



INDEPENDENT

Parents who use surrogate waiting up to a year to become legal guardians

Exclusive: Fears over how long surrogate remains baby's legal mother have been raised

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Francis Haugen and his husband Stuart Armfield had a child via surrogacy
(Alex Dark Photography)

Surrogacy laws in the UK are putting the health of babies at risk due to the length of time it takes parental orders to come through, experts have warned.

The process of surrogacy involves a woman volunteering to go through with a pregnancy for another individual or a couple, who then go on to become the child's parent or parents after the surrogate gives birth.

Current UK laws say an intended parent must apply for a parental order to become the legal parent of the child, a process that can take up to a year.

Until the order is granted, the baby's legal mother remains the surrogate, even if the baby is now living with the intended parents. Experts have said this can mean protection is not being provided for babies in medical emergencies.

Harriet Errington, a family law partner at London firm Boodle Hatfield, who advises on surrogacy arrangements, told *The Independent* it takes an average of around six months for the parental order to be granted but can take up to a year.

Ms Errington said: "They might not have any contact with the surrogate mother anymore. In the meantime, if there are any medical decisions to be made, the intended parents don't have the legal authority to make those medical decisions.

"So say the baby was really sick and needed treatment urgently in hospital and the hospital couldn't get hold of the surrogate mother because she is not in the baby's life anymore, it would be really difficult.

"That kind of scenario demonstrates how absurd the whole situation is. These laws are putting the baby's health and welfare at risk. They are just not really child focused."

She said the whole process whereby intended parents are caring for their child but have no legal rights can be "really scary" for all involved.

The baby "should always be foremost in our mind" as the "main party who we all need to be concerned about", she added.

Ms Errington noted intended parents are often fearful the mother "might renege on her agreement" and decide to keep the child she has carried.

"She could potentially do that under English law," she said. "Indeed it sort of facilitates that for her. But no one really considers the other side of the coin,

which is what if the intended parents were to change their mind, potentially leaving the surrogate mother with a baby that she doesn't want.”

Francis Haugen, who had a child via surrogacy with his husband Stuart Armfield, told *The Independent* how gaps in the law could have endangered their baby's health.

The 35-year-old, who has a large TikTok presence with Stuart, added: “Our surrogate wasn't genetically linked to our child. One of us is the genetic father of the baby but neither of us went on the birth certificate.

“We had to wait 10 months until after the birth for the parental order to come through. We think that is legally outdated and needs updating to reflect modern times.”

Mr Haugen explained until the parental order came through, their child's legal father was their surrogate's husband.

He added: “We went to hospital as our baby boy was unwell and the doctors wanted to do a lumbar puncture because he had an infection.

“They gave us all the forms. We said ‘we can't sign these, as we are not the legal parents’. Luckily it transpired it wasn't anything serious and he had Covid and they didn't need to do a lumbar puncture.

“If they had needed to do it, our surrogate lives three hours away, so I don't know how that would work if it was an emergency or she had been abroad as I assume you need to sign the papers in person. It was very scary.”

Mr Haugen, who runs a social media company with his husband, said it is easy to forget they are not the legal parents in their daily lives, but with “big important life events, suddenly you are reminded you don't have any power in the eyes of the law”.

In 2019, the Law Commission of England and Wales and the Scottish Law Commission called for surrogacy laws to be overhauled. Among other recommendations, they called for new parents who go through surrogacy to have legal responsibility for their child when they are born, scrapping the current system of parental orders, while still allowing for the surrogate mother to object if necessary.

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Ms Errington said she was disappointed to learn the Law Commission has postponed the “much-needed Surrogacy Reform Bill” to next spring as she warned surrogacy laws required “reform years ago” due to being “acutely out of step with modern fertility practises, attitudes and family structures”.

She added: “It requires an urgent rebalancing to ensure that the biological parent, intended parents and, critically, the welfare of the child are equally protected.

“The existing linear approach is no longer fit for purpose and as the law stands, both intended parents and surrogates are at risk should either party renege on their agreement, with potentially devastating consequences.”

The lawyer argued the UK's main surrogacy legislation is almost “40 years out of date”, warning it is “terrible” the Surrogacy Reform Bill “keeps getting pushed off into the long grass” due to being a “difficult, emotive” subject area.