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Bwrdd Iechyd Prifysgol Cwm Taf Morgannwg University Health Board

SURROGACY GUIDELINE

Initiated By	Cwm Taf Morgannwg University Health Board Obstetrics and Gynaecology Directorate
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CHANGE HISTORY

Version	Date	Author Job Title	Reasoning
1.			

AUTHORSHIP, RESPONSIBILITY AND REVIEW

Author	Fiona James	Ratification Date	Feb 2023
Job Title	Safeguarding Lead Midwife	Review Date	Feb 2026

Disclaimer

When using this document please ensure that the version is the most up to date by checking the Obstetrics & Gynaecology Guidelines on WISDOM

PRINTED DOCUMENTS MUST NOT BE RELIED ON

Guidelines Definition

Clinical guidelines are systemically developed statements that assist clinicians and patients in making decisions about appropriate treatments for specific conditions.

They allow deviation from a prescribed pathway according to the individual circumstances and where reasons can be clearly demonstrated and documented.

Minor Amendments

If a minor change is required to the document, which does not require a full review please identify the change below and update the version number.

Type of change	Why change made	Page number	Date of change	Version 1 to 1.1	Name of responsible person
New for CTMUHB				1	Fiona James

Contents

Definitions

Surrogacy: Is the practice where one woman carries a child for another with the intention that the child should be handed over after birth and parental rights being exercised (so far as practicable) by, another person or persons.

Partial Surrogacy: This is where the surrogate mother uses her own egg which is fertilised with the intended or commissioning father's sperm.

Gestational, full or Host Surrogacy: The surrogate carries the commissioning parent's genetic child conceived through in-vitro fertilization at an infertility clinic.

Commissioning Couple (Intended parents): The people who wish to become the legal parents to the child up after its birth

Background

Legal aspects of Surrogacy

The UK was the first country to legislate with the Surrogacy Arrangements Act 1985. In the UK, surrogacy is not prohibited by law however surrogacy through a commercial arrangement is illegal. Surrogacy cannot be advertised or commercialised, meaning you are not allowed to pay someone to be your surrogate, or advertise surrogacy as a service.

Surrogate mothers can however receive reasonable expenses from the intended parents, such as for maternity clothing, insemination and IVF costs and costs of travelling to and from hospital. Surrogacy agreements can be made by the intended parents and surrogate; and they can record how they want the arrangement to work. A detailed surrogacy agreement can cover all eventualities and decision making events and can be used by staff to guide the provision of healthcare to the surrogate, intended parents and child.

The Midwifery team should be alert to any third parties (i.e. parties outside the Surrogate mother and commissioning couple) who may be acting illegally. Should staff become suspicious that the parties are involved in a commercial arrangement, they should contact the Safeguarding Midwife, for further advice and guidance.

A Surrogacy arrangement is not a legally binding contract and therefore an arrangement between the Surrogate Mother and the commissioning (intended) parents is not enforceable. Either party are therefore free to change their mind at any time but disputes in surrogacy are rare. Department of Health Social Care 2019.

In the United Kingdom the birth mother is the legal mother irrespective of the conception method and genetic make-up of the baby. Legal parenthood can be transferred by parental order or adoption after the child is born.

Parental Order

A parental order can be sought when one parent of the commissioning couple is the child's genetic parent (i.e. be the egg or the sperm donor) and can be made from not before the child is 6 weeks old, and up to 6 months after the birth. The following criteria must be met in order to apply for a Parental Order to be issued by the Family Court in the applicant's home area

- Intended parents are over 18
- Commissioning parent must be resident in UK
- At least one of the applicants must be genetically related to the child
- Apply after 6 weeks of birth and before 6 months
- The surrogate parents must consent to the making of the order
- No money other than expenses must have been paid in respect of the surrogacy arrangement

The Court will appoint a Parental Order Reporter, who visits all the parties and provides the Court with a report describing the circumstances of the surrogacy, commenting on the welfare of the child, (as set out in the Adoption Act 2002 and modified by the Parental Orders Regulations), and any arrangements for direct or indirect future contact.

Although rare, in some instances the Court may ask for a DNA test to prove the parentage of the child. The Parental Order Reporter will need to satisfy the Court that the consent of the birth mother is freely given. The granting of the Order is dependent on the surrogate's consent.

It is important to remember that whilst the Surrogate Mother and/or the commissioning (intended) parents may wish responsibility for the child to pass to the intended parents at birth, the Surrogate Mother remains legally responsible for the baby until the parental order has been granted or the baby has been legally adopted by the commissioning parents. The commissioning parents have no legal rights over the baby until this time.

Registration of Birth

<u>The legal parents at birth</u>
If you use a surrogate, they will be the child's legal parents at birth. If the surrogate is married or in a civil partnership, their spouse or civil partner will be the child's second parent at birth, unless they did not give permission.
Legal parenthood can be transferred by parental order or adoption after the child is born.
If there is disagreement about who the child's legal parents should be, the courts will make a decision based on the best interests of the child.

Mental Capacity

If midwifery staff have concerns regarding the surrogate's mental capacity and decision making, then concerns need to be escalated to the Safeguarding Midwife.

Guidance

- Midwives have a legal duty of care to the surrogate mother and the baby once born. The wishes of the surrogate are paramount and the commissioning (intended) parents will only become involved with her direct consent.

- During provision of care good practice for the surrogate to have the opportunity to see the midwife alone to discuss any concerns such as domestic abuse or emotional well-being that may not be disclosed if accompanied.

- Midwives should be non-judgmental and encourage the surrogate to be open and honest about the arrangements to ensure a good relationship based on trust.

- Information should only be shared by the midwifery team on a need to know basis and only then with the consent of the surrogate.

- Record keeping details of the surrogacy agreement should only be documented in the health care records if the surrogate consents.

- Midwives should discuss with Community Senior Midwife any surrogacy cases that they encounter or suspect. Child protection must be considered if there are any Safeguarding concerns and Specialist Safeguarding Midwife should be informed and contacted for advice and support.

- Midwives should include the commissioning couple, where acceptable to the surrogate mother, in antenatal care while being mindful that the commissioning couple have no legal rights. CTMUHB should facilitate this so far as is practical.

- A surrogate mum should be offered screening to ensure optimal maternal care ASW Standards and Protocols Pages 47-49.If the family consent to combined Screening for Down's, Edwards and Patau's syndrome, the lab will require additional information to calculate a result. The lab will require IVF information to calculate a risk and if the pregnancy is from a donor egg, the age of the donor will also be required ASW Standards and Protocols Page 63.If the women or the biological father of the baby are from anywhere outside the UK or Ireland they should be offered Sickle and Thalassaemia Screening.

- As with every pregnancy, infant feeding is an essential topic to include in provision of antenatal care (WHO, 2017). It is important that the intended parents and the surrogate mother should be encouraged to talk about feeding the baby early in pregnancy, so that a plan for this can be agreed by all, prepared for and included in the surrogacy birth plan.

- If the intended (commissioning) mother expresses a wish to breastfeed the baby, then the support of the Infant Feeding Specialist team within CTMU should be offered to all parties. This is because surrogate birth offers many options for infant feeding, all of which warrant early, sensitive and informed discussion (www.surrogacybydesign.com).

- It is good practice for the commissioning couple to inform their local G.P., midwife and health visitor that they are expecting. Commissioning couple may wish to access parent education classes in their locality and meet midwife / health visitor prior to birth.

- The Named Midwife in conjunction with the Community Senior Midwife will arrange to meet with the surrogate and commissioning couple to discuss CTMUHB's position and a plan of care (Check list appendix 2). The Named Midwife in conjunction with the Community Senior Midwife will document the discussion in the All Wales Maternity records

- The Named Midwife will request that the surrogate mother and commissioning couple sign the CTMUHB Parental Agreement (Appendix 1).

- The Surrogate Mother and the commissioning (intended) parents will often sign up to surrogacy birth plan which will usually set out the preferred method of birth, who will be present for the birth, who will hold the baby after birth and who will make decisions about the child's welfare etc. This should include the agreed plan for feeding the new baby. Staff should be aware that these agreements are not legally binding and should be used as a guide only. CTMUHB should facilitate this so far as is practical.

- The surrogate mother remains the legal mother at birth, the surrogacy agreement should set out plans for the care of the baby during the post-natal period. The intended parents usually will care for the child from birth, independently from the surrogate.

- Wherever practically possible, the intended parent/s will be accommodated, separately from the surrogate mother within the maternity unit to undertake caring responsibilities for the baby if this has been agreed with the surrogate mother.

- Arrangements for the handing over of the baby should happen in an appropriate place within the maternity unit and parties should not be asked to leave the hospital premises to do so. Staff should maintain the surrogates and commissioning parent's privacy and confidentiality at this sensitive time

- The Named Midwife will liaise with the surrogate and commissioning parent's local General practitioner, Midwife and Health visitor. A detailed

handover with sharing of information and consideration in respect of registering baby with family G.P.

- Midwives will provide ongoing community midwifery care to the surrogate mother for up to 28 days being mindful of her emotional needs and increased risk of post-natal depression. A small study suggests that 75% of surrogate mothers experienced a degree of postnatal depression for 2-6wks following birth

- Midwives will notify the commissioning parent's local midwifery service and health visitor when the baby is transferred home ensuring ongoing care and support is offered to the commissioning couple.

- In the case where there is disagreement between the surrogate mother and commissioning couple it is the surrogate mother to whom the midwife has a duty of care. The needs of the surrogate mother and baby must be the primary focus of midwifery care.

- If the baby needs treatment the surrogate and intended parents should have considered this in the surrogacy agreement. The surrogate has the overall responsibility until a parental order is in place but staff should consider the wishes of the intended parents. (BMA 2008)

- If the commissioning (intended) parents change their minds about taking the child the Surrogate Mother (and her partner if she has one) will be legally responsible for the child. In the event that the Surrogate Mother also refuses to take on responsibility, the Safeguarding Midwife should be contacted for advice and guidance.

- If the Surrogate Mother changes her mind and wishes to keep the baby the midwife has a duty of care to mother and baby.

- If the surrogate mother leaves the hospital without the baby the commissioning parents must NOT be allowed to take the baby without the surrogate's consent. The Safeguarding Midwife and Children Services must be informed.

- If baby is born out of Cwm Taf Morgannwg University Health board a detailed handover from the hospital of birth is required to ensure ongoing care. If there are any concerns raised the Community Senior Midwife and Specialist Safeguarding Midwife need to be informed.

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Royal College of Midwives [RCM] (1997) Surrogacy: Defining Motherhood. Position Paper. No18. London:RCM

Surrogacy Arrangements Act 1985

The British Medical Association (BMA), 2008.Parental responsibility, Guidance from the British Medical Association

Appendix One CTUHB Parental Agreement

****Insert Name*

Chief Executive

Cwm Taf Morgannwg University Health Board

**** (Add Date)*

Dear

I am due to give birth to a baby on (Insert EDD) and am willing to hand over the custody of this baby to *****and ******.

If, for any reason, the baby and I have to stay in hospital for a few days, I do not want to have any contact whatsoever with the baby. I would like ******to be involved with the total maternal care of the baby i.e., feeding, bathing, changing of nappies etc.

Yours sincerely

Signed _____ Date_____

Witnessed _____ Date _____

Signed _____ Date _____

Witnessed _____ Date _____

Signed _____ Date_____

Witnessed _____ Date _____

Appendix Two Surrogacy Checklist

	Sign when Discussed/ Complete	Date
Insert names of mother and commissioning couple ……..&……		
Priority of care is to Birth mother…….……		
Place of birth Home/ AMU/ OU		
2 people can accompany birth mother for labour and birth		
If all straightforward may have early discharge		
No rest room facilities available for commissioning couple		
Emergency LSCS in event of general anaesthetic		
If spinal, then only 1 person may accompany mother to theatre		
If transferred to ward will try to accommodate in the same room		
Neonatal Intensive Care unit- Mother may leave unit and care be provided for by Commissioning parents. Mother needs to be present on transfer home		
Baby		
Baby will be known as baby (Insert surname of mother while in maternity unit)……		
Sign form to hand over care to Commissioning parents		
Vitamin K Yes/ No		
Maternity service will support the plan agreed by all parties for feeding the baby, with reference to health board infant feeding guidelines.		
Examination of the new-born		
Transfer home as soon as fit & well		
Arrangements for handover of baby		