

RESEARCH STUDY BY UNIVERSITY OF YORK AND MIDDLESEX UNIVERSITY: THE EXPERIENCES AND VIEWS OF PARENTAL ORDER REPORTERS (PORs) ON SURROGACY ARRANGEMENTS

KEY FINDINGS:

Policy and Practice

Parental Order Reporters:

- Wanted fuller practice and role guidelines; few drew on academic research findings in carrying out their role.
- Considered that their role was constrained by their late entry into the process.
- Strongly supported the need for surrogacy agencies to be regulated by law.
- Had concerns that overseas surrogacy arrangements could encourage exploitation of surrogates; believed more should be done to prevent couples going abroad for treatment.
- Thought risks were greater where arrangements included family members, where the surrogate acted multiple times and when there was no external agency involvement.
- Considered payment of £5-10,000 to surrogates to be reasonable for expenses (though a sizeable minority thought it should be higher), but would welcome fuller guidelines. Not all routinely referred back to the court when financial records were scanty, untoward or appeared to cover payment as well as expenses.
- Would welcome more mentoring and more opportunities to gain experience with the role.

Intended Parents and Surrogate Mothers

Parental Order Reporters:

- Were not opposed to surrogacy per se; saw it as carrying advantages as well as risks.
- Believed it should not be left [only] to the intended parents to tell their child of their origins and supported changes to the birth registration process.
- Did not consider intended parents were formally prepared adequately for parenthood through surrogacy and that they and surrogate mothers should receive psychosocial assessments informed by child welfare principles before entering a surrogate arrangement.

Offspring

Parental Order Reporters:

- Believed that children conceived through genetic or gestational surrogacy will have long term emotional consequences but not necessarily because of genetic difference in the family or transmitted genetic traits.
- Reported that as an adult, the surrogate offspring should be able to find out through formal channels the identity of the surrogate mother and any half siblings.
- Had concerns about the short and long term impact on the children of surrogates.

Background

Unlike many social work tasks, Parental Order Reporters' (PORs) work is little proscribed

and there small annual turnover of cases. The first formal practice guidance was issued in 2010 (by Cafcass) after the introduction of the Human

Fertilisation and Embryology (Parental Orders) Regulations 2010. It contains little on legal parentage, parental responsibility, 'reasonable expenses' or recommended checks. Studying PORs' work offers insights into how experienced social workers approach work in little regulated contexts outside of the mainstream.

What was the research and who took part?

We conducted an anonymous national postal survey and 16 telephone interviews. A small number of respondents had done 20+ investigations but the majority less than five. **The findings reported here are drawn from both parts of the study.**

Conducting unstructured investigations – the use of professional discretion

PORs were often the only professional involved in the court process and had to draw largely on their own initiative for how to approach their task. While they did checks with CRB, local authority and health visitor themselves, intended parents' accounts of involvement with fertility centres or surrogacy agencies were usually deemed sufficient.

Contact with intended parents varied: whether seen separately as well as together and how often, whether to explore their journey to surrogacy, background, relationship and families of origin or be satisfied with evidence from 'here and now'.

There was widespread agreement about pertinent aspects of child welfare: evidence of basic parenting skills, parent-child bonding, parental awareness of longer term identity issues and openness about child's origins, plans for ongoing contact with surrogate and family:

I'm looking at not just the short term needs of the child but the long term needs including

the child's identity needs....

Contacts with surrogates also varied and some saw their children while others considered this outside their role. Involvement of surrogates' partners usually depended on whether consent was thought required but there was confusion about this either at the time or in retrospect.

Many reported constraints of the role, including that their late entry meant that financial/ other arrangements had been transacted and the child had been with intended parents for several weeks or months – a 'fait accompli'.

..... we are doing all of this work after the horse has bolted, and where it's almost too late to have a significant you know, impact on it you wouldn't do an adoption assessment you know, on carers' ability to adopt a child, after you've just placed a baby with them for six months.

Some slowed proceedings for further work with one or both parties or to hold group meetings to agree contact plans (if absent).

..... one doesn't need to be unnecessarily rigorous. But suitably rigorous on behalf of the child..... not just to say well actually it's a fait accompli so why am I bothering myself..... striking a balance between knowing when one should bother oneself and when one shouldn't.

New requirements (from April 2010) to make the child's welfare paramount and to use the [amended] Welfare Checklist were thought likely to strengthen the role.

Does genetics matter?

Respondents were divided about this. A few thought DNA testing, preferably earlier in the process, was appropriate to strengthen paternal commitment or meet children's rights to know their origins without doubt. Others were less

inclined to see the lack of genetic link or the transmission of genetic traits as a risk especially alongside the positive impact of 'nurture' where the child appeared well settled.

PORs' other work experience was of limited help in this aspect: they were used to considering emotional risks, identity and contact needs of children reared by non-biological parents but not when the 'birth parent' was intentionally neither their biological nor social parent.

Determining 'reasonable expenses': an appropriate social work task?

There was widespread unease about this task. PORs usually looked for discrepancies between each party's accounts of financial arrangements and brought to the court's attention where these were unavailable or appeared untoward. The latter included foreign holidays for the surrogate's family, rent/mortgage payments, regular monthly payments, payments towards Christmas presents or children's education fees.

Some were more 'hands off' and accepted scanty financial records or non-pregnancy related expenditure without referral back to court, even when they thought the exchange of money was payment not expenses.

I've always been very aware that really there isn't any point in going into any great depth because there's absolutely no way I can check that they're being open and honest with me and what could I do about it if I thought it was excessive?

There were different views about what was 'reasonable'. Some thought there could scarcely be too high a price for undergoing pregnancy and labour. Some had empathy with intended parents and linked its

measurement to strength of desire:

.... It's hard to say what's reasonable when people have wanted a baby for so long isn't it?

Regardless, there was widespread approval of the underlying principle that children should not be 'bought and sold'. This was partly because of increased risk of exploitation of either adult party but also because of the impact on all the children concerned on learning of this.

The effectiveness of assessment and preparation for surrogacy arrangements

Intended parents and surrogates were generally found well prepared and supported through informal routes but less so through formal ones. Such services were thought more geared to 'solving' adults' infertility than creating emotionally healthy families.

Suitability assessments appeared limited or non-existent. For example, the use of surrogates with known mental health difficulties including post-natal depression and one with children in the care system had warranted little attention. One surrogate who disputed an agreement following the birth entered a new agreement through an agency and got pregnant while awaiting the court's decision. One POR said:

.... it's a private arrangement, isn't it, that's what I mean, it's back door adoption, there's no independent monitoring of this until it goes before the courts ...

There were particular concerns where outside agencies had not been involved or where the surrogate was a family member or friend – drawing on their experience of children damaged in families where social and biological relationships were unclear and/or such boundaries not well managed.

Overseas arrangements were often found, or

anticipated, to be problematic with the parallel drawn with overseas adoption. The respondent with most experience of overseas work reflected on the difficulties of its regulation and of when another country's culture and legislation is more attractive to the intended parents.

Surrogate mothers and families – motivations and outcomes

Respondents were intrigued and/or disturbed by surrogates' motives. Concerns arose with surrogates who had multiple pregnancies or appeared to do it 'as a business' and with little regard for the effect on their own children.

..... what came back to me was 'well, we just do this as a job, and it's a way of getting cash in hand' this wasn't being done by her out of the goodness of her heart, she wasn't helping childless couples or anything else, it was purely 'I'm a baby machine and I might do it another few times'

Surrogates were generally reported to feel no lasting 'claim' to the children they had carried even when it was their genetic child or when they agreed to ongoing contact (which most appeared to do).

Surrogates also reported their involvement to feel 'worthwhile', though respondents were concerned where relationships with partners had become strained or ended, with associated fears for children who thus 'lost' both the baby and their resident father.

Many PORs expressed concerns about the children of surrogates in the present (coping with their mother's pregnancy and the child then 'disappearing') and longer term. Whether genetic half siblings or not, it was recognized that they may also have an interest in the 'surrogate' child at some

point(s) and vice versa.

..... [no psychological assessment] to see if they could cope with their mother having a baby and then giving it away, because it gives subtle messages to children, doesn't it

Positive impact on other work

PORs reported satisfaction from seeing children with good prospects of happy family lives - a 'little bit of light relief' from their usual work and reinforcement of children's need to be permanently settled early in life.

As experienced workers, some relished the stimulation of different, time-limited work.

..... the ones that I've done have just been fascinatingly interesting..... The difference is with child protection that.... when you walk up the garden path you know what you're looking for you know you've got some history. Whereas with the parental order case, you've got no idea what you're going to walk into. I quite like the edginess of it.....

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Anyone wishing for copies of journal articles arising from this study that include discussion and recommendations by the authors, please contact Marilyn Crawshaw, mac7@york.ac.uk

- **NOTE:** In the UK, a couple (the 'intended' parents) can legally commission either 'traditional' (genetic) surrogacy arrangements where the surrogate mother is inseminated, often without medical assistance, with the intended father's sperm using her own oocyte, or 'host' (gestational) surrogacy where, through the use of in vitro fertilization (IVF), the surrogate mother carries the intended parents' genetic child.

- In UK law, until a Parental Order (PO) is granted (Section 54 HFE Act 2008¹) the surrogate mother remains the child's legal mother and parental responsibility remains with her and her husband or civil partner (if she has one, unless it can be shown they did not consent if IVF was involved).
- Consent must be given fully and freely. The intended parents must make application within six months after the child's birth; be aged 18 or over; be married, in a civil partnership or 'enduring family relationship'; and be domiciled in the UK, Channel Islands or Isle of Man. The child must be living with them at the time of application.
- Only 'reasonable' expenses' for the surrogate can be paid as commercial surrogacy is prohibited under the Surrogacy Arrangements Act 1985.
- Since April 2010, PO applications in England² start in the Family Proceedings Court, which appoints (usually) a Cafcass officer to act as Parental Order Reporter. PORs are experienced social workers and Family Court Advisers whose duties are threefold: to investigate the surrogacy arrangement, including the financial agreement between the intended parents and surrogate mothers; inspect the welfare of the child; and prepare reports for court as to whether an order is in the child's best interests for the immediate and longer term (Cafcass, 2010).

¹ This replaced Section 30 of the Human Fertilisation and Embryology Act 1990

² As this study deals with Parental Order applications in England only, we do not specify any differences in other parts of the UK. For fuller details, see <http://www.legislation.gov.uk/ukpga/2008/22/part/2/crossheading/parental-orders>