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TRANSCRIPT OF "FILE ON 4" - "SURROGACY"

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EDITOR: David Ross

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SOUND OF BABY GURGLING

ALISON: Good morning, darling, did you sleep well?

MANEL: A mother and one of her six month old twins. After years of infertility they were born through surrogacy.

ALISON: Seeing the babies born was the most joyous moment of my life.

MANEL: The number of surrogacies is increasing in Britain, but why hasn't the law been keeping pace?

MAN: We were horrified. Most people go into surrogacy as the last throw of the dice, and yet in this area of human life you don't have any protection at all.

AMANDA: Hiya!

MIDWIFE: How are you?

AMANDA: All right, not bad.

MANEL: This is the third time Amanda has been pregnant on behalf of somebody else.

MIDWIFE: So we're just going to have a little listen.

AMANDA: Okay.

MIDWIFE: It's a bit cold this gel, I'm afraid.

ACTUALITY OF BABY'S HEARTBEAT

AMANDA: What's it coming in at today?

MIDWIFE: About 140.

AMANDA: Right.

MANEL: I've joined Amanda because I'm trying to get into the mind of one of Britain's surrogate mothers – women who are prepared to help create families by lending their wombs, often spending years of lives having other people's babies.

AMANDA: Right, I'll see you next month and next time I'll be bringing the mother with me.

MIDWIFE: Yes, brilliant.

AMANDA: Tada, bye.

It's a little girl. It's a straight surrogacy, which means it's artificial insemination with the intended father's sperm. I've donated my own egg as they didn't have any eggs to donate. They have been trying for 23 years, they have had nine rounds of IVF, she's had two ectopics and really there was nowhere else to go apart from surrogacy at this point.

MANEL: How long have you known them?

AMANDA: About six weeks longer than I'm pregnant.

MANEL: Is six weeks enough to get to know a couple properly and decide whether or not you want to carry their child?

AMANDA: Not always, but on this occasion I think it was, because I got a real feel for them and they really wanted me to help them.

ACTUALITY OF COMPUTER GAME

AMANDA: Should you be hitting all those walls?

CHILD: No. Yay!

MANEL: Eyes glued on the computer, this is Amanda with the children she carried for herself, now aged 8 and 10. But she entered the world of surrogacy before they were born.

AMANDA: Well I had a termination of pregnancy some years ago, when I was in my early twenties. I really feel that was a mistake. It's not a mistake for everyone, but it was a mistake for me. And it was only afterwards that the enormity of the situation hit me about what it is that I had actually done. Well, I think surrogacy was my way of giving something back. I was just so intent on making up for this awful, horrid thing that I had done.

MANEL: At the age of 37, she isn't about to call it a day at being a surrogate. The latest baby is due in May, she has another surrogacy pregnancy planned for later this year and is contemplating a fifth for 2010.

What's the draw of surrogacy?

AMANDA: You get a really buzz of seeing this couple become a family. I don't know of anything else I've done in my life that is as worthwhile. When you look at all their years of trying and you can give them what all the doctors and all the professors and all the surgeons couldn't.

MANEL: I get the impression that you enjoy being a mother of your children, so I can't quite get around how you are able to hand a child over to somebody else and just say goodbye.

AMANDA: I've got my kids, that's fine. If I wanted any more I could have them, there's nothing stopping me having them. I think every couple who wants to become a family should have the opportunity to do so, and as great as modern science is, it doesn't solve everybody's problem and sometimes there just isn't anywhere else to go than using a surrogate.

MANEL: Do you stay in contact with the baby afterwards?

AMANDA: Yes, but that all depends on the parents. If the parents decide that actually they really don't want a constant reminder that they had to use somebody else to expand their family then that's fine. However, personally I'd like to feel that they might lift the phone and give me a call once in a while, and that's what's happened.

MANEL: Finding out how many babies are born through surrogacy each year in Britain is very difficult. It's no one's job to gather this kind of information. Surrogacy arrangements aren't regulated or monitored by the Human Fertilisation and Embryology Authority – the HFEA. In fact, this doesn't come under the auspices of any regulatory authority. But this programme has obtained figures which suggest surrogacy is becoming more popular. The number of couples who have gone to court to formalise their role as parents of children born through surrogacy has increased by

MANEL cont: more than a third in just twelve months. These figures are still small – 79 last year – but it's unlikely this paints the full picture. Anthony Douglas is the Chief Executive of CAFCASS, the Children And Family Court Advisory Support Service.

Do you think that the number of parental orders which are being granted reflects the number of people who are actually going through surrogacy?

DOUGLAS: No, it will only be a percentage. The extent of the under-reporting of the shortfall in the true number is impossible to say. Undoubtedly surrogacy is becoming more mainstream. It's still very small, the figures, compared to adoptions, there are three to four thousand adoptions per year. This is still a very tiny group, but it is becoming embedded as one practice amongst many for childless couples.

MANEL: If Amanda Broomhall does goes ahead with two more surrogacies, she won't be setting any records. She will still be far behind some other British surrogate mums – the so-called super surrogates.

ACTUALITY WITH PHOTOGRAPHS

CAROLE: This is a photograph of my first surrogate child, born in 1995. I went straight on to have another pregnancy for the same couple and then I had the twin girls. This photograph shows them in their buggy. This is a photograph of another surrogate boy. I've had more girls than boys. These

MANEL: This is a family album with a twist. These children are part of different families, but the same woman gave birth to them all. At the age of 42, Carole Horlock believes she is Britain's, Europe's, possibly even the world's most prolific surrogate mother.

CAROLE: I've had twelve surrogate children for other people.

MANEL: Twelve?

CAROLE: Yes, twelve. That includes one set of twins and one set of triplets. All of those were for other people. I have two children of my own. So in total I've given birth to fourteen children.

MANEL: So including the twins and the triplets, how many pregnancies does that make for other people?

CAROLE: That would make nine surrogate pregnancies. I'm not a machine, I don't give birth to babies and give them away and never give them another moment's thought, you know. It's important for me to know that they're going to a loving, warm environment and to see them grow as a family is very satisfying and it's part of it. It doesn't end at giving birth.

MANEL: Carole is currently living in France, where surrogacy arrangements are illegal. Most of hers have been for British couples. The law here permits surrogacy but is intended to prevent it taking place on a commercial basis. Only what are described as 'expenses' are allowed.
How much do you charge?

CAROLE: I don't charge as such. I get compensated for what I go through with the pregnancy and it varies. For a friend that worked as a nurse and didn't have much money it was minimal. Other people, if they've earned more money and they wanted to give me a little more to say thank you, but it's varied between couples and I won't disclose it because it brings it down to buying babies, and people don't buy babies, they pay me for being pregnant.

MANEL: The fee, as I understand it, is meant to be expenses only.

CAROLE: It is expenses, but it includes wear and tear on your body and physical hardships.

MANEL: I've heard that the figures that are acceptable to the courts when it comes to expenses can be anything between £7,000 and say £15,000 maximum.

CAROLE: That's what I've heard, yes.

MANEL: Does that fit in with what you have been paid?

CAROLE: Sometimes it's been less than that and usually not more than that, yeah.

MANEL: You say usually not more than £15,000 which suggests that on at least one occasion it has been.

CAROLE: You won't push me to say that I have been, so no, I haven't been paid more than £15,000.

ACTUALITY IN OFFICE

GAMBLE: Our little section is in the end down here. There are three of us in a fertility law team at the moment. There are my files on the shelf here, lots of surrogacy cases, international surrogacy advice and so on.

MANEL: In her office, not far from the sea in Bournemouth, this is one of Britain's leading fertility law specialists – solicitor Natalie Gamble.

GAMBLE: The way the law works is that you have to apply for a parental order after the child is born in order to transfer parenthood to the commissioning parents, and one of the conditions of getting that parental order is that you show that not more than reasonable expenses has been paid to the surrogate mother. So essentially commercial surrogacy isn't an offence, it's not illegal, but it will stop you acquiring parenthood for the child if you have paid more than expenses to the surrogate mother.

MANEL: I understand from one surrogate that they can charge for childcare of existing children, pregnancy clothes, loss of earnings, even takeaways because they can't cook. Would a court see that as being reasonable?

GAMBLE: Yes. The courts take a reasonably broad approach and they recognise that being pregnant is, you know, puts you out to a great extent, so they take a wide latitude in allowing expenses for things like takeaways and childcare and so on, so you can be generous but you do need to show that those expenses are reasonable and that's it not a big commercial reward for having carried a child.

MANEL: If these limits on expenses are only imposed when a couple seeks a parental order, in reality if a couple decide not to bother doing that then they can pay as much as they want.

GAMBLE: This is one of the problems with the current law, that the check on commercial surrogacy is, if you like, almost after the horse has bolted. It occurs right at the end stage, by which time the surrogacy arrangement has already taken place and the payments, if there are any, have already been made.

MANEL: The surrogates we've interviewed say they've kept to the expenses rule. But we've uncovered evidence that suggests it can sometimes be ignored.

ACTUALITY WITH COMPUTER

MANEL: I've opened up my laptop. There's a British based website, which I've been on before to find things like plumbers and gardeners. But there's a woman in the north of England offering to help anyone looking (and I'm quoting here) for a suitable place to "grow" their baby. And here is an American surrogacy message board. And there's a woman who says she's somewhere in the UK and again wants to be a surrogate. We've been advised that placing these adverts is actually illegal for people in Britain. But what these ads don't tell you is how much money is going to be involved. So my producer and I have been emailing another woman who has been advertising on the internet. She says she's an experienced surrogate and she has told us that she charges £16,000 plus expenses. One couple I've been in contact with tell me they have been quoted figures by British surrogates of up to £30,000. Judges who are deciding whether to grant parental orders rely on court social workers from CAFCASS. It's their role to effectively police this. The Chief Executive, Anthony Douglas, says not everything will come to their notice.

DOUGLAS: Any system can be manipulated or potentially defrauded, but our experience is that it is not a field where the people we see are seeking to behave outside the law.

MANEL: One surrogate, who's very experienced, told us that she's heard stories where the commissioning parents have been forced to hand over more money and yet more money during the course of the surrogacy, but that that is kept quiet.

DOUGLAS: Yes, I would suspect the majority of cases like that would not come to our attention and I suspect the covert side of surrogacy has more than its fair share of profiteering.

MANEL: And we've spoken to more than one person who has told us that they've come across people asking in the region of £25,000 to £30,000 for surrogacy.

DOUGLAS: I haven't seen cases like that, but like you I've heard of them and I'm sure there's an element of truth. We do need to shine a light on these cases and to bring them out into the open to get them properly monitored and regulated because with devious practices it's less possible to guarantee stability and the right home for a child in the future.

MANEL: As far as we know the majority of surrogacies produce the desired outcome. But when surrogacy arrangements go wrong, the consequences can be devastating. For this File on 4, I've been talking to couples who – for the first time – have agreed to tell me their stories in the hope that their words will draw attention to what they see as weaknesses in British surrogacy law. To protect their identities and those of the children involved, we have changed their names.

ALAN: When people would come to the house and they'd see any photograph they would immediately ask about kids. They'd put you in a situation where you were trying to explain what had happened and where you were, and so to avoid anything like that we ended up not having any photographs at all.

MANEL: Alan and his wife Pauline tried to conceive for a decade.

ALAN: We got to a point where we didn't really celebrate Christmas, in the sense that we didn't bother with a tree or the lights or decorations. You can't celebrate something like Christmas when inside you feel empty and a bit unfulfilled and you haven't resolved things.

MANEL: At times life became almost unbearable.

ALAN: It hurts a lot. It's an ache and it doesn't go away. It stays there. You can't leave it. You've got to do something about it.

MANEL: They turned to one of Britain's unofficial surrogacy agencies to find a woman willing to help.

ALAN: What tends to happen is you build up a series of conversations over perhaps two or three days or weeks even, and then if you still feel comfortable with each other, then you tend to agree to meet up. Normally the first meeting often takes place at a neutral venue – it might be a café or somewhere, because then if either party doesn't feel comfortable it's easier to sort of stop it and walk away. And then it tends to progress at either party's house and then you can possibly see the respective family members and take it from there.

MANEL: What did you know about her?

ALAN: Well basically we knew what she disclosed to us. She obviously filled in a profile. It tends to be limited information. She had a family and she was telling us the family was complete and that she was doing this because had altruistic reasons for it. She wanted to help other couples, etc.

MANEL: How long was it before you embarked on the road of surrogacy with her?

ALAN: From actually making the first telephone call to the first insemination was a matter of two or three months.

MANEL: Alan says they soon received the good news that their surrogate was pregnant. She had conceived through artificial insemination. Genetically the baby was going to be hers and Alan's.

ALAN: As time went on, we went through all the routine tests and the baby was developing fine and then after a while we were told that she had miscarried, she told us she had miscarried, and we just were sympathetic to the surrogate and what had happened to her.

MANEL: What were you going through?

ALAN: It was just turmoil. To us this was our last opportunity for a child of our own. We just thought it's not happening for us again.

MANEL: They say they stayed in touch with her, but having suffered several miscarriages themselves they wanted to give her time and space to recover from what she'd been through. They certainly weren't expecting what happened next.

ALAN: We got a call from the agency who told us that they had had some information and that they were going to investigate.

MANEL: Investigating what? Did they tell you?

ALAN: They had been informed that the miscarriage hadn't taken place and that the surrogate was still pregnant. The surrogate denied that she was pregnant and that she had indeed miscarried, as she had told us, and that was the end of it. And so the agency couldn't do a great deal, because they couldn't prove whether she was pregnant or not. We knew when the due date was and we ended up hiring a private investigator to actually make enquiries at the hospital, and we soon got the information that he had found out that a child had been born.

MANEL: It was a baby boy and a DNA test later confirmed that genetically it was Alan's child. Despite Alan's biological links, he had no legal rights to the baby at all. In the eyes of the law, the parents were the surrogate mother and her husband. The fertility law specialist Natalie Gamble says the surrogate holds all the legal cards.

GAMBLE: From a legal perspective, this comes down to the very basic rule under our system of law at the moment that the surrogate mother and her husband are the legal parents of the child at birth, so essentially it's up to them to consent to parenthood being transferred to the commissioning parents. And they hold all the power in that, if you like. There isn't any power for the court to override their lack of consent if they do decide they want to keep the baby for whatever reason.

MANEL: What if the man's sperm has been used? He must have some legal rights?

GAMBLE: No, if the surrogate is married at the time she conceives, then the father of the child will be her husband and not the biological father.

MANEL: This means that the people who are intending to be the parents of the unborn baby have no legal rights at all?

GAMBLE: That's right.

MANEL: As a solicitor specialising in fertility matters, can't you draw up a legally binding contract which makes clear that the woman carrying the child is only the surrogate mother?

GAMBLE: No, the law says that a surrogacy agreement is unenforceable.

MANEL: Alan and Pauline were given the same advice by their legal team, but they refused to give up. As far as they were concerned, the baby had been conceived to be theirs – their son. They went to court, where it emerged that the surrogate, known as Mrs P, had pretended to have a miscarriage before in an earlier surrogacy.

READER IN STUDIO: It is now an admitted fact by Mrs P, in relation to both children, that she falsely asserted to each father within months of becoming pregnant that she had miscarried ...

MANEL: Court papers also show several years earlier Mrs P had:

READER IN STUDIO: ... laid claim to an abandoned child which had been found ... which she read about in the newspaper. However, on medical examination and police investigation it transpired that she had not recently been pregnant and had invented the story.

MANEL: The court found that Mrs P and her husband had been good parents and the judge said it was a particularly difficult case to decide, but a residency order was made in favour of Alan and Pauline.

ACTUALITY PLAYING WITH FIRE ENGINE TOY ETC SIRENS

ALAN: The house is full of toys, and this one does all sorts of things, including making noises. They're Christmas presents; it was a great Christmas we've had, something we didn't think we'd ever have.

MANEL: By the time the court's ruling had been made, Alan's son was 18 months old. But the law only allows six months for the commissioning couple to seek the official transfer of parental rights. The delay has proved critical.

ALAN: We have a residence order and we have parental responsibility and that's as far as it goes at the moment. It allows us to do the day to day upbringing of a child and be his parents in some respects, but we don't have the full status of legal parents that you might have through a child of your own or through a proper surrogacy where you would go through the process in the right way.

MANEL: What has been the cost of all of this – emotionally but also I suppose financially for you?

ALAN: We've had to sacrifice many things and close to £100,000 probably has been spent by us in the whole process. We've just had to go into our savings, remortgage the house to find the money to pay for all this.

MANEL: Has it been worth it?

ALAN: At the end of the day it has, yes, in the sense that we have a lovely little child. It's cost us financially but you can't measure that in terms of how delightful the child is.

MANEL: The court that granted Alan and his wife the residency order also drew attention to the role played by the surrogacy agency. The judgement stressed that it didn't examine the investigations that the agency made into the psychological background of the surrogate, but did conclude:

READER IN STUDIO: I would urge all such agencies to ensure their checks into the background of all parties to these essentially artificial childbirth arrangements are as thorough as they can be.

ACTUALITY IN OFFICE

CARTER: This is mission control. Two of us work here. It's a very small back bedroom ...

MANEL: In a small room in a family home in a village not far from Middlesbrough, this is where you find Robin Carter. He's the spokesman of the surrogacy agency Childlessness Overcome Through Surrogacy or COTS. This is the agency involved in Alan's case.

CARTER: If I can get that on there, yes, we have the database, so for each couple and each surrogate we have one record, and every time we speak to anybody we record what we've said or what's been said to us, such as obviously births of children and that kind of thing.

MANEL: Surrogacy agencies like this aren't regulated in Britain and in order to stay within the law, aren't allowed to profit through putting couples and surrogates together. Although you have to pay to join COTS, Robin Carter says there's a limit to the vetting the organisation can do.

CARTER: The surrogate herself would have the sexually transmitted infection tests. They and any partner or husband that they have would have a criminal record check. She would need a letter from her doctor to say there was no reason why she shouldn't act as a surrogate mother. She would also have a meeting with somebody from COTS who would take her through the whole process and try to get some idea of her motivation.

MANEL: Do they have a psychological test?

CARTER: No.

MANEL: Shouldn't they?

CARTER: What we have to bear in mind is that we only really can do what we can do, and the cost of having a psychological assessment added to all of the other things would be quite considerable. We have to understand that we can only do what we can do within the resources that we have, and we do rely, for example, on doctors to give us indications if there were any mental health or other issues that they feel might be relevant. But at the end of the day we are limited mainly by resources and by the fact also that we don't get a lot of women coming forward to be surrogates. If we had a massive barrage of tests and assessments, we would have to accept that that might just simply put some people off.

MANEL: But wouldn't it weed out, perhaps, those who in the end prove to be unreliable?

CARTER: My knowledge and experience of psychological assessment suggests to me that in fact it wouldn't be very likely that the kind of personality traits that might be counterproductive in surrogacy would be identified by a psychological assessment.

MANEL: Alan doesn't blame COTS, but he says at the moment there's nothing to stop something similar happening again.

ALAN: In hindsight, if we had had more information and there had been more verification, if some of the background information had been given, then we might have taken a different decision. The way things are at the moment, the information you get at the start is quite thin.

MANEL: So what's needed?

ALAN: I think we need to have a database of surrogates so that you have a common database with a lot of details on there about the surrogate's background and other items which could be relevant.

MANEL: Who would run that?

ALAN: I think there needs to be a central agency set up to keep that database.

MANEL: Are you suggesting some kind of regulatory body?

ALAN: I think there needs to be.

ACTUALITY AT ROYAL COURTS OF JUSTICE

MANEL: More often than not, the detailed agonies of surrogacy agreements that have gone wrong go largely unreported. And, until this programme, it's been highly unusual to hear from those involved. One of the reasons is that the cases often end up here. I'm in the main corridor of the Family Division at the Royal Courts of Justice in London. And normally microphones, reporters and the public are kept well away. Because children are involved, hearings take place behind closed doors, and only the judgements are made public. But judges are becoming concerned about some of the issues that surrogacy cases are raising.

MANEL cont: One High Court Judge, Mr Justice McFarlane, has written to the Government about the matter and now he has taken the unusual step for a serving judge to agree to be interviewed about it.

McFARLANE: In the judgement that I gave in one of the cases, I did express concern that these agencies, well meaning though they undoubtedly are, were not audited or regulated in any way as to the quality of advice that they gave to couples approaching them for their service. I was sufficiently concerned to send a copy of the judgement to the Government department in the hope that they could look more carefully at the whole range of these cases and decide whether there was a need for some form of modest regulation or checking of the competence and the level of functioning of the service that's provided.

MANEL: How would you summarise the level of concern amongst yourself and your colleagues in the family division about the surrogacy cases which have gone wrong?

McFARLANE: I can only speak for myself and for Mr Justice Headley who's on record about this as well. Both of us were sufficiently concerned to give our judgements in public. It seemed to me that in those particular cases matters had gone significantly wrong and that there was a need to look and see whether the arrangements we have in this country are the best that can be made for these couples in a circumstance when the child has been born and the court wants to do its very best to achieve the best for that child's welfare.

MANEL: With all the potential pitfalls involved in surrogacy agreements in Britain, there's evidence that British couples are now increasingly going abroad to find surrogates. And on the face of it, that's a pretty easy thing to do. I have a supplement here from a British Sunday newspaper and there's an Indian Clinic advertising its surrogacy programme, and a few pages later here's the same Indian clinic again, and this time it's surrogacy for same sex couples. But this international dimension means, first of all, British courts are having to grapple with commercial payments paid by British couples in countries where that is allowed, but it's also opening up another legal minefield, which is causing yet more heartache.

ACTUALITY OF BABY GURGLING

ALISON: Did you sleep well?

MANEL: Early morning giggles – or probably gurgles. Six months ago, Alison and her husband Mark feared they would never have this experience at home with their twins.

ALISON: It was a rollercoaster. It was the enormous highs of seeing the babies born, it was the most joyous moment of my life, but we didn't know whether we would be able to bring the babies home.

MANEL: After much thought, Alison and Mark decided to go East to find their surrogate – to the Ukraine. And having signed all the relevant paperwork, under the law in the Ukraine, Alison and her husband automatically became the children's legal parents. However, under British law they still had no rights at all. The twins were left in legal limbo.

ALISON: The principal difficulty was the fact that the surrogate was married, so her husband in UK law is regarded as the father of the child.

MANEL: Even though your husband genetically was the father?

ALISON: Indeed. That seems to have no bearing on the situation whatsoever. The fact that her husband would be the father meant that we had no claims on the children in UK law, despite the fact that in Ukraine the commissioning couple are the registered parents and our names would go on the birth certificates right from the beginning. Under British law we had no connection to the children at all. This left the children probably parentless, because in Ukraine we were the parents and in Britain they were the parents – and stateless, because in Ukraine they were British, they were our children, and in UK they were Ukrainian because they were the children of the surrogate mother and her husband.

MANEL: They were stuck there for six weeks – until British immigration authorities gave them discretionary leave to bring the twins into the United Kingdom, pending a hearing at the High Court to decide whether Alison and Mark should be given parental rights. They were successful, but the case was far from straightforward. Mr Justice McFarlane has been looking closely at what happened.

McFARLANE: It is certainly entirely possible to contemplate that the child, for example, failing to get entry clearance to be brought into this country, and so it would be impossible for the couple to get a parenting order in this country, because the child would not be living with them here. And the child presumably would stay in the other jurisdiction. The surrogate mother has given up the child and it may be that the child would have to fall back on the social services in that foreign country. Then the child would be in public care, in some countries that would be an orphanage, one hopes in most countries it would not be - and not at all what was envisaged by the three adults who were involved in the surrogacy process. That outcome should be avoided at all costs.

MANEL: Mr Justice McFarlane says it isn't his role to comment on Government policy or on the current state of British surrogacy law. But others who specialise in this area, like the solicitor Natalie Gamble, say it has failed to keep pace with the realities of modern life.

GAMBLE: The law was designed back in 1990, when the rules on assisted reproduction were put in place. At the time surrogacy was very rare and the rules were not designed specifically to cater for it. And what's happened over the last twenty years is that surrogacy has become much more acceptable and much more common, and lots of people find surrogates who are either relatives, typically sisters or sisters in law or friends, and that's really the kind of situation that the law is designed to deal with most comfortably, if you like. And if you're not lucky enough to have somebody in that position who's willing to help you, then you have to go out and find a surrogate who's somebody you don't know. Things then become much more difficult.

MANEL: What do you think of the law as it is at the moment?

GAMBLE: I just think it's not really fit for purpose.

MANEL: The cases we have examined in this File On 4 investigation may have happened over recent months and years, but many of the issues they raise aren't new.

ACTUALITY WITH REPORT

BRAZIER: I've got my copy of the report, commissioned by the Department of Health on Surrogacy, and I undertook this report with two very valuable colleagues. It's pretty old now and getting a bit yellow and I'm afraid there are a few coffee stains on it.

MANEL: This is Professor Margaret Brazier – Professor of Law at the University of Manchester - thumbing through a report she wrote more than ten years ago. She was asked to chair a panel examining the laws on surrogacy. Commissioning the report was one of the first things the new Labour Government did after coming to power in 1997. The report's recommendations? A new Surrogacy Act, regulating Surrogacy Agencies, setting up a code of conduct and strengthening the rules on expenses.

BRAZIER: I strongly hoped it would happen. I'm well aware of the numbers of reports commissioned by Government that sit on Government shelves and the parliamentary timetable never allows action to be taken.

MANEL: So what did happen?

BRAZIER: As far as I'm aware very little. In fact, I am not aware of any of our specific recommendations to Government being implemented.

MANEL: In your report you said there had been "a policy vacuum" during which – and again I'm quoting – "surrogacy had developed in a haphazard fashion"?

BRAZIER: That policy vacuum still exists and I find it very sad to see that some of the same problems that we found just seem to be recurring again and again without any substantive measures to address them and reduce the risk of things going horribly wrong.

MANEL: File on 4 wanted to ask the Government why it hasn't acted on the Brazier report's recommendations, for its response to what has happened to the couples and the children featured in this programme, and for its reaction to the letter it received from the High Court Judge, Mr Justice McFarlane. However, our requests for an interview have been declined. The Department of Health told us in a statement that after receiving a recommendation from a Parliamentary Committee, it is going to be consulting about the possibility of bringing surrogacy within the remit of the Human Fertilisation and Embryology Authority. No date for that consultation has yet been set.

BRAZIER: It is not beneficial to allow the current fudge to continue. I think the Government has to make up its mind about issues of regulation and also about issues of payments and consider whether there are measures that can be taken in 2009 which will ensure that four years on your colleagues aren't producing a similar programme to this.

SIGNATURE TUNE