Dear [MP’s Name]

I am a constituent and I’m writing about the Law Commission’s surrogacy consultation ¹ and proposals for legislative change.

I have a number of concerns about the proposals and also about the way the Law Commission conducted the consultation. For example, there were 118 questions, based on a consultation paper ² that ran to 502 dense and technical pages. This will have prevented many people who have a stake in the proposals from participating and goes against good practice guidelines.³

The primary focus of the consultation was on the legal status of commissioning parents, granting them legal parenthood from the moment of the child’s birth, rather than on the protection of women and children and their human right ⁴ to not be instrumentalised and commodified. Question 42 proposes lifting all restrictions on advertising surrogacy related services and 17 questions (72–88) were devoted to payments to surrogate mothers. If implemented, the proposals will inevitably lead to a rapid increase in surrogacy in the UK.

Another glaring omission was the lack of any serious consideration of the impact of the proposals on the NHS and public finances. This is what I want to focus on in this letter because I fear that the potentially catastrophic impact is not widely understood.

**Costs to the NHS**

The number ⁵ of surrogacy parental orders are increasing year on year (from 117 in 2011 to 430 in 2019), but alarmingly there is no requirement for NHS trusts to keep records of surrogate pregnancies, births, and postnatal care. This means that the NHS is unable to collate meaningful statistics regarding costs and outcomes.

It is accepted that donor oocyte pregnancies are at greater risk of complications,⁶ including hypertensive disorders, small for gestational age, preterm delivery, and increased need for specialist NICU services.

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¹ http://www.lawcom.gov.uk/project/surrogacy/
⁴ http://nordicmodelnow.org/2020/02/14/surrogacy-a-human-rights-violation/
The cost of managing these high-risk cases was quantified in a Californian study. It found the costs were several times higher in all cases, but 26 times higher for twins and 173 times higher for triplets.

Without accurate NHS record keeping it’s impossible to understand the immediate financial impact of the proposals on the NHS, let alone the long-term outcomes for surrogate mothers and babies. Surely it would be improper to plough ahead with such radical proposals without a full understanding of these impacts?

**Legal disputes and conflict of interests**

Any increase in the numbers of surrogacy arrangements is likely to lead to complex legal and safeguarding issues for the NHS and social services. However, the Law Commission did not give any real consideration to this.

To illustrate some of these issues, consider the case of *H (A Child - Surrogacy Breakdown) [2017] EWCA Civ 1798.* Briefly, the relationship between the parties broke down fairly early in the pregnancy. The surrogate mother became unwell and delivered the baby prematurely without notifying the commissioning parents. It was a difficult birth and she and the baby stayed in hospital for longer than usual. She was discharged home with the baby and registered the birth before notifying the commissioning parents and informing them that she would not adhere to the surrogacy agreement.

Now, consider such a case under the Law Commission’s proposal that the commissioning parents should automatically acquire parental responsibility and legal parenthood at the moment of birth.

If the hospital were to notify the commissioning parents that the surrogate mother was in labour, it would be a violation of her human right to privacy and confidentiality. However, the hospital would be legally obliged to do this as the commissioning parents would be required to give their consent for any medical treatment of the baby.

This represents a troubling conflict of interest and the hospital might need to seek advice from its legal team or even the law courts. Medical and midwifery staff would be caught in the middle, and might be required to prevent a woman from seeing or caring for the baby she has just given birth to.

Surely it is insupportable that the NHS and its staff should be put in such a position? And it begs the question of how the Law Commission could fail to consider these consequences.

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8 http://www.familylawweek.co.uk/site.aspx?i=ed183038
One of the key recommendations of the UN Special Rapporteur on the Sale and Sexual Exploitation of Children is that the woman giving birth to the child must always be accorded parental responsibility and legal parenthood. I am dismayed that the Law Commission has ignored this important recommendation and failed to understand the persuasive reasoning behind it.

Exploitation of the NHS and exposure of the NHS to baby trafficking

If the proposals go ahead, there’s likely to be a sharp increase in the numbers of commissioning parents coming to the UK from abroad to avail themselves of services here – and one of the attractions would be that the NHS provides free maternity care.

It’s clear from the consultation paper that foreign commissioning parents are already entering surrogacy arrangements in the UK – although numbers are unclear. For example: Paragraph 3.67 says that one agency required foreign commissioning parents to place the money to be paid to the surrogate mother in an escrow account; and Question 100 asks for experiences in the UK “involving foreign intended parents.” Further evidence comes from the websites of UK agencies that include material directed at foreign commissioning parents.

The case of: Re G (Surrogacy: Foreign Domicile) [2007] EWHC 2814 (Fam) provides shocking evidence that the COTS surrogacy agency facilitated the exploitation of British women and the trafficking of babies – underpinned by the taxpayer and the NHS.

One COTS worker gave evidence that he knew of at least 20 cases and another said that COTS “helped many couples from Europe, and currently have couples from France, Greece, Norway, Belgium and Germany going through surrogacy.” That surrogacy is illegal in several of these countries may explain why the UK is an attractive surrogacy destination.

The judge was concerned by the evidence and described it as the illegal traffic in babies for adoption:

“The traffic in young babies for adoption between one country and another is rightly now the subject of very strict control and is only authorised after proper and detailed scrutiny by the social services and other authorities. It is therefore a matter of significant concern that COTS has, albeit naively, been involved in the activities that I have described which are, and have long been, outside the law.”

It is of grave concern that, should the proposals go ahead, there is likely to be an increase in such cases and the UK is likely to become a major international surrogacy destination.

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9 http://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx
10 http://www.familylawweek.co.uk/site.aspx?i=ed984
It is a wholly inappropriate use of NHS resources to subsidise the international business of surrogacy in this way. I would also posit that international commissioning parents represent a greater risk to surrogate mothers, and are likely to regard the process as purely transactional and have little care or concern for her welfare – leading to more safeguarding concerns regarding both the mother and baby.

Should the baby be born with health problems, it is easy for someone overseas to decide they do not want the baby and to default on the agreement, as happened in the case of baby Bridgett 11 born in the Ukraine and abandoned by the American commissioning parents. The journalist who made this report found that there were at least 11 other similar cases.

As it happens the Ukraine is in the news 12 right now, due to large numbers of babies awaiting collection by their commissioning parents who have been unable to travel to collect them. These news stories are truly heart-breaking and reveal the full extent of the unsavoury trade in babies, commissioned by people from around the world to be gestated by impoverished women in the Ukraine. This is baby farming and people trafficking on an industrial scale.

It is utterly shameful that the Law Commission is proposing new laws that will facilitate UK citizens to import babies they have purchased abroad by making it easier to obtain passports and visas.

**Conclusion**

In consideration of all these concerns I am writing to ask you to ensure that:

1. The NHS is immediately required to record all pregnancies and births resulting from surrogacy arrangements, including incidence of multiple births, and to conduct ongoing research into the risks and health outcomes for both surrogate mothers and babies.

2. The Law Commission’s surrogacy project is suspended until there’s been a fully costed assessment of the impact of their proposals on the NHS and other public services.

3. There’s an immediate investigation into the numbers of international surrogacy arrangements and the costs arising from these, with prosecutions where appropriate.

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11 [http://youtu.be/0euVSmfVcWc](http://youtu.be/0euVSmfVcWc)
4. The Law Commission is reminded that it must be conscientious in fulfilling its obligations under the public sector equality duty\(^\text{13}\) and that the final proposals must be compliant\(^\text{14}\) with ratified international conventions, including CEDAW and the Convention on the Rights of the Child and its optional protocols.

Yours sincerely

[Your name and address, including postcode]

\(^{13}\) http://nordicmodelnow.org/2019/11/08/prostitution-where-the-harm/

\(^{14}\) http://nordicmodelnow.org/2020/02/14/surrogacy-a-human-rights-violation/