

# **Evidence 43**

**Sunday Times Newspaper Article**

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Surrogate mother Kim Cotton and her husband, Geoff. Right: Baby Cotton

# HOW TO BUY A BABY

THE BUSINESS of "buying" a baby that is yet to be conceived, by paying a woman to be artificially inseminated, is fraught with potential pitfalls. What happens if the surrogate mother changes her mind and wants to abort the foetus, or, when the child is born, wants to keep it? What happens if the baby is born deformed, or turns out to be triplets, and the father changes his mind? How does he know that the child is really the product of his sperm and not the result of the surrogate mother's own sex life?

The contracts drawn up by the National Centre for Surrogate Parenting - which led to the controversial birth of Baby Cotton - are designed to meet all those contingencies, and more. The Sunday Times has obtained copies of two specimen agreements, one for the "potential parents", the other for surrogate mothers. They are masterpieces of cautious drafting.

The agreement signed by the would-be father, who provides the sperm and pays the bills, runs to 15 foolscap pages. It stipulates that he becomes legally responsible for the custody, care and support of the baby on conception, so long as a blood test immediately after birth "does not exclude the father from paternity."

He pays in advance: \$10,000 to the centre, and the same amount to the surrogate mother, though her money is held in escrow until she delivers. He also pays \$2,500 for the legal and medical fees, and promises to pay any additional expenses that might crop up.

If a baby (or babies) is born, in whatever condition, and the father refuses to accept it, he is "compelled" to support the child or "to pay all expenses relating to putting the child up for adoption, or public or

● The fate of Baby Cotton, Britain's first commercial surrogate baby, will be announced by a judge tomorrow. The birth of the 7lb 13oz girl on January 4 prompted wide public hostility on moral and legal grounds. But is it really wrong?

private institutionalisation of said child".

The contract the surrogate mother signs is longer, 20 pages, because the "rules and regulations" to which she agrees are more demanding. She must submit herself for psychological examination before insemination. If she suffers a miscarriage, she does not get paid, though, if that is no fault of her own, she "shall have the opportunity to participate in one further attempt". Even if the baby is stillborn, deformed or disabled, "the mother's agreement will have been fulfilled and she will receive her fee".

In addition to the contract, the surrogate mother, and her husband, have to sign a number of other documents. Among them is a "waiver of the right to abort said child". If she is advised on medical grounds to terminate the pregnancy, the father is entitled to call in his own doctor for a second opinion. If the two opinions disagree, "an independent third physician's opinion will be binding".

She and her husband must also sign what is called an abstinence clause, which reads in part: "We understand ... that I abstain from any sexual intercourse for a period of at least two weeks prior to the initial artificial insemination,

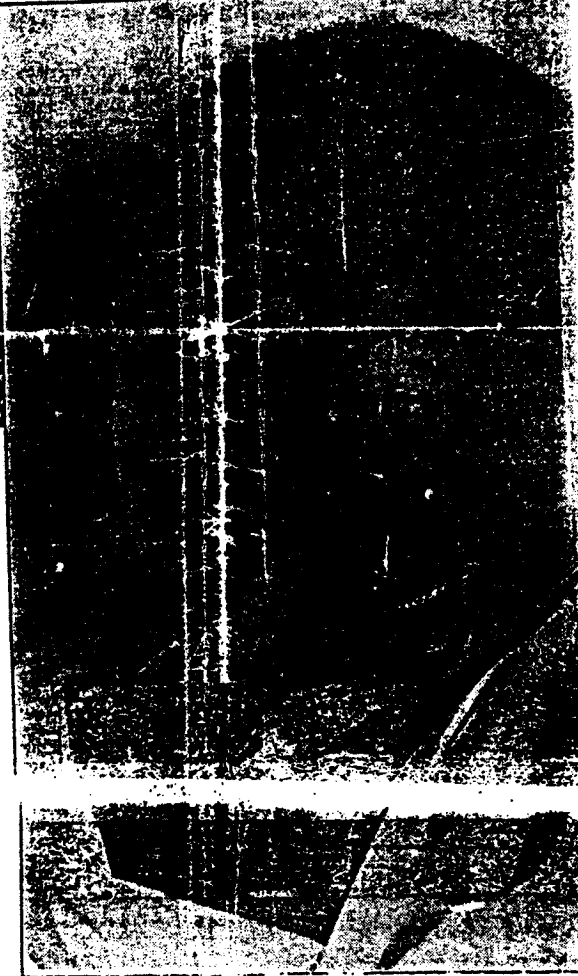
and that intercourse may not be resumed until the conception has been confirmed."

Finally, she agrees not to smoke or drink alcohol after insemination, and not to engage in "sexual promiscuity". The penalty for any breach of these conditions is severe: the surrogate mother, and her husband, agree to pay all expenses already incurred plus \$25,000 in damages.

All of which goes some way to explaining why Kenneth Clarke, the health minister, is determined to rush through legislation in this session of parliament to ban commercial surrogate agencies. As he told The Sunday Times on Friday: "The involvement of commercial agencies is generally seen as extremely tasteless, and I personally object to the idea of a woman leasing out a womb."

The opposition parties agree, and the Warnock committee of inquiry, which reported last year, condemned surrogacy outright, recommending criminal prosecution for commercial and non-commercial organisers - though it was doubtful that private arrangements could be effectively outlawed. It recommended that those arrangements should have no legal standing.

Clarke promises that when



commercial agencies have been banned, the government will go on to consider the "wider issues". The birth of Baby Cotton may yet prove to be the catalyst for broader legislation preventing what church leaders described last week as "bringing a child into the world by proxy".

BUT SURROGATE motherhood is at least as old as the bible, Genesis, Chapter 30, says that when Rachel could "bare Jacob no children", she proposed her maid, Bilhah, as a substitute mother - though the insemination was not artificial. Bilhah gave Jacob two sons.

How widespread the practice is now is anybody's guess. Dr Jack Glatt, a leading infertility specialist at Hammersmith hospital in London, says it has been going on in secret since time immemorial: "I would not know whether it's five babies a year in this country or 500," he said. Perhaps some clue is provided by the number of AID births - where the husband is infertile, and the wife is artificially inseminated; in 1982, the last year for which figures are available, there were 1,009 reported AID pregnancies in Britain, which resulted in 820 live births.

What is certain is that there is a huge demand for children from childless couples. According to the National Association for the Childless, about 10% of married couples in this country who want children cannot have them. And, because of an increase in cases of inflammatory pelvic infection - and the spread of sexually transmitted diseases - infertility is on the increase.

Most victims would opt for adoption, and at any one time 100,000 couples are looking for a baby, according to British Agencies for Adoption and Fostering. But most want

"healthy white babies" and there are only about 1,200 available. Demand exceeds supply by a factor of 80. Indeed, since abortion was legalised in 1968, the total number of adoptions has fallen from 24,000 a year to less than 9,000 a year - and more than half of those are "step-adoptions", where one or other of the couple is already the child's natural parent.

The pattern is much the same in other developed countries where abortion, changing attitudes towards single-parent families, and improved contraception techniques, have drastically reduced the number of unwanted children - and increased the desperation of childless couples.

In America in 1981, 37-year-old Harriett Blankfield was among the first to realise that surrogate motherhood could provide up to half of those couples (where it is the woman who is infertile) with a remedy - and provide Blankfield herself with a lucrative business. She had just declared herself personally bankrupt, with creditors claiming \$494,000 after the failure of her "Mr Wrecking" demolition company.

She established the National Centre for Surrogate Parenting Inc in a nondescript office in Bethesda, Maryland, just over the border from the District of Columbia. She told the Washington Post: "My goal is to have offices around the country and maybe in England, in the Middle East and western Europe. I want to see this company become the Coca-Cola of the surrogate parenting industry."

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Report by Sarah Helm, Rowena Webster and Roger Wilsher in London and Mark Hosenball in Washington. Research by Sara Walden

The Washington Post



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The fixers: Blankfeld (above) and Quinton (left). Their 'mothers' get 78 cents an hour.

signed up by Blankfeld's agency are already pregnant. They are all due to collect £6,500, which is approximately what \$10,000 was worth when the contracts were signed. Blankfeld thinks that is not very much. In 1983 she told the Washington Post: "When you consider that the whole process takes anywhere from 18 months to two years, they're only making 78 cents an hour."

HOWEVER distasteful this kind of attitude may be, many experts on infertility and in family law believe the cash to be a just reward for the work done.

wrong and dangerous.

Robert Winston, reader in Infertility Studies at Hammersmith hospital, believes that non-commercial surrogacy should be permitted, and even provided on the National Health Service in cases of special need. "Infertility can be a devastating condition and of great concern to many people," he said.

Robert Johnson QC, chairman of the Family Bar Association, says that the Warnock recommendation to make non-profit-making agencies liable for criminal prosecution is "wrong and totally unworkable".

Professor Michael Freeman, of University College London, an expert in family law, accuses the government of "moral panic". He says: "We have a government which is generally committed to liberty and freedom, and I would like to know on what grounds they would like to interfere with what looks like a perfectly good commercial contract which would probably end up with a child being cared for perfectly well." He says that critics are guilty of "sexist glorification of motherhood".

Dr Wendy Greengross, a practising GP and one of the two dissenting members of the Warnock committee, is opposed to commercial surrogate agencies, but believes it is "very sad" that Warnock came out in favour of a total ban. "A large number of children have to live through very distressing circumstances, such as the divorce of parents. Who is to say that a child born of a surrogate mother to loving parents, under careful supervision, will necessarily suffer such serious difficulties?"

She claims that opinion on surrogacy within the committee was more divided than the final tally of votes suggested. "We were under a lot of pressure to report by the government deadline. There were some people who were unsure, and then when it came to the crunch came out against."

The unsavoury aspect of the case of Baby Cotton might have made the verdict more certain. But is it right?

commercial agencies have been banned, the government will go on to consider the "wider issues". The birth of Baby Cotton may yet prove to be the catalyst for broader legislation preventing what church leaders described last week as "bringing a child into the world by proxy".

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BLANKFELD'S ambition to expand her service to Britain was fulfilled in May 1983, when she came to London to be interviewed for the Thames

Television programme, TV Eye. Ulla Quinton, a former airline stewardess from Redhill, Surrey, read about her visit in a newspaper and went to see Blankfeld at the Hilton hotel.

Quinton had long had an interest in surrogacy after reading about it in a novel, and had included it in an essay as part of her training to qualify as a health visitor. After the Hilton meeting she agreed to follow up on the inquiries that Blankfeld had received from British would-be surrogate mothers.



Gorst: intervened

She was given a warning about how hostile some people might be to that decision when, in late 1983, she got a job as a health visitor with East Surrey health authority. Though she kept her surrogacy activities separate (and carried them out under her maiden name, Manning), the Mail on Sunday found out about her and, on December 4, led the newspaper with a story headlined "Babies for sale". A week later, she resigned from the health authority.

Quinton and Blankfeld did not learn from that experience. When, within four months, Kim Cotton - a 28-year-old housewife from Finchley - had signed up with the agency, and become pregnant through insemination, the story of "Britain's first commercial surrogate

mother" was offered to Fleet Street newspapers by auction.

The Daily Star won, with a bid of £7,500, on the strict agreement that Cotton's identity would not be revealed. But the Daily Mail (the Mail on Sunday's sister paper) had no difficulty in identifying her. It broke the news last September, and revealed that the baby would be born in Barnet, north London.

From then on, controversy was inevitable. As Vic Lyon, the chairman of Barnet's social services committee, said: "If Mrs Cotton had not gone for publicity we may never have known. But here we had a mother who openly admitted she had no intention of caring for her baby, we had a recognised placement agency, and we had no idea who the prospective parents were likely to be. We had a statutory duty in such circumstances to step in."

Alan Gorst, the borough's social services director, was advised by the Home Office to wait until the child was born. The moment she was, at 7.26pm on January 4, Gorst went to the home of the local duty magistrate to get a "place of safety" order, preventing Baby Cotton's removal from the hospital.

The only way the child's father could then get the baby, he had paid for was to apply for her to be made a ward of court, and trust that he would eventually be given custody. Last Tuesday, Mr Justice Lacey made the wardship order from his home in Roehampton; he will announce his ruling on custody tomorrow.

Whatever his verdict, the likely consequence of all the publicity and wrangling is that Baby Cotton will be one of the last commercial surrogate babies born in Britain, though at least three other women