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Law

'It's about changing lives — and the law'

The UK's first fertility law firm is bringing ground-breaking cases and creating families. **Frances Gibb reports**

Last week a mother went to court for the right to become pregnant with her own grandchild, using the frozen eggs of her dead daughter. The woman, 69, and husband, 58, say that it was their daughter's dying wish that she should carry the child: she had her eggs frozen after being diagnosed with bowel cancer, hoping to have children after treatment but died in her mid-twenties.

The case, thought to be the first of its kind, would involve the daughter's eggs being fertilised by donor and implanted into the mother. A clinic in New York will carry out the procedure for some £60,000, but the Human Fertilisation and Embryology Authority (HFEA) has refused the couple's application to export their daughter's eggs to the US, saying she did not give clear written consent.

The week before, a judge ruled that a gay couple should have the parenting rights over a baby rather than the birth mother who was the surrogate. The ruling sparked debate about whether the laws around surrogacy need to be tightened to deal with such informal arrangements — the view of lawyer Natalie Gamble, who handled both cases.

"At its heart this [gay couple surrogacy case] was a dispute between the mother, father and same-sex partner about what was agreed before the child was conceived. Preconception

'Disputes will become more common if we do not give the law more structure and clarity'

and surrogacy agreements are unenforceable under UK law so it was not about whether the court should uphold the original agreement, although that did form an important part of the factual background to the case." The issue was what living and contact arrangements would best promote the child's welfare, she said.

As such, it was like many decisions in the family courts every day. However, she adds: "UK surrogacy law is woefully outdated and such disputes will inevitably become more common if we do not



CHRISTOPHER ISON

Helen Prosser, left, and Natalie Gamble: need to ensure those entering into arrangements think through the issues carefully

give the law more structure and clarity. As the court intimated, we need a proper process to ensure those entering into arrangements to conceive a child think through all the issues carefully, proceeding only if there is consensus."

It is six years since Gamble set up her pioneering law firm, Natalie Gamble Associates (NGA), the first in the UK specialising in assisted reproduction and fertility law. Before then, she was working at Lester Aldridge (Bournemouth, Southampton) where her interest in fertility law grew from tax and family work.

"At the time few lawyers knew anything about this: I started investigating what could be done within the law and it was not very much." The first of her two children, a girl, was born in 2002 through donor insemination, but at that time it was hard to obtain full parental rights for both her and her female partner other than through routes such as obtaining a residence order.

Her work developed into surrogacy and she and her team handled the first international surrogacy arrangement to be ratified by the UK courts after twins born to British parents were "ma-

rooned stateless and parentless" in the Ukraine. That case became the basis of later international surrogacy cases.

Since then, the law has improved somewhat, but there a way to go. The problems were highlighted in another recent case in which a British couple in their sixties, who had been trying for children for 38 years, entered a surrogacy arrangement in the Ukraine. However when the mother disappeared, the couple could not establish that she had been happy to give up the twins. Mrs Justice Theis granted orders to make the couple the legal parents. "Again, as the judge said, some blame must lie with the law, which makes UK surrogacy an informal adventure and allows problems like these to happen," Gamble noted.

NGA is based in light open-plan offices in the New Forest, with views over fields. There is just a handful of staff, to be a total of nine by July: "We don't have titles and we have an absolutely flat hierarchy," she says. The atmosphere is informal: there is a "baby board" with dozens of pictures of the babies that they have helped into existence. "There was a real need for advice from the start. It is about securing parentage for fami-

lies conceived in different ways — that's the heart of what we do. Heterosexual couples are well covered so it's mainly gay dads, lesbian couples, single parents, donor conception, surrogacy, relationship breakdown... where, with same-sex couples, there may be issues with stored embryos."

It is not just the area of law itself that is ground-breaking; the firm's approach is also unusual and pro-active in seeking to improve it. "We think outside the box and like pushing the boundaries. We get involved in the sector beyond client work — we are not just lawyers."

One upshot of that has been Brilliant Beginnings (see below), founded with Helen Prosser, Gamble's co-owner at NGA. This is a non-profit making professional surrogacy and egg donation agency that sits alongside the law practice and aims to give couples practical support and legal advice, while campaigning with the law firm for reform. Both helped to shape the Human Fertilisation and Embryology Act 2008, which introduced the right for two women to be on a baby's birth certificate: "That was a major milestone," Gamble says.

Since the 2008 case, international surrogacy has become a phenomenon, with some 2,000 cases a year involving UK parents going abroad. "We have campaigned for changes in the law to make surrogacy better supported legally. Many couples go abroad because arrangements there are far easier: what we need is well-managed surrogacy here, so fewer parents have to go abroad."

She has also campaigned for maternity rights for parents who use surrogacy, which became law from this April. In another move, after a private member's bill promoted by John Healey, MP, children born through surrogacy abroad automatically become British on the grant of a parental order; while a further reform ensured that parents who store their own embryos for surrogacy can do so for more than five years.

In 2012 Gamble acted for Kyle Casson, the UK's first single father to conceive through a surrogacy arrangement in the UK, who achieved parental rights through an adoption order. But the rules on surrogacy remain outdated.

"In many US states parents and surrogates are given psychological screening, and medical and legal advice before they enter into a written contract, which then allows the court to make a pre-birth order confirming everyone's responsibilities before the birth. We think it's time for a similar framework in the UK."

"If you enter into an arrangement here, the surrogates are still the parents and it has to be unpicked afterwards through court orders while the children are left in limbo. We want proper recognition and support for such arrangements." At present parents must apply for a parental order — although currently that is only open to a couple and not a single parent. The firm worked with Jessica Lee, MP, who last October tabled a debate in Westminster Hall.

Meanwhile, there are plenty of couples to advise. The firm has helped to create hundreds of families since it began. "It is all about changing lives, plus the law — so it feels very meaningful. It's incredibly rewarding to be involved in people's journeys."

Next week

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— a new Magna Carta
for the digital age?**

Beyond the legal issues: big demand for couples considering surrogacy to have professional support and advice in an 'ethically robust and safe environment'

Couples seeking help with fertility problems need more than legal advice, says Helen Prosser. Hence Brilliant Beginnings was launched in 2013, to work alongside its "sister" law firm — and together they have helped more than 400 families.

The original idea for the agency was put to both the Department of Health and the Human Fertilisation and Embryology Authority, who "liked the idea", Prosser, a mother of two, says. "We wanted to do it properly, within the law, but we needed to create a framework that the law does not currently provide. It had to be ethically

robust and provide a safe environment for people to come to us."

Prosser is responsible for strategy and management at Natalie Gamble Associates and like Gamble, her co-owner there, is an expert in the field: she has advised the Human Fertilisation and Embryology Authority on its code of practice and on surrogacy forms; and is a member of a group advising on donation issues.

At present couples with money tend to head abroad: the United States and India are big destinations with countries such as Mexico evolving. But the costs are prohibitive for most

people. "So we need to make it easier here, put people in the position to make informed decisions," she says.

The agency screens would-be surrogates and parents. Some 95 per cent of surrogates do not make it through screening and preparation. It is currently working with ten screened surrogates. Meanwhile, there is huge demand from interested parents: since opening, it has spoken with 500. Fees are transparent and staged: a full matching and management service is £7,000 plus VAT. The agency cannot make a profit as commercial brokering by a third party between parents and a

surrogate is a criminal offence. The service also helps couples who want to go to the US to find an agency, clinic and lawyer — and also the practical support through to bringing a baby home to the UK. A full service is offered to intending surrogates, working alongside agencies such as COTS and Surrogacy UK.

In July the agency opens a second office in Borough, south London. "There is a huge lack of professional support in this area of work, unlike abroad where they are properly counselled, advised... and we thought: we can do this."

Cases handled by Natalie Gamble Associates include:

- High Court awards care of 15-month-old girl to gay couple against wishes of birth mother — 2015
- Re G and Re Z: first case to test rights of lesbian parents to be named on birth certificates — 2013
- UK's first single father to conceive through surrogacy in UK — 2012
- Landmark ruling for international surrogacy asserting welfare of child as paramount — 2010
- Fireman who donated sperm to lesbian couple pursued for child maintenance — 2008