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[2014] EWHC 595 (Fam)

FAMILY DIVISION

ELEANOR KING J

2 JULY 2013, 5 MARCH 2014

Family proceedings – Orders in family proceedings – Parenthood in cases involving assisted reproduction – Parental orders – Human Fertilisation and Embryology Act 2008, s 54.

JP and LP were married. JP was unable to conceive. They decided that they would attempt to conceive through 'partial' surrogacy. A friend ('the surrogate mother') agreed to help; she was artificially inseminated at home with the sperm of LP and became pregnant. The child was born on 1 March 2010. The surrogate mother registered the child's birth; the certificate showed LP as the 'father' and the surrogate mother as the 'mother' of the child. The Human Fertilisation and Embryology Act 2008 regulated assisted reproductive technology and embryo research permitted in the United Kingdom. There was a statutory requirement for the welfare of a child born as a result of fertility treatment to be taken into account. The 2008 Act regulated both 'full' surrogacy involving in vitro fertilisation and 'partial' surrogacy. Under the 2008 Act the effect of the surrogacy arrangement between JP, LP and the surrogate mother was that the surrogate mother having carried the child following assisted reproduction 'and no other woman' was the child's legal mother. Unless the child was subsequently adopted or parenthood transferred through a parental order the surrogate mother had and retained parental responsibility. LP was the genetic and social father of the child; the surrogate mother was neither married nor treated in a United Kingdom licensed clinic so she was not in the category of relationships which could otherwise have the effect of making the husband/partner of the surrogate mother the legal father in place of the genetic father. JP had no status other than the emotional and social status of being the child's psychological mother; she did not have parental responsibility. Section 54[a] of the 2008 Act provided for the making of a parental order 'for a child to be treated in law as the child of the applicants' if the child had been carried by a woman who was not one of the applicants as the result of 'the placing in her of an embryo or sperm and eggs or her artificial insemination', and the gametes of at least one of the applicants had been used to bring about the creation of the embryo. The relevant conditions were that the applicants were husband and wife, civil partners, or two persons living as partners in an enduring family relationship; the applicants 'must apply for the order during the period of 6 months beginning with the day on which the child is born'; at the time of the application and the making of the order the child's home had to be with the applicants and either or both had to be domiciled in the United Kingdom. The court had to be satisfied that the woman who carried the child (and any other person who was a parent of the

a Section 54, so far as material, is set out at [26], below

child but was not one of the applicants) had freely and with full understanding of what was involved, agreed unconditionally to the making of the order. In June 2010 the relationship between JP and LP broke down. JP left the matrimonial home with the child and in July 2010 made an application for a residence order. The county court made a shared residence order in favour of JP and LP and they undertook to issue an application for a parental order pursuant to s 54 of the 2008 Act to regularise the child's status as between themselves and the surrogate mother. However, the application was not issued until 19 October by which time the child was seven-and-a-half months' old, outside the six months' time period. Neither JP or LP attended directions hearings in November or December and the application was eventually dismissed. In March 2011 a specific issue order for the return of the child to JP after contact was made by a district judge. At a further directions hearing the shared residence order was confirmed and JP and LP undertook to reissue their application for a parental order; no one involved appreciated that the time limit for an application under s 54 had expired. The decree absolute in the divorce proceedings between JP and LP was pronounced in November 2011. In September 2012 JP made an application for a sole residence order. The matter was transferred to the High Court and the child and the surrogate mother were joined as parties. The court was asked to address the issues arising in the circumstances in which there was no parental order regularising the legal status of each of the three adults involved and to consider how the effect on the exercise of parental responsibility by each of them. Before the High Court it was agreed by all parties that the undertakings given by JP and LP to the county court in March 2011 to promptly reinstate/reissue their application for a parental order were misconceived as by that time the child was one year old and there was no provision within the 2008 Act for a discretionary extension to the statutory time limit.

Held – (1) As had been recognised by the parties, the policy and purpose of parental orders was to provide for the speedy consensual regularisation of the legal parental status of a child's carers following a birth resulting from a surrogacy arrangement. Such a policy did not fit comfortably with extensions of time which inevitably resulted in the continued involvement over a protracted period of a surrogate mother in the lives of a commissioning couple and their child. A parental order was not therefore an option for the family (see [30], [31], below).

(2) An adoption order under the Adoption and Children Act 2002 would not provide a solution to the problem of JP's status of irrevocable parental responsibility, as if JP were to adopt the child alone, LP's parental responsibility would be extinguished and JP and LP could not adopt together because they were no longer married and were not living as partners in an enduring family relationship (see [32], below).

(3) If a Special Guardianship order was made in favour of JP she would be able to exercise parental responsibility for the child not only to the exclusion of the surrogate mother, which would probably be appropriate, but also to the exclusion of LP, which would potentially be inappropriate (see [33], below).

(4) A shared residence order such as had been granted under the Children Act 1989 conferred parental responsibility upon JP, but remained an unsatisfactory solution; a residence order did not confer legal motherhood upon JP and in the event that she ceased to have a residence order she would lose her parental responsibility. While a residence order regulated where the

child lived and gave JP parental responsibility, the surrogate mother retained legal motherhood and parental responsibility under the 2008 Act (see [34], below).

(5) The court would endorse the proposed consent order before it by which the child would be made and remain a ward of court until further order; there would be shared residence order between JP and LP; all issues of parental responsibility would be delegated to JP and LP jointly; and the surrogate mother would be prohibited from exercising any parental responsibility for the child without leave of the court. Given the wholly exceptional circumstances, wardship was the most appropriate way to manage the overall use of parental responsibility as between the father, the legal mother and the psychological mother of the child (see [35]–[37], below).

Per curiam. (1) The instant case highlights the real dangers which can arise as a consequence of private 'partial' surrogacy arrangements where assistance is not sought at a regulated fertility clinic. At a licensed clinic consideration will be given to the welfare of a child born as a result of the surrogacy arrangement and counselling services will be provided to the parties which will include the provision of information about the likely repercussions of a surrogacy arrangement and the importance of obtaining a parental order (see [39], below).

(2) The prohibition in s 2 of the Surrogacy Arrangements Act 1985 of the negotiating of surrogacy agreements on a commercial basis has perhaps had the effect that there are few firms of solicitors specialising or knowledgeable in the field. However, an understanding of, and ability to make, an application for a parental order complying with the provisions of the 2008 Act should be a part of the skill set of a competent general family practitioner (see [7], [41]–[43], below).

Notes

For making of parental orders, see 9 *Halsbury's Laws* (5th edn) (2012) para 129.

For the Human Fertilisation and Embryology Act 2008, s 54, see 10(2) *Halsbury's Statutes* (4th edn) (2013 reissue) 245.

Application

On 12 September 2012 JP applied under s 8 of the Children Act 1989 for a sole residence order in respect of CP, a child born on 1 March 2010 to SP as a surrogate mother following artificial insemination with the sperm of LP as a result of an informal surrogacy arrangement between SP, JP and LP (who at that time were married). The birth of CP had been registered by SP on 24 March 2010; the birth certificate showed LP as the 'father' of CP and SP as the 'mother' of CP. On the application of JP for a residence order following the breakdown of the relationship between JP and LP in June 2010 a shared residence order had been made on 15 July 2010 in the Leicester County Court in favour of JP and LP. A decree absolute had been pronounced on 4 November 2011. The matter was transferred to the High Court and CP and SP were joined as parties. The facts are set out in the judgment.

Martin Kingerley (instructed by *RP Robinson Solicitors*) for the applicant.

Frances Judd QC (instructed by *Porter Dodson Solicitors*) for the first respondent.

Nassera Butt (instructed by *Scutt Beaumont Solicitors*) for the second respondent.

Jacqueline Matthews-Stroud (instructed by *Wilson Browne Solicitors*) for the third respondent.

Judgment was reserved.

5 March 2014. The following judgment was delivered.

ELEANOR KING J.

[1] These are proceedings arising out of applications made under s 8 of the Children Act 1989 and under the inherent jurisdiction of the High Court in relation to a little boy, CP, who was born as the result of a surrogacy arrangement on 1 March 2010 (three years, eight months).

[2] Whilst ultimately the parties have been able to agree a way forward in the interests of CP, the facts of this case stand as a valuable cautionary tale of the serious legal and practical difficulties which can arise where men or women, desperate for a child of their own, enter into informal surrogacy arrangements, often in the absence of any counselling or any specialist legal advice.

Background

[3] The applicant, JP (who I shall refer to as the mother although she is neither the birth nor genetic mother) and the respondent father, LP married on 24 May 2008. The mother had had a child by an earlier relationship but had undergone an hysterectomy and was therefore unable to conceive a child with the father. The couple decided that they would attempt to conceive through 'partial' surrogacy, that is to say a form of conception where the surrogate mother's egg is inseminated using the commissioning male's (here the father's) sperm.

[4] To this end the mother and father sought the help of a friend of the mother, SP (the surrogate mother). The surrogate mother agreed to help, was artificially inseminated at home with the father's sperm and became pregnant.

[5] Under s 1(A) of the Surrogacy Arrangements Act 1985 surrogacy arrangements are not enforceable by law. This can cause serious difficulties to hospitals where babies are born as a result of surrogacy agreements. Some health areas have multi-agency surrogacy protocols in place to provide for all aspects of a surrogate birth taking place in their hospital; this includes the 'hand over' of the baby and any welfare issues which may arise. Such protocols unfortunately are by no means universal.

[6] The mother, father and surrogate mother planned that the birth would take place at the Leicester Royal Infirmary. I have not been told whether Leicester Royal Infirmary have a surrogacy protocol although they do have an assisted conception unit. In whatever guise, when the hospital became aware that the surrogate mother was giving birth as a result of a surrogacy arrangement, the hospital asked the parties to enter into and provide the hospital with a copy of a surrogacy agreement.

[7] The parties agreed and an agreement was prepared by a firm of Birmingham solicitors. The solicitors were in fact committing a criminal offence as, whilst such agreements can lawfully be drawn up free of charge, the solicitors in preparing and charging for the preparation of the agreement were 'negotiating surrogacy arrangements on a commercial basis' in contravention of s 2 of the Surrogacy Arrangements Act 1985 which says:

> '**2.** *Negotiating surrogacy arrangements on a commercial basis, etc.*—(1) No person shall on a commercial basis do any of the following acts in the United Kingdom, that is—
>
> (a) initiate or take part in any negotiations with a view to the making of a surrogacy arrangement,
>
> (b) offer or agree to negotiate the making of a surrogacy arrangement, or
>
> (c) compile any information with a view to its use in making, or negotiating the making of, surrogacy arrangements;
>
> and no person shall in the United Kingdom knowingly cause another to do any of those acts on a commercial basis.
>
> (2) A person who contravenes subsection (1) above is guilty of an offence …'

[8] CP was born safe and well on 1 March 2010 and the hospital, having seen and been reassured by the illegal surrogacy agreement, agreed to CP being handed over to the care of the mother and father. The surrogate mother registered CP's birth on 24 March 2010. The birth certificate shows the 'father' as the father and the surrogate mother as the 'mother' of CP.

[9] The relationship between the mother and father broke down in June 2010 within months of CP's birth. The mother left the matrimonial home with CP and, on 6 July 2010, made an application in the Leicester County Court for a residence order in her favour.

[10] On 15 July 2010 a shared residence order was made in the Leicester County Court in favour of the mother and father. At that hearing the mother and father also undertook to regularise CP's legal status as between the surrogate mother, the mother and the father by issuing an application for a parental order pursuant to s 54 of the Human Fertilisation and Embryology Act 2008 ('HFEA 2008'). CP was a little over 19 weeks' old.

[11] The father signed the application for a parental order on 16 July 2010 and passed it on to the mother to sign and lodge with the Leicester County Court. The mother signed the application form on 28 July 2010 but did not lodge it with the court as agreed. The application was finally issued on 19 October 2010 by which time CP was 33 weeks or seven-and-a-half months' old. The application was out of time, the statutory time limit for such an application being six months from the date of birth.

[12] The application was listed for directions on 3 November 2010 and again on 1 December 2010. Neither party attended. Judge Lea therefore ordered that the application for a parental order should stand dismissed unless, by 4pm on 30 December 2010, the mother applied for the application to be listed. No such application was made and accordingly the application was dismissed on 30 December 2010 pursuant to Judge Lea's order.

[13] During the early part of 2011 the relationship between the mother and father reached a low ebb; on 7 March 2011 the mother issued an application for a specific issue order seeking the return of CP after contact, which order was made by a district judge on 21 March 2011. The matter came in front of Judge Lea on 24 March 2011 for further directions. The shared residence order was confirmed and the mother and father undertook to reissue their application for a parental order in respect of CP; no one involved appreciated that the statutory time limit for such an application had now expired. In the event no attempt was made to make a fresh application.

[14] Decree absolute was pronounced on 4 November 2011.

[15] Relationships as between the mother and father continued to be fraught and on 12 September 2012 the mother made an application for sole residence of CP. The matter was transferred to the High Court and both CP and the surrogate mother were joined as parties.

[16] The court was asked to address the issues which arose in circumstances where there was no parental order regularising the legal status of each of the three adults involved and also to consider how this impacted on the exercise of parental responsibility by each of them.

The legal backdrop

[17] The Human Fertilisation and Embryology Act 1990 ('HFEA 1990') was the result of the recommendations which had been made in the *Report of the Committee of Inquiry into Fertilisation and Embryology* (July 1984, Cmnd 9314) (the 'Warnock Committee'). The Act set out the boundaries of what was to be determined to be the appropriate level and type of assisted reproductive technology and embryo research to be permitted in the UK. The HFEA 1990 also created the Human Fertilisation and Embryology Authority to regulate and license activities dealing with human embryos and gametes. The HFEA 1990 not only addressed issues such as consent and legal status, but also the welfare of the resulting child and the necessity of potential parents having a proper understanding of the course upon which they were embarking.

[18] By way of example; the HFEA 1990 introduced a statutory requirement that the welfare of a child born as a result of fertility treatment was to be taken into account, the relevant section said as follows:

> '**13.**—(5) A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment **(including the need of that child for a father)**, and of any other child who may be affected by the birth.' (Emphasis added.)

[19] The HFEA 1990 was substantially amended by the HFEA 2008 in line not only with the scientific developments, but also the significant evolution in public perception and attitudes; for example, the change in the intervening years in society's attitude as to whether it was right for treatment to be offered to same-sex female couples or to single individuals led to an amendment whereby the words 'need … for a father' were removed from s 13(5) in the new HFEA 1990 and the words 'supportive parenting' were substituted. Critically the requirement for a consideration of the resulting child's welfare remained in place. Guidance on the proper approach to the welfare requirement is found in Pt 8 of the HFEA Code of Practice (8th edn).

[20] Under both the HFEA 1990 and the HFEA 2008, not only must a resulting child's welfare be considered, but it is a condition of the granting of a treatment license to a fertility clinic that a woman shall not be treated unless she, and any partner who are being treated together, have 'been given a suitable opportunity to receive proper counselling about the implications of taking the proposed steps, and have been provided with such relevant information as is proper' (HFEA 1990, s 13(6).) The accompanying Code of Practice (8th edn), Pt 3, specifically refers to counselling being provided at every stage of the treatment process by a qualified counsellor.

Surrogacy

[21] So called 'full' surrogacy involves in vitro fertilisation as the commissioning couple's sperm and egg are fertilised in vitro and implanted

into the surrogate mother. Given that 'full' surrogacy as of necessity involves in vitro fertilisation, it has to take place in a licensed fertility clinic and therefore it comes within the remit of the HFEA's regulation. (The court is not aware that there are believed to be any unregulated fertility clinics offering in vitro fertilisation in England and Wales although there are many abroad.)

[22] In contrast 'partial' surrogacy is where the surrogate mother's egg is inseminated using the commissioning male's sperm. Partial surrogacy can, as was the case with CP, be carried out informally by the parties themselves at home without involving treatment in fertility clinics. In these circumstances such 'partial' surrogacy cases are neither controlled nor regulated; there is no third party consideration of the welfare of the resulting child and none of the three people involved receive information about critical issues

such as who will be the legal parents of the resulting child, or information or counselling to ensure they understand the challenges presented to parents about such issues as 'identity' consequent upon a surrogate birth.

[23] Notwithstanding that a surrogacy arrangement may have taken place outside the structure of the HFEA 2008, the Act itself nevertheless spells out the legal effect of such an informal arrangement:

(i) The **surrogate mother** having carried a child following assisted reproduction 'and no other woman', is the child's legal mother (HFEA 2008, s 33(1)). This remains the case unless the child is subsequently adopted or parenthood transferred through a parental order. Absent adoption or a parental order she has and retains parental responsibility.

(ii) The **father** is the genetic and social father of CP.

The surrogate mother was not married (HFEA 2008, s 35) and was not treated in a UK licensed clinic, she was not in the category of relationship which would satisfy the so called 'Fatherhood conditions' (HFEA 2008, s 37) which relationships could otherwise have the effect of making the husband/partner of the surrogate mother the legal father in place of the genetic father.

(iii) The **mother,** absent legal intervention, has no status other than the emotional and social status of being CP's psychological mother. Crucially she does not have parental responsibility, she cannot therefore give consent to medical treatment, register CP for a school or take a myriad of decisions in relation to CP which parents routinely do without a thought as to whether or not they have the authority so to do.

Conferring parental status/parental responsibility upon the mother

(i) Parental orders

[24] Prior to November 1994 the only means by which the commissioning couple of a child who was born to a surrogate mother could obtain parental status was by embarking on a full adoption procedure.

[25] The Parental Orders (Human Fertilisation and Embryology) Regulations 1994 SI 1994/ 2767 (brought into effect by s 30 of the HFEA 1990), created parental orders, which provided for a consensual 'fast-track' means for the transfer of legal parenthood to a couple where the child in question was conceived using the gametes of at least one of the couple. Section 30 of the HFEA 1990 was subsequently repealed and replaced with new provisions for parental orders found in s 54 of the 2008 Act which expanded the categories of individuals in respect of whom parental orders could be made so as to include married couples, civil partners, unmarried opposite-sex couples and same-sex couples not in a civil partnership.

[26] Section 54 provides:

> '(1) On an application made by two people (“the applicants”), the court may make an order providing for a child to be treated in law as the child of the applicants if—
>
> (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,

(b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and

(c) the conditions in subsections (2) to (8) are satisfied.

(2) The applicants must be—

(a) husband and wife,

(b) civil partners of each other, or

(c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

(3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.

(4) At the time of the application and the making of the order—

(a) the child's home must be with the applicants, and

(b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(5) At the time of the making of the order both the applicants must have attained the age of 18.

(6) The court must be satisfied that both—

(a) the woman who carried the child, and

(b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.'

[27] At the time of the making of the application for a parental order on 16 July 2010 the mother and father satisfied the requirements of s 54 of the HFEA 2008 to this extent:

(i) CP had been carried by a woman who was not one of the applicants as a result of the placing in her of the sperm of the father (s 54(1)(a)).

(ii) The applicants were husband and wife (s 54(2)(a)) and were over 18 (s 54(5)).

(iii) The surrogate mother agreed unconditionally to the making of the order (s 54(6)), and no money or benefit had been given or received (s 54(8)).

[28] Two statutory requirements were not, or may not, have been satisfied:

(i) The application was not made within six months of CP's birth (s 54(3)).

(ii) Had the mother and father lodged the application in late July 2010, before the six-month statutory time limit had elapsed, the issue of statutory interpretation which would still have faced the court would have been whether the existence of the shared residence order made on 15 July 2010 would have served to satisfy the requirement found at s 54(4), that—

> 'At the time of the application and the making of the order—
>
> (a) the child's home must be with the applicants …'

That issue was not argued before the court and it would not be right therefore to speculate as to the likely outcome of such a debate.

[29] When the matter came before the High Court it was agreed by all parties that the undertakings given by the parents to the county court in March 2011 'to promptly reinstate/re-issue their application for a parental order in respect of CP', were misconceived. By that stage CP was a year old, all agreed that s 54(3) says that the parties **must** apply for the order during the period of six months beginning with the day on which the child is born. There is no provision within the Act to provide for a discretionary extension to the statutory time limit and no one sought to argue that the court could, or should, whether by means of the use of its inherent jurisdiction or otherwise, seek to circumnavigate the mandatory provisions of the statute.

[30] It was recognised by the parties that the policy and purpose of parental orders is to provide for the speedy consensual regularisation of the legal parental status of a child's carers following a birth resulting from a surrogacy arrangement. Such a policy does not fit comfortably with extensions of time which inevitably result in the continued involvement over a protracted period of the surrogate mother in the lives of the commissioning couple and their child.

[31] A parental order is not therefore an option for this family.

(ii) Adoption

[32] An adoption order does not provide a solution to the problem of the mother's status of irrevocable parental responsibility:

(i) If the mother were to adopt CP alone, the father's parental responsibility would be extinguished pursuant to ss 46 and 67 of the Adoption and Children Act 2002.

(ii) The mother and father cannot adopt together because they are no longer married and they are not 'living as partners in an enduring family relationship' (Adoption and Children Act 2002, ss 50(1), 67, 144).

Special guardianship order

[33] A special guardianship order is equally not an option in CP's case; if a special guardianship order was made in the mother's favour she could exercise her newly granted parental responsibility, not only to the exclusion of the surrogate mother (probably appropriately) but also (potentially inappropriately) to the exclusion of the father.

(iii) Residence order

[34] The mother can and has been granted a shared residence order under s 8 of the Children Act 1989. The effect of the order is to confer parental responsibility upon her. It remains, on any view, an unsatisfactory solution and understandably leaves the mother feeling vulnerable; a residence order does not confer legal motherhood upon her and, in the unlikely event that she ceased to have a residence order, she would lose her parental responsibility. Whilst a residence order regulates where CP lives and gives the mother parental responsibility, the surrogate mother retains legal motherhood and parental responsibility pursuant to s 33 of the HFEA 2008.

[35] The parties, their legal teams and the guardian worked hard to find some sort of solution to the problem faced by the parents. This was greatly assisted by the fact that, after several years of bitter recriminations and a complete inability to pull together for the sake of this much-wanted child, the

parents have to their credit, and with the assistance of the guardian, managed to put aside their grievances and reach a sensible and practical shared care arrangement. This left the legal structure to be put in place in order to:

(i) provide the mother with security and recognition of her status,

(ii) to regulate the use the surrogate mother may choose to put of her parental responsibility in circumstances where, whilst there is no immediate reason to believe she would act inappropriately, she is a close personal friend of the mother and continues to see CP,

(iii) to achieve (i) and (ii) without jeopardising the father's role as legal father with parental responsibility.

Outcome

[36] The parties put before the court the following structure which, given the exceptional circumstances, the court has endorsed:

(i) CP shall be made and remain a ward of court until further order.

(ii) A shared residence order as between the mother and father.

(iii) All issues of parental responsibility are delegated to the mother and father jointly.

(iv) The surrogate mother is prohibited from exercising any parental responsibility for CP without the leave of the court.

[37] The court bore in mind before approving the proposed consent order that the very purpose of the introduction into the Children Act 1989 of prohibited steps orders and specific issue orders was to incorporate into the 'new' Act valuable features of wardship which had prevented the taking of important steps in a child's life without the leave of the court. I bear in mind that prohibited steps orders can be made against third parties and therefore, in theory, could be made to regulate the use made by the surrogate mother of her parental responsibility. I concluded however that given the wholly exceptional circumstances of this case, wardship is the most appropriate way in which to manage the overall use of parental responsibility as between the father, the legal mother and the psychological mother of this child.

Cautionary tale

[38] Happily, the mother and father having had the benefit of expert legal advice and, with assistance from a first-class guardian, CP can now look forward to a secure and happy future with her care being shared between the two people she does and will continue to regard as her parents.

[39] This case however highlights the real dangers which can arise as a consequence of private 'partial' surrogacy arrangements where assistance is not sought at a regulated fertility clinic (or indeed full surrogacy arrangements where the child is born abroad). At a licensed clinic consideration will be given to the welfare of a child born as a result of the surrogacy arrangement and counselling services will be provided to the parties which will include the provision of information about the likely repercussions of a surrogacy arrangement and the importance of obtaining a parental order.

[40] It is to be hoped that a multi-agency surrogacy protocol will soon be in place in every health authority in England and Wales, drafted in conjunction with their local fertility units and local authorities. Such protocols would go some way to ensuring that in informal surrogacy arrangements the welfare condition is met and the adults will be given important information and advice.

[41] Outside the regulated clinics advice is hard to find; there are few firms of solicitors specialising, or even passingly knowledgeable, in the field, perhaps in

part because the prohibition contained in s 2 of the Surrogacy Arrangements Act 1985 prohibiting the negotiating of surrogacy agreements on a commercial basis means that firms are not providing a 'surrogacy service'. Surrogacy is however becoming increasingly common and the number of applications for parental orders around the country is increasing rapidly, particularly since the amendments to the HFEA 2008 now allow same-sex and co-habiting opposite-sex couples (but not single people) to apply for parental orders (s 54(2)).

[42] In CP's case, not only did the first firm of solicitors draft an illegal surrogacy agreement, but once Children Act proceedings commenced no one knew (or checked) the time limits relating to parental orders.

[43] The application for and granting of parental orders whist not 'routine' is no longer the exclusive province of lawyers specialising in reproduction and human embryology law. An understanding of, and ability to make a proper application complying with the provisions of the HFEA 2008, should be as much a part of the skills set of a competent general family practitioner as is a step-parent adoption.

Order accordingly.

Karen Widdicombe Solicitior (non practising).