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Children's Voices in Surrogacy Law

Hearing the Views of Children on Surrogacy Law Reform

Katherine Wade, Kirsty Horsey & Zaina Mahmoud



Children's Voices in Surrogacy Law

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Children's Voices in Surrogacy Law: Hearing the Views of Children on Surrogacy Law Reform

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INVESTOR IN PEOPLE

Contents

About the Authors *ix*

Acknowledgements *xi*

Glossary *xiii*

Introduction *1*

Chapter 1 Methodology: Hearing Children's Voices in Research on Law and Law Reform *27*

Chapter 2 Children's Views About Parenthood in Surrogacy Arrangements *51*

Chapter 3 Children's Views About Contributions to Surrogates *87*

Chapter 4 Children's Views About Origin Information in Surrogacy *119*

Chapter 5 Surrogacy in Children's Social Worlds *147*

Conclusion: Hearing From Children on Surrogacy Law Reform *179*

Appendix 1: Tables of Participants *195*

Appendix 2: Contributions Comparison *199*

Appendix 3: Law Commissions' Infographic *201*

Appendix 4: Images From the Project *203*

Appendix 5: Semi-Structured Interview Questions *211*

References *213*

Index *247*

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This book is for everyone born through, or to be born through, surrogacy.

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Glossary

ART	Assisted Reproductive Technologies.
Cafcass	The Children and Family Court Advisory and Support Service.
Commercial surrogacy	A form of surrogacy typified by profit-making intermediaries (brokers, agencies and so on), enforceable arrangements and compensated surrogates.
Compensated surrogacy	A system of surrogacy that allows for payments to surrogates for 'gestational services'.
Contributions to surrogates	Items passed between the intended parent/s and the surrogate.
DHSC	The Department of Health and Social Care.
Domestic surrogacy	A surrogacy arrangement between UK-based intended parent/s and a UK-based surrogate.
Donation	The transfer of egg, sperm or embryos from one body to another for the purpose of helping someone other than self or partner conceive a child.
Donor	Person who agrees to give their gametes (egg, sperm) or embryo to another for the purpose of helping someone (other than partner) conceive a child.
Donor-conceived person/people	Person or people born following donation of egg, sperm or embryo.
Gestational surrogacy	Where a woman carries a child genetically unrelated to herself on behalf of others, following the transfer of an embryo created using IVF. The embryo could be created using gametes from two intended parents, or one intended parent plus a donor or, in rare cases, from donation of both egg and sperm, or an embryo.

HFE Act	Human Fertilisation and Embryology Act (1990 or 2008).
HFEA	The Human Fertilisation and Embryology Authority.
Intended parent/s	A person who uses a surrogacy arrangement to have a child, and who intends to raise that child from birth. Intended parent/s may or may not be genetically related to the child.
International surrogacy	A surrogacy arrangement undertaken in a different jurisdiction from the one in which the intended parent/s live (sometimes referred to as cross-border or transnational surrogacy).
IVF	In-vitro fertilisation.
Origin information	Information (both non-identifying and identifying) about surrogates, gamete or embryo donors, and intended parents (with or without a genetic relationship to a child).
Parental order	A court order removing legal parenthood from the surrogate (and her spouse/partner where appropriate) and granting it to the intended parent/s.
Regulated Surrogacy Organisation (RSO)	A proposed State regulated non-profit surrogacy support organisation.
Regulated Surrogacy Statement (RSS)	A proposed official document setting out the details of a surrogacy arrangement signed by all parties to it.
SAA	Surrogacy Arrangements Act 1985.
Surrogacy arrangement	An arrangement in which a surrogate agrees to carry and give birth to a child that will be raised by its intended parent/s.
Surrogacy expenses	Out-of-pocket expenses incurred by a surrogate in preparation for, during or connected to the surrogacy process.
Surrogacy Register	A proposed Register to collect information about surrogates, gamete donors and intended parents that the surrogate-born person could access.
Surrogate	A person who agrees to carry and give birth to a child that will be raised by its intended parent/s.

Traditional surrogacy	Where the surrogate carries a child genetically related to her on behalf of the intended parent/s. This could be following the transfer of an embryo created using her own egg (as a donor), or via her insemination in either a clinical setting or at home.
UNCRC	United Nations Convention on the Rights of the Child 1989.

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Introduction

This book explores findings from the Children's Voices in Surrogacy Law (CVSL) project.[1] The project involved 54 children and young people and gathered and analysed their views about surrogacy law and reform proposals in the United Kingdom.[2] The data were collected through (a) interviews, which allowed for the collection of rich insights through in-depth discussion and (b) artwork, which allowed for exploration of children's experiences and perception of surrogacy in the United Kingdom. The book's aim is twofold: first, to present and analyse children's views on surrogacy and surrogacy *law* for the first time for use in academic, legal and policy debates. In it, we detail our findings, while making some policy arguments about how the law should (or should not) be changed. Second, we present a novel method for the inclusion of children in consultation on law reform, especially when legislating for matters which directly concern them.

The book presents the first insights into children's views on surrogacy law, at a time when surrogacy and its regulation is the subject of ethical and legal debate in many parts of the world. We hope that the insights from this project can influence law and policy debates in these jurisdictions, contribute to the research on surrogacy law reform from children's perspectives and contribute a new methodology for involving children in law reform by researchers, reform bodies and policymakers. As will become apparent, this study was conducted within what may be termed a partially permissive 'tolerant' legal framework (Scherpe et al., 2019) in the United Kingdom in which commercial surrogacy activity is

[1]The research was funded by the Institute of Medical Ethics Research Funding (2021), Research England participatory research grant (University of Leicester (2023), University of Bristol (2023)).

[2]There is a distinction in terminology between children and young people in terms of age and maturity. However, the term 'children' will be used throughout for ease of reading.

Children's Voices in Surrogacy Law, 1–25



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prohibited but surrogacy is recognised as a legitimate form of family-building by the State and supported by the activities of several non-profit organisations.[3]

This research is timely, given current domestic and global debates on surrogacy, as well as ongoing law reform agendas. In March 2023, the Law Commission of England and Wales and Scottish Law Commission published joint recommendations on surrogacy law reform alongside draft new surrogacy legislation (Law Commissions, 2023). Their five-year project (re)ignited academic, public and parliamentary interest in surrogacy. There are also surrogacy law reform projects happening in other jurisdictions, most notably (due to their similarity) Ireland, Australia and New Zealand, and there are transnational attempts to formulate or influence global policy on surrogacy (Declaration of Casablanca for the Universal Abolition of Surrogacy, 2023; Child Identity Protection, 2026a, 2026b; HCCH Working Group on Parentage/Surrogacy, 2025; International Social Service General Secretariat, 2021; United Nations Special Rapporteur on violence against women and girls, its causes and consequences, 2025). As these illustrate, surrogacy can be a divisive topic, and there is no global consensus on how it should be regulated. Some advocate prohibition (Declaration of Casablanca for the Universal Abolition of Surrogacy, 2023; United Nations Special Rapporteur on violence against women and girls, its causes and consequences, 2025), while others call for implementation of minimum universal standards of protection (HCCH Working Group on Parentage/Surrogacy, 2025; International Social Service– General Secretariat, 2021; Surrogacy360, 2023). At national levels, 'it is possible to encounter the absence of special legislation, a complete ban on surrogacy or some sort of legalization of the procedure' (Valc, 2025, pp. 3–4), though there are almost constant shifts in the formation or amendment of existing national laws (Horsey, 2024). This book therefore provides an original and essential contribution to such policy debates.

The project adopts a predominantly qualitative approach, with quantitative elements.[4] We adopt a socio-legal approach, exploring the social, political and economic contexts in which law develops and how these impact the law (Economic and Social Science Research Council, 2023). This was necessary to answer our central research questions, which sought to explore how children perceive and experience surrogacy and their perspectives on surrogacy law and potential law reform. Our work is interdisciplinary: in seeking to examine the law as a social phenomenon, it draws on other disciplines, including sociology, social policy, social work, social psychology and childhood studies. As is the case with the research underpinning this book, a socio-legal approach may also adopt empirical research methods to examine the operation and impact of law and policy in practice. Our findings are situated amidst this wider literature: as such, this book should appeal to those researching or studying surrogacy (or related family-making techniques) in disciplines beyond law and at any level, as well as

[3]Some of these were involved in the recruitment of participants for this study: see Chapter 1, p. 48.

[4]See Chapter 1 for a full explanation of the methodology.

those supporting surrogacy, including inter alia legal practitioners, counsellors, advocates and regulatory bodies. This book is also policy-orientated, as its insights can be used to inform policymakers in an evidence-based way (Cownie & Bradney, 2017, p. 52).

There is a growing literature on the lived experiences of those seeking to have a child through surrogacy ('intended parents') and parents through surrogacy (Horsey et al., 2025; Jadva et al., 2003, 2012; Jones et al., 2023), surrogates (Blyth, 1993, 1994; Horsey, 2025a, 2025b, 2025c; Horsey et al., 2022; Jadva et al., 2003, 2012, 2015; Lamba et al., 2018; Mahmoud, 2023, 2025a, 2025b), as well as gamete donors (Gilman et al., 2025; Gilman & Nordqvist, 2022; Imrie et al., 2019; Imrie & Golombok, 2018; Nordqvist & Gilman, 2024), and there is increased engagement from law and policymakers with these groups (Law Commissions, 2019a, 2023). Empirical studies have also focused on experiences of surrogacy in other countries, including India (Pande, 2014; Saravanan, 2013), Canada (Gruben et al., 2018; White, 2018; Yee et al., 2019), the United States (Mahmoud, 2023; Martínez-López & Munuera-Gómez, 2024) and Denmark (Tanderup et al., 2023, 2025), among others. Some systematic reviews also provide further data (Kneebone et al., 2022; Söderström-Anttila et al., 2016). Other work has considered experiences of particular groups of intended parents, including same-sex male couples (Carone, 2017a; Nebeling Petersen, 2018; Smietana, 2017), solo intended parents (Carone, 2017b) or those who engage in surrogacy outside their home country (international surrogacy) (Jackson et al., 2017; Jadva et al., 2018).[5] Such studies make it possible to understand more about who undertakes surrogacy and why (either as a potential parent or as a surrogate), and their experiences of the process. However, to date, *children* have not been included in the legal and ethical debates around surrogacy regulation, despite the fact that many of the contentious issues in debates on surrogacy relate to children.[6]

This book also fits within a wider and growing literature on children's rights theory and child participation in research (Groundwater-Smith et al., 2015; Križ & Petersen, 2023; Parkes, 2013; Percy-Smith et al., 2023; Schrama et al., 2021; Tisdall, 2014, 2017). Much of the United Kingdom's current regulatory framework for surrogacy is shaped by the interests of adults and underpinned by assumptions of what is in the best interests of children. We explore children's views on core legal issues in surrogacy and their experiences of surrogacy, and consider what this might mean for law and policy in the United Kingdom, rather than exploring adults' reflections on their childhood experiences (Wade & Mills, 2025). This chapter situates the book within wider literature, including core

[5]Though such arrangements are sometimes referred to as 'transnational' or 'cross-border' surrogacy, we use the term 'international surrogacy' throughout, reflecting the Law Commissions' choice to use the term in their public consultation (2019a, para. 3.100) and Final Report (2023, para. 16.2).

[6]There has been limited engagement from *adults* born from surrogacy, which reflects either positivity (see e.g. Annelo, 2026; Hardach, 2022) or late discovery of their birth story through surrogacy in less-than-optimal ways (see e.g. Maurel, 2026).

findings from longitudinal research which examined the psychological adjustment and well-being of children born through surrogacy (Golombok et al., 2004, 2006a, 2006b, 2011, 2013, 2018; Jadva et al., 2012, 2015, 2023, 2026; Zadeh et al., 2018). Our data complements this research, by focusing on what children think about issues in surrogacy that the law regulates and their experience of surrogacy under the UK regulatory framework, as opposed to their psychological development.

This introductory chapter provides the legal background and context for the CVSL project and for the analysis in the subsequent chapters. It concludes by setting out the importance of including children's views in law reform.

The History of Surrogacy in the United Kingdom

Some forms of surrogacy have occurred through history and across different cultures. Surrogacy is a form of third party assisted reproduction whereby a person (the surrogate) carries a pregnancy and gives birth to a child intended to be raised by another person/people (the intended parent/s). In 'traditional' surrogacy (also called genetic/partial/straight/low-tech surrogacy), the surrogate's own egg is used, meaning that they are genetically related to the child born.[7] In gestational surrogacy (also called full/host/IVF/high-tech surrogacy), embryo(s) created by in vitro fertilisation (IVF) are transferred to the surrogate's uterus; as a result, the surrogate usually has no genetic connection to the child.[8] Embryos may be created by gametes from both intended parents, from one of them and an egg or sperm donor or, rarely, from neither (using both donor egg and sperm, or a donated embryo). Intended parents may be couples (heterosexual, same-sex or otherwise),[9] or a single person.

In the United Kingdom, all gestational surrogacy, and some traditional surrogacy, occurs within a clinical setting. Fertility clinics are licensed by the Human Fertilisation and Embryology Authority (HFEA) and must operate

[7]We acknowledge that not everyone who gives birth may define themselves as a woman. However, the term will be used as a factual description of what the law says, or in using quotes.

[8]There are rare instances where a surrogate may also be a known egg donor, with egg retrieval taking place in a clinic, before being fertilised by IVF and (re)implanted into the same woman acting as a surrogate (Horsey, 2025a; Horsey et al., 2022).

[9]Intended parents could also be in polyamorous relationships in the *factual* sense, but in the *legal* sense, a maximum of two intended parents can be recognised under UK law. This is not the case everywhere: in September 2025 a New York court ruled that a child born through assisted reproduction can have three parents named on their birth certificate, where all were involved biologically and intentionally in the child's conception (*In the Matter of Baby D.K.N.* (2025 NY Slip Op 25,202)). A similar provision exists in British Columbia (Canada) under the Family Law Act 2013 (Kelly, 2014). An internet search reveals that at least 14 US states/districts have laws that allow for more than two legal parents. In late 2022, Cuba promulgated a new Family Code (Ley No. 156 Código de las Familias), recognising multiple parents in certain situations on an intention-based model (Pelegrino Toraño, 2025).

under its Code of Practice (2023a). The HFEA records that over 77,500 IVF cycles were performed in 2023, with about 20,700 babies born as a result (HFEA, 2025). IVF now accounts for around one in 32 births per year, though only a small proportion of these involve surrogacy: 233 surrogates received IVF treatment in 2023 (HFEA, 2025). It is hard to gauge an accurate number of children born through surrogacy; one way to estimate this is through court data on the number of parental orders granted, whereby intended parents become legal parents of surrogate-born children through a court order. These show a gradual increase in the number of orders granted each year since records began in 2011. In 2011, 117 parental orders were issued, rising to 543 in 2025 (Ministry of Justice, 2026),[10] though it should be noted that these capture children born through surrogacy in the United Kingdom *and overseas*.[11] This is a small proportion of the number of children born each year: by contrast, 594,677 births were registered in England and Wales in 2024 (Office for National Statistics, 2025). Surrogacy is not a common way of having children; it is an option sought by people who have, for example, been unsuccessful in using IVF or other fertility treatments, are unable to carry a baby for medical reasons such as cancer or a congenital condition, or who cannot conceive by 'natural' means, such as same-sex male couples or single men.

Surrogacy has been regulated since 1985 by the Surrogacy Arrangements Act (SAA 1985), alongside certain provisions of the Human Fertilisation and Embryology Acts 1990/2008 (HFE Acts 1990, 2008), some secondary legislation and a sizeable body of case law. This section traces the development of, and policy behind, the United Kingdom's surrogacy law over the last 40 years. It has a particular focus on three aspects, as these formed the basis for our data collection: legal parenthood, payments/contributions to surrogates and access to origin information.

The Warnock Report and the SAA 1985

In 1958, the government established the Feversham Committee to enquire 'into the existing practice of human artificial insemination and its legal consequences and to consider whether, taking account of the interests of individuals involved

[10]Scotland records parental orders separately. In 2022, 17 orders were granted; 27 in 2023 and 20 in 2024 (Scotland National Records Office, 2025).

[11]A response from the Child and Family Court Advisory and Support Service (Cafcass) to a Freedom of Information inquiry from Kirsty Horsey (ref Gov/CAF23-31530, 28.11.23) shows that 51% of surrogate births between 2016 and 2023 to UK-based parents occurred outside the United Kingdom. Note also, the number of parental orders granted may not accurately represent the number of surrogate *births* in any given year, not only due to the lag in granting orders once an application is made (so the birth may have in fact occurred in a previous year) but also because some intended parents may not apply for one, particularly perhaps if they are issued a foreign birth certificate with their names on it. Additionally, some (though few) who have children via surrogacy will achieve parenthood via adoption.

and of society as a whole, any change in the law is necessary or desirable' (Committee on Human Artificial Insemination, 1960, p. 1). The Feversham Report described sperm donation as 'an activity which might be expected to attract more than the usual proportion of psychopaths' and sought to discourage the practice (Annual Report of Council, 1973, p. 59).

Twenty years later, the birth of Louise Brown via IVF was lauded as a success story of science helping 'married heterosexual couples have "ordinary" families,' and realising (infertile) women's '"innate" and natural desire to have genetically related children' (Dow, 2018, p. 317). Notwithstanding doubt expressed by some prominent scientists (Tranfield-Thomas, 2024), early media narratives were generally positive, locating IVF within the boundaries of '"respectable" heterosexual family formation' (Dow, 2019, p. 191). This chimed with a fundamental tenet of Thatcherism, the dominant political outlook of the time: promotion and defence of the traditional/nuclear family, understood restrictively as married heterosexual couples and their biologically related children (David, 2014; Fineman, 1995; Lewis & Cannell, 1986).

Another feature of Thatcherism was enthusiasm for increased surveillance and scrutiny of professional actions, and the promise of transparency and accountability borne by external oversight (Wilson, 2011, pp. 131–132). Reflecting this ethos and responding to growing public calls for oversight of assisted reproductive technologies (ART), in 1982 the government established a Committee of Inquiry into Human Fertilisation and Embryology (Warnock Committee). Chaired by moral philosopher Mary Warnock, it was charged with developing practical proposals for regulating IVF and related science before 'the swift developments in embryology go much further' (Warnock, 1985, p. 521), ensuring that debate and potential regulation of ART would occur 'not in the private, but in the public sphere' (Warnock, 1983, p. 249).

The Warnock Report was published in 1984, recommending regulation of ART based on an assumed 'common moral position' on the importance of promoting the nuclear family (Department of Health & Social Security, 1984, p. 3). It emphasised the urgent need for external regulatory oversight, recommending the creation of a state regulator for ART and embryology. The Warnock Committee viewed ART as an acceptable, albeit extraordinary technology assisting 'ordinary' (traditional/nuclear) families, reflected by its recommendations regarding donation. Where donor eggs were used, which was rare at this time, the woman who gave birth was recognised as the legal mother, in line with the principle *mater est quam gestatio demonstrat*[12] (1984, paras. 4.17, 4.25, 6.8). Where donor sperm was used, the husband of the woman receiving treatment would be the child's legal father, in line with the principle *pater est quem nuptiae demonstrant*,[13] thereby replicating the nuclear family and, crucially perhaps, establishing a culture of secrecy in relation to donor insemination that was reflected inter alia in the policy, existing until 2005, of allowing anonymous

[12]Maternity is demonstrated by gestation.
[13]Paternity is demonstrated by marriage.

donation (Gilman & Nordqvist, 2022, pp. 9–10; Speirs, 2012). This recommendation was reflected in the Family Law Reform Act (FLRA) 1987 which allowed the husband of the woman receiving treatment using donor sperm to be entered on the birth certificate as the legal father (FLRA 1987, s. 27). The Warnock Committee considered that the same principles should apply to embryo donation, so that 'an embryo once transferred should be regarded for all purposes as that of the carrying mother' (1984, para. 7.6). The Committee recommended donor anonymity, as it considered this provided protection from potential 'emotional difficulties' and minimised 'invasion of the third party into the family' (1984, paras. 4.22, 6.6, 7.7). Anonymity was thought necessary to protect the donor from parental responsibility and to allow the husband parental rights (Dewar, 1989). However, the Committee also recommended that children should have access to 'basic information about [their] donor's ethnic origin and genetic health' when they turned 18 (1984, paras. 3.2, 4.21, 4.22).

The Warnock Committee also considered surrogacy. The Committee's response to surrogacy appears to be an inevitable consequence of the timing. Media coverage of surrogacy at that time was generally not positively framed, utilising terms such as 'rentawomb', 'procreation for profit' and 'prostitution of motherhood' (see discussion in Mahmoud, 2026a). Much of this was influenced by the (mis)perception of surrogacy as inevitably commercial, and by feminist critiques of the practice – particularly emerging from the United States – framed it as involving the commodification of women/children or the alienation of women's reproductive capacity (Allen, 1990; Corea, 1985; Lee & Morgan, 2001; Overall, 1987; Pateman, 1988; Shanley, 1995).[14] Other feminist arguments against (commercial) surrogacy include questions about whether surrogates can give true consent, or whether coercion (financial or otherwise) makes this impossible (Anderson, 2000). Others argue that surrogacy 'contributes to and perpetuates gender inequality' (Hill, 2024, p. 703; Satz, 2010). There are also concerns about undertaking the physical and psychological risks of pregnancy for someone else (Warnock Report, para. 8.12; Levron et al., 2014; McCoy et al., 2024; Parker, 1983; Reame & Parker, 1990; Yadav et al., 2018), as well as welfare concerns for children separated from their birth or 'true' mother (Okin, 1990). Though these concerns achieved prominence in the 1980s and 1990s, divergent feminist perspectives remain today, some of which reflect those earlier anxieties. For example, some argue that commercial (or even all) surrogacy is inherently exploitative and the practice should be abolished (Declaration of Casablanca for the Universal Abolition of Surrogacy, 2023; United Nations Special Rapporteur on violence against women and girls, its causes and consequences, 2025). Others, however, view surrogacy as a legitimate choice for women, allowing them to express their reproductive/bodily autonomy (and even financial autonomy)

[14]US commercial surrogacy agencies began to emerge in the early 1980s, prompting these concerns. The strength of the US feminist backlash against surrogacy increased following the infamous 1986 *Baby M* case, where Mary Beth Whitehead, a traditional surrogate, changed her mind and fled with the baby (*In re Baby M* 109 NJ 396 (NJ 1988) leading to several trials, appeals and ultimately the recognition of Whitehead's legal parentage.

where informed consent is present (Robertson, 1983; Walker & van Zyl, 2017a, 2017b; Wilkinson, 2016). Rather than prohibit the practice, many in the latter group would advocate for regulation to facilitate 'ethical' surrogacy that prioritises the welfare of women and children (Fischer et al., 2024; Hill, 2024).

The Warnock Report appears to be influenced by views of surrogacy that had developed in the 1970s and 1980s, and 'exceptionalised' surrogacy from other ART, describing it as 'the wrong way to approach pregnancy' (1984, paras. 8.10, 8.17). A surrogate's contribution was considered 'greater, more intimate and personal than the contribution of a semen donor' (para. 8.10). Following donor-assisted conception, social policy to promote the nuclear family meant allocating legal parenthood to the person who gave birth and their partner – if applicable – as opposed to following genetics. Therefore, in surrogacy, the view was that the surrogate should be recognised as the legal mother (paras. 8.8, 8.20).

The Warnock Committee deemed surrogacy 'inconsistent with human dignity', causing public concern by enabling a person's use 'as a means to [an] end' (1984, paras. 8.11, 8.17). It believed that paying for surrogacy rendered it 'positively exploitative,' as well as damaging and 'degrading to the child [. . .] since, for all practical purposes, the child will have been bought for money' (paras. 8.11, 8.17). Despite its opposition to surrogacy the Committee recommended a legal framework strongly discouraging surrogacy; recognising complete prohibition as impossible and criminalisation undesirable, the recommendations aimed to thwart surrogacy's growth (Horsey, 2016).[15] Mary Warnock later explained how concerns with surrogacy arose 'largely because of possible consequences for the child' given its disruption of the nuclear family (Warnock, 1985, p. xii). Later still, she said that she thought the Committee 'could have done better' in respect of its recommendations about surrogacy, explaining that meeting representatives from American surrogacy agencies and thinking about how she herself would be unable to hand a baby she had carried to someone else 'made her (and the majority of the committee) averse to surrogacy as a whole' (Horsey & Avery, 2016).

Shortly after the Warnock Report was published, Kim Cotton gave birth to the United Kingdom's first (publicised) baby through commercial surrogacy organised by an American agency, for which she received £6,500. After Kim Cotton left the hospital, the local authority applied to have the baby made a ward of court. Latey J later ruled that the baby could leave the jurisdiction with the Swedish intended parents as 'at the heart of the prerogative jurisdiction in wardship, is what is best for the child or children concerned' (*Re C (Wardship)* [1985] FLR 846). At this time, surrogacy arrangements were occurring in a predominantly private and secretive manner, using rudimentary methods of self-insemination, with sparse and sporadic media coverage (Mahmoud, 2026a). However, *Baby Cotton*, viewed as a 'baby-for-cash' deal (BBC, 1985), became 'synonymous with discourses relating to surrogacy' generating forceful

[15]A dissenting minority recognised the practice would continue and suggested therefore that it should be regulated (Warnock Report, 1983; Expression of Dissent).