Introduction/Expertise

I am a recognised expert on the socio-legal aspects of surrogacy in the United Kingdom. My socio-legal PhD used comparative socio-legal and health methods, doctrinal analysis, and empirical research to analyse surrogacy regulation in Britain and California. This research was cited in the Law Commission of England and Wales and the Scottish Law Commission's Final Report (2023), the Nuffield Council on Bioethics, and was used in *Re W and X (Foreign Surrogacy)* [2022] EWFC 120. I am a co-investigator on **Children's Voices in Surrogacy Law**, an exploratory research project applying innovative interdisciplinary methods to collect and analyse children's views on surrogacy law; this project is the first time children's views are formally incorporated into law reform.
My publications show how surrogates' lived experiences diverge from assumptions underpinning regulatory frameworks in the UK and California. My forthcoming work explores criminalisation of surrogacy, expands on the impact of misinformation and stigma, and critiques the UK Law Commissions' proposals.

Question C: Do you think it is appropriate for SSOs to approve surrogacy agreements (where they are compliant with the legislative requirements), or should this responsibility sit with a different entity, such as the National Regulator (or alternative)?

In the UK, non-profit surrogacy organisations play a significant role in the practice of surrogacy and supporting surrogates, despite descriptions as 'well-meaning amateurs with limited resources'.[1] These organisations mitigate potential risks by helping surrogates and intended parents find each other, providing information and support, and eligibility criteria including health checks, screening, and counselling.[2] Their valuable role was recognised by the Law Commission of England and Wales and the Scottish Law Commission (**the UK Law Commission**) in their Final Report, *Building Families Through Surrogacy: A New Law*.[3] SSOs are similar to the proposed regulated surrogacy organisations (RSOs) that will play a central gatekeeping role in the reforms proposed by the UK Law Commissions. Similar to the UK's approach of having these regulated organisations be responsible for ensuring intended parents and surrogates meet the eligibility conditions, I believe the SSOs are the appropriate body to approve surrogacy agreements.
Importantly, as I argued in my PhD, facilitators (or SSOs as proposed by the ALRC) should create an autonomy-supportive environment for surrogates, while ensuring their health and wellbeing are safeguarded appropriately.[4] They must be subject to increased accountability and legitimacy to ensure their safe and ethical operation, allowing them to have dedicated and appropriate staff, more professional resources and increased training.
Similar to the UK's proposals, SSOs should operate on a non-profit or capped fee basis. My research reveals that reforms resulting in the slightest move towards commercialisation—including allowing the UK equivalent of these organisations to recoup a profit, and therefore no longer be 'non-profit'—were not supported by surrogates, echoing previous findings.[5]

Question D: Should both the surrogate and the intended parent(s) be required to undergo a psychological assessment?

Drawing on research in the UK, I believe it is fundamental that surrogates and intended parents undergo a psychological assessment. This assessment should ensure that they understand the nature, purpose and implications of their decision, considering the psychological and existential implications of all possible outcomes (e.g. failed embryo transfers, miscarriage, abortion, stillbirth), allowing them to attribute

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[1] *Re G (Surrogacy: Foreign Domicile)* [2007] EWHC 2814 [18], [29].
[2] *Re Z (Surrogacy: Step-parent Adoption)* [2024] EWFC 20; Law Commission, *Building Families Through Surrogacy: A New Law* (Law Com No 244, 2019) paras 3.31, 3.45, 3.50-3.55.
[3] Law Commission, *Building Families Through Surrogacy: A New Law; Volume II: Full Report* (HC 1237, SG/2023/77, Law Comm No 411, Scot Law Com No 262, 2023) para 1.11.
[4] Zaina Mahmoud, 'Surrogates Across the Atlantic: Comparing the Impact of Legal and Health Regulatory Frameworks on Surrogates' Autonomy, Health, and Wellbeing' (PhD, University of Exeter 2023) ch 6.
[5] ibid ch 6; Kirsty Horsey, *Surrogacy in the UK: Further Evidence for Reform–Second Report of the Surrogacy UK Working Group on Surrogacy Law Reform*, 2018); Surrogacy UK, *Response to Law Commissions' Joint Consultation Paper on Building Families Through Surrogacy: A New Law* (October 2019, 2019); Kirsty Horsey and others, 'UK Surrogates' Characteristics, Experiences, and Views on Surrogacy Law Reform' (2022) 36 Int J Law Policy Fam 1.

personal meaning to the different pathways chosen in pursuit of parenthood.[6] This assessment should be conceptualised as an opportunity to reflect on the decision to pursue a surrogacy arrangement, focussing on how surrogacy will affect those involved and the future children, ensuring those involved are comfortable with what they are undertaking and have the strengths and resources to move forward.[7] Importantly, this should not be merely a 'tick-box exercise' and must be conducted by individuals with particular qualifications and with specific knowledge of surrogacy.

Question E: If Option 19.2 is adopted: Should the criminal history check be limited to specific offences, such as those relating to children or violent offences? What should be the purpose of the criminal history check? You might want to consider if it should be provided to the surrogate to facilitate informed consent to the arrangement, to the psychologist undertaking the psychological assessments, or to the Surrogacy Support Organisation to determine if the arrangement should be approved?

There should be a criminal history check, and it should be provided to the surrogate to ensure there is genuine fully informed consent to the arrangement, as well as to the psychologist and Surrogacy Support Organisation to ensure that the arrangement is properly supported, with any risks minimised. In the UK, HFEA-licensed fertility clinics are required to consider various factors as part of the welfare of the child assessment, including past or current circumstances that are already seriously impairing the care of any existing child of the family, including child protection measures taken regarding existing children, mental or physical conditions, and drug or alcohol abuse.[8] Likely due to the inability to satisfy these requirements, intended parents engaged in transnational surrogacy arrangements and did not disclose their previous history, casting doubt on the consent provided. In one case, previous public law proceedings revealed the intended parent had been domestically abusive to the mother of his other children.[9] In another, the intended parent was arrested for alleged serious sexual offences (though the case was closed by the police)[10] and did not to inform the clinic and surrogate 'about the change in his circumstances following his arrest';[11] further safeguarding checks revealed two other offences.
Recognising that screening has been criticised as discriminatory, as there is no equivalent parental aptitude scrutiny for those conceiving without assistance,[12] surrogacy is a very particular pathway to parenthood involving an additional party and provoking different ethical considerations and there should be rigorous scrutiny and oversight.

Question F: Should the surrogate's partner (if any) be required to undergo implications counselling?

Yes, with the caveat that the counsellor is aware of the intricacies of surrogacy and that it is not just a box-ticking exercise. My previous research with surrogates indicates that there are mixed views on the matter, as some feel like it should be an option, whereas others think it is necessary, given the challenges posed by surrogacy on their relationship, as well as any children the surrogate may have.[13]

Question G: Should there be additional counselling requirements? If so, what should these requirements be? You may wish to consider whether post-birth counselling should be optional or mandatory, or for how long after the birth the intended parent(s) should be required to cover the cost of the surrogate's counselling.

No, there shouldn't be any further mandatory counselling requirements. However, there should be optional counselling and intended parents should be required to cover this cost. My research echoed existing literature that shows surrogates view their journeys as a joint endeavour, forging a friendship with

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[6] Zaina Mahmoud, 'Mandatory (M)othering: An Exploration of British Surrogates' Healthcare Experiences' in Rebecca Brione, Samantha Halliday and Jacqueline Nichols (eds), *Reproduction, Narratives of Consent and Invisible Women* (Routledge 2025).
[7] ibid.
[8] Human Fertilisation and Embryology Authority, *Code of Practice (Edition 9.4)*, 2023) para 8.14.
[9] *YW & XW v A & P* [2024] EWHC 3548.
[10] *W v S* [2025] EWFC 85 [18], [40].
[11] ibid [42]
[12] Emily Jackson, 'Conception and the Irrelevance of the Welfare Principle' (2002) 65 MLR 159, 177ff; Emily Jackson, 'The Law and DIY Assisted Conception' in Kirsty Horsey and Sheila AM McLean (eds), *Revisiting the Regulation of Human Fertilisation and Embryology* (Biomedical Law and Ethics Library, Routledge 2015) 31.
[13] Mahmoud, Surrogates Across the Atlantic (n 4).

their intended parents based on mutual trust and appreciation.[14] Where surrogates experienced negative experiences, this was attributed to mismatched expectations and not due to relinquishing the baby. Indeed, my research similarly found that surrogates' separation from the baby was reflective of the current understanding that surrogates separate the pregnancy from their pre-surrogacy self-identity, in a manner similar to living organ donors.[15] Surrogates do not view the child as their own,[16] and contrary to widespread belief,[17] there are no differences between surrogates who act as gestational and traditional surrogates in terms of feeling a bond with the child. The cost of counselling covered should extend at least 6 months postpartum, to account for any issues that may arise. In the event that these issues extend beyond this, there should be involvement of the SSO to ascertain where the financial responsibility lies, given their responsibilities.

Question L: Should the National Regulator (or alternative) set caps on the amounts that can be recovered for specific costs, and for the monthly allowance?

By not permitting surrogacy to be undertaken for a profit, a crude binary drawn between financially incentivised deviant surrogates engaged in baby-selling & altruistic good surrogates underscoring their contribution to a loved one's motherhood project. Prohibitions on payments were rooted in a fundamental objection to women being paid for their reproductive capacity, and corrupting surrogates' motivations.[18]

There should not be any caps for specific costs or for the monthly allowance, as these will inevitably be overly restrictive. During my PhD, I found that any restrictions or caps would have heightened tensions in surrogates' relationships with intended parents and therefore would have impacted their wellbeing. Surrogates already carefully limited their expenses as far as possible, even if to their financial detriment.[19] The introduction of a monthly allowance accounts for subjective expenses incurred in surrogacy arrangements, ensuring any incidental expenses for which receipts are not provided are properly reimbursed and that surrogates are not left out of pocket.

Question P: Should there be a simpler pathway to legal parentage for intended parents who have engaged in a registered overseas surrogacy agreement; and are recognised in the birth country as the legal parents of the child? For example, should legal parentage be recognised in Australia without the need for a court order?

I think there should be a simpler pathway to legal parentage for intended parents who have gone through the appropriate channels and demonstrated due diligence when undertaking transnational surrogacy arrangements, including undertaking appropriate research into the safety and ethical nature of their surrogacy arrangement.

Question S: In relation to the registration process in Proposal 37: which entity should be responsible? For example, the National Regulator (or alternative); a Surrogacy Support Organisation (see Proposal 3); or a different government department or entity?

What factors should the registration entity consider, when determining which destinations should be 'permitted destinations'? For example, should these be destinations with laws that require the surrogate's informed consent, or transparent gamete donation?

Do you think the registration process would work in practice? Are there any changes you would suggest to improve how it works and its effectiveness?

Should intended parents be required to demonstrate, as a precondition to registration, that they have made reasonable efforts to engage in domestic surrogacy before they can engage in a registered overseas surrogacy arrangement?

This question is one I answer in a paper that I'm currently submitting to a legal academic journal, and when it's accepted, I would be very happy to send it. In the paper, I argue that there absolutely should be

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[14] ibid (n 4); Zsuzsa Berend, 'The Social Context for Surrogates' Motivations and Satisfaction' (2014) 29 RBMO 399, 400.
[15] Elly Teman, 'Embodying Surrogate Motherhood: Pregnancy as a Dyadic Body-Project' (2009) 15 Body Soc 47, 66.
[16] Heléna Ragoné, *Surrogate Motherhood: Conception in the Heart* (Westview Press 1994);
[17] Susan Imrie and Vasanti Jadva, 'The Long-Term Experiences of Surrogates: Relationships and Contact with Surrogacy Families in Genetic and Gestational Surrogacy Arrangements' (2014) 29 RBMO 424, 430.
[18] Mahmoud, Surrogates Across the Atlantic (n 4).
[19] ibid (n 4).

a requirement for intended parents to make a declaration, what I call a Statement of Intention. This statement places the onus on intended parents to demonstrate the safety and ethical nature of their surrogacy arrangement, regardless of jurisdiction. This Statement requires answering questions that are inspired by *Re Z*, where Theis J outlined a non-exhaustive list of 16 key considerations for potential intended parents involved in 'a surrogacy arrangement (particularly one that involves the surrogate coming from and/or the child being born in a foreign jurisdiction) [to] consider **before** they enter in any surrogacy arrangement'.[20] Five additional considerations were added by later cases.[21] The Statement of Intention would require intended parents to demonstrate due diligence when undertaking transnational surrogacy arrangements, recognising the lack of pre-birth legal advice sought. In addition to a clear and chronological account of events and relevant documents, intended parents would be required to present a Statement of Intention answering the following (amended) questions. In addition to a clear and chronological account of events and relevant documents, intended parents would be required to present a Statement of Intention addressing three categories of information: shared intention and legal understanding, surrogate autonomy, and cross-border risk awareness. Intended parents would confirm their shared intention to be recognised as the child's legal parents, their understanding of the legal consequences of surrogacy, and the legal status of the surrogate at birth. Intended parents would document the steps taken to ensure that the surrogate entered the arrangement voluntarily, understood its implications, and had access to independent legal advice. They would identify the jurisdictions involved, the legal status of surrogacy in those jurisdictions, and any known risks relating to documentation, nationality, or enforceability.

[20] Re Z (Foreign Surrogacy) [2024] EWFC 304 [4] (emphasis in original).
[21] See above *K v Z* [2025] EWHC 927 [35]; *B & C v D & H (Anonymous Surrogacy)* [2025] EWFC 366 [3], [8], [43].