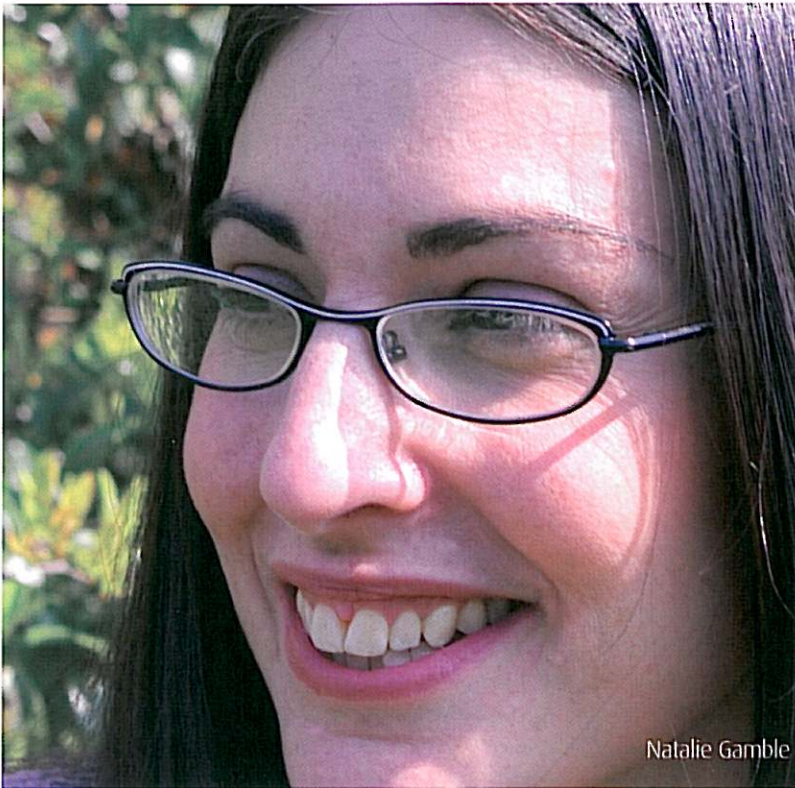


# Fertility tourism:

## what you need to know from a legal perspective



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Fertility tourism suddenly seems to have become a popular catchphrase in the world of fertility treatment. But, while it may satisfy media appetite, the phrase doesn't get anywhere near reflecting what our clients tell us about their real experience: taking a fertility journey abroad often feels very little like a holiday.

The reasons people decide to go abroad for treatment are serious and difficult and often reflect the restrictions in the UK as much as the attractions abroad. We hear repeatedly that the most significant factor in our clients' decisions to go abroad is the inability to readily access donor eggs, donor sperm and surrogate mothers in the UK. Patients often feel quite simply that they have no other choice if they want to build their family.

Foreign clinics haven't missed the business opportunity and are actively marketing their services to British patients, helped by increasing availability of global information via the web. This is naturally beginning to raise concerns about the potential problems for British patients going abroad for treatment. In the last year, we have seen coverage of the NHS having to pick up the tab for multiple pregnancies resulting from a growing trend of fertility tourism, and concerns about foreign clinics not being required to uphold the same safety standards as apply in our carefully regulated sector in the UK.

But what about the legal side of things? There is no legal restriction preventing patients from going abroad for treatment (indeed you have a right to do so). But if you are considering going abroad for treatment, it is important that you understand where your much wanted family will stand legally.

If you're considering foreign egg donation, the law is set up to assist. A carrying mother is the legal mother of her child under English law, and this applies no matter where in the world she conceives. If you are a British woman conceiving with donor eggs in Spain, the USA or anywhere else, it means that you have the protection of English law in making you your child's legal mother.

The donor sperm laws are more complicated. If you are conceiving with donor sperm and are married to or in a civil partnership with the woman carrying your child, then you can be treated as your child's other legal parent (a father if you are the dad, or a parent if you are a second mum). It makes no difference whether you conceive in the UK or abroad.

However, if you are an unmarried couple conceiving with donor sperm, or a lesbian couple and not civil partners, you can only both be treated as legal parents if you conceive in a licensed clinic in the UK. In practice, it means that if you are an unmarried couple going abroad for treatment with donor sperm, the non-carrying partner will not automatically acquire legal parenthood under English law (making an early marriage or civil partnership ceremony prior to conception one possible legal alternative).

The other big legal issue if you have treatment abroad with donor eggs or sperm, is your family's ability to access information about your donor. The Human Fertilisation and Embryology Authority records details of conceptions which take place in the UK, and gives donor conceived children and their parents legal rights to access information about the donor and any genetic siblings over time. If you conceive with donor eggs or sperm outside the UK, there will be no such record of your conception, and you should explore what legal rules apply in the place where you conceive.

Surrogacy is without doubt the most difficult legal area of all, and this is where patients would be wise to always seek specialist legal advice before committing to any kind of treatment abroad. Under English law, the parents of a child born through surrogacy are typically the surrogate and her husband and in international surrogacy cases this usually conflicts with the position in the country where the arrangement takes place. Patients are often lulled into a false sense of security by the fact that they can be named on the birth certificate in the country where their child is born, without realising that this will be meaningless for English law purposes. Without careful planning, a surrogate child may be born stateless and parentless in a foreign country, with no entitlement to enter the UK (in the absence of expensive and complex legal intervention). This is clearly a nightmare for parents who have been on such a long journey to have a much wanted child, and well worth taking some time at the outset to explore properly.

The central message if you are thinking of going abroad for treatment is, do your homework. While the desire to get that positive pregnancy test is incredibly strong, make sure you give yourselves the time you need to explore all the implications and make sure that this is the right option for you, not just in the short term, but with a view to what it will mean for your family once your precious child arrives.