific costs reported in surrogacy

### 2.6.3 Plans of future intended parents with regard to costs

**Participants who indicated that they were intending to enter into a surrogacy arrangement in the future were asked whether they anticipated making any payments to the surrogate, or to an agency/intermediary.**

All respondents confirmed that they anticipated making payments to an agency/intermediary, with one participant remarking: “I imagine I’ll have no choice.” The sums that the future intended parents anticipated spending on such services ranged from £10,000 (Canada) to approximately USD\$200,000 (USA).

Likewise, future intended parents also anticipated making payments to the surrogate. While some anticipated only paying sums relating to expenses – for example, in Canada – others anticipated payments of up to £30,000 or USD\$35,000. When categorising what these payments would be for, participants reported that they would be “for expenses”, for “compensation” or “for her work”, though one noted that they “[had] heard of other unofficial expenses involved.”

## 2.7 Information on surrogacy arrangements

### 2.7.1 How information was obtained

**Parents through surrogacy, and those intending to enter into a surrogacy arrangement in the future, were asked about the information available to them: where they accessed information concerning surrogacy in the country in question, whether they had any difficulties in this regard, and what further information would have been of assistance.**

Participants described obtaining information from a variety of sources, but by far the most prevalent was information obtained online. Websites such as Google and Facebook were mentioned specifically, as well as “blogs”, “forums” and “reviews” more generally.

A significant number also mentioned information obtained through friends or other intended parents. Together with the reliance on “forums” and “reviews”, this demonstrates the importance of word of mouth in facilitating surrogacy.

Surrogacy organisations and lawyers also played a role in providing information, as did the agencies and clinics used by intended parents. Reliance on the latter for information is somewhat concerning, given the vested interest that these agencies and clinics have in the perpetuation of surrogacy. However, the majority of participants who indicate that this was their source of information also noted other sources (including internet searches, or through separate legal advice).

Of concern, two respondents noted that they “did not look” for information on surrogacy in the jurisdiction in question,<sup>5</sup> or had “no info[r]mation] at all” (interestingly, both in relation to surrogacy undertaken in Canada).

<sup>5</sup> This was in response to the question “Did you have any difficulty in accessing information about surrogacy in that country?”

## 2.7.2 Difficulties in obtaining information

**Participants were also asked whether they had any difficulty finding information about surrogacy arrangements in the country in question.**

Thirty-two of the 40 respondents to this question indicated that they did not have any difficulty obtaining information, though went on to indicate that the issue was not availability of information, but quality. As one participant put it: “There is a vast amount of information, so the difficulty was navigating and making sense of it all. Separating inflated vendor marketing material and overstated promises from actual fact was also a challenge.”

Again, a concern arose in relation to participants who noted that they had no difficulty obtaining information as the “agency provided [it] all”. Tellingly, when responding to the question of what further information the parent would have found useful to have available, the response was “the truth”.

Of the 8 respondents who did indicate they had difficulty finding information, only few expanded on this. One indicated a difficulty because of differences in language and culture, while another noted that all the information was informal. The inability to identify accurate information was also highlighted by these participants, with one commenting that “a lot of information can become much more complicated than the concrete and necessary information you're looking for.”

## 2.7.3 Further information that would have been useful

Finally in this section, **participants were asked what further information they would have found it useful to have available.** The answers largely fell within four key categories: clarity/transparency; legality; costs; timeframes.

Many participants highlighted the advantages of a **transparent** process, including a clear list of steps in the process, and practical expectations. The different options available to intended parents was also raised as an area in which greater information was needed.

In addition to clarity and transparency, information about the **legal process** was also a key concern of many participants. Responses indicated the advantage of knowing the legal implications of surrogacy in the jurisdiction in question, and called for a clear breakdown of state-by-state surrogacy laws so that comparisons could be drawn and informed choices made. The status of the intended parents with regard to legal parenthood, and the legal procedures that intended parents would have to go through after birth, were also noted as key concerns, with participants noting the difficulty in obtaining information about the requirements for a Parental Order in the United Kingdom.

**Costs** were also a major issue identified, with participants wishing for a better understanding of the costs involved in surrogacy before they started, and for clear and consolidated lists of costs for both agencies and surrogates. One participant in particular noted the lack of transparency involved with costs, with the clinic not making clear what additional costs would have to be paid throughout the surrogacy process.

Intended parents also wished for greater transparency with regard to expected **timeframes** for surrogacy, and in particular, the time it would take for a child to obtain a passport to return to the parents’ country of origin.

In addition to these reoccurring themes, there were a number of other concerns raised on an individual basis. One participant noted that information about how to find donors and surrogates would have been useful, while another responded that they would have liked to have had better knowledge of the surrogate. Finally, two participants linked the issue of information to the existence of a well-regulated legal system, with one commenting that “[i]t would have been very useful if this process was regulated

in our country so that the whole process can be carried out with the greatest guarantees for all parties”, while the other added “[t]he most useful thing... is to have the guarantee that things are being done correctly”.

## 2.8 Difficulties experienced in the surrogacy journey

**Parents through surrogacy were asked whether they experienced any difficulties throughout the process, either before entering into the surrogacy arrangement, and in the foreign country after the child was born.**

### 2.8.1 Difficulties before entering into the surrogacy agreement

Twenty-three of the 29 respondents to this question stated that they had not experienced any difficulties before entering into the surrogacy arrangement. Of those who had encountered problems, these included difficulty finding an egg donor, as well as an absence of professionalism and a lack of reliability on the part of the agency. One participant, although they did not specify a particular problem, recounted that the “whole process [was] pretty fraught and worrying”.

When asked about difficulties in the foreign country after the child was born, the majority likewise experienced no difficulties. However, 11 of 26 reported problems, including medical issues, and legal issues.

From a **medical** perspective, one participant reported that their children (twins) were born premature, leading to concern surrounding healthcare costs. Several participants also reported difficulties caused by the Covid-19 pandemic, but these were legal rather than medical. One participant explained that they were not able to enter the jurisdiction in which the children were born until two months after their birth, due to Covid restrictions, while others reported issues when trying to return home with the child, and the process for obtaining documents taking longer than expected due to a reduction in services.

Parents were also affected by political and **legal** changes, with one disclosing difficulties obtaining a birth certificate due to the political climate in the child’s country of birth (Russia) at the time, while another noted that there had been a law change in the country of the child’s birth (Mexico), leading to the process taking longer than anticipated.

Worryingly, several parents described poor treatment received by the authorities – both from their own government, and officials in the child’s country of birth. One disclosed problems of discrimination on the part of authorities when processing the children’s passports, while another recorded that the officials had made the surrogate “[feel] bad”. Yet another described the authorities as “terrible” and “unsympathetic”. Concern was also expressed that the processes that parents had to go through to obtain travel documents were unclear, and the “application forms do not represent the world will live in, out of date.”

### 2.8.2 Difficulties travelling back to the United Kingdom, or with regard to legal parenthood

**Parents through surrogacy who were based in the United Kingdom were asked whether they had any difficulties travelling back to the UK, or with regard to obtaining legal parenthood.**

The experiences of parents when returning to the UK seem to indicate an evolution of practice. One participant recounted the approach of the authorities in 2010, noting that the immigration authorities “didn’t know how to handle us at Heathrow”, and “detained” their 17-day-old child for three hours. On the other hand, another participant described a more recent experience where “the person we spoke to at border control was familiar with this type of arrangement” and was “at the immigration desk for no longer than five to ten minutes”. Yet another stated that “no one asked questions”, and they were “just ushered through the gates”.



No respondents cited specific difficulties in obtaining recognition of parenthood through a parental order in the United Kingdom. Nevertheless, participants described the process as “lengthy” and “outdated”. One participant recounted that although there “were no obstacles or problems” to obtaining the order, “there [were] many hoops to jump through with very little guidance for parents trying to navigate the...process.”. Likewise, another participant expressed the view that the parental order process “doesn’t represent the parents that have paid every penny they have [and who have] have the same rights as everyone else to have a family. The system is wrong in many ways.”

### 2.8.3 Difficulties for parents through surrogacy travelling back to other jurisdictions

**Parents through surrogacy who were based in another jurisdiction were also asked whether they experienced any problems when returning to their home country after completing the surrogacy arrangement.**

Unlike UK-based parents, who reported very few issues when returning home, the majority of foreign-based parents (13 out of 19) *did* experience difficulties.

These largely fell into two categories: difficulties with travel or immigration, and difficulties obtaining legal recognition.

When recounting difficulties with **travel arrangements and immigration**, several participants mentioned delays caused specifically by the Covid 19 pandemic. But others also noted that the attitude of their own authorities were not helpful in obtaining travel documents or passports to return home. One participant described having to stay six months in the country of the child’s birth before being able to return home with them, while another simply stated “I can’t get home. They won’t let me back home.”

With regard to **legal recognition**, participants described the lack of recognition of foreign birth certificates, and the institutional procedures that they had to go through, as significant difficulties they had experienced. Participants also noted the time take to register the birth in their jurisdiction, with one reporting a nine month wait for the Spanish authorities to accept and register the birth, during which time there were difficulties in accessing health care. Another recounting that their child was left stateless for a year without rights and without legal protection.

### 2.8.4 Obtaining legal parenthood in foreign jurisdictions

**Finally, non-UK based parents were asked whether they had obtained legal parenthood for their child in their home jurisdiction. If they had done so, they were asked how this was achieved.**

The answers provided encapsulated the difficulties with the global system of international surrogacy. For some, this appeared to be straightforward: through a court order in the child’s country of birth, and then recognition of that foreign order in the home jurisdiction. For others, however, it was much more complicated.

One common mechanism for obtaining legal parenthood was through adoption. Where this was used, participants noted the different mechanisms needed for fathers and mothers – while for fathers, a court order or voluntary acknowledgement of paternity was sufficient, mothers had to go through the more arduous process of adoption.

Likewise, participants also highlighted the discrepancies between recognition in different countries. One participant set out the four relevant jurisdictions that needed to be complied with in recognising their family: the country of the child’s birth, the country where the family resides, the father’s country of citizenship, and the mother’s country of citizenship. Each of these jurisdictions may have different criteria for determining parenthood, leading to a conflict of laws. This may also have a consequential

effect on the child's citizenship: for example, one participant noted that through the presentation of a pre-birth order in the USA, the child was recognised as an Australian citizen (the nationality of the husband). However, to obtain New Zealand citizenship (from the mother), the parents had to undertake a full adoption in that jurisdiction.

A final group of responses reflected the harsh reality that for some families, recognition of their legal status can never be obtained. One participant noted that they are the "legal parents to all but a UK judge", while another noted that although they are trying to move back to the UK, this is made difficult because their legal parenthood would not be recognised there.

One answer, however, betrayed the difficulty a non-lawyer may have in understanding the complexities of the law in this area. When responding to the question of "Have you obtained legal parenthood for your child?" their answer was as follows:

"I don't know what this means. I am the genetic father, have done DNA tests to prove this, I am on the birth certificate and now have UK passports for them. I think that makes me the legal parent."

However, of course under current UK law, despite having a proven genetic connection, despite being named on a foreign birth certificate as a parent, and despite even being able to get British passports for the child on the basis that the intended father is a British citizen, this is not enough to establish legal parenthood. While this was only one response out of 19 – in itself a very small sample size – this exemplifies the concern of many legal commentators that some intended parents do not understand the legal reality of their situation, and may not be aware of the potential difficulties that they could face in this regard.

## 2.9 Other information

**Intended parents and future intended parents were asked whether there was any other information that they wished to share with us. This question was intended to identify any issues that we had missed, and allow participants to highlight information that was most important to them.**

Some participants used this opportunity to provide further information about their surrogacy journey – both the positives and the negatives.

On the positive side, participants reflected that surrogacy was "an easy and pleasurable experience", "a beautiful process" and "should be celebrated". They also highlighted the relationship that they had with their surrogate, noting "I have friends for life in their surrogates", and "our family is joined to our surrogate's forever". Most poignant perhaps was the simple statement by one participant: "Love makes family".

On the other side of the coin, some participants noted the difficulties they had experienced, and in some cases, were still experiencing, when undertaking surrogacy. Words used to describe the experience included "horrific", "horrible" and "a scandal".

One recounted that they were "ripped off" by their surrogate, while others described the situation of legal limbo that they had been in before both intended parents were able to obtain recognition of their legal parenthood: with one recording having to wait 18 months, another over three years. This prolonged legal limbo was also raised by another participant, who noted that they were met with discrimination and disrespect by the authorities, and left for six months in a foreign country while waiting for passports to travel with their children. Finally, one participant recorded her anger when she sees her children's birth certificate, stating that they are adopted: "They have never been abandoned, they had my [DNA], I am their mother".

Other participants focused not on their individual situations, but on the wider legal framework, and the need for social and legal change. These participants called for recognition that infertility is a serious social issue, with one opining that “after survival, reproduction is the most fundamental needs.” As such, they recommended that there be a complete overhaul of the regulation of surrogacy in all European countries, and especially the United Kingdom: “[w]hen two people who love each other and need help from another to have a child, then it should be that person’s choice to help. The law should allow and facilitate this in a fair and non discriminatory way.”

Some participants had specific recommendations in this respect: one noted that “I strongly suggest the UK fully legalise paid-for surrogacy”, while another suggested that the UK should look to the legal regimes of Ukraine and the US, to develop a system that allows advertising and direct payments to surrogates. This participant went on to give the opinion that “the nature of surrogacy in the UK (on a ‘friendly’ basis) may draw on the English tradition of amateurism, but it’s frankly a waste of time for couples who just want to get on with it.”

Several parents noted that they would have preferred to undertake the process in their home jurisdiction, but felt forced to go abroad, “drawn by the guaranteed nature of the contracts offered by surrogacy agencies abroad”, and leading to them “unwittingly putting themselves, their surrogates and new born child in danger.”. These participants urged for a system that would “make things easier for parents” and which would protect “the rights of all involved parties.”

## 3 Experiences of Legal Practitioners

### 3.1 Profile of participants

In addition to examining the surrogacy journeys of intended parents (and those who planned to enter into a surrogacy arrangement in the future) the survey sought to draw on the experiences legal practitioners involved in surrogacy.

Of the 168 participants in the survey, 19 per cent (n 27) of participants were legal practitioners, operating in the United Kingdom, as well as in Germany, Georgia, Malta, New Zealand, South Africa, Ukraine and the United States of America.

Legal practitioners were asked specifically about the issues they had encountered at different stages of the surrogacy journey: in the lead up to the conclusion of the arrangement; after the conclusion of the agreement, but before recognition of legal parenthood of the intended parents; and after the recognition of legal parenthood.

### 3.2 Difficulties experienced during the surrogacy journey

#### 3.2.1 Difficulties before the conclusion of the surrogacy agreement

**When describing the difficulties that had arisen in the phase leading up to the conclusion of the surrogacy agreement**, there were two main issues that were described: issues regarding the terms of the surrogacy contract; and issues concerning the lack of legal knowledge of the parties.

When negotiating the **terms of the surrogacy contract**, it was noted that at times there was limited understanding of the process, and that parties were not aware of their rights and responsibilities. While many confirmed that the parties may disagree on the principal clauses of the contract, individual practitioners highlighted different clauses as the cause of this disagreement.

Unsurprisingly, financial terms were reported to be the most disputed, and in particular, the level of payments and expenses expected. The need to manage and itemise the expenses that intended parents were paying was also highlighted as an issue of concern, as well as the need to ensure that the agreement remained altruistic and not commercial in some jurisdictions.

For several practitioners, one of the biggest issues between the parties concerned the living conditions and lifestyle of the surrogate. One recounted that “[s]ome intended parents providing housing for the surrogate mother to live during pregnancy and even provide the surrogate mother with the assistant – a person helping the surrogate mother with her needs during pregnancy (preparation of meals, housecleaning, etc)”. Another reported that the intended parents would often like to have more control over the surrogate, while the surrogate did not want to change their lifestyle for the programme.

In addition to these reoccurring issues, practitioners offered a number of other issues:

- Contractual clauses concerning abortion and selective termination;
- The consequences of the death of the surrogate or the intended parents;
- Who is in attendance in the delivery room; and
- Whether the surrogate should be vaccinated against Covid 19.

In addition to disputes concerning specific terms of the surrogacy agreement, participants also noted the difficulties that arise due to **lack of understanding of the applicable law**. This issue was raised with respect to the surrogate and intended parents themselves: understanding their rights and responsibilities, awareness of the need for additional processes for legal recognition of parenthood, and

possible delays that they may face in resolving the child's legal status. However, another issue that was identified was the lack of comprehension of the different legal requirements that intended parents might face on return home on the part of the legal practitioners and clinics in the foreign jurisdiction, and especially the need for the surrogate to complete certain documentation after birth.

One interesting clash in this respect concerns the child's access to information on their genetic origins. This was highlighted by the opposing statements of two responses to this survey: on the one hand, one legal practitioner noted that other countries do not appreciate how important it is for their domestic law that the child have access to information about the genetic donors; while on the other hand, another practitioner raised a concern regarding a lack of understanding of *their* domestic law that required egg donation be completely anonymous. This epitomises the conflict of laws that arises in relation to international surrogacy – with at times directly contradictory legal requirements that somehow must be reconciled.

### 3.2.2 Difficulties after entering into the surrogacy agreement

**The participants were then asked what issues they had encountered after the conclusion of the agreement, but before the recognition of parenthood of the intended parents.**

The issues identified by practitioners were wide-ranging and numerous.

Several practitioners recounted disputes concerning the terms of the agreement, with different understandings of their rights and obligations. Arrangements about payments, additional claims for compensation (for example, for complications during pregnancy or delivery) were raised as issues that led to disputes between the parties, as well as questions concerning selective foetus reduction.

One practitioner perhaps summed this situation up best when they stated: “The better was the agreement, the less problems will arise or at least they would be much easier to solve.”

A second major issue that was raised by practitioners was the breakdown of the relationship between the surrogate and the intended parents, or complaints concerning the actions of one or other of the parties.

One practitioner noted that they had acted in “a number” of cases where there had been such a relationship breakdown, leading to a situation where the surrogate did not feel able to consent to the transfer of legal parenthood through the making of the parental order. Despite this, in none of these cases did the surrogate seek to care for the child. This raises an interesting question: is the surrogate in this case refusing to consent because they do not believe the intended parents should have legal recognition (despite being the social parents)? Or is this in fact an example of the surrogate using the only mechanism available to them to express their anger and disappointment in how the arrangement has progressed? Or might other motives be at play?

The prospect of the surrogate changing her mind about the agreement and wanting to keep the child herself is often raised as a concern with surrogacy arrangements – should she be forced to hand over the child, as agreed, or does she have parental rights that must be respected? However, such a difficulty was not reflected in the answers given to this survey – either by practitioners, surrogacy agencies, or the intended parents themselves. The only instance where a party had changed their mind concerning legal parenthood was in fact one of the intended parents, in a case where their relationship had broken down during the surrogate's pregnancy, and only one of them wished to continue on with the agreement. This is not to say that surrogates *never* change their mind, but the data gathered from this admittedly small survey suggests that this concern may be more theoretical than practical.

Unsurprisingly, it was noted that the breakdown in the relationship between the surrogate and intended parents happened mainly in domestic UK surrogacy arrangements. In the United Kingdom, clinics or

surrogacy organisations cannot operate on a commercial basis, leading many individuals to make their own arrangements through online forums. As a consequence, these parties are not screened for their suitability for surrogacy, nor is there a professional matching process which takes into account the different desires and expectations of the parties.

Several practitioners also described difficulties that arose with regard to the surrogate mother. Grievances on the part of intended parents concerning the behaviour of the surrogate, particularly where they had breached behaviour clauses that were included in the contract. Issues raised were breach of prohibitions on drinking alcohol or smoking, the type of food she was eating, or the activities she was undertaking, as well as (international) travel plans. On the other hand, grievances on the part of the surrogate were also noted – in particular where the surrogate felt unsupported or under-prioritised by the intended parents.

Blackmail and extortion were also mentioned as concerns at this stage of the arrangement. Though no further information was provided on this point in the survey, this may refer to a demand by the surrogate for more money to continue with the arrangement, or to agree to the transfer of legal parenthood. The aim of this survey was not to go into depth concerning any one particular issue, but rather discover the type of issues that arise in such arrangements. Nevertheless, this may be an area in which further study is warranted.

The final two difficulties raised by legal practitioners related to legal issues – first, immigration and travel; and second, obtaining recognition of legal parenthood.

On the subject of immigration, practitioners noted that this was often an issue in international surrogacy arrangements, with intended parents not having taken legal advice before hand, and finding themselves in difficulty in this regard. One practitioner noted the amount of paperwork necessary to file a passport application, and in particular, the time frames for processing any passport application. This accords with the experiences of intended parents themselves, as discussed in Part 2.8 above.

Difficulties in concerning the acquisition, and recognition, of legal parenthood were also raised by a large number of participants.

Practitioners disclosed issues concerning the consent of the surrogate, and particularly the issue of tracing foreign surrogates where consent needs to be given more than six weeks after birth.<sup>6</sup>

Difficulties with the system of parental orders – both theoretical and practical – were identified. On a theoretical level, some practitioners expressed the opinion that the system was “outdated” and introduced “uncertainty”. As one participant put it: “It was written in a time when no one could have envisaged the technological developments of the day (nor the trials presented by a global pandemic). Extensive legal arguments have had to be raised, at considerable cost to clients to confirm their status as parents.”

On a more practical level, one practitioner noted that some intended parents did not realise they needed a parental order, often relying on an overseas birth certificate on the advice they had been given by the surrogacy clinic in the foreign jurisdiction. Even for those who were aware of this requirement, intended

---

<sup>6</sup> This is an issue that has come through in the caselaw of the High Court when dealing with international surrogacy arrangements. For example, in the case of *Re D (A Child)* [2014] EWHC 2121 (Fam). when the court tried to contact the surrogate through an international detective at the address given by the surrogacy agency. Although three women at that address claimed to answer to that name, none of them admitted to bearing the child. As a result, the court was forced to cease its enquiries. Likewise, in *Re D and L (Minors) (Surrogacy)* [2012] EWHC 2631 (Fam); [2013] 2 FLR 275. the court tried to contact the surrogate at the time of the hearing, to gain her consent to the parental order. The intended parents employed an inquiry agent to locate the surrogate, but this was unsuccessful, as the address that they had been given was the residence of the agent, rather than the mother. The surrogacy clinic, when asked for its assistance, replied with a single piece of paper printed with an “obscene gesture”.

parents sometimes ran into difficulties with meeting the criteria set out in law for obtaining a parental order. Both of these situations indicate that individuals and couples seeking to enter into a surrogacy arrangement often do not have sufficient information regarding the legal requirements in the United Kingdom. As discussed in Part 2.7 above, the large majority are obtaining information about surrogacy from the internet, including websites such as Google and Facebook, as well as “blogs”, “forums” and “reviews” more generally. Friends and other intended families also played a role in providing information, as did surrogacy clinics.

Although legal practitioners were named a source of information, responses indicated that it was not common practice to seek legal advice *before* the arrangement was entered into. In practice, it seems that legal practitioners are sought out only after the child has been born, and when intended parents are faced with a legal dilemma. This is of great concern – by the time the child has been born, and the parents are facing difficulties with travel and recognition of parenthood, it is almost too late. A better approach would be for intended parents to be fully informed before they embark on their surrogacy journey, they would be able to avoid some of the potential pitfalls described in Part 2.8 above.

### 3.2.3 Difficulties after the recognition of legal parenthood

**Legal practitioners were asked what issues they had encountered *after* the recognition of parenthood of the intended parents.**

The answers to this question reflected the difficulties inherent in an international surrogacy industry, and the lack of harmonisation of surrogacy laws. One major issue identified was that the recognition of parenthood is not a one-off event – simply because parenthood is recognised in one jurisdiction, does not necessarily mean this will translate to recognition elsewhere. Where intended parents seek to have their parenthood recognised in their home jurisdiction, the practitioners noted delays in the process, and demands for additional documents. This issue of delay was also raised in relation to immigration issues, and getting the child documents to return to the intended parents’ home jurisdiction.

The other issues in this section were raised by individual practitioners only, which makes any wider conclusions difficult. However, the following problems were identified:

- Lack of cooperation of the surrogate mother
- Termination of pregnancy and foetus selection
- Delays in payments by health insurance providers
- Cancellation of the agreement and financial recourse by the intended parents

One practitioner also noted a problem that has not yet arisen, but they believe will become an issue in the future: the potential that children born via surrogacy will at some stage try to obtain information on their origins. This concern was also noted as an issue arising before entering into a surrogacy arrangement, as discussed in Part 3.22 above.

## 3.3 Identifying significant issues

**In addition to questions concerning the specific difficulties that legal practitioners had seen arise at various stages of the surrogacy journey, they were further asked what they saw as the most significant problem that needs to be dealt with in any of the time periods.**

This question received a significant number of very detailed responses, which can be broken into the following categories:

- Parenthood:

One of the reoccurring themes in the responses to this question was the uncertainty regarding legal parenthood, and particularly, cross-border recognition of this. These concerns ranged from the specific – for example, the criteria for a parental order in ss54/54A of the Human Fertilisation and Embryology Act 2008– to the general – for example, international recognition of legal parenthood established abroad.

One practitioner poignantly stated:

“The law needs to catch up with science. In ideal world there would be an international convention so that nations could be satisfied of the ‘safety’ of the agreement and it could become an administrative process rather than a legal one – even if that did do me out of a job!”

- Legal knowledge and advice

Practitioners also highlighted the need for greater knowledge and understanding of intended parents of the severe legal consequences they may face, with one practitioner going so far as to recommend that all intended parents should be mandated to obtain information about the legal situation in their home country before entering into a surrogacy arrangement. Taking proper advice early in the surrogacy journey was seen as vital for informed decision making, which would in turn reduce difficulties at a later stage.

One practitioner also recommended that legal advice be compulsory for both the surrogate, and the intended parents, ensuring that they have a full and proper understanding of the agreement that they are entering into.

- Immigration

Other practitioners emphasised the need to speed up waiting times for travel documents for surrogate born children. They noted the complexity of the current rules – particularly for non-British nationals living in the United Kingdom – and the importance of ensuring intended parents are able to bring their child with them to their home jurisdiction.

- Lack of regulation

It was not only the UK legal system that came under scrutiny. A number of practitioners noted the lack of regulation in “destination” countries – for example, Georgia and Ukraine – which creates confusion as to rights and responsibilities, and leaves room for exploitation. In particular, one practitioner described the need for the obligations of all parties to be set out in law, with clear penalties for violations of rights and non-fulfilment of responsibilities, while another proposed the drafting of a standard sample surrogacy arrangement, setting out important and necessary conditions to be included.

- Relationship between parties

The relationship between the intended parents and the surrogate was also highlighted as a particular issue. Trust and respect between the parties was identified as a vital part of the surrogacy arrangement, but effective communication is not always possible due to differences in language and background.

One practitioner set out the issues that arise as follows:

“Prior to entering into an agreement it is vital that careful consideration is given to a wide number of ethical issues to make sure that the commissioning parents and surrogate share the same views on important matters such as termination (and in what circumstances either party would wish to terminate), what would happen in the event of separation of the parties / death of the parties during the arrangement as well as any expectations for the relationship between



the commissioning parents and surrogate and her family before, during and after the pregnancy.”

Several practitioners noted the role of agencies and intermediaries in this respect, with one noting that a good intermediary can help solve any misunderstandings between the parties. It was argued that a third party could provide objectivity, and ensure that all key issues are considered, and all parties are genuinely on the same page.

- Identity

As with Part 3.2.1 and 3.2.2 above, the theme of identity and access to origins also arose in answer to this question. One practitioner emphasised the importance of ensuring the arrangement prioritises the provision of information on both the donor and surrogate, opinion that the parents should know who the donor is, and should have contact with the surrogate, knowing her name, and her story.

- Covid

Finally, the impact of the Covid-19 pandemic was discussed, and the need to take into account any possible restrictions that may arise as a result of this.

### 3.4 Other information

**Finally, and at the end of the survey, legal practitioners were asked whether there was any other information that they wished to share with the researchers.**

The majority of participants who answered this question focused on the need for updated laws surrounding surrogacy – both nationally and internationally. The need for adequate and effective state control was highlighted, which would address the dangers that arise from a lack of regulation.

On a national level, one practitioner gave the opinion that “[t]he law is outdated and not fit for purpose”, while another noted that the manifold difficulties that the UK surrogacy system has given rise to, including issues concerning consent, payments, and informed decision-making. One participant further still, proposing a specific remedy for this, advocating for a system of paid surrogacy to be introduced in the United Kingdom – where the mother would receive reasonable compensation for her lost income and suffering during the pregnancy and birth.

On the international level, several participants called for unified rules on international surrogacy, which would govern issues such as citizenship and recognition of legal parenthood. In particular, one practitioner noted that “clear common world regulation is the key to bringing surrogacy to the new level: secure, honest and fair.”

Finally, one practitioner moved away from the theme of legal regulation, and focused on the information available to intended parents. They noted that “the flow of information received by intended parents too often is controlled by commercial agencies – this means that objective information is not always available to parents who are planning their families at a distance. Neutral information sites would be helpful”.

## 4 Experiences of surrogacy agencies

Of the 168 responses received to this survey, 14 came from surrogacy agencies, working in Georgia, Mexico, Ukraine, and United States of America. Of these 14, 2 were operating on a not-for-profit basis (both in Ukraine), while the remaining 12 were for profit. This is obviously a very small sample size, so broad statistical conclusion cannot be drawn. Added to this, many participants only responded to one or two of the questions, leaving little qualitative information either. Nevertheless, the responses provide some indication of the key issues faced by these players.

**Agencies were asked whether they had experienced any difficulties in relation to foreign administrative systems or courts; or in relation to issues of nationality or travel of the surrogate child.**

### 4.1 Difficulties in relation to foreign administrative systems or courts

When asked about difficulties in relation to foreign administrative procedures or courts, the key issue identified by surrogacy agencies was the length of the passport process, and the difficulties experienced by intended parents wishing to return to their home jurisdiction. It was noted in particular that the United Kingdom authorities take longer to issue passports than do other countries, leaving intended parents in limbo in the foreign jurisdiction for extended periods of time.

### 4.2 Difficulties in relation to issues of nationality and travel of the surrogate child

Unsurprisingly, given the answers given above in relation to foreign systems and courts, the main issue raised in relation to nationality and travel of the surrogate child was the length of the process. One agency also noted that where the child is not recognised as acquiring the nationality of the intended parents, it is sometimes necessary to instead proceed with an application for a passport from their country of birth (in this case, Ukraine).

The other issue raised in relation to travel relates to children suffering medical complications. Where urgent medical assistance is needed, then special arrangements and transportation may need to be arranged. Given the significant cost implications of such treatment and transportation, this is a very important issue which intended parents should be aware of.

### 4.3 Difficulties not described above

Finally, surrogacy agencies were asked whether they had experienced any difficulties that they had not described above. Only two issues were raised in this regard. First, the shipment of frozen gametes for surrogacy, although no further information was provided on what issues had arisen in this respect.

Second, one agency noted that certain consulates are not as helpful or knowledgeable about surrogacy arrangements, which can lead to delays in recognising legal parenthood or establishing citizenship. This seems in accord with the experiences described in some intended parents who noted that their own embassies and authorities were not helpful in obtaining travel documents or passports to return home. (see Part 2.8 above)

## 5 Contributions from third parties

**In addition to the questions focused on specific key players in the surrogacy journey, the survey also had a section which allowed others to share their views.**

Thirty per cent of the 168 responses (n 43) were from those in the category of “other”, highlighting the significant interest that surrogacy generates in wider society.

### 5.1 Interest in surrogacy

Those who responded to this section were asked what their interest was in surrogacy. This question allowed for a free-form response, and consequently, a wide variety of answers, some of which described the role of the individual responding, others an ethical/political position on surrogacy.

The responses included:

- Academic/Researcher
- Run a global non-profit assisting intended parents
- Mental health professional working in third party reproduction
- Fertility concierge and matchmaker between intended parents and agencies
- Bringing a feminist perspective to surrogacy
- Concern regarding the rights of women
- “social, political and legal”
- Abolition
- Professional

### 5.2 Legal concerns about surrogacy arrangements

**These participants were asked what their legal concerns are about surrogacy arrangements. This was deliberately framed in *legal* terms to be consistent with the overall aims of this project – to explore legal issues that arise in relation to international surrogacy arrangements.**

- Regulation

The need for clear and enforceable legislation was highlighted as a significant issue by several participants. They expressed concern about the potential for exploitation that arises as a result of a lack of legal framework and oversight, and noted that the control of arrangements by domestic authorities in the country of origin is vital to ensure the protection of the parties.

- Legal parenthood

One of the most frequently cited concerns by these participants related to legal parenthood for surrogate born children. This was raised as a concern not only in relation to the initial establishment of legal parenthood, but also, in international cases, how cross-border continuity can be achieved. The difficulty that intended parents and surrogate born children face in obtaining recognition of their legal relationship in their own jurisdiction was highlighted on numerous occasions.

In this respect, several participants also noted the lack of awareness of intended parents travelling abroad for surrogacy arrangements, with many not realising that they will not automatically be recognised as the legal parents of their child in the United Kingdom. It was recalled that the need for a parental order was not clear for all intended parents – especially if they were named on the foreign birth certificate – and the necessity of legal advice for all parties involved in the process was emphasised.

- Citizenship and travel

As with intended parents, legal practitioners, and surrogacy agencies, participants in this category also raised concern about citizenship for the child, and the process required to return to the intended parents' country of origin. However, no further information was given in this regard.

- Exploitation and abuse of surrogates

One of the most frequently cited concerns by these participants in the survey was the exploitation of surrogates. Some argued that all surrogacy was exploitative, expressing the view that "surrogacy is human exploitation", or in violation of human rights. Several called for the abolition of surrogacy altogether, while others raised concerns about how to protect women from illegal practices.

On the other hand, other participants, described surrogacy as only potentially exploitative in certain circumstances: for example, surrogacy being used "to exploit women in vulnerable situations". Concern was expressed regarding the laws for the selection and screening of surrogates, and the criteria for acceptance, as well as the growing use of social media to find surrogates. Moreover, the importance of ensuring that the surrogate's consent was free and informed, and that she was respected by third parties was emphasised.

One participant noted the ethical issues that arise in particular with international surrogacy, expressing concern that some jurisdictions are painted as "ethically-sound" without this assumption being tested, and without an exploration of different views of what "ethical" means, and in relation to whom.

- Children's rights

In addition to the rights of surrogates, several participants highlighted the need to ensure the rights of the children born through surrogacy. Several different concerns were raised in this respect: the right of the child to have legal parenthood established, and recognised across international borders; the problem of stateless children; and the right of the child to know about their genetic or gestational origins. At the heart of this issue, as one participant recounted, is the difficulty of how to "reconcile preventing abuse with the best interests of the child".

- Intended parents

Finally, participants also expressed concern regarding the position of intended parents in surrogacy arrangements. These concerns ranged from lack of legal recognition of parenthood; to financial vulnerability; to ensuring a right to reproduction and family life. As one participant stated: "I...believe that intending parents should not be perceived as evils or criminals just because they want to fulfil their family projects."

### 5.3 Further information

**As with other participants in the survey, respondents in this section were asked whether there was any further information they wished to share with the researchers.**

By far the most frequent comment in this section concerned the exploitation of women in surrogacy arrangements, as well as calls for the abolition of surrogacy as a practice. Surrogacy was described as "slavery", "violence against women" and "obstetric violence", with one participant stating clearly: "[w]omen are not incubators". Another participant expressed the view that "[s]urrogacy can only be approached from an abolitionist perspective on this practice, as slavery was abolished in the past."

This was described as a missing perspective, stating that "surrogacy is usually dealt from the perspective of its regulation and never from the perspective of its abolition." This participant went on to give the

opinion that “[i]t is a question of fundamental rights and not just a legal issue. It does not make sense to leave it only in the hands of lawyers who have no business dealing with social issues.”

The sale of children was also raised as an issue in this section, and concerns regarding child trafficking. On the other hand, one participant made a point to argue against this interpretation of surrogacy, expressing the view that “onerous surrogacy arrangements, when regulation is clear and implemented correctly, do not necessarily involve sale of children. It might be better for the authorities to keep a close eye on each arrangement, than to just prohibit payments and not being able to enforce such a prohibition.”

On the other end of the scale, one participant recounted the dangers faced by “naïve singles and couples” who “engage with agents or agencies or directly with surrogates offshore who they met online without understanding the risks or track records.” This participant noted that some intended parents are convinced to enter into surrogacy arrangements in countries where they are not legally eligible, causing problems with legal recognition.

Finally, and related to this point, one participant suggested that the Foreign, Commonwealth and Development Office keep an approved list of jurisdictions, which would be acceptable to judges in the United Kingdom. This accords with one of the suggestions of the Law Commission of England and Wales, and the Scottish Law Commission, in their Consultation Paper, “Building Families Through Surrogacy: A New Law”.<sup>7</sup>

---

<sup>7</sup> Law Commission Consultation Paper 244; Scottish Law Commission Discussion Paper 167 (6 June 2019), <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/06/Surrogacy-consultation-paper.pdf>, [16.91]-[16.92]