PROGAR's submission to the Parliamentary Office of Science and Technology September 2025

The British Association of Social Workers (BASW) Project Group on Assisted Reproduction, PROGAR (Project Group on Assisted Reproduction (PROGAR) | BASW) has since the 1980s campaigned on matters concerning assisted reproduction, including surrogacy, in the UK and overseas. Over the years, we have worked variously in partnership with donor-conceived adults, Barnardo's, Children's Society, Donor Conception Network, Donor Conceived UK, British Infertility Counselling Association (BICA), British Association for Adoption and Fostering (BAAF), National Association of Guardians ad Litem and Reporting Officers (NAGALRO), Children and Family Court Advisory and Support Service (Cafcass), Children and Families Across Borders (CFAB), Surrogacy UK and UK DonorLink

PROGAR does not take a stance for or against surrogacy. Rather, its focus is on the ethical and human rights of those impacted by surrogacy, including the lifespan implications for surrogate-born people, their families and networks and those of the other parties affected, including surrogates and donors, where one is involved.

We agreed with many (but not all) of the Law Commissions' recommendations and their draft Bill but argue that further work is needed in relation to the rights of surrogate-born people. Our submission to the LCs' consultation and our report to the Public Health Minister in October 2023 following publication of the LCs' report can both be found in the PROGAR 'Publication and Resources' section at Project Group on Assisted Reproduction (PROGAR) | BASW. We included many references in those documents. We also contributed to the International Social Services Verona Principles for the Protection of the Rights of Children Born Through Surrogacy - https://iss-ssi.org/surrogacy/ and believe that our comments below should be considered against those.

There are two key underpinning concepts to our response to surrogacy:

(i) Surrogacy is a family building intervention not a medical treatment- The LCs concluded that surrogacy is closer to IVF than adoption: we **disagree**. Taking the routes to parenthood/family life as being on a continuum from natural conception to adoption, surrogacy will sit next to adoption. Although surrogacy arrangements are typically carried out in medical contexts, this does not detract from similarities with the adoption (i.e. non-medical) context whereby a woman conceives and carries a pregnancy and gives birth and the child is raised by someone else. Where adoption differs is that the conception was not achieved with the *intention* that the child would be raised by other parents: sometimes the intention for adoption is arrived at, provisionally, during the pregnancy (through voluntary relinquishment or through child protection procedures); sometimes the adoption occurs quite some time after birth. Core to the approach to adoption is that prospective adopters will not only undergo an assessment process but also preparation sessions aimed at increasing their potential to cope with, and be better equipped for, the additional aspects of adoptive parenting. We would like to see an adapted version of this as a *requirement* for entering surrogacy arrangements and for it to be informed by child welfare professionals and, of course, children's rights. This would thereby acknowledge the additional aspects of parenting a surrogate-born child. Some surrogacy agencies already offer something akin to this but it should be universally *required*.

(ii) Existing research is limited and should be treated with due caution. Research on surrogacy is still very sparse and there are no large-scale studies, longitudinal or otherwise. There is often an over-

reliance on and/or unwarranted extrapolation from existing research findings. In addition, its relative exclusion of attention to the involvement of donors (where used) carries risks, especially given the more extensive body of research into the lifespan implications of using donor conception treatments. In current practice, donors are far less likely to be known to IPs than are surrogates and access to their information can be time-delayed or not allowed. Donors can therefore remain 'in the shadows' - like a ticking time bomb - for all concerned, including policy makers and professionals. Building in such asymmetry for surrogate-born people carries significant adverse implications.

We also have an overlying concern specific to <u>international surrogacy</u> but deal first with where we agree with the LCs. We support the importance of improving the processes whereby IPs can bring the surrogate-born infant into the UK. For a child to be 'stranded' overseas is not acceptable in human rights terms. In addition, any concerns about the context in which the surrogacy arrangements have been made and carried out are best dealt with in the UK. However, we also suggest the importance of improving the processes for any child born overseas with a legitimate claim to enter the UK not only those born through surrogacy arrangements.

Importantly, we are also concerned that more than half of UK Parental Orders now result from international arrangements and there are a growing number of associated 'reported cases'. The UN Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences has also just reported on surrogacy- https://docs.un.org/en/A/80/158. It makes disturbing reading (and we are aware that some of its content has been challenged) and strengthens the case for looking further into how to minimise the risks of international arrangements.

Below, we set out where we agree with the LCs' recommendations and where we have outstanding **CONCERNS**, bringing some up to date from our earlier reports.

- <u>Establish a Surrogacy Register</u> – while we **agree**, (including allowing retrospective registration in certain situations) our **CONCERN** is:
    - a surrogate-born child's human right under UN CRC to know **all** their parents regardless of whether legal, genetic or gestational should require the Register to include the identity of any donors that were used as well as that of surrogates. If not, there will be a two-tier system whereby those with a known donor will be able to access their identity and that of the surrogate from the Surrogacy Register but those with an ID release donor will have to apply to the HFEA Register (which may anyway have different eligibility rules).
    - We are also very aware that any informal surrogacy arrangements (domestic or international) and international arrangements will be excluded from the Register, strengthening our concerns above about the need for more work in those areas.

- <u>Regulation of Surrogacy Organisations</u> for domestic arrangements pursuing the 'new pathway'. While we **agree, o**ur key **CONCERNS** are:
    - There should be a requirement for RSOs to have child welfare expertise and/or include such expertise in their policy making and practice arrangements;
    - There should be a requirement for minimum levels of contact with the parties throughout the treatment, pregnancy and afterwards. As written, RSO involvement is only *required* pre-conception and at around the time of birth and immediately afterwards if the surrogate withdraws her consent and otherwise only to provide information to the Surrogacy Register.

- Surrogacy Agreements – we **agree** these should be required and *strongly* support that IPs should have no right to enforce the agreement (as argued by Maud de Boer-Buquicchio, UN Special Rapporteur on the sale and sexual exploitation of children in her 2018 report https://www.ohchr.org/en/documents/thematic-reports/ahrc3760-report-special-rapporteur-sale-and-sexual-exploitation-children) and that surrogates have the right to withdraw consent during pregnancy and up to six weeks post birth (but also see our next bullet point about withdrawal of consent). Our key **CONCERNS** are:
    - There is an over emphasis on what can be achieved with pre-conception surrogacy agreements. They can never amount to 'fully informed consent' as the parties are in effect speculating about how they will feel when going through the process. They should instead be seen as a working document and subject to change including through mediated resolution if there is conflict
    - Requirements for pre-agreement **assessment** for surrogates and IPs; and the requirement (as in the HFE Acts) to take account the welfare of *existing* children as well as the welfare of the child to be born do not go far enough:
        - Should be minimum levels of implications counselling sessions, given the potential complexity of surrogacy arrangements;
        - Recommendation 30 that counsellors should let the RSO know if they have any concerns about any of the parties involved is too vague, makes no reference to confidentiality agreements that typically exist in counselling relationships and are subject to the counsellors' Code of Ethics; and risks blurring the boundaries between counselling and welfare of the child assessments;
        - Child welfare expertise and children's rights' understanding should be required for parts of the process and included in the knowledge and skills set of RSOs and counsellors;
        - The assumption that existing HFEA Welfare of the Child assessment procedures are sufficient is of concern - PROGAR has been raising concerns with the HFEA for some time about their lack of robustness;
        - Given that minors can also commit crimes against children, this needs to be built into the safeguarding scrutiny process as well as requiring enhanced DBS checks for adults aged 18 and over;
        - There are insufficient safeguards for existing children that may be affected, for example where the spouse/partner of a surrogate in an ongoing committed relationship does not agree with the proposed arrangement. Unlike in the **Verona Principles** there is no recommendation/requirement that the spouse/partner of the surrogate and any existing children should be included in pre-conception assessment and counselling. We argue that this should be required in order for the RSO to assess whether any proposed surrogacy arrangement may impact negatively upon the surrogate's existing children as well as the child to be born of the surrogacy arrangement;
        - There should be a shelf life for surrogacy agreements after which they would need to be renewed. There is also a need for a mechanism to ensure that the signatories remain the same prior to each treatment being entered (the latter has been an issue at times in HFEA-licensed treatments, for example when a woman changes her partner but does not notify the clinic);

- There should be a requirement for intended parents to undertake preparation sessions to better equip them for parenting through this route;
- There should be a requirement for all donors to give specific consent for their gametes to be used in a surrogacy arrangement.

- Arrangements for surrogate's withdrawal of consent/post birth consent: We **agree** that the surrogate's consent should be required following the birth of the child but **disagree** with the LC's recommendation for how this should be done. Our **CONCERNS** include**:**
  - The surrogate should herself confirm her consent post birth rather than this being done for her by the IPs. We believe this would have benefit for the surrogate herself and for the surrogate-born person in later life. Assigning the declaration to her would also be more in keeping with respecting her autonomy than requiring the IPs to do this.
  - The proposal that the surrogate be required to notify both the IPs and the RSO if she decides to withdraw consent is inappropriate. Given that such a decision may sometimes be caused by her concerns about the IPs, it potentially exposes her to risk and/or undue pressure if she has to deal with the IPs direct. We strongly suggest that she should only be required to notify the RSO (or another third party) and it should then be the responsibility of the RSO to inform the IPs.
  - The assumption that RSOs will be a neutral party for the purposes of providing support to the surrogate in the event of her withdrawing consent is problematic. There will be circumstances where the RSO may have a conflict of interests given their involvement with IPs, or may be perceived to have such a conflict by the surrogate. They may at times anyway be asked to provide support to the IPs themselves. While such instances may be rare, they are likely to be complex. Hence independent support may be needed for the surrogate, its offer should be a requirement and should be free of charge.
- Courts to have the ability to dispense with surrogate's consent in PO applications in certain circumstances (**AGREE**).
- Changes to birth registration – while we agreed with parts of the LCs' proposals, especially the inclusion of the fact that the birth resulted from a surrogacy arrangement on the long certificate, we were divided about their proposal for IPs to be legal parents at birth (see below). We strongly support a retrospective change to right of access to their original birth certificate for surrogate-born people in England and Wales who have a Parental Order. Our **CONCERNS**:
  - We strongly recommend that the long certificate also makes clear whether it was a genetic surrogacy arrangement; a gestational (IPs' gametes alone) surrogacy arrangement or a gestational (with donor) surrogacy arrangement – important information for a surrogate-born person.
  - On the whole, we preferred the LCs' alternative model in their consultation document, but with surrogate-born people being given statutory rights to access the original certificate.
  - We believe that health services should be required to notate the birth notification they send to the Registrar to indicate where the birth has been the result of surrogacy

arrangements (where this is known to the health services). This would provide an additional check in the system.

- We cannot see why surrogate-born people who are subject to a Parental Order should not have the right of age-related access to their original birth certificate in line with those on the new pathway. Surely the principle is the same?

- Legal parenthood - The LCs recommended that IPs be allowed to register as the child's legal parents from birth under the new pathway on the grounds that it would be in the 'best interests' of the child by thus providing legal certainty for the child and reducing stress. The statement regarding 'best interests' is not well evidenced in the LCs' report although it is clear from the research they cite (which is sparse as we refer to earlier) that some IPs and surrogates would prefer IPs to have legal parenthood from birth. There is no research evidence that surrogate-born infants are harmed by the delay to transfer of legal parenthood. We remain divided in our views about this proposal, with a majority retaining concerns about removing the link between the person giving birth and legal parenthood and shifting the assigning of legal parenthood to an administrative process rather than a judiciary one. We would like to see much fuller exploration of options that do not require the severing of this link – for example the surrogate and IPs being registered as legal parents until the point at which it is clear that the surrogate is not going to withdraw consent (currently proposed as at 6 weeks post birth) This is especially so given that the shift to legal parenthood at birth will only apply to IPs using the new pathway, potentially a minority of those using surrogacy arrangements.

- We **agree** that parental responsibility should be given to IPs regardless of which route to legal parenthood is used. However our **CONCERN** is that more work is needed to determine how IPs not using the new pathway could trigger the acquisition of PR. At the least it should be linked to their intention to apply for a Parental Order. Safeguards might then be needed where the IPs fail to make a PO application, leaving the surrogate (and her spouse/ civil partner if she has one) to be the legal parent and having PR.

- Access to information – we **AGREE** that all surrogate-born people in England and Wales should be able to access identifying and non-identifying information from the Register and to access their complete Parental Order file (where this applies). The LCs recommended such access should be variously at ages 16, 17 and 18 or younger if Gillick competent. Our **CONCERN** is that this should go further as it is becoming increasingly clear that withholding information from minors may be open to legal challenge on human rights grounds and that the use of commercial DNA testing is anyway leading to changes regardless of the legal framework. We support the HFEA's law reform proposal to move towards donor-conceived people being able to access identifying information about their parent(s)'s donor(s) from birth. We earlier voiced our **concerns** about any introduction of a two-tier system for anyone born through surrogacy with donor arrangements. Other **CONCERNS** include:

  - Although it is recommended that the children of surrogates should have the right to access non-identifying information about children born to their mother or to learn (from age 16) if anyone to whom they intend to marry, enter a civil partnership with, have a sexual relationship with, was carried by the same surrogate as themselves, the

same right is not extended to the children of the donors used. We also believe the age should be lowered.

- There should be a requirement to inform any applicant to the Surrogacy Register where a donor was involved of their right to join the HFEA Donor Sibling Link voluntary register, including their right to make such an application even if they were not aware/were unsure if a donor had been used.

- There is nothing proposed about who will meet the costs of the proposed counselling service for applicants prior to information release, who will provide it and who will provide and pay for professional intermediary services for those who wish to establish contact. This is of additional concern given that the HFEA withdrew funding even for its very limited free professional support to applicants to the HFEA Register in 2024;

- There are no proposed requirements for clinics or regulated surrogacy agencies to collect a 'pen portrait' (ie biographical information) about either the surrogate or the donor (where one is used) for release to surrogate-born people. Research suggests that those wishing to learn more about their origins welcome such information about the surrogate and donor 'as a person' and not only their height, weight, medical history.

- Record keeping - We have recently become aware of the insecurity of record-keeping in the UK with some recent proposals being floated to destroy records that we consider to be of heritage importance. We therefore feel reference to records storage should be strengthened: they are of value not only to the person to whom they apply but also to those who come after them, in particular their descendants.

- Support for both genetic and gestational surrogacy to continue (**AGREE**) – we have had growing concerns at the growth in recent years of gestational surrogacy with the use of a donor, both domestically and internationally. There is no evidence that it is in the best interests of surrogate-born people for a donor to be used when not required on medical grounds. Our **CONCERN** is the potential for resulting additional lifespan complexity arising from having to incorporate the meaning to them of having an additional 'parent' as well as any the additional associated information exchange and/or contacts. In addition research suggest that even if IPs are open with their child about their use of a surrogate this does not necessarily extend to their use of a donor, leaving open the possibility of late disclosure of their genetic heritage with all the associated risks. Informed consent of all parties should therefore include a requirement for IPs to be made aware of the potential for such additional complexity.

- Requirement retained for a genetic link to at least one of Intended Parents. (**AGREE**). We also **AGREE** with the recommendation that an IP without a genetic link can apply for a PO if their prior relationship with the other IP has broken down, leaving the court to decide who should be awarded legal parent status.

- Age and other requirements for surrogates – we **AGREE** with 21 being the minimum age for surrogates but are **CONCERNED** at the proposed lack of an upper age or any restriction on the number of surrogate-born infants that a surrogate can give birth to. For example it appears to take little account of the increased risk of genetic abnormalities with age. We also have **CONCERNS** about the lack of a requirement for a surrogate to have already given birth before becoming a surrogate. Pregnancy is a

major life event. If a surrogate has a difficult pregnancy or birth then this may affect her future decisions about whether to have children of her own.

- Retention of time limit of six months to apply for a PO (where one is required) with courts having the power to dispense with it for late applications (**AGREE**)
- Ban retained on commercial surrogacy (**AGREE**) – our **CONCERN** is that more clarity is needed about the involvement of 'not-for-profit' organisations and especially where the boundaries between altruistic and commercial surrogacy become blurred.
- Introduction of clearer rules around 'allowable' payments but that where these are breached this should not prevent the process continuing, providing that it is in the best interests of the child (**AGREE**)