

At the dadcheck[®]gold DNA testing service, we have recently noticed a surge in the number of prospective parents wishing to enter into a surrogacy arrangement with an overseas mother. There are significant grounds for arguing caution in these arrangements, not least because there are cases where the intended parents are not at all linked genetically to the child born (or to be born) under the “surrogacy agreement”.

The identification of a reputable clinic (the chosen route for many) can be difficult and if your clients wish to go down this path, we strongly recommend that steps are taken to establish the genetic link to the child. Indeed, this is perhaps one of the reasons why the involvement of dadcheck[®]gold is increasingly requested by the legal profession for surrogacy matters.

Surrogacy contracts are not enforced by UK law and are only legally binding in a small number of countries. Entering into a surrogacy contract overseas can be a very lengthy and complicated process which is heavily dependent on a number of situational factors. Also of importance, besides the obvious issue of the child’s passport, is the need for a UK based parental order which transfers legal rights from the surrogate. A parental order cannot be obtained if the child is more than 6 months old and the surrogate mother must give her full and informed consent to; a) handing over the child to the commissioning parents and b) assignment of parental responsibility from the surrogate mother (and her husband, if applicable) to the commissioning parents. This consent cannot be given earlier than 6 weeks after birth.

There are two types of surrogacy which present different legal implications:

The first, “traditional” surrogacy, or artificial insemination, involves insertion of sperm into the fallopian tube of the surrogate mother, who will consequently be the biological mother of the child. As a result, the surrogate mother must agree to a series of legal obligations including the transfer of her rights as the parent of the child to the individual(s) who have opted for surrogacy. The second, “gestational” surrogacy, involves implantation of an externally fertilised embryo into the surrogate mother; that is, the surrogate acts as a “host” and is biologically unrelated to the child she is carrying. Whilst the embryo may have one, both, or neither parents as participants in the surrogacy, under UK law the mother and father of the child is the woman who gives birth to the child and the man she is married to at the time of conception. Therefore, if the overseas surrogate mother is married, although the prospective parents’ names should be on the child’s birth certificate, the child is not necessarily recognised as being automatically eligible for British nationality. The commissioning parents must apply to the Home Office for registration of the child as a British citizen before applying for a UK passport and a parental order may be required. On the other hand, if the surrogate mother is unmarried, such an application to the Home Office is unnecessary provided that the father has provided evidence that he is related to the child as its biological father.

Both of these scenarios require the use of accredited DNA paternity testing, as it is imperative to confirm the biological relationship between the man and the child and ideally, also child and the mother if the surrogacy is gestational. DNA paternity testing is mandatory evidence to support a



passport application for the child to become a British national and must be completed by one of the accredited DNA testing services on the list provided by the UK Ministry of Justice, such as dadcheck®gold.

We regularly liaise with the Home Office and various embassies worldwide to provide advice and DNA evidence in such matters.

The Foreign and Commonwealth Office provide a PDF document detailing international surrogacy on their website and there is specific guidance for couples travelling to India for surrogacy.

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