

Concerning shifts in the shrinking world of global surrogacy

Published 25 September 2023 posted in [Comment](#) and appears in [BioNews 1208](#)

Author

[Kelly Blaxall](#)

Senior paralegal, NGA Law



The recent scandal surrounding a fertility clinic in Greece has further shortened the list of safe countries intended parents can access legal, ethical surrogacy in, argues Kelly Blaxall of NGA Law...

Over the past 15 years, a growing number of emerging destinations have attracted an expanding number of intended parents pursuing [surrogacy](#) overseas. According to Family Court statistics over the past five years around 400 children are born to UK intended parents via surrogacy annually (in the UK and overseas), a growth of over 600 percent since 2008.

A recurring situation seen over the past decade, is of lower-cost destinations for surrogacy rapidly increasing in popularity, before governments there abruptly closing their door to foreign intended parents (see BioNews [1136](#)). With the ever-growing global demand for surrogacy, and a narrowing range of options, parents are finding it increasingly difficult to access the information they need to navigate this process in an ethical way that ensures protection for everyone involved.

From 2010, India became a popular overseas destination for UK parents, followed by Thailand and Nepal, before these destinations banned surrogacy for foreign parents in 2015 (see BioNews [791](#)). When this happened, Ukraine, with its favourable surrogacy laws (recognising heterosexual married intended parents as their child's legal parents from birth) as well as clinics managing the surrogacy process commercially, quickly developed into a common surrogacy destination for UK parents. For similar reasons (such that parents can be listed on the birth certificate as legal parents from birth), neighbouring Georgia followed, also increasing in popularity.

Since the Ukraine war, parents have justifiably been warned against pursuing surrogacy there, although worryingly, some agencies still offer and promote surrogacy services there to UK parents. Nevertheless, the [UK government](#) has now withdrawn the emergency passport scheme for surrogate babies in a bid to discourage parents. A group of Ukraine MPs also attempted, unsuccessfully, to ban surrogacy for foreign parents during the period of martial law there (see BioNews [1188](#)). Georgia, overwhelmed by the resulting increase in demand, has now announced a surrogacy ban for foreign parents from 2024 (see BioNews [1194](#)).

More recently, in September 2023, a clinic on the island of Crete, Greece hit the headlines when it was closed and a criminal investigation was launched following allegations of human trafficking (see BioNews [1204](#)).

To meet the demand for lower-cost global surrogacy, surrogacy arrangements now often involve multiple jurisdictions, with organisations from surrogacy destinations which are no longer accessible to foreign intended parents, seeking to circumvent changing local restrictions. Through our legal work in global surrogacy at NGA Law,

we are increasingly hearing of international clinics reporting the recruitment of women acting as surrogates from other countries who are moved across borders, either for [IVF](#) treatment, pregnancy or birth.

This comes with significant ethical, logistical, safety and legal implications. Are the women involved fully informed and consenting? How will the surrogate be supported in a foreign country? What happens if something goes wrong with the pregnancy or birth? Is it safe for the surrogate to be travelling during the pregnancy? If the birth happens in the 'wrong' country, what is the legal position for the surrogate, parents, and the baby?

We know of alarming advice being given to prospective intended UK-based parents by foreign surrogacy organisations – including that they can 'choose' to have the birth take place in the UK – despite the fact there isn't a policy that allows surrogates to travel to give birth within the UK Immigration Rules and raises considerable concerns over the regard for the surrogate's safety and wellbeing, and wishes.

Although Greece, which much like the UK allows altruistic surrogacy via court order, has never been a common surrogacy destination for UK parents, the recent scandal there means it would be unsurprising if, Greece becomes the next destination to close its doors to foreign intended parents.

If so, all the remaining lower-cost international surrogacy destinations operating are ones without any legal framework whatsoever. If a surrogacy destination is without a legal framework, it is not illegal to pursue surrogacy there, but there is no legal safety net or structure, and there are few ethical safeguards to protect women acting as surrogates. And importantly, the legal landscape is at risk of a changing quickly, sometimes overnight. Cyprus falls into this category, as do the countries in South America, Africa and Central Asia in which surrogacy is now being explored and marketed.

Having supported parents engaging in surrogacy in Mexico and Colombia, these parents were reassured by organisations that it was legal and straightforward. However, our experience so far has been very different. In fact, these destinations are not always surrogacy-friendly and the political landscape causes significant problems. Parents have struggled with the local authorities in getting birth certificates, court orders and passports to travel home, with little clarity around where a surrogate can and should give birth and little support around the logistics from agencies. This results in complexities around getting a baby home, at a pivotal time in their development and their parents' lives.

Having also supported several parents engaging in surrogacy (most of whom had an existing connection with these countries) in West Africa, namely Nigeria and Ghana, surrogacy as a way of building a family is still emerging. Often, there is stigma attached to infertility generally, as well as surrogacy, which can make it difficult for surrogates and parents to be open about their surrogacy journey and therefore ensure their choice, safety and wellbeing are protected. Some agencies and clinics do not encourage parents to have a relationship with their surrogates and the

surrogate's motivations are not always openly communicated, meaning children born may not have full transparency of their conception and birth.

There are, however, safe, ethical and legal international surrogacy options. The USA remains the most popular global surrogacy destination. It accounts for around half of all international surrogacy journeys undertaken by UK parents, and for good reason. With a clear legal framework, a well-trodden path, and careful protection for surrogates and intended parents, the USA seeks to ensure that everyone is well prepared, protected by professionals and safe. But it carries a very high price tag and for parents who cannot afford it, the alternatives are diminishing.

Parents in the UK have one significant advantage over parents from most other European countries, which is that surrogacy is legal and possible at home in the UK. But within the UK, surrogacy offers no legal security (surrogacy arrangements remain informal and unenforceable) and there is a significant shortage of surrogates, making the prospect of having a baby lengthy and uncertain. Most parents pursue international surrogacy not because they want to go abroad, but because they feel they have no choice. We need to change this and ensure ethical UK surrogacy thrives, both by warranting enough women to be motivated to come forward and making sure there is a robust and secure legal framework that protects everyone.

Surrogacy should be a positive experience for all involved, a collaboration which benefits everyone and gives the child a positive birth story. If we truly care about making surrogacy safe and fair for all and minimising the risk of exploitation, we need to understand the global realities of surrogacy and do more to make safe UK surrogacy a possibility for more parents.