



BASW position statement - Surrogacy

BASW is the Professional Association for Social Workers in the United Kingdom. We seek to promote best practice in social work and to secure the well-being of social workers.

BASW is frequently asked to explain the position of the social work profession on current issues. These position statements seek to explain positions that we express on issues that arise frequently. They comprise statements in **bold** and commentary in *italics*. The commentary seeks to reflect our Code of Ethics, the views of our members expressed through our democratic structures, and our understanding of social work internationally as a practice-based profession and an academic discipline.

This position statement below is about a lifelong process starting when individuals are conceived through surrogacy arrangements, act as a surrogate or are her other offspring, or are the parents raising/ who have raised a surrogate-born child. Its key focus is on the children involved but refers to the ethical and rights-based issues for the adults involved where appropriate. Much of this position statement also applies to individuals affected by donor-assisted reproduction outside of surrogacy arrangements.

BASW recognises that there are a range of ways in which families are formed through assisted reproduction, bringing both rewards and challenges. We neither promote nor condemn assisted reproduction, including surrogacy. Our social work focus, based on our understanding of child development, research and practice wisdom, is on the well-being and human rights of the parties involved, principally the offspring that are conceived and the offspring of the surrogate or gamete donor.

1. Given that surrogacy carries great potential to engender conflicting interests and competing rights, the rights and best interests of the children involved must always be paramount.

Commentary: (BASW Code of Ethics at 2.1, Ethical Practice Principles 3, 7, 8). Surprisingly the UN Convention on the Rights of the Child 1989, which is ratified by all members of the UN except the United States, does not specify that the rights of children

and their best interests should be paramount, only that they should be afforded primary consideration. BASW believes that children's rights should be paramount in all aspects of surrogacy arrangements. This is recognised in part in UK legislation concerning the transfer of legal parenthood following surrogacy through the making of Parental Orders (Section 54, Human Fertilisation and Embryology Act 2008 and The Human Fertilisation and Embryology (Parental Orders) Regulations 2010) which makes paramount the welfare of surrogate-born children, though we recognise that welfare and rights are interconnected rather than interchangeable.

The CRC makes no specific reference to either surrogacy or any other form of assisted reproduction. While these technologies were little used or discussed when CRC was drafted, it is arguable that the CRC still covers them. However its reference to the rights of children to be free from discrimination of any kind, irrespective of their or their 'parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth of other status (Article 2) fails to recognise that children born through such procedures may have several 'parents'¹ and the actions of one set of 'parents', say their 'commissioning parents' may themselves discriminate against those of one or more of the others, say the genetic or carrying 'parent'. Placing the child's rights as paramount enables them to be seen more clearly and allows all their rights in relation to all their 'parents' to be considered.

Throughout their dealings in surrogacy-related work, social workers should make paramount the rights of the children involved.

2. Surrogacy can be exploitative of any or all of the parties directly involved, i.e. children, surrogates and 'commissioning parents', leading to inequities and injustices which should be challenged wherever they arise

Commentary: (BASW Code of Ethics at 2.1, 2.2, Ethical Practice Principles 7, 8, 9). *Surrogacy arrangements carry the potential for any of the parties directly involved to be exploited. For the agencies and professionals involved in providing such services there can be strong commercial interests or interests that focus, knowingly or otherwise, on adults' desires to be parents rather than the needs of children. This field is hampered by the limited lobby for the children affected or yet to be born, the lack of pressure groups among adult surrogate-born children similar to those that have developed for donor conceived individuals, and the absence of research into longer term outcomes for both*

¹ Terminology in such areas is complex, perhaps especially in relation to 'parents'. In practice the term 'parent' is usually only applied to those who intend to raise/are raising a surrogate-born child; we are here calling them the 'commissioning parents' to reflect UK legislation and regulations. Given the importance of recognising that a surrogate-born child has social, genetic, legal and carrying 'parents', some of whom will not be the same as the 'commissioning' parents, we use the term 'parents' to apply to all these parties for the purposes of this Position Statement.

domestic and cross border arrangements. In addition there are no international or bilateral agreements in place to try and curb poor practices, including poor medical practices which may result in children becoming disabled or suffering poor health or even abandonment and surrogates receiving poor ante- and post- natal care with knock-on effects for themselves and/or any children they are raising. Restrictive legislation or costs in some countries may contribute to global movements of 'commissioning parents' and service providers; with new markets opening up all the time, monitoring is especially difficult.

Social workers carry a responsibility to draw attention to exploitative practices, including through liaison across national boundaries and reporting and following up on instances of exploitation. The boundaries between surrogacy and child selling are also especially potentially porous.

3. A surrogate-born child has the right to know the identity of (i) the person who gave birth to them (ii) the person/s who donated gametes in order for them to be conceived and (iii) the person/s who are raising them in a parenting capacity.

Commentary: (BASW Code of Ethics at 2.2, Ethical Practice Principles 4, 7, 8).

Surrogate-born children are in the unique situation of having several 'parents', making their rights under Article 7 of the CRC to 'know' their parents arguably more complex than for many children. They will all have been carried through pregnancy by one woman. Although the surrogate and child will not necessarily be genetically related and leaving aside the presence of any emotional relationship, it is increasingly recognised that they will have had a biological relationship and that the surrogate may impact their genetic predispositions. If there is no genetic relationship, this will be because the egg has been supplied either by an egg donor (known to the 'commissioning parents' or, more often, a stranger) or by the commissioning mother. The commissioning father may have been the supplier of the sperm that led to conception or a sperm donor may have been used, again known or a stranger. Hence, some surrogate-born children will be genetically related to one of their 'commissioning parents'; some to both; and some to neither². Given the global trade in surrogacy, such arrangements are made regardless of whether surrogacy (whether genetic, gestational and/or using gametes other than from a 'commissioning parent') is legally acceptable in the country where the 'commissioning parent/s' hold nationality and/or intend to raise the child. Finally few jurisdictions, treatment centres or gamete donor banks keep registries that enable a surrogate-born child to trace the identity of all their 'parents' even if their 'commissioning parents' make them aware of their origins. In similar vein there are few if any requirements to keep biographical information about the surrogate and egg donor for later release to 'commissioning parents' or the offspring. Indeed some commissioning parents are never aware of the identity of the surrogate at any stage let alone that of the egg donor.

² Note that in order to obtain a Parental Order, at least one of the 'commissioning parents' must be the child's genetic parent.

The situation is further complicated with regard to a surrogate-born child being able to know their own full identity and the identity of all their 'parents' by birth registration systems. For anyone born in the UK, the use of a gamete donor is not recorded on the birth certificate nor is there a system within the birth registry that enables such information to be made available to them despite their legal right to access their donor's identity (if they were born after April 2005 and conceived in a UK licensed centre) if they are aware of their origins. For anyone conceived and born outside the UK, there are a multitude of approaches to birth registration. Although UK rules in relation to legal parenthood post surrogacy still apply to such children on their entering the UK, this is dependent both on their 'commissioning parents' declaring their status and applying for Parental Orders.

Social workers carry a responsibility to draw attention to such matters on a national and international level as well as to act in a direct way to ensure that surrogate-born offspring of any age have access to information about their own identity and that of those involved in their conception and birth.

4. A surrogate-born child has the right to a nationality

Commentary: (BASW Code of Ethics at 2.1, 2.2, Ethical Practice Principles 4, 8).

There can be a struggle to acquire a nationality for some surrogate-born children for quite some time after birth although Article 7 of the CRC makes clear that children have a right to a nationality. Adults whose desire to become parents overrides their attention to the consequences of using cross-border surrogacy arrangements have sometimes found themselves 'stranded' in the country where the child was born, unable to obtain entry clearance back to their home country. Where couples are involved (note that some single people commission surrogates though are not eligible for UK Parental Orders³), this sometimes leads to one partner returning home pending the outcome of lengthy negotiations; this clearly provides the potential for risk to the emotional and general wellbeing of the child and their relationship with their 'commissioning parents'. The 'solution' to this problem is often presented as the need for jurisdictions to recognise all cross-border arrangements and/or for legal parentage to be granted to the 'commissioning parents' at or before birth. However this is not compatible with the child's right to know their 'parents' as the official trail of parentage should (i) start with a robust system of assessing and preparing 'commissioning parents' in their home country ahead of surrogacy arrangements being entered into (and which makes clear which overseas countries are compatible if cross-border arrangements are to be made), (ii) have record-keeping systems in home countries that include identifying and biographical information about surrogates, gamete donors (where applicable) and 'commissioning parents' which can be accessed by a surrogate-born child throughout their lifetime and (iii) have a birth registration system that identifies the woman who gave birth and the involvement of any gamete donors as well as the 'commissioning parents'. Any changes that were put in

³ Note that this situation may change following a recent human rights challenge.

place to deal with nationality issues should not be at the expense of creating other longer term issues for the offspring.

These are complex matters at both national and international levels. Where social workers are involved as part of assisted conception treatment services or in informal surrogacy arrangements outside of treatment centres or elsewhere they have a responsibility to act in accordance with the rights of the children involved and affected.

5. When acting in relation to setting up surrogacy arrangements, proposed transfer of legal parentage following surrogacy arrangements or in any subsequent disputes about the care of children born through or affected by surrogacy arrangements, all professionals need to be fully aware of the significance of obtaining informed consent from the surrogate.

Commentary: (BASW Code of Ethics 2.1, 2.2; Ethical Practice Principles 3, 4, 7). *Some surrogates can find themselves with limited power, especially when they are motivated to become surrogates as a result of poverty or feeling powerless to resist demands to so act. Some surrogates have limited understanding of the language in which information is given or contracts are written because of spoken language barriers, poor education and so on. Some surrogates have limited opportunities to challenge poor antenatal, delivery and post-natal medical practices and resist demands made on them by surrogacy agencies or ‘commissioning parents’.*

At the same time, some agencies, professionals and ‘commissioning parents’ have a poor or dismissive approach to understanding the potential need of surrogate-born children to understand the social and cultural context of the surrogate who gave birth to them (and the gamete donor/s if they were used), a need which can be lifelong.

Of course by no means all ‘commissioning parents’, agencies and professionals pay poor attention to the rights of surrogates and ‘commissioning parents’ also need to be able to exercise informed consent. We highlight the situation of surrogates in particular because their profile is that they are typically poorer and less well educated than the others involved in this process and their potential lifelong significance to the offspring is important.

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For more information about BASW’s work on assisted reproduction and surrogacy, see <https://www.basw.co.uk/progar/>

All position statements can be found here <https://www.basw.co.uk/about/policy-ethics-human-rights-committee.php>