

Subject: Please say NO to the Law Commission's surrogacy recommendations

Dear [MP's name]

I am writing to you as a constituent because I have grave concerns about the Law Commission's (LC's) recommendations and draft bill for changing surrogacy legislation in the UK. I am particularly concerned that the recommendations will normalise surrogacy and institutionalise the view that obtaining a baby is a "right" and that women are the means for other people to realise that "right".

Most of the respondents to the consultation disagreed with the proposals and wanted a total ban on surrogacy in the UK[1] in line with many of our close European neighbours, including France, Germany, Spain, and Italy. And yet the LC effectively dismissed these responses on the basis that they were outside the remit of the consultation. Instead, they listened to the minority of respondents who were in favour of normalising surrogacy, even though many, if not most, of these had vested interests in the success of the surrogacy industry.

It is troubling that the LC appears not to have recognised that pregnancy and childbirth are unique human experiences that carry major risks and are life changing for women. For example, they claim that the kind of welfare checks that are mandatory on the transfer of a child in any other circumstances are not necessary because such checks are not required when a child is conceived in the age-old natural fashion.

But this does not recognise that for almost a year of her life, the mother is in an active symbiotic relationship with the developing foetus and this takes place on the emotional and psychological level as much as on the physical level. This means that her commitment to the baby's well-being is already well developed when he or she is born. The historical and traditional presumption that the birth mother is the legal parent is therefore reasonable and just.

The LC recommends that, provided the commissioning parents pass a number of basic checks **prior to conception** and everything proceeds according to plan, they will automatically become the legal parents at the moment of birth. If the birth mother has second thoughts and finds that she cannot after all hand over this baby to people who are complete strangers to it, her only recourse is to voice her objection and apply to the courts for a parental order. Even if the child was conceived from her own genetic material, the commissioning parents – as the legal parents – will take custody of it. This means she is unlikely to be granted a parental order even if she has the wherewithal to pursue one.

The LC claims that this arrangement will be purely altruistic, but that is smoke and mirrors. If it were purely altruistic, there is absolutely no reason why the current system can't be maintained where the birth mother automatically has legal parenthood and if, of her own volition, she decides to hand the baby over, she can do that after the birth and the commissioning parents can then apply for a parental order.

The reason for this proposed change is that the commissioning parents and the whole feeding chain of lawyers, consultants and advisors want **certainty**. They want the baby to be transferred no matter what and they want their fees. They are terrified that she will change her mind – even though research has shown that it is much more likely that the commissioning parents will do so.[2] This really does expose the claim that the arrangement is entirely altruistic as a sham.

The LC recommends introducing regulated surrogacy organisations (RSOs), overseen by the Human Fertilisation and Embryology Authority (HFEA). These would need to be “not for profit”, which the LC seems to think will ensure that they won’t be driven by commercial concerns. But they will need to cover their costs, which no doubt will include attractive offices and hefty salaries for executives, so in practice commercial objectives will drive them and they will need to continuously seek new business and new women who can be convinced or coerced to rent out their wombs.

Another worrying aspect is that the LC recommends the ending of the current ban on advertising surrogacy services. There will still be some restrictions but RSOs, and lawyers, counsellors and health professionals will be able to advertise. This will inevitably increase the demand for surrogacy – and increase the view that it is a “right”.

This will have an enormous impact on young women, as the tech giants will push adverts onto their social media feeds, enticing them to become surrogate mothers. They already do this for egg “donation”, always playing on women’s emotional vulnerabilities, offering them the opportunity to give the “gift of life” and to “make another woman’s dreams come true” and so on.[3] These ads will inevitably encourage marginalised young women into surrogacy arrangements that are likely to cause them untold damage and ruin their life chances.[4]

The LC recommends strictly limiting what surrogate mothers can be paid to the actual cost of the pregnancy and surrogacy process and “modest” gifts – along with a mechanism for enforcing this. Their aim is that she should be no better or worse off financially because of the surrogacy arrangement than if she hadn’t undertaken it.

This purports to ensure that she is not enticed into it for financial gain and to reduce the risk that women will be exploited. This would be admirable of course, if they weren’t sanctioning an entire feeding chain of NGOs, lawyers, counsellors, fertility clinics, and health professionals who will financially benefit from the arrangement – in other words a commercial system for everyone apart from the one person without whom it could not exist. As such it can only be seen as exploitative of women’s generosity and socialisation to put everyone’s needs before their own.

This reveals the contradictions in the idea that altruistic surrogacy is possible at mass scale. It simply is not.

I am concerned that if the bill were to go before parliament, the powerful and well-funded surrogacy industry will lobby for it to become better suited to their aims – for example, that

fees to surrogate mothers can be higher to attract more women into their net, and the protections proposed, such as they are, would be even weaker. Social media is already alight with UK surrogacy organisations and lawyers saying that the recommendations don't go far enough.

I have many other serious concerns about the recommendations, including that they fail to include appropriate measures to address the fact that surrogacy pregnancy and childbirth carry significantly more medical, psychological and emotional risks than natural ones.[5] For example, they have not placed an upper age limit on surrogate mothers nor introduced a limit on the number of embryos that can be transferred. Nor did they consider the pressures these additional risks will place on the NHS and social services.[6]

The surrogacy industry is predicated on the commodification of babies and women's reproductive powers and this is the premise on which the LC's recommendations are based.

When we legitimise the commodification of babies, it changes our understanding of a child from a unique member of a family and community, to whom we all share a responsibility – into seeing the child as the private property of one or two individuals, of no business to anyone else. This is not only abhorrent, but it implicitly justifies society withdrawing collective resources from women and children, and the destruction of the social safety net. Commodifying children erodes the fabric of our society.

Similarly, commodifying women's reproductive capacities reduces women to second class status. Women didn't fight for centuries for control over their own bodies – only for a world that is so unequal that one of the few options many women have is to rent out their wombs.

We should be aiming at discouraging surrogacy, not increasing demand for it by making it easier and strengthening the legal rights of commissioning parents.

I urge you to reject the Law Commission's recommendations and say NO to their draft bill (or any similar bill) and I request that you pass on my concerns to the government and ministers responsible.

Yours sincerely

[Name and address]

[1] See page 12 of the full report: <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2023/03/2.-Surrogacy-full-report.pdf>

[2] <https://www.nytimes.com/2014/07/06/us/foreign-couples-heading-to-america-for-surrogate-pregnancies.html>

[3] <https://nordicmodelnow.org/2021/02/21/egg-donation-empowering-really/>

[4] <https://nordicmodelnow.org/2020/01/29/i-was-an-altruistic-surrogate-and-am-now-against-all-surrogacy/>

[5] <https://nordicmodelnow.org/2020/09/07/medical-risks-of-surrogacy-and-egg-harvesting/>

[6] For example, see the section on the NHS in the Impact Assessment: <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2023/03/IA-Surrogacy.pdf>