



EXPERT: Richard Westoby



# WHY DO INTENDED PARENTS GO ABROAD FOR SURROGACY?

Richard Westoby shares his personal and professional experience on going abroad to start his own family.

It is a common misconception that surrogacy in the UK is illegal. It isn't! Intended parents cannot pay a surrogate a fee or pay more than reasonable expenses incurred during the pregnancy process.

But how much is reasonable? This is clearly open for interpretation but from what I understand this number seems to be around the £15-18,000 mark.

In addition, surrogacy agencies cannot make money from arranging a commercial surrogacy transaction. That doesn't mean they can't exist in the UK, they just have to be not-for-profit. Add to that the fact surrogacy contracts are unenforceable you then have a scenario that means whatever is agreed between the intended parent and the surrogate is purely trust based.

It can all be written down and agreed in advance but legally that agreement will not stand up in court.

So not a great framework on which to go through surrogacy. It does happen to work well most of the time but when things go wrong they seem to go very wrong. This is the primary reason that most intended parents that I talk to look at international surrogacy.

In early July there was a case where a surrogate won custody of the baby that she carried from the intended parents because the court ruled that she was unable to consent unconditionally to the surrogacy journey. The court also found that the intended parents were "manipulative and dishonest" and "at the very least, potentially exploitative". The intended parents and the surrogate met via a Facebook group where intended parents and surrogates were matched.

This case is fraught with issues and as we know, there are always two sides to every story but it highlights once again the issue with surrogacy in the UK. In my mind

the issue is that without surrogacy reform where all parties are covered and legally empowered to make decisions we will continue to face situations like this.

Without the ability for professionals to assist in the matching process we are likely to also see situations arise where the court finds for the surrogate over the intended parent.

I'm not saying that this will happen every day, in fact it has only happened a handful of times but it will happen often enough to make intended parents worry about the situation and think twice about going through the UK system. So, where can intended parents look for as an alternative to go through their surrogacy process?

The most well-known and well-covered jurisdiction is the United States of America. In the US, surrogacy is not covered by Federal law but by State law which means that the laws vary state by state which can be confusing. I typically tell intended parents to do a little bit of research online and I suggest people to take a look at the Surrogacy Map, which is an online tool that can be found via any search engine.

The US is where everyone has the best legal protection, from the intended parents to the egg donors (if needed) and surrogate. There is also wording in the contracts that are put together to protect the unborn child! So, as you can see the US is the global benchmark on fully empowered decision making.



But hand in hand with this legal coverage goes the cost. The US is the most expensive place to go through surrogacy and the costs can range from \$85,000 up to \$170,000+. In all of the cases that I have helped the average cost is about \$140,000. This does not include medical coverage for the child/children after birth though.

The next jurisdiction that I find intended parents are looking at is Canada. It's very similar to the UK because in Canada surrogates are not allowed to be paid a fee. They are however, allowed to be paid reasonable expenses, which in most cases equates to the same amount that you would be paying over to a UK surrogate. Canada



benefits because English is the main language and all of the maternity health care costs are covered by the Canadian State which sometimes also covers the child post-birth.

Surrogacy contracts to date have not been tested in the Canadian courts (unlike in the UK) but that is not to say that they won't. Anyone looking at Canada should really talk to a lawyer in Canada to understand the risks associated with this.

Canada is not as expensive as the US and the cost range is \$80-100,000 with the IVF being done in Canada or in the US. The most recent development has been the flying of Canadian surrogates to the US in order to gain access to a wider range of IVF clinics and services. In Canada there are a handful of good clinics but in the US there are many more. Another factor that drives some intended parents to the US is that in Canada gender selection is not allowed, whereas in the US it is.

For same-sex male couples, the US, Canada and the UK are currently the only bona fide jurisdictions that allow international surrogacy.

Cambodia has just opened up as a venue for international surrogacy but the law there is such that it is neither for nor against allowing surrogacy to happen. To me this is another Thailand waiting to happen with an overnight ban on it being imposed. There are no laws protecting either the surrogate or the intended parents and I would say to anyone looking at Cambodia to proceed with caution.

For opposite-sex couples, the other jurisdictions that are available include

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Georgia, Russia and the Ukraine. In addition Greece and Cyprus have a hybrid type of scenario to enable the law to be circumvented.

The decision to go to other countries is predominantly driven by the cost of the surrogacy journey. The reality is that the US can be more than double that of the Ukraine! However, I also strongly urge intended parents to think about the long-term implications.

Obtaining a passport for a child born in the US or in Canada is very simple and quick to do. Once the child has this passport it is able to fly in to the UK on the visa-waiver program and the UK passport process can begin.

However in countries such as Ukraine / Georgia, the process will take a minimum of 16 weeks from the date of birth. This is because the UK passport office has instigated more rigorous checks.

In Ukraine, UK intended parents can only stay for a period of 90 days within a 180 day period so you can be there for 3 months and then not visit again for 3 months. You would need to think through who is going to be the person to go first and then second because in all likelihood you won't be able to be there at the same time. This also has an impact on work because you will have to be away from work for that whole period of time to look after your child.

The agencies and clinics in the US and in Canada know that intended parents look at the lower cost jurisdictions and they are working on ways to get the costs down.

I would definitely say to anyone thinking about international surrogacy to get in touch with me, come to one of my informational sessions and learn more about the process and how to make it work for you. There are ways and means to make this journey financially accessible whilst getting the best legal coverage that you can and I'm happy to be the impartial guide to that.

For more information please contact me via [www.guidetosurrogacy.com](http://www.guidetosurrogacy.com)