

Reviewer's report

Title: Building Irish families through surrogacy: medical and judicial issues for the advanced reproductive technologies

Version: 1 **Date:** 27 October 2008

Reviewer: Imogen Goold

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Major Compulsory Revisions

None.

Minor Essential Revisions

P 11: "When a dispute arose, the local court intervened and Baby Cotton was temporarily made a ward of court." - could you include a note on what this dispute was?

P 15: "While still others have developed regulations monitoring the practice of surrogacy, California law has paved the way for prospective parents, surrogates, and egg donors to be reasonably certain that their intentions, as expressed by their formal surrogacy agreement, will be respected" - this sentences doesn't quite make sense and needs rephrasing.

380 "would help eliminate emotional strain and the probably of litigation" - change to "probability"

P. 16 - the point about commodification should be expanded. It's mentioned very briefly and the material that follows in the paragraph doesn't really develop it. It's a big point and is often raised in relation to surrogacy. It would be good if they could talk more about surrogacy contracts being contracts for services so that this conceptualisation of them won't be a legal problem, but that doesn't mean it doesn't face the ethical concerns about commodification -- these could be discussed.

P 22: "the Warnock Report gave 533 consent to most forms of reproductive technology such as IVF" - I'd change the expression. "Gave consent" sounds odd and also suggests that the Warnock Report was somehow regulatory, when it was merely advising government on how it might want to legislate.

P 25: "The prevailing historical view was that any act of surrogacy diminished women and was degrading to all females. The resulting child then risks becoming classified as a commodity, an immoral outcome inducing 'baby-selling'." - the commodification point doesn't follow on from the point that surrogacy diminishes women. These are two different issues and need to be dealt with separately. There also needs to be a bit more discussion of them preceding the discussion of illegality to inform the consideration of the law.

P 27: last sentence of the first paragraph does not make sense and needs revising.

P 28: in the remedies section, it would better not to phrase the possible breaches as questions -- it would read better if they were simply given as examples of potential breaches. Also, ending this section on a question is a little unsatisfying for the reader - I understand that it falls outside the scope of their paper, but it would still be better some draw some conclusions. In particular, the point about commodification could be raised and the question of what should be done if they child is born with an abnormality ('damaged goods') due to an action of the surrogate? This is where commodification is an issue, especially if the commissioning parents then reject the child (I think there are examples where this has in fact happened).

As a general point, the best part of the article and it's most interesting points come at the end - on remedies and damages - it would be good to expand this section if possible as it contains the most original material.

Discretionary Revisions

Most of these are sentences that need clarifying or rephrasing.

P. 3: "The basic idea of surrogacy is deeply personal" - this sounds a little odd - could it be rephrased?

P. 3: " surrogacy's practical side can even be interpreted from a mundane collection of one mother's meticulous shopping lists" - again, this reads a little oddly and I'm not sure what the authors mean here. I'd rephrase.

P. 4: "Any residual negative bias attached to surrogacy, probably reflects a misunderstanding of the personal experience of pregnancy and has implications for clinical medicine, biological research and social policy" - this needs rephrasing as the meaning isn't really clear.

P. 5: "102 the commissioning male's sperm (either as a form of sexual intercourse or assisted insemination)" - should read "either through sexual intercourse or assisted insemination"

P. 6: "125 donated), should never be legally classified as offspring of the surrogate (as this appears to be the case in some countries)" - should read "as appears to be the case..."

P 8: "However, the advanced reproductive technologies have not benefitted from progressive regulation by the IMC, as the council retained until 1994 a provision restricting IVF only to married couples." - this doesn't quite make sense. Do the authors mean that access to ARTs had not improved as the council had limited access to married couples until 1994? I'm not quite sure what this means or the point of the sentence here.

P 9: "The Board has permitted that in cases covering the general expenses of the

surrogate by the commissioning person/s is reasonable, and not coercive or driven by profit, the adoption can proceed without contravening the Acts." - this needs to be rephrased as it's rather unclear.

P 18: the section on intent in contract could be expanded to give a fuller picture of the objective test of intentions and its relevance in relation to contracting.

P 23: the comments about the Warnock Report and the views on surrogacy could be fleshed out with some reference to Mary Warnock's subsequent explanation of this in her later publications. If the authors want to make this change, I'm happy to provide some references. They might also want to note the dissenting voices on surrogacy in the report.

Level of interest: An article of importance in its field

Quality of written English: Needs some language corrections before being published

Declaration of competing interests:

I declare that I have no competing interests.