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CHILDREN'S VOICES IN SURROGACY LAW



PHASE ONE PRELIMINARY REPORT

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All participants have been given pseudonyms used in this report.

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For more information about the project, please visit: childrensvoices.le.ac.uk



TABLE OF CONTENTS

Introduction.....	- 1 -
Topic One: Parenthood	- 6 -
Topic Two: Contributions to Surrogates	- 12 -
Topic Three: Origin Information and Contact.....	- 17 -
Topic Four: Children Navigating Surrogacy in their Social Worlds.....	- 25 -
Preliminary Conclusions	- 27 -
Next Steps	- 29 -
References.....	- 30 -
Appendix One.....	- 31 -



INTRODUCTION

Children's Voices in Surrogacy Law (CVSL) is an empirical project that aims to gather and analyse children's views on surrogacy law. This Report sets out the preliminary findings of the focus groups from **PHASE ONE**.

PHASE ONE of the project involved children and young people with experience of surrogacy who were aged 8-17. The goal was to ascertain their views about the current law and the extent to which law reform is required. Three groups of children and young people were involved:

1. Children and young people born through surrogacy,
2. Children and young people whose mother had a child through surrogacy or was planning to do so,
3. Children and young people whose family member had a child through surrogacy.

There were three topics chosen for consideration:

1. Parenthood,
2. Contributions to surrogates,
3. Origin information and contact.

Data were collected in two forms:

- a) focus groups, and
- b) creative contributions (drawings, paintings, plasticine models, digital content) on the theme *what surrogacy means to me*.

Participants were recruited through various methods, including placing online calls on social media, sending emails to the four non-profit surrogacy organisations recognised by the Department of Health and Social Care (Brilliant Beginnings, Childlessness Overcome Through Surrogacy (COTS), My Surrogacy Journey, and Surrogacy UK), Donor Conception Network, and contacting independent surrogates. **FIGURE ONE** (below) presents a sample advertisement placed via social media for focus group recruitment. Additionally, calls were placed through the websites and emailing lists of the Institute of Medical Ethics (IME), the Society of Legal Scholars (SLS), and the Socio-Legal Association (SLSA).

FIGURE ONE: Sample advertisement for focus group participants



Between July and November 2022, seven focus groups were carried out with 25 children and young people aged 8-17 years old. Twenty-one girls and four boys took part. Six focus groups were held face-to-face (Focus Groups ONE, TWO, THREE, FIVE, SIX and SEVEN). Focus Group FOUR was held online via Microsoft Teams. The focus groups lasted between 47 minutes and two hours and thirty minutes. **TABLE ONE** (below) presents the organisation and breakdown of the seven focus groups.

TABLE ONE: Organisation and breakdown of focus groups

	Age range	Number	Gender and relationships	Format
Focus Group ONE	8-10 years	5	5 girls (2 siblings)	face-to-face
Focus Group TWO	11-13 years	6	5 girls, 1 boy (2 siblings)	face-to-face
Focus Group THREE	10 years	2	2 girls (siblings)	face-to-face
Focus Group FOUR	15-17 years	3	2 girls, 1 boy	online
Focus Group FIVE	9-10 years	3	3 girls	face-to-face
Focus Group SIX	11-13 years	4	2 boys, 2 girls (2 sets of siblings)	face-to-face
Focus Group SEVEN	14	2	2 girls (siblings)	face-to-face

As can be seen in **TABLE ONE**, participants were grouped together in focus groups to ensure that there was no greater than a two-year age difference present. This approach sought to ensure that each focus group was appropriately pitched to different levels of understanding, thereby allowing children to feel comfortable expressing their views. **TABLE TWO** shows the breakdown of participants in relation to the experience they have of surrogacy.

TABLE TWO: Participants' experience of surrogacy

Experience of Surrogacy	
Born through surrogacy	7
Children of surrogates	17
Children whose family member had a child through surrogacy	1

For focus groups involving children aged 8-14, a deck of playing cards was designed to help with the activities, as seen in **TABLE THREE** (below).¹ The deck included three types of cards:

1. Explanation cards: cards with pictures and definitions,
2. Illustration cards: cards with pictures only,
3. Question cards: cards with questions.

The explanation cards were used to define terms including '*gestational surrogacy*,' '*traditional surrogacy*,' '*donor*,' '*Parental Order*' and '*intended parents*.' The illustration cards were used by children to choose different answers to questions. The question cards allowed children to follow the questions posed during the sessions. **APPENDIX ONE** presents a selection of these cards.

Although a script was used by the facilitators, the wording of the questions differed slightly in each group; additional explanations were needed in some groups and, if the discussion developed, sometimes other questions were posed by the facilitator or children. **TABLE THREE**

¹ The card content was developed by the team and the research assistant, Dr Charlotte Mills. The deck was illustrated and designed by Saria Digregario and Claudia Dagostino.

presents the questions posed to the children's focus groups and any accompanying activity conducted during the session. Participants picked their own pseudonyms for the focus groups.

TABLE THREE: Focus Group Protocol for Children Aged 8-14

	Question	Activity	Cards Used
TOPIC ONE: Parenthood	What makes somebody a parent?	Children wrote and drew on post-it notes placed on a board, followed by a group discussion.	
	When a child is born through surrogacy who do you think the parents should be?	Children chose between (a) intended parents (b) surrogate, or (c) surrogate and partner.	<i>Illustration cards:</i> Intended parents, Surrogate, Surrogate and partner
	What do you think of Parental Orders?	Group discussion	<i>Explanation card:</i> Parental Order
	One of the reasons for the rules that we have now is to allow the surrogate to change her mind. What do you think of that?	Group discussion	
	In order to be able to apply to the judge to become the legal parents, one of the intended parents has to be genetically related to the child. What do you think of that?	Group discussion	<i>Illustration cards:</i> Egg, Sperm
TOPIC TWO: Contributions to Surrogates	What kinds of things do you think intended parents should be allowed to give surrogates?	Children assembled illustration cards under cards labelled 'yes,' 'no,' and 'not sure.'	<i>Illustration cards:</i> Car, Holiday, Doctor's fees, Maternity clothes, Vitamins, Money, Spa voucher, Lost wages
	Should a surrogate be paid for being a surrogate during the pregnancy?	Children chose between 'yes,' 'no,' and 'not sure.'	<i>Illustration cards</i> Yes No Not Sure
	Some people think that surrogates should not be paid money because children who are born through surrogacy would not want to know that their surrogate had been paid. What do you think of that?	Group discussion	<i>Illustration cards</i> Yes No Not Sure

TOPIC THREE: Origin Information and Contact	Should children born from surrogacy be told that they were born this way?	Children circled answers (yes, no, not sure), followed by group discussion.	<i>Question card</i>
	Should children born from surrogacy know who their surrogate was?	Children circled answers (yes, no, not sure), followed by group discussion.	<i>Question card</i>
	Should children born through surrogacy know whether the surrogacy was traditional or gestational?	Children circled answers (yes, no, not sure), followed by group discussion.	<i>Question card</i>
			<i>Explanation cards:</i> Traditional surrogacy, Gestational surrogacy
	If the surrogacy involves egg or sperm donation, should children born through surrogacy be told about this?	Children circled answers (yes, no, not sure), followed by group discussion.	<i>Question card</i>
			<i>Explanation card:</i> Donor <i>Illustration cards:</i> Egg, Sperm
	When/what age should children be told about and who should them?	Group discussion.	<i>Question card</i>
	Should children of women who act as a surrogate know whether the surrogacy was traditional or gestational?	Children circled answers (yes, no, not sure), followed by group discussion.	<i>Question card</i>
<i>Explanation cards:</i> Traditional surrogacy, Gestational surrogacy			
Do you think that contact between the surrogate and her family and the family who used surrogacy is important? If so, what kind of contact do you think is appropriate?	Children circled answers (yes, no, not sure), followed by group discussion.	<i>Question card</i>	

FOCUS GROUP FOUR was held virtually, reflecting the preferences of the young people aged 15-17 who participated. Since this was online, playing cards were not used. Instead, the definitions and questions were displayed on a PowerPoint presentation. The questions were the same for **TOPIC ONE: Parenthood** and **TOPIC THREE: Origin Information and Contact**. For **TOPIC TWO: Contributions to Surrogates**, participants were asked their views on the acceptability of seven of the eight categories of potential contributions from the Law Commissions' Joint Consultation Paper infographic (below at *FIGURE TWO*) shown on a slide. The only category not discussed was 'loss of welfare entitlement' as it was thought that it was too similar to 'loss of earnings.'

These seven categories were:

1. Essential costs of pregnancy,

2. Additional costs of pregnancy,
3. Costs associated with a surrogate pregnancy,
4. Compensation for pain and inconvenience,
5. Compensation for loss of earnings,
6. Gifts,
7. Payment for being a surrogate.

FIGURE TWO: Law Commissions' infographic ²



Following FOCUS GROUP ONE and FOCUS GROUP TWO, a new topic of discussion emerged from the participants themselves, prompting the inclusion of a fourth topic with the remaining five focus groups. This fourth topic related to how participants navigated surrogacy in their social worlds, and the questions posed were:

- 1) Do you tell people you are born through surrogacy/your family member is or was a surrogate?
- 2) Do you have to explain it?
- 3) What do people think?
- 4) Do you learn about surrogacy in school?

² Law Commission, *Building Families Through Surrogacy: A New Law* (Law Com No 244, 2019) para.15.4.

TOPIC ONE: PARENTHOOD

We asked participants to tell us what they thought makes someone a parent.

Participants were asked to write and draw on post-it notes, which were placed on a board and a group discussion followed. Participants' answers focused on *'having babies,'* with some explaining this could be done by having sex/having your own, through surrogacy, adopting, fostering, or being a guardian. Some examples include:

You become a parent by having kids either adopting, surrogacy, foster, having your own - all that makes you a parent. (Ava, 10, child of surrogate)

If you are a parent, the way you do it is by having a baby. The way a baby is made if you don't use surrogates is by having sex. (Raven, 9, child of surrogate)

To become a parent, you need a sperm and an egg. A parent is someone who has a child or has had a child for someone else via IVF... (Oliver, 11, child of surrogate)

A parent would be a person who is your guardian, and it doesn't have to be your biological parent. (Valeria, 10, child of surrogate)

FIGURE THREE (below) presents a word cloud depicting the most prevalent terms provided by participants, including *'care'* (15), *'support'* (12), *'responsibility'* (11) and *'love'* (10).

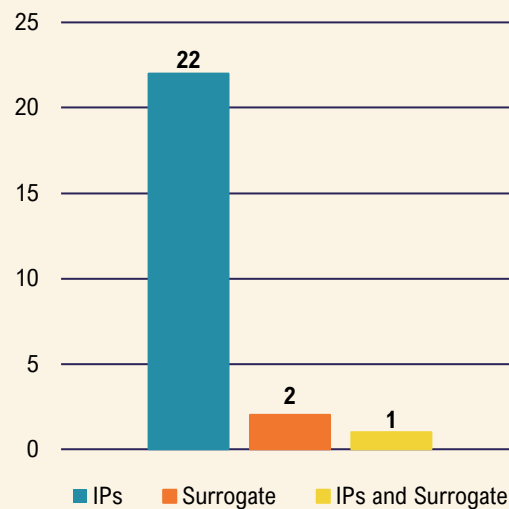
FIGURE THREE: Word cloud



We asked: When a child is born through surrogacy who do you think the parents should be?

Participants were asked their views on who should be recognised as the parents following a surrogacy arrangement. They were asked to choose one of three choices depicted on illustration cards: *'intended parents,'* *'surrogate'* and *'surrogate and partner.'*

As seen in FIGURE FOUR (below), **twenty-two** participants said this should be the intended parents, **two** said it should be the surrogate, and **one** said it could be both the intended parents and the surrogate.

FIGURE FOUR: Participants' views on parenthood following surrogacy

Two participants mentioned that the presence of a genetic link might affect who should be recognised as the parents; for example, Scarlett (11, born through gestational surrogacy) said:

It is not just the person who gave birth ... it is the person who looks after the child or baby...When I was first born, obviously, the surrogate was by law my proper mother, but obviously she is not and it's my parents that are my parents.

Jane (14, born through surrogacy), focused on choice with regards to parenthood following surrogacy arrangements:

'cos the intended parents chose to be the parents, and the surrogate chose to be a surrogate—not a parent.

Christina (14, born through surrogacy), focused on relied on the idea of adopting responsibility as the reason for recognising intending parents as the legal parents:

At the start of the surrogacy process, the intended parent ... like ... took full responsibility for the child that would be born.

We explained Parental Orders and asked: 'What do you think of Parental Orders?'

The explanation card for the term Parental Order, seen in **APPENDIX ONE** was used for the participants aged 8-14, and the same definition was presented to the participants in the online focus group.

Twenty of the twenty-five participants said that the system should be changed and that the intended parents should be the parents at birth; for example, Scarlett (11, born through surrogacy) said:

It [the law] should be changed to as soon as the baby comes out, comes out of the tummy, or comes out, it should first, straight away, be the person who is intending to look after it.

Similarly, Ellie (13, born through surrogacy) did not think the surrogate should be the parent when the child is born, and expressed that she did not understand the necessity for the Parental Order process:

It's a bit unnecessary. I don't think going through a middleman is really... I don't see why it should be the surrogate at all in the first place.

Some participants referred to intended parents' expectations and effort expended, like Eliza (11, child of surrogate):

I think it's wrong that you should have to apply for that. You've done all this work, put all this time to find a surrogate, like you could be on a waiting list for two years and then to have to go to court like six weeks after the baby's born, that's when they have to apply for the parental order and that can take quite a while to change even then so, I don't think it's right 'cos I think that the intended parents from the start should be the parents.

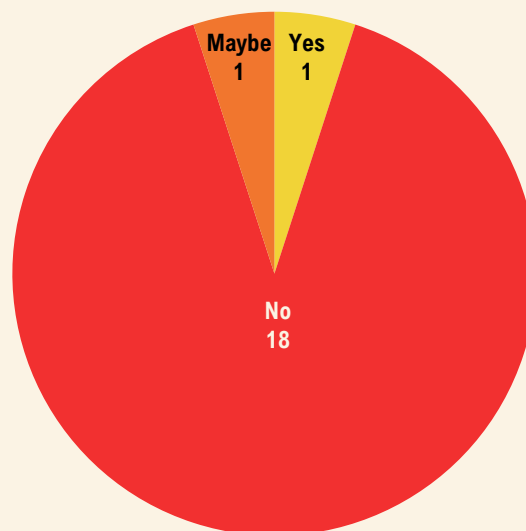
Similarly, Valeria (9, child of surrogate) said:

If... the parents, the ... the parents aren't the surrogate ... they're ... they've worked hard, and they have given their sperm ...and then if somebody else takes their baby, and they've been wanting to have a baby, and they've worked really hard, that's not fair.

We explained that one of the reasons for the current law was to allow the surrogate to change her mind, then asked participants what they thought about this.

As seen in **FIGURE FIVE** (below), **eighteen** participants said that the surrogate should not be able to change her mind.³ **One** said 'maybe', and the other **one** said she should have to go to court if she wanted to do so.

FIGURE FIVE: Participants' views on whether surrogates should be able to change their mind



Participants' views on surrogates' ability to change their mind were nuanced. Some children were dogmatic, like Evalynn (11, born through gestational surrogacy):

I don't think the surrogate could change their mind because it is not the surrogate's baby. It is the intended parents' [baby]. And so, I think that shouldn't really happen.

³ Five children in FOCUS GROUP ONE did not answer this question at all.

Young participants were more concerned about the happiness of the entire group and 'fairness' as Lilly (9, child of surrogate) explained:

My mum said that you have to trust... the intended parents have to trust the surrogate and the surrogate has to trust the intended parents, because, they need to trust them, because if the surrogate wants to keep the baby, then that's not going to be fair, because they waited for a long time.

Participants in two focus groups mentioned the possibility of three parents (the intended parents and the surrogate). Scarlett (11, born through surrogacy), based this on a circumstance in which they all agreed/wanted this:

They could all make a group decision, if they want to do it. And if they agree they all want to be the parents then they could go to court and get it changed. I don't know if that is possible that three people can be the parents...

Some participants made distinctions between gestational and traditional surrogacy with this question. For example, some participants were open to the surrogate being able to change her mind in the case of traditional surrogacy, as Oliver (11, child of surrogate) explained:

Cause she used part of her body to make it so, if you just, like, gave birth to a baby that was also sort of made of her then I don't think it'll be that fair.

One participant, Eliza (11, child of surrogate), said that even where this happened (and the surrogate kept the child), the intended parents should still have contact rights (described along the lines of a shared parenting arrangement):

Because the baby is genetically related to them [the IPs] and if they wanted to have something to do with that baby then both sides should have something to do with that baby because they are both related.

However, other participants stated that traditional surrogates should also not be allowed to change their mind. For example, Valeria (9, child of surrogate) said:

...The traditional surrogacy that we said. Um, even though she's... offered and used her own egg, ... they still asked her for her to be the surrogate and so that doesn't make it... even though that she's used her egg, they've asked her to be a surrogate. So... it doesn't matter what egg it comes from, it should still be theirs, because they've asked to have for a baby, or, for help.

Some participants noted it was important for surrogates to understand what they were agreeing to at the outset; for example, Lucy (15, child of surrogate) stated:

I think they should give consent, but right at the start of the pregnancy. So that you know they understand, and they give consent that it's not their child and they are doing it for someone else...

Jack (17, child of surrogate) agreed with her, and added:

I agree with what [Lucy] said. I think if the surrogate is in the state of mind where she isn't certain whether she wants to keep the baby or not, then she shouldn't be a

surrogate because it is kind of the agreement of, you know, you're having this baby to help these other people. It's not yours.

One participant in FOCUS GROUP FOUR, Anna (16, niece of a woman who had a child through surrogacy), raised the issue of a power imbalance between the intended parents and surrogate, explaining that she didn't '*know how to [say] this right*' but that there was:

a power dynamic between the surrogate and the IP in that the surrogate has more of a choice afterwards, and it can frighten IPs off getting a surrogate at all if they're worried that at the end of it their baby can be taken from them.

We explained the requirement for the baby to be genetically related to at least one of the intended parents for a Parental Order to be granted. We then asked: 'What do you think of that rule?'

The issue of genetic relatedness generated a lot of discussion both here and among other questions above where it was sometimes spontaneously raised.⁴ Examples of participants' comments include:

It's right that you do [need to have the genetic connection] because then you at least have something to do with the child but if you don't then I don't think it matters as much because, like, even if you don't then you're wanting to take a child because you've agreed to. You've gone through a whole process of wanting to for so long. Because then it's, 'cos even if it's a sperm donor and her [surrogate's] egg, then it's going to be their child, it should be their child. (Freya, 12, child of surrogate).

Family nowadays is made-up of so much more than genetics and biological relations and I just think if the intended parents have made that commitment already before, you know, the child is even conceived then, and they're not related. I don't think it matters. I think they should still [be] able to apply for a parental order. And I think they should still be able to be the parents no matter what, because they have made that commitment. They have taken that responsibility of that child. (Lucy, 15, child of surrogate)

Eliza (11, child of surrogate) identified problems this rule could cause for single applicants for Parental Orders and stated:

If there was an intended parent who was, like, a woman by themselves ... And they, say, have something wrong with their eggs. They wouldn't have a sperm and they wouldn't have any eggs so, therefore, it would be the surrogate's egg or a donor egg and a donor sperm, which means they have no relation to that baby, but at the same time, they could still be a mother because they will look after that baby and care for that baby just as well as someone genetically related to that baby could.

The two participants in FOCUS GROUP SEVEN raised the issue of how this requirement may be justified by creating a distinction between surrogacy and adoption, but nonetheless, acknowledged the problems with the requirement. For example, Jane (14, born through surrogacy) stated:

⁴ FOCUS GROUP SIX did not really engage with this issue: one said they thought the genetic link requirement was a good idea after it was explained. FOCUS GROUP ONE participants nodded but it is not clear that there was full understanding.

Although it makes sense to separate the idea of surrogacy and adoption, I can also see why someone might choose to go down the route of surrogacy, rather than adoption, even if they cannot provide the egg or sperm, because they may feel more connected with the child, because they were there from the start of the process.

Christina (14, born through surrogacy) mentioned the issue of adoption, but she was clear that surrogacy should be an option for parents, even in the absence of a genetic link:

I think that, if the parents ... even if they are not genetically related to the child, decide to go down the route of surrogacy, I think that they should be able to get a parental order, because ... it is not the same as adoption, but I think that if they, like...the parents might feel more connected to their child or they might want to be a part of that part of the child's life.

TOPIC TWO: CONTRIBUTIONS TO SURROGATES

In the face-to-face focus groups, children aged 8-14 were given illustration cards depicting various potential contributions intended parents could give to surrogates during the pregnancy. We asked them whether it should be permissible for intended parents to give these items to surrogate by sorting them into the following categories: 'yes,' 'no,' or 'not sure.' **TABLE FOUR** provides a summary of the answers provided by the participants in the face-to-face focus groups.

TABLE FOUR: Breakdown of Participants' Views on the Acceptability of Various Contributions

Contribution	Yes	No	Not sure
Car	4	14	4
Holiday	11	7	4
Doctors' fees	17	4	1
Maternity clothes	18	1	3
Vitamins	10	5	9
Money	9	7	6
Spa voucher	14	5	3
Lost wages	13	2	7

Some categories of payments were uncontroversial, as participants recognised their link with the surrogate pregnancy and rationalised that these expenses would not have been incurred but for the surrogacy, these included *maternity clothes* and *doctors' fees*. Other categories of payments, notably *car*, resulted in more discussion in the focus groups. While a car is not a typical expense, it was specifically chosen to encourage participants to think about the cost of various contributions and allow them to express whether there should be limits on how much intended parents can give to surrogates.

Overwhelmingly, many participants whose mothers had been surrogates felt a car was too expensive and drew on their mothers' experiences to justify why cars were not appropriate contributions intended parents could make to surrogates. For example, Valeria (9, child of surrogate) explained that a car was too expensive and almost burdensome for surrogates:

I said no, 'cos cars are a lot of money and she's pregnant, so she's not gonna need the car really, because she's not going to be wanting to go out, 'cos she's going to be tired, and it'll be quite uncomfortable to sit in a car.

Regarding a *holiday*, many participants felt it was inappropriate if given prior to birth, either because of the risk that something could go wrong (e.g., the surrogate going into labour), how far the destination could be, fears that something could go wrong. or because it would not be enjoyable, for example, Aoife (10, child of surrogate):

I don't really think that when she's on holiday she would like to be pregnant, because when you're pregnant you get really tired and bothered about the littlest things, so I definitely think "no."

However, if a holiday was provided following birth, participants viewed it as a token of appreciation, rather than a stressor for surrogates, as the following quotes reveal:

Because then she gets time to relax after being, um having a baby, and that's quite stressful and being very busy, and having to do that, cause it's nine months of tiring. (Aoife, 10, child of surrogate)

Because she doesn't have a baby in her tummy anymore so she doesn't have to, she doesn't get as stressed out when she's on holiday and she can just relax because she's just had a baby. (Lilly, 9, child of surrogate)

Like the discussion surrounding *car*, participants appeared to draw on their experiences in their answers, for example, Oliver (11, child of surrogate):

With holiday, I put it in yes because when my mum was a surrogate for someone, they offered her a holiday.

Similarly, *spa voucher* resulted in mixed answers within focus groups, with the views depending on whether they were provided to the surrogate during the pregnancy or following birth. If they were provided while the surrogate was pregnant, they were viewed unnecessary and potentially stressful, as Aoife (10, child of surrogate) explained:

She's not relaxed, and she's really agitated she might like to go somewhere else, just to like... not in a steamy room as Valeria said, cause that's too hot...

If spa vouchers were provided after surrogates gave birth, they were seen as a good way for intended parents to show their appreciation, as surrogates could enjoy the experience, as the following quotes reveal:

'Cos a spa day is not essential. You don't need it, but it's a nice way to show you appreciate what they're doing for you. (Ellie, 13, born through surrogacy)

I don't think that they're that expensive and I think they just do it because it would be a nice experience for the surrogate. (Oliver, 11, child of surrogate)

Vitamins was a category that unexpectedly confused many participants, with more placing it in the "not sure" category. Participants who did say it was an acceptable contribution justified it with reference to the surrogate's health. For example, Scarlett (11, born through surrogacy) said:

If you want your surrogate to be nice and healthy so she can give birth, and also because it would be nice of you to make sure her wellbeing and then her health is OK.

Lost wages caused confusion for some participants, with facilitators providing explanations for some groups before children decided whether it was an appropriate contribution. Participants felt that as time off work was directly related to the pregnancy, it was acceptable. For example, Eliza (11, child of surrogate) stated:

[I said yes to lost wages] because they could lose wages because of the pregnancy, because they wouldn't be in work, and they might have to work less hours when they do work. So really ... that isn't their fault.

The most controversial category was *money*, as depicted in **FIGURE SIX** (below). **Nine** participants said money was an acceptable potential contribution, **seven** participants did not think money was acceptable, and the remaining **six** participants were unsure.

FIGURE SIX: Participants' views on the acceptability of money as a contribution to surrogates

Nine participants said money was an acceptable potential contribution, explaining that it should be left up to the intended parents to decide. For example, Ashley (12, born through surrogacy) said:

'Cos if they want to give money they can and if they don't, they don't have to.

Those born through surrogacy were less likely to dismiss the idea of payment as inappropriate but did not think it should be a strict requirement. For example, Tom (11, born through surrogacy) stated:

I think it's important that [intended parents] have the choice because if they have to pay then I don't think that's good because if they just want a child but if they just want to give a money to kind of help out a bit then that's good.

Seven participants did not think money was acceptable, and voiced concerns over how the intended parents would be able to afford to pay surrogates (as well as pay for the other contributions discussed). They had difficulty reconciling the idea that surrogacy was based in altruism while also being able to receive payment. For example, Ava (10, child of surrogate) said:

I don't think it's fair that they get paid to do it because it's just, they're probably going to do it just for the money and it's not about the money, it's about helping other people out.

Evalynn (11, born through surrogacy) mentioned how there should be parity between those requiring surrogacy to form their families and those who do so unassisted:

If, like, a person didn't have to pay money to someone to give birth to their child, then why does someone who was born through surrogacy have to pay for their child to be born.

The remaining six participants were unsure about the acceptability of money.

As discussed in the **INTRODUCTION**, participants aged 15-17 in FOCUS GROUP FOUR were asked their views on the acceptability of seven of the eight categories of contributions from the Law

Commissions' Joint Consultation Paper infographic (above at **FIGURE TWO**). There was more consensus regarding which categories of contributions were appropriate for surrogates to receive. Like the other focus groups, there was a clear sense that any expense incurred during the pregnancy, or connected to the pregnancy, was acceptable. For example, Jack (17, child of surrogate) said:

I think it should be what needs to be covered for the surrogate pregnancy.

Participants in this focus group expressed concerns regarding potential financial coercion and the potential undermining of altruism as the basis of surrogacy if payments to surrogates were expressly allowed.⁵ They drew on how they would have been worried about their family's financial situation had the surrogacies been undertaken out of financial need, for example, Jack (17, child of surrogate):

For me, personally, if I found out that my mum had been paid to be a surrogate, I would be extremely worried...and I think it would really take away from ... 'cos I know my mum really, really enjoyed being a surrogate and I'd be like is that real? Did she actually enjoy it, or was it all just to try and support us?

Similarly, Lucy (15, child of surrogate) said:

If I knew that, you know, she was having all of these babies and she was possibly putting herself at risk every time just to get more money for us, I think I would be extremely worried. And it would definitely really, really negatively affect me mentally.

We were interested in participants' views on concerns raised in the Warnock Report and Brazier Review regarding the impact of payment on children born through surrogacy.⁶ We asked participants the following question: **Some people think that surrogates should not be paid money because children who are born through surrogacy would not want to know that their surrogate had been paid. What do you think of that?**

There were significant differences in the opinions expressed. Those born through surrogacy drew on their experiences and described why they would not have cared; for example, Ellie (13, born through surrogacy) said:

I don't think I really care. Honestly, it's like, surrogacy isn't that big a part of my life and I think that I wouldn't really mind.⁷

Similarly, Tom (11, born through surrogacy):

It doesn't affect me too much. I don't think I'd mind too much if I found out she was paid.

Christina (14, born through surrogacy) explained why it did not impact her:

⁵ Though surrogates may receive payment for their involvement in surrogacy arrangements, there is a widespread misconception that it is legally prohibited due to the Parental Order requirement that only 'reasonable expenses' be paid, unless retrospectively authorised, found at sections 54(8) and 54A(8) of the Human Fertilisation and Embryology Act 2008.

⁶ See Department of Health and Social Security, *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (Her Majesty's Stationery Office, 1984) para. 8.11; Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation, Report of the Review Team Cm 4068 (HMSO, London 1998) para 4.14.

⁷ Emphasis in original.

I don't think it would affect me that much because I wasn't really alive and I wasn't, like me personally, I wasn't part of the decision. I wouldn't have been part of the decision to pay the surrogate. I don't think it would affect me that much.

However, Scarlett (11, born through surrogacy), expressed concerns about how children could feel objectified if they knew surrogates were compensated, with this at odds with surrogacy being an act of '*kindness*':

The child might feel like the only reason that the surrogate wanted to give birth to them is for the money, that is not... You don't want to feel you've just been bought like a piece ... like a toy or something, because you are not. You are a human being.

Participants whose family members had been surrogates were more concerned about how potential children would feel, but, like other questions asked throughout these focus groups, they were clear that there was no '*one size fits all approach*.' For example, Eliza (11, child of surrogate) stated:

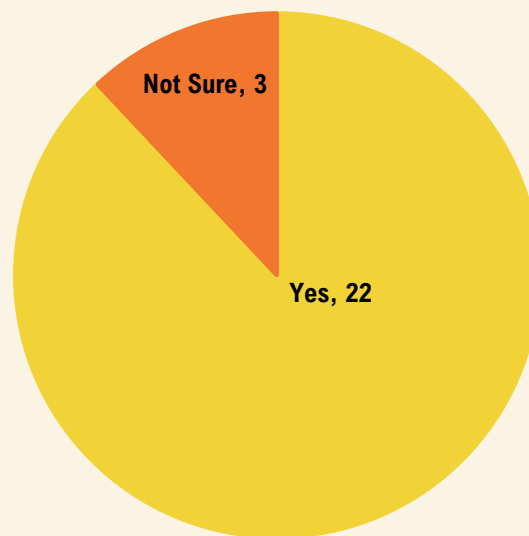
One person just might not care but another person might feel quite strongly about that, and I feel like a surrogate didn't want to bring them into the world. It depends on the child...

TOPIC THREE: ORIGIN INFORMATION AND CONTACT

The topic of origin information and contact covered a broad range of questions which arise from the practice of surrogacy, as set out in the following sections. We asked participants about openness around surrogacy arrangements. We asked: **Should children born through surrogacy know they were born this way?**

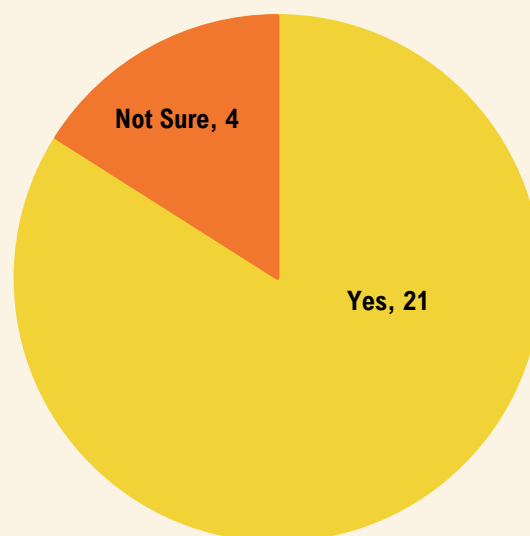
As seen in **FIGURE SEVEN** (below), **twenty-two** participants said 'yes' and **three** were 'not sure.'

FIGURE SEVEN: Participants' views on whether children should know if they were born through surrogacy



When asked about **whether the child should know the identity of their surrogate**. As seen in **FIGURE EIGHT** (below), **twenty-one** participants said 'yes' and **four** were 'not sure.'

FIGURE EIGHT: Participants' views on whether children should know their surrogate's identity



The majority of participants thought that openness was important and expressed this in different ways. The following quotes are examples of participants' comments:

Children have all the rights to be told how they are born. (Valeria, 9, child of surrogate)

I think they deserve to know. (Tom, 11, born through surrogacy)

It's just nice to know. (Ellie, 13, born through surrogacy)

It would be nice if they did know. (Louisa, 13, child of surrogate)

Other participants mentioned that being born through surrogacy was nothing to be ashamed of. For example, Christina (14, born through surrogacy) said:

I think yes, because I think it is an important part of their history and I don't think it is anything to be ashamed of. So, I don't see why they shouldn't be told.

Similarly, Louisa (13, born through surrogacy) said:

There is no point in keeping it a secret.

Some participants mentioned that if children asked, they should be answered truthfully. For example, Aoife (10, child of surrogate) stated this in the following way:

If they were to ask the question, they should be told, and it shouldn't be kept a secret from them.

Some participants noted that hiding this information could result in feelings of betrayal. For example, Tom (11, born through surrogacy) commented:

If they don't know and they find out, somehow, they might feel betrayed.

Some participants noted that it depends on the family; for example, Scarlett (11, born through surrogacy):

I mean, it is obviously not important...well it is... I mean. It might be more important for some people than other people.

Another, Anna (16, niece of woman who had a child through surrogacy) commented:

It depends on the situation for the intended parents.

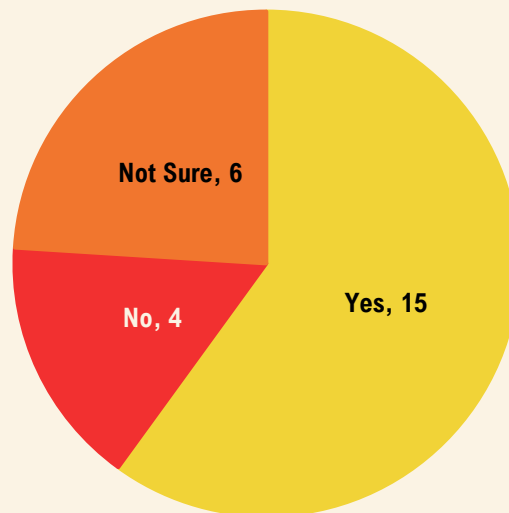
Some participants said that it would be good to know, to help with children's understanding of surrogacy; for example, noting that contact should not be forced. Jane (14, born through surrogacy) stated:

I said yes, because it will help the child ... like ... understand the surrogacy, and also, they were such a big part of the beginning of their life, and I don't think they should just be cut out. But I don't think if anyone is uncomfortable with it, I don't think it should be a forced thing.

Participants were asked about their views on gestational and genetic links. We asked: **'Should children born through surrogacy know whether the surrogacy was traditional or gestational?'**

As can be seen in **FIGURE NINE** (below), **fifteen** participants said 'yes,' **six** said 'not sure' and the remaining **four** participants said 'no.'

FIGURE NINE: Participants' views on whether children born through surrogacy should know the type of surrogacy arrangement



As with the previous question, some participants indicated that children should be aware of this knowledge. For example, Ellie (13, born through surrogacy) said:

I think that they deserve to know about this stuff.

Others referenced their own preferences. Scarlett (11, born through surrogacy) stated the following:

I'd like to know if I had any other genes with another person.

Others mentioned the issues of potential siblings arising from surrogacy. For example, Jane (14, born through surrogacy) stated:

I think they should know because they could end up having siblings that they don't know of, and I think it's important that they know of these siblings... as long as everyone is, of course, comfortable with the knowledge.

As with the previous questions, participants referred to how this would depend on each family. For example, Oliver (11, child of surrogate) said:

I don't think they necessarily need to know because it's not something that's important to them...

Similarly, Freya (12, child of surrogate) said:

It depends if it matters to them, to the surrogate or the intended parents.

The concept of truth came up again with this question, with truth-telling considered important by participants in this discussion. For example, Eliza (11, child of surrogate) commented:

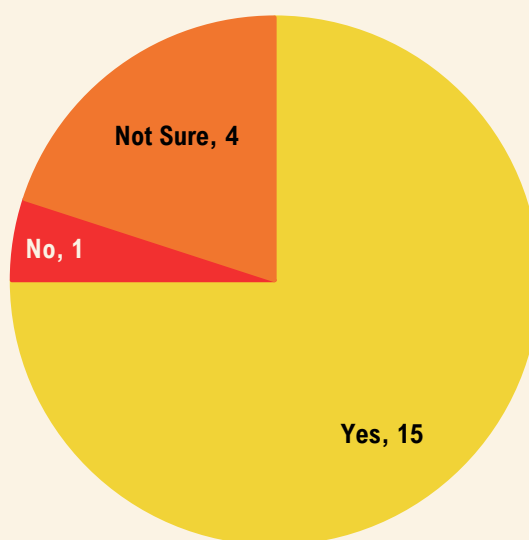
If the child asks then definitely, I think they should know.

The other five 11–13-year-olds in this focus group agreed with her.

Six focus groups (twenty participants) were asked their views about whether children born through surrogacy should know whether sperm or egg donation was used.⁸

As can be seen in **FIGURE TEN** (below), there was less certainty overall in the answers provided, with **eleven** participants saying 'yes,' **eight** participants saying, 'not sure' and the remaining **one** participant saying 'no.'

FIGURE TEN: Participants' views on whether children born through surrogacy should know whether gamete donation was used



Some participants attached importance to genetics. For example, Oliver (11, child of surrogate) stated:

I think they should know about their egg donor because...they would technically be related to them.

Another participant, Freya (12, child of surrogate), agreed:

I completely agree [with Oliver]. They're genetically related to them.

Ashley (12, born through surrogacy) similarly stated:

They're related to the donor, so they should know.

However, other participants seemed to attach less importance to genetic links and said that they should be told if they ask (Eliza, 11, child of surrogate; Aoife, 10, child of surrogate) or if they want to know (Freya, 12, child of surrogate). Two participants born through surrogacy (Scarlett and Evalynn, 11) answered that while they would like to know, others may not and, therefore, so, they were not sure whether children should know.

The three participants in FOCUS GROUP FOUR acknowledged the issue of genetic relatedness could be difficult for infertile intended parents to discuss but stated that children should be told if they asked. The idea that the potential harm arising from children inadvertently finding out about

⁸ FOCUS GROUP ONE did not engage with the concept of donor conception like the other groups, and so were not asked about this issue.

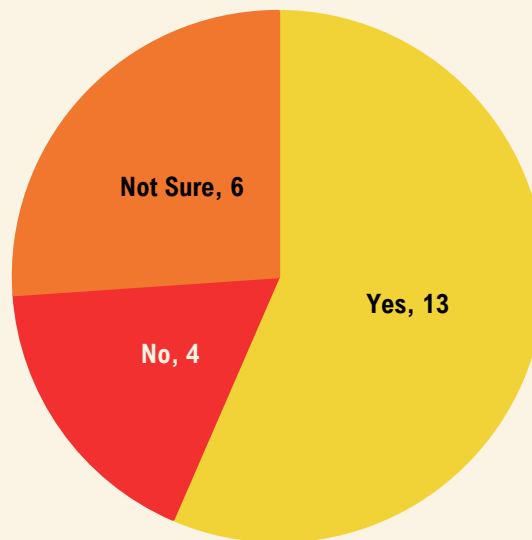
their origins justified the need for openness about genetics; for example, Lucy (15, child of surrogate) said:

I feel like the child should have the right to know. (...) If information is withheld from someone and then they find out without meaning to or someone like lets it slip, it can make them questions things and it can hurt people, not just the child or the parents, but you know, friends, family. It can have a lot of after effects on people.

We asked twenty-three participants: ‘Should children whose mother acts as a surrogate know whether the surrogacy was traditional or gestational?’⁹

As can be seen in **FIGURE ELEVEN** (below), **thirteen** participants said ‘yes,’ **six** participants said ‘not sure’ and the remaining **four** participants said ‘no.’

FIGURE ELEVEN: Participants’ views on whether surrogates’ children should know about the type of arrangement



Some participants appeared to attach importance to genetics; for example, Eliza (11, child of surrogate) stated:

Yeah, because, like, essentially that could be your brother or half-brother or half-sisters if it was traditional. So, you should know that, and you have the right to know that because it has an impact on your life as well as the surrogate's.

Freya (12, child of surrogate) also attached importance to genetics:

If it was their egg, then you could have a relative you don't know about.

Some appeared to attach importance to genetics. For example, Lucy (15, child of surrogate):

It doesn't make a difference to me whether [my mum] used her own egg or not, because I know that with like my mum, she knows that she has no attachment to the child. Even though she carried it, she has no attachment. She is not related ... She does not feel like she needs to take care of the child... And I feel kind of the same way. I don't have any attachment to the child.

⁹ FOCUS GROUP THREE participants were not asked this question because it would have interrupted the flow of the discussion, which was focused on questions relevant to their experience of being born through surrogacy as opposed to children of surrogates.

So, although we may be biologically related in that, you know, my mum used her own egg ... she's like a donor. You know, it's not her child. So, I don't feel like I should have any relation to it either.

Another participant, Jack (17, child of surrogate), compared his feelings towards his mother's traditional and gestational surrogacies, noting how he had expected to feel differently about the former than he had felt about the latter. However, he appreciated knowing that she had undertaken both types of surrogacies:

I just didn't [feel different] because, like, the kids that she had, I feel the same way about all of them, like as I would see any of my mum's friends' kids like.... I don't see myself being related to them in the slightest.... Whether it is traditional or gestational like it didn't affect me, but it was, you know, kind of nice to know like. I'd rather know than not know.

Six focus groups (twenty participants) were asked: when should children be told and who should tell them?¹⁰

Fifteen participants answered this question, and all suggested that this should be done during childhood. Participants expressed the view this information should be told early, for example Jack (17, child of surrogate) said as '*soon as possible*' and Tom (11, child of surrogate) said '*as young as possible*'.

Other participants mentioned telling children when they are able to understand; for example, Aoife (10, child of surrogate) said '*when they are ready*.' Some participants mentioned curiosity about conception as an indicator for when to tell children; for example, Scarlett (11, born through surrogacy) stated '*when they start to get curious about how babies are born*,' and Aoife (10, child of surrogate) said '*when they start asking questions*.'

Some participants felt this information should always be known and should be introduced gradually. For example, Valeria (9, child of surrogate) said:

Just dot it around; they should find out straight away.

Similarly, Jack (17, child of surrogate):

I think in an ideal situation there should be told as soon as possible, like there shouldn't be kind of a sit down "OK, here is how you came to be." It just should kind of always be a known thing.

Jane (14, born through surrogacy), referred to the idea of "normalising surrogacy" from a young age:

I think that it should be normalised, and they should be told they are a child of surrogacy at quite an early age and then more of the ... like ... facts ... that they may not understand at a younger age, tell them at an older age, so drip feed the idea of surrogacy and just normalise it.

¹⁰ Five children in FOCUS GROUP ONE did not answer this question at all.

As with earlier questions, one participant, Lucy (15, child of surrogate) mentioned that *'it all depends on the parents and the child.'* Another, Eliza (11, child of surrogate), talked about disagreement about knowing the surrogate:

If [the parents] didn't think the child should meet the surrogate, I think the child should still have a say in that...cause it's kinda their life and they are born through that surrogate.

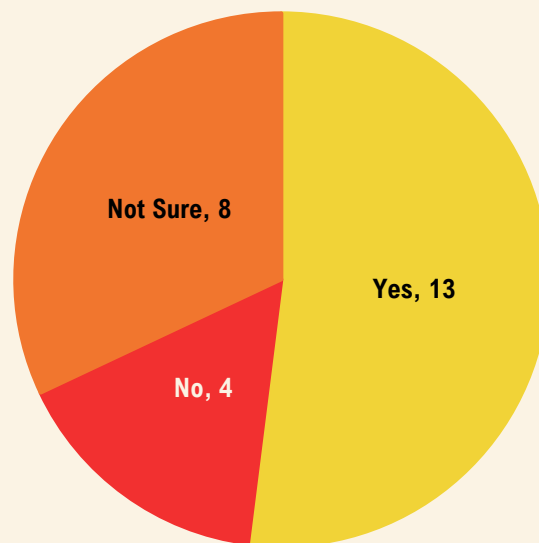
All fifteen participants felt that when disclosure occurs, the parents should be the ones to do this.¹¹ Five also mentioned surrogates being involved, with one participant mentioning the surrogate's partner being involved. Lilly (9, child of surrogate) explained why the surrogate should be involved in addition to the parents:

The surrogate got to know the child during pregnancy, but the intending parents get to know them their whole life.

We asked: 'Do you think that contact between the surrogate and her family and the family who used surrogacy is important?'

As can be seen in **FIGURE TWELVE** (below), **thirteen** participants said 'yes,' **eight** participants said 'not sure' and the remaining **four** participants said 'no.'

FIGURE TWELVE: Participants' views on whether contact between the families is important



Some of the thirteen participants who felt contact was important referred to the surrogate's role, for example, Scarlett (11, born through surrogacy):

It is important because she helped create you and like went through the pregnancy with you. So, she is like a second parent, if you think about it.

Similarly, Lilly (9, child of surrogate) commented:

They should stay in contact because they were originally, she was kind of like the mum, because ... she gave birth to them, and had her in her stomach.

Likewise, Oliver (11, child of surrogate) stated:

¹¹ An additional four in Focus GROUP Two nodded in agreement.

Yeah ... 'cos they helped you be born so I think it would good if you knew the people. They basically made you alive.

Two participants mentioned that there should be friendship between the surrogate and her family, and the families formed through surrogacy. Jack (17, child of surrogate) said:

I believe that to start a journey with a surrogate and intended parents it should friendship-based. So, they should have that relationship which they want to continue on afterwards.

The other participant, Aoife (10, child of surrogate), stated:

I think yes, because it is good for you to be friends after, like, if you just cut them off it'd be awkward, like: "Wait? Where have you gone?"

Again, participants mentioned how the level of appropriate contact 'depended on each family.' The following are examples of participants' views:

I think it all depends on what the agreement is, and that the IPs and the surrogate are comfortable with. (Anna, 16, niece of a woman who had a child through surrogacy)

I think it's nice, but I don't know if it's essential. ... don't think everybody in every situation you need it. (Ellie, 13, born through surrogacy)

Participants also considered limits to contact between the families. The following are some of the participants' views:

Yeah, so, I think they should stay in touch, just generally, like one phone a month, and text, not too often, but sometimes, just to let them know how the child. Aoife (10, child of surrogate)

If the surrogate is not related, it's good to maintain space between the surrogate and the child. Because too much can confuse a child... (Eliza, 11, child of surrogate)

You can know about them and be friends with them, but I don't think you should have a real relationship with them because they're not your family... (Raven, 9, child of surrogate)

Participants described the kind of contact deemed appropriate, and referred to various locations or occasions, including parks and leisure centres, walking the dog, having food, birthday parties and family Christmases. Many participants described birthdays as the ideal occasion for some contact between the families. For example, Scarlett (11, born through surrogacy) explained:

Because the surrogate helped create that birthday almost.

One participant, Lucy (15, child of surrogate), described her own experiences with surrogacy and the level of contact involved, explaining how the family who used surrogacy had met her extended family. She did not suggest this level of contact was essential, and explained how it depends on each arrangement:

The IPs that my mom worked with they have met my grandparents ... and like we've had a day out and that's about it... They don't keep in contact, but they have met.

TOPIC FOUR: CHILDREN NAVIGATING SURROGACY IN THEIR SOCIAL WORLDS

As described in the **INTRODUCTION**, a fourth topic was added from FOCUS GROUP THREE onwards. This topic centred on how children navigated surrogacy in their lives. Participants were asked about whether they told their friends about the role surrogacy played in their lives. Some participants described how they only discussed it when it was relevant, whereas others noted that it was common knowledge in their social circles. For example, Tom (11, born through surrogacy) said he spoke about being born through surrogacy '*if it comes up in conversation*' and Ellie (13, born through surrogacy) said '*I don't tell many people because they don't need to know*'. On the other hand, Ashley (12, born through surrogacy) said '*I think all my friends know I was born through surrogacy*'.

Other participants expressed pride at being born through surrogacy and described the positive reactions they had received from friends; for example, Scarlett (11, born through surrogacy) shared:

I enjoy being surrogacy born because it's something special about me and makes me thankful for the kindness because if there was no kindness, I wouldn't, I probably wouldn't be here, because my surrogate did it out of kindness.

Evalynn (11, born through surrogacy) agreed:

My friends actually think it is really cool and think it's a really nice way...and I completely agree. I think it is a really nice way to be created.

Participants whose mother had been a surrogate discussed how they were open within their social circles. Louisa (13, child of surrogate) said that she told friends she had known for long time because they came to her house and saw her mother while she was pregnant and asked if she was having a sibling. Jack (17, child of surrogate) reported feelings of pride:

I've always been really open with it like because I'm really proud of my mum...for being a surrogate and for...kind of helping these people in this way...I've never hidden it.

Some participants described how their friends did not understand surrogacy, and how they explained the concept as a result; for example, Valeria (9, child of surrogate) said:

I told them ... that my mum's done surrogacy and she's doing it again, but I don't really think they get it.

Aoife (10, child of surrogate) similarly stated:

I haven't really told anyone, only the closest friends, but I don't think they're interested because I don't think half of them even know what it is.

Despite these difficulties, some participants expressed their positive experiences when disclosing their family member's involvement in surrogacy to friends, as Lilly (9, child of surrogate) described:

I tell my friends about it, and I said, "my mum's a surrogate," and they say, "What's a surrogate?" And I say, "it's a person who carries for someone else probably because they probably have problems or can't carry anymore," and then they understand me and say, "well that's very generous of your mum to do that," and I say, "thank you."

Jane (14, born through surrogacy) similarly said:

They think it is a really nice thing. Usually, when I tell them they all go 'Aw'.

There was general agreement between participants that there was either nothing or very little tco in schools about surrogacy. Older participants in FOCUS GROUP FOUR expressed that they enjoyed explaining surrogacy to others. For example, Jack (17, child of surrogate) said he was happy to explain things to people, rather than them being unsure.

Yeah, I'd rather tell people about it and be open about it. Then people can see, it's not some strange thing, it's just something that people do.

The other two participants in FOCUS GROUP FOUR mentioned they were '*advocating*' for surrogacy, with Anna (16, niece of woman who had a child through surrogacy) saying that this was due to the '*stigma*' surrounding surrogacy. Lucy (15, child of surrogate) explained that she tried hard to increase people's knowledge because '*[i]t's really not talked about as much as it should be, and people have misunderstandings.*' She described that she had to explain how her mother '*volunteered*' to be a surrogate, as people thought that her mother was paid for her involvement in surrogacy.

PRELIMINARY CONCLUSIONS

TOPIC ONE: PARENTHOOD

- Care, love, support, and responsibility were central to how participants viewed parenthood.
- Participants recognised people becoming parents in different ways.
- Most participants thought that intended parents should automatically become parents following surrogacy.
- There were differing opinions on whether the surrogate should be able to change her mind depending on participants' ages.
- Children thought Parental Orders should be changed, and there were some nuanced answers as to how this should be done, as the role of the surrogate was viewed by many as important.
- Most participants had not viewed the genetic link requirement as particularly important.

TOPIC TWO: CONTRIBUTIONS TO SURROGATES

- Whether certain contributions to surrogates were deemed acceptable was determined by participants' experiences.
- Most participants expressed a strong dislike towards payments for surrogates.
- Some participants were concerned that intended parents would be under pressure to pay large amounts.
- Three out of seven participants born through surrogacy were more open to payments of all types, including for being a surrogate, whereas children of surrogates were concerned about payment.
- Keeping surrogates happy and healthy was a strong concern and determined the acceptability of some contributions.
- When participants born through surrogacy were asked about whether payment would negatively affect children born through surrogacy, there was no consensus, with some not taking issue and others voicing some concerns.

TOPIC THREE: ORIGINS

- The majority of participants were in favour of openness in surrogacy with regards to knowing the surrogate and whether the surrogacy was gestational or traditional.
- The majority of the participants asked were in favour of openness in relation to the use of donors.
- Many participants were in favour of children being told information at a young age.
- The majority thought parents should disclose information.
- There was an emphasis on 'truth' and not concealing things from children.
- Contact between families was seen as important.
- Regarding origin information and contact, that idea that 'it depends' on the different families and different arrangements was evident.

TOPIC FOUR: NAVIGATING SURROGACY

- Many participants were very open about surrogacy in their lives, while others only spoke about it when relevant, or where it was brought up.
- Many participants' peers knew little about surrogacy, leading to participants explaining it to them.
- There was general agreement that there was nothing or very little done in schools about surrogacy.
- Some participants mentioned "advocating" for surrogacy to raises awareness/remove stigma.

NEXT STEPS

REPORT

Between December 2022 and January 2023, the team completed PHASE TWO of the project, which involved conducting focus groups in schools in Canterbury with the same age group (aged 8-18). We asked children who did not have experience of surrogacy most of the questions included in this Report. We aim to publish a Preliminary Report of **PHASE TWO** in early 2023.

CHILD-FRIENDLY VERSIONS

We will publish a child-friendly and an animated version of the Report.

DIGITAL WALL

The creative contributions from the participants were gathered and digitised into an online "Digital Wall" exhibition.¹² This was first displayed at the *Future Directions in Surrogacy Law* conference on 30 November 2022 and is available [here](#).

¹² The animation was done by [Richie Phillips Motion Design](#).

REFERENCES

Human Fertilisation and Embryology Act 2008

Department of Health and Social Security, *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (Her Majesty's Stationery Office, 1984), (Warnock Report).

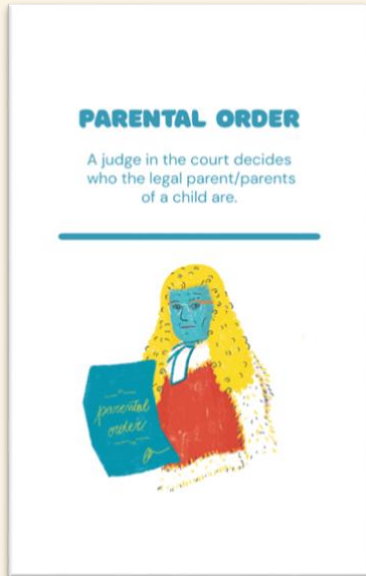
Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation, Report of the Review Team Cm 4068 (HMSO, London 1998) (Brazier Report).

Law Commission of England and Wales and the Scottish Law Commission, 'Building Families Through Surrogacy: A New Law' (Law Com Consultation Paper No 244, Scot Law Com Discussion Paper No 167, June 2019).

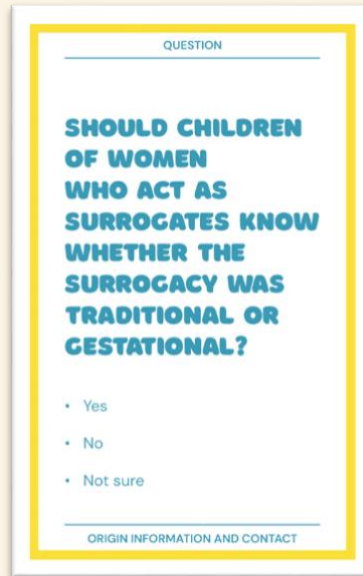
APPENDIX ONE

A deck of playing cards was commissioned and designed to help with the activities. As discussed in the **INTRODUCTION**, there were three types of cards within the deck.

Example explanation card



Example question card



Example illustration card

