

# Kent Academic Repository

## Full text document (pdf)

### Citation for published version

Horsey, Kirsty and Mahmoud, Zaina (2022) Surrogates' and intended parents' experiences of surrogacy arrangements: a systematic review. *Reproductive BioMedicine Online*. ISSN 1472-6483. (In press)

### DOI

### Link to record in KAR

<https://kar.kent.ac.uk/97612/>

### Document Version

Pre-print

#### Copyright & reuse

Content in the Kent Academic Repository is made available for research purposes. Unless otherwise stated all content is protected by copyright and in the absence of an open licence (eg Creative Commons), permissions for further reuse of content should be sought from the publisher, author or other copyright holder.

#### Versions of research

The version in the Kent Academic Repository may differ from the final published version.

Users are advised to check <http://kar.kent.ac.uk> for the status of the paper. **Users should always cite the published version of record.**

#### Enquiries

For any further enquiries regarding the licence status of this document, please contact:


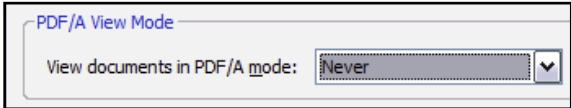
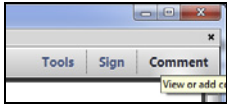
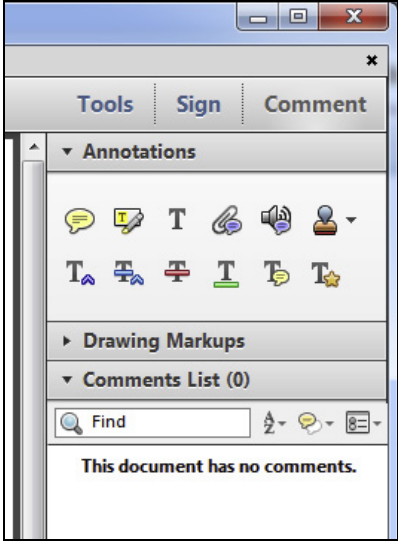
[researchsupport@kent.ac.uk](mailto:researchsupport@kent.ac.uk)

If you believe this document infringes copyright then please contact the KAR admin team with the take-down information provided at <http://kar.kent.ac.uk/contact.html>

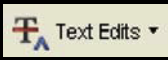










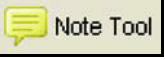

## INSTRUCTIONS ON THE ANNOTATION OF PDF FILES

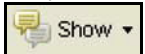
To view, print and annotate your content you will need Adobe Reader version 9 (or higher). This program is freely available for a whole series of platforms that include PC, Mac, and UNIX and can be downloaded from <http://get.adobe.com/reader/>. The exact system requirements are given at the Adobe site: <http://www.adobe.com/products/reader/tech-specs.html>.

*Note: Please do NOT make direct edits to the PDF using the editing tools as doing so could lead us to overlook your desired changes. Rather, please request corrections by using the tools in the Comment pane to annotate the PDF and call out the changes you are requesting. If you opt to annotate the file with software other than Adobe Reader then please also highlight the appropriate place in the PDF file.*

PDF ANNOTATIONS	
Adobe Reader version 9	Adobe Reader version X and XI
<p>When you open the PDF file using Adobe Reader, the Commenting tool bar should be displayed automatically; if not, click on 'Tools', select 'Comment &amp; Markup', then click on 'Show Comment &amp; Markup tool bar' (or 'Show Commenting bar' on the Mac). If these options are not available in your Adobe Reader menus then it is possible that your Adobe Acrobat version is lower than 9 or the PDF has not been prepared properly.</p>  <p>(Mac)</p> <p><b>PDF ANNOTATIONS (Adobe Reader version 9)</b></p> <p>The default for the Commenting tool bar is set to 'off' in version 9. To change this setting select 'Edit   Preferences', then 'Documents' (at left under 'Categories'), then select the option 'Never' for 'PDF/A View Mode'.</p>  <p>(Changing the default setting, Adobe version 9)</p>	<p>To make annotations in the PDF file, open the PDF file using Adobe Reader XI, click on 'Comment'.</p> <p>If this option is not available in your Adobe Reader menus then it is possible that your Adobe Acrobat version is lower than XI or the PDF has not been prepared properly.</p>  <p>This opens a task pane and, below that, a list of all Comments in the text. These comments initially show all the changes made by our copyeditor to your file.</p> 

## HOW TO...

HOW TO...		
Action	Adobe Reader version 9	Adobe Reader version X and XI
<b>Insert text</b>	<p>Click the 'Text Edits' button  on the Commenting tool bar. Click to set the cursor location in the text and simply start typing. The text will appear in a commenting box. You may also cut-and-paste text from another file into the commenting box. Close the box by clicking on 'x' in the top right-hand corner.</p>	<p>Click the 'Insert Text' icon  on the Comment tool bar. Click to set the cursor location in the text and simply start typing. The text will appear in a commenting box. You may also cut-and-paste text from another file into the commenting box. Close the box by clicking on 'x'  in the top right-hand corner.</p>
<b>Replace text</b>	<p>Click the 'Text Edits' button  on the Commenting tool bar. To highlight the text to be replaced, click and drag the cursor over the text. Then simply type in the replacement text. The replacement text will appear in a commenting box. You may also cut-and-paste text from another file into this box. To replace formatted text (an equation for example) please <a href="#">Attach a file</a> (see below).</p>	<p>Click the 'Replace (Ins)' icon  on the Comment tool bar. To highlight the text to be replaced, click and drag the cursor over the text. Then simply type in the replacement text. The replacement text will appear in a commenting box. You may also cut-and-paste text from another file into this box. To replace formatted text (an equation for example) please <a href="#">Attach a file</a> (see below).</p>
<b>Remove text</b>	<p>Click the 'Text Edits' button  on the Commenting tool bar. Click and drag over the text to be deleted. Then press the delete button on your keyboard. The text to be deleted will then be struck through.</p>	<p>Click the 'Strikethrough (Del)' icon  on the Comment tool bar. Click and drag over the text to be deleted. Then press the delete button on your keyboard. The text to be deleted will then be struck through.</p>
<b>Highlight text/ make a comment</b>	<p>Click on the 'Highlight' button  on the Commenting tool bar. Click and drag over the text. To make a comment, double click on the highlighted text and simply start typing.</p>	<p>Click on the 'Highlight Text' icon  on the Comment tool bar. Click and drag over the text. To make a comment, double click on the highlighted text and simply start typing.</p>
<b>Attach a file</b>	<p>Click on the 'Attach a File' button  on the Commenting tool bar. Click on the figure, table or formatted text to be replaced. A window will automatically open allowing you to attach the file. To make a comment, go to 'General' in the 'Properties' window, and then 'Description'. A graphic will appear in the PDF file indicating the insertion of a file.</p>	<p>Click on the 'Attach File' icon  on the Comment tool bar. Click on the figure, table or formatted text to be replaced. A window will automatically open allowing you to attach the file. A graphic will appear indicating the insertion of a file.</p>
<b>Leave a note/ comment</b>	<p>Click on the 'Note Tool' button  on the Commenting tool bar. Click to set the location of the note on the document and simply start typing. <u>Do not use this feature to make text edits.</u></p>	<p>Click on the 'Add Sticky Note' icon  on the Comment tool bar. Click to set the location of the note on the document and simply start typing. <u>Do not use this feature to make text edits.</u></p>

HOW TO...		
Action	Adobe Reader version 9	Adobe Reader version X and XI
<b>Review</b>	To review your changes, click on the 'Show' button  on the Commenting tool bar. Choose 'Show Comments List'. Navigate by clicking on a correction in the list. Alternatively, double click on any mark-up to open the commenting box.	Your changes will appear automatically in a list below the Comment tool bar. Navigate by clicking on a correction in the list. Alternatively, double click on any mark-up to open the commenting box.
<b>Undo/delete change</b>	To undo any changes made, use the right click button on your mouse (for PCs, Ctrl-Click for the Mac). Alternatively click on 'Edit' in the main Adobe menu and then 'Undo'. You can also delete edits using the right click (Ctrl-click on the Mac) and selecting 'Delete'.	To undo any changes made, use the right click button on your mouse (for PCs, Ctrl-Click for the Mac). Alternatively click on 'Edit' in the main Adobe menu and then 'Undo'. You can also delete edits using the right click (Ctrl-click on the Mac) and selecting 'Delete'.


### SEND YOUR ANNOTATED PDF FILE BACK TO ELSEVIER

Save the annotations to your file and return as instructed by Elsevier. Before returning, please ensure you have answered any questions raised on the Query Form and that you have inserted all corrections: later inclusion of any subsequent corrections cannot be guaranteed.

### FURTHER POINTS

- Any (grey) halftones (photographs, micrographs, etc.) are best viewed on screen, for which they are optimized, and your local printer may not be able to output the greys correctly.
- If the PDF files contain colour images, and if you do have a local colour printer available, then it will be likely that you will not be able to correctly reproduce the colours on it, as local variations can occur.
- If you print the PDF file attached, and notice some 'non-standard' output, please check if the problem is also present on screen. If the correct printer driver for your printer is not installed on your PC, the printed output will be distorted.

**AUTHOR QUERY FORM**

	<p><b>Journal: RBMO</b></p> <p><b>Article Number: 3096</b></p>	<p><b>Please e-mail your responses and any corrections to:</b></p> <p><b>E-mail: <a href="mailto:correctionsaptara@elsevier.com">correctionsaptara@elsevier.com</a></b></p>
---	--	---

Dear Author,

Please check your proof carefully and mark all corrections at the appropriate place in the proof (e.g., by using onscreen annotation in the PDF file) or compile them in a separate list. To ensure fast publication of your paper please return your corrections within 48 hours.

For correction or revision of any artwork, please consult <http://www.elsevier.com/artworkinstructions>.

We were unable to process your file(s) fully electronically and have proceeded by

- Scanning (parts of) your article     
  Rekeying (parts of) your article     
  Scanning the artwork

Any queries or remarks that have arisen during the processing of your manuscript are listed below and highlighted by flags in the proof. Click on the 'Q' link to go to the location in the proof.

Location in article	Query / Remark: <a href="#">click on the Q link to go</a> Please insert your reply or correction at the corresponding line in the proof		
<u>Q1</u>	IP has been expanded as 'intended parents' throughout the paper as, in line with journal style, two-letter abbreviations are avoided if possible		
<u>Q2</u>	The journal's standard declaration of interests statement has been added. Please amend this if it is incorrect.		
<u>Q3</u>	This section comprises references that occur in the reference list but not in the body of the text. Please position each reference in the text or, alternatively, delete it.		
<u>Q4</u>	The author names have been tagged as given names and surnames (surnames are highlighted in teal color). Please confirm if they have been identified correctly.		
<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td data-bbox="552 1470 1110 1540">Please check this box or indicate your approval if you have no corrections to make to the PDF file</td> <td data-bbox="1110 1470 1179 1540"></td> </tr> </table>		Please check this box or indicate your approval if you have no corrections to make to the PDF file	
Please check this box or indicate your approval if you have no corrections to make to the PDF file			

Thank you for your assistance.



## COMMENTARY

# Surrogates' and intended parents' experiences of surrogacy arrangements: a systematic review

 [Kirsty Horsey\\*](#), [Zaina Mahmoud](#)

## ABSTRACT

This commentary situates the recently published systematic review of empirical studies of surrogates' and intended parents' experiences of surrogacy by Kneebone, Beilby and Hammarberg within the context of increased international interest in legislative and regulatory reforms to surrogacy. The commentary evaluates the strengths of this systematic review, before turning to a discussion of how jurisdictions could introduce reforms aiming to facilitate domestic surrogacy arrangements, focusing on the UK and the Law Commission's recent proposals.

## INTRODUCTION

The recent systematic review of empirical studies of surrogates' and intended parents' experiences of surrogacy by Kneebone, Beilby and Hammarberg, published in this journal, provides an excellent starting point for those exploring surrogacy – particularly cross-border arrangements. The authors presented an overview of studies conducted in 12 different jurisdictions, allowing this review to be a good way to contextualize current and future debates on surrogacy regulation. As noted by the authors, it is important that policy makers are informed by the lived experiences of those involved in surrogacy. Many Minority World states, including New Zealand, the Republic of Ireland and the UK, are likely to reform their surrogacy legislation in the relatively near future. It is in this context that this commentary is offered.

Many of the studies reviewed detailed commercial gestational surrogacy

experiences, often cross-border. Although many of these jurisdictions, for example India, generated much academic interest at the time, they have since prohibited cross-border surrogacy arrangements. With 13 out of the 47 studies discussing India, the emphasis of the findings is somewhat skewed as a result.

The strength of that review lies in the finding that both 'sides' of surrogacy arrangements – surrogates and intended parents – were generally satisfied with their experiences, hoping to maintain relationships after birth. Expectedly, this was more challenging in cross-border arrangements, sometimes due to language or communication difficulties. The geographical distance involved often led to feelings of disengagement and lack of control or connection, particularly compared with 'domestic' arrangements. At other times, this was directly a product of the same rules that led intended parents to seek cross-border surrogacy, for example problems

accessing 'domestic' surrogacy due to restrictions on eligibility.

Surrogates based in India and Ukraine were more likely to leave their families for some of the surrogacy; in these locations, surrogates were actively discouraged from building any kind of relationship with the intended parents. The disparity in agency between surrogates and all other stakeholders was clear in India, with surrogates reporting feeling a loss of autonomy, being 'subjected to medical procedures which they had no say over such as fetal reduction and caesarean sections'. Exploitative practices were allowed by those managing the arrangements (and sometimes asked for by intended parents), as seen, for example, in surrogates caring for babies after birth, or in terms of breastfeeding expectations. Other infringements on autonomy were described 'in settings where profit-driven clinics operate with no regulatory oversight' and 'oppressive living environments, poor surrogate health care and forced late-

London Women's Clinic, London, UK

© 2022 Reproductive Healthcare Ltd. Published by Elsevier Ltd. All rights reserved.

\*Corresponding author. E-mail address: [kirsty.horsey@londonwomensclinic.com](mailto:kirsty.horsey@londonwomensclinic.com) (K. Horsey). [https://doi.org/10.1016/j.](https://doi.org/10.1016/j.rbmo.2022.09.017)

[rbmo.2022.09.017](https://doi.org/10.1016/j.rbmo.2022.09.017) 1472-6483/© 2022 Reproductive Healthcare Ltd. Published by Elsevier Ltd. All rights reserved.

Declaration: The authors report no financial or commercial conflicts of interest.

term abortions', mostly in unregulated surrogacy operations in Ukraine and Kenya. There were also lower levels of continued contact between surrogates and the families they helped to create, and more legal challenges.

The authors define their dichotomy between 'commercial' and 'altruistic' settings. However, the terms are contested and overlap. That surrogates in both these settings show no real indication of money being their driving motivation, but rather a desire to help others have families, is supported in the current authors' own work. Similarly, evidence of these pervasive surrogacy myths, mostly connected to stigma (e.g. Russian surrogates) or social acceptability (e.g. surrogates keeping their decisions a secret) and misconceptions about surrogacy were prevalent across jurisdictions, more so than expected. However, this could be related to the study's time frame and skewing towards studies of commercial/gestational surrogacy in India in particular.

The study must be contextualized in terms of much of the literature not falling within its methodology, including non-peer reviewed pieces, blogs, expert reports, etc., and peer-reviewed papers pre-dating the study time frame, as the included publications spanned just over 10 years, from January 2010 to June 2021. Of particular interest are the themes and subthemes identified by the researchers: most of their findings resonate with those of other studies, anecdotal stories in the 'surrogacy community' and our own research. Kneebone, Beilby and Hammarberg's conclusion that there should be 'collaboration between fertility organisations to develop best practice guidelines' to 'support clinics in providing international surrogacy services that minimise the risk of harm to those accessing care' is also of particular note.

## COMMENTARY

The likelihood of an international framework for surrogacy any time soon is exceptionally remote. Regardless, removing barriers to domestic surrogacy and/or the 'push factors' prompting intended parents turn to engage in cross-border surrogacy is especially welcome. In fact, this is a focus of the Law Commission of England and Wales and Scottish Law Commission's joint review

of surrogacy laws, with their final report and draft bill expected in spring 2023. It is anticipated these will include attempts to bolster domestic surrogacy in the UK and provide a secondary route for the recognition of cross-border surrogacy arrangements.

New Zealand's recent Law Commission review is similar: facilitating domestic ('altruistic') surrogacy, aiming to reduce the number of New Zealanders opting for cross-border care, while recognizing the need for those who do go overseas to have their familial relationships recognized upon their return. In Ireland, the Oireachtas' Joint Committee on International Surrogacy has also taken evidence on how the Republic should deal with international surrogacy, in the light of a domestic Bill that proposed to do nothing about it; recommendations include the establishment of a pathway for the legal parenthood of children born from international surrogacy arrangements, similar to the *Law Commissions' 2019* draft proposals, discussed later.

The question is how to make 'domestic' surrogacy more attractive. The authors of the review suggest that prohibitions on commercial surrogacy are the primary barrier to access, with 'expanding the financial compensation that altruistic surrogates receive' encouraging more surrogates. We do not agree that this is necessarily the solution. Instead, it is necessary to combat pervasive surrogacy 'myths', especially the perception of surrogacy as 'dangerous' or contested – or even illegal, as demonstrated by a recent Progress Educational Trust study into public opinions (PET, 2022). The lack of certainty engendered by a legal framework prompts intended parents to worry about surrogates renegeing on agreements (and hence they do not get their longed-for child) and simultaneously renders surrogates concerned about being left with a baby they did not intend to have – despite all evidence pointing the other way, even in the UK's 'altruistic' context.

The next biggest perceived risk, in our view, stems from the opaqueness of the current UK legislation in relation to parental orders – the legal mechanism transferring parenthood after birth from the surrogate (and their partner, as applicable) to the intended parents. In particular, the 'requirement' (although

it is clearly not) that no money other than to cover the surrogate's 'reasonable expenses' should have passed between the parties results in a hyperawareness of all finances exchanged, with surrogates potentially being left out of pocket (*Mahmoud, 2022*) and intended parents fearing that they risk losing legal parenthood if they 'get it wrong' (*Horsey and Sheldon, 2012*). Unsurprisingly, some intended parents prefer to undertake their surrogacies within a commercial context, with the security of enforceable contracts, and the involvement of brokers and agencies, as well as legal parenthood at birth. However, in these circumstances, without legal advice counselling otherwise, intended parents may be unaware of the requirement of a parental order to establish legal parenthood in the UK, or the fact that legal parenthood is more than being named on the birth certificate. Domestic surrogacies, with certainty in parenthood and payments established prior to birth, are in everyone's best interests.

The *Law Commissions' 2019* draft proposals afford intended parents legal parenthood at birth, provided that their specified 'pathway' for surrogacy is followed. Against the backdrop of a more tightly regulated framework, this pathway includes recognized surrogacy organizations, and informed consent proffered by written agreements, legal advice and implications counselling. Although agreements on the whole would remain unenforceable, unlike New Zealand's proposals (NZLC, 2022, recommendation 8), financial arrangements may be afforded more security. No movement towards a commercial model is seen in the UK, New Zealand or Ireland, but reforms to rules surrounding advertising may occur, recognizing the difficulties in their enforcement in a digital age. A regulator for recognized surrogacy organizations and the creation of a surrogacy register further enhances the ever-growing legitimacy of surrogacy as a modern form of family building (*DHSC, 2018*). Overall, these reforms – should they materialize – will modernize the domestic practice of surrogacy, providing much-needed security and certainty. In this way, the legal, social and other support that surrogates and intended parents receive will be brought in line with the already well-regulated and successful clinical procedures used by many of those involved in surrogacy (see, for example, *Horsey et al., 2022*).



Importantly, though, are these changes desired by the surrogacy community? We argue that the answer to that is overwhelmingly 'yes'. The authors of the review suggest that 'regulators and policy-makers can, and should, be informed by the lived experiences of those involved in surrogacy', and we are in complete agreement with this.

Kneebone, Beilby and Hammarberg point to 'limited research on the experiences of altruistic surrogates'. Although true to an extent, both of the current authors have conducted empirical research with altruistic surrogates in the UK context and have found that surrogates, and less unexpectedly intended parents, support a move towards intended parents' legal parenthood resting from birth, and resist commercialization (or even a move towards them receiving payments beyond expenses) (Horsey 2015, 2018; Mahmoud, 2022). Furthermore, high levels of ongoing relationships are reported between intended parents, their children and the surrogates (and often their families). Psychological studies reveal that surrogates who operated within the UK context were happy with their decisions and that there was no negative effect on their own family relationships (Jadva et al., 2019). From the other side, a longitudinal study from the Cambridge Centre for Family Research shows that families created by surrogacy fared no better or worse overall than families created by other forms of assisted conception; indeed, when the children were aged 14 years, the families created by surrogacy were doing better than others (Golombok et al., 2017).

Surrogacy is here to stay as a legitimate form of family building (DHSC, 2018) and should be supported and legitimized by government and healthcare providers alike. Doing so safeguards the health and well-being of those involved, while protecting the rights and interests of the children born, including in relation

to their lifelong identity. With any luck, fewer intended parents will feel the need to participate in cross-border commercial surrogacy, especially as the emerging destinations are increasingly manifesting wherever surrogacy is completely unregulated. Cross-border surrogacy remains a concern, given the issues with autonomy, stigma and healthcare summarized by Kneebone, Beilby and Hammarberg in their review. While some destinations are better than others in the sense of better regulation and more ethical practices, including some US states (Jadva et al., 2019, 2021), this comes at a high financial cost, potentially pushing some towards less ethical surrogacy arrangements. In the absence of international protocols, clear rules, supporting people to become families through surrogacy in a safe, ethical way in their home countries, are very welcome in the UK and beyond.

#### UNCITED REFERENCES

Progress Educational Trust 2022, *Te Aka Matua o te Ture | New Zealand Law Commission 2022*, Kneebone et al., 2022

#### REFERENCES

- Department of Health & Social Care. 2018. *Care in Surrogacy: Guidance for the care of surrogates and intended parents in surrogate births in England and Wales* (28 February 2018).
- Golombok, S., Iloi, E., Blake, L., Roman, G., Jadva, V. **A Longitudinal Study of Families Formed Through Reproductive Donation: Parent-Adolescent Relationships and Adolescent Adjustment at Age 14.** *Dev. Psychol.* 2017; 53: 1966–1977
- Horsey, K. 2015. *Surrogacy in the UK: Myth Busting and Reform: Report of the Surrogacy UK Working Group on Surrogacy Law Reform.* Surrogacy UK.
- Horsey, K. 2018. *Surrogacy in the UK: Further Evidence for Reform: Second Report of the Surrogacy UK Working Group on Surrogacy Law Reform.* Surrogacy UK.
- Horsey, K., Gibson, G., Lamanna, G., Priddle, H., Linara-Demakakou, E., Nair, S., Arian-Schad, M., Thackare, H., Rimmington, M., Macklon, N., Ahuja, K.K. **First clinical report of 179 surrogacy cases in the UK: Implications for policy and practice.** *Reprod. Biomed.* 2022
- Horsey, K., Sheldon, S. **Still Hazy After All These Years: The Law Regulating Surrogacy.** *Med. L. Rev.* 2012; 20: 67–89
- Jadva, V., Gamble, N., Prosser, H., Imrie, S. **Parents' relationship with their surrogate in cross-border and domestic surrogacy arrangements: comparisons by sexual orientation and location.** *Fertil. Steril.* 2019; 111: 562–570
- Jadva, V., Prosser, H., Gamble, N. **Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making.** *Hum. Fertil. (Camb.)* 2021; 24: 93–104
- Kneebone, E., Beilby, K., Hammarberg, K. **Experiences of surrogates and intended parents of surrogacy arrangements: a systematic review.** *Reprod. Biomed.* 2022
- Law Commission of England and Wales. 2019. *Building Families Through Surrogacy: A New Law.* Law Com No 244.
- Mahmoud, Z. 2022 **Surrogates across the Atlantic Comparing the impact of legal and health regulatory frameworks on surrogates' autonomy, health, and wellbeing.** University of Exeter 2022
- Progress Educational Trust, *Fertility, Genomics and Embryo Research: Public Attitudes and Understanding* (June 2022).
- Te Aka Matua o te Ture | New Zealand Law Commission. **Te Kōpū Whāngai: He Arotake | Review of Surrogacy.** NZLC 2022: R146

Received 9 September 2022; accepted 15 September 2022.

