Management of Surrogacy Pregnancies Guideline

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Summary of document:
Some families may require the assistance of a surrogate in order to have children. Surrogacy is when a woman or birthing person carries a child for someone, with the intention that, at birth, the child will be handed over to another person or persons. Intended parents (IPs) are couples who are considering surrogacy as a way to becoming a parent. Surrogates and IPs should be treated in the same way as any other people accessing healthcare during pregnancy and birth whilst recognising that there may be particular characteristics that may require a more tailored approach.

Scope:
The aim of this guideline is to provide the multi-agency team with clear guidance to facilitate the care for pregnant surrogate women and pregnant surrogate people, whilst appreciating the position of the intended parents, and where appropriate involve them in care.
This policy uses the term “women” to reflect that maternity and reproductive care are sex-based health needs. It applies equally to all people who are pregnant or have recently given birth, including trans men and non-binary people. Care must be delivered in an inclusive, respectful and responsive way.

To be read in conjunction with:
https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales (opens in a new tab). - Opens in new tab.

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Surrogate Pregnancy, Intended parents, Commissioning parents, Gestational carrier

Glossary
BBA Born Before Arrival
IP Intended Parents
NBBS Newborn Blood Spot Screening
NIPE Newborn and Infant Physical Examination

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Scope

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Aim

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Objectives

The aim of this document will be achieved by the following objectives:

- Individualising care based on the needs of the women and families accessing care

Introduction

Some families may require the assistance of a surrogate in order to have children. Surrogacy is when a woman or birthing person carries a child for someone, with the intention that, at birth, the child will be handed over to another person or persons.

Surrogacy

Altruistic surrogacy is a positive option for those seeking to start a family through assisted reproduction in the UK. The safety and health of the surrogate and child will always be of paramount importance. The vast majority of surrogacy cases are straightforward, positive and rewarding experiences; disputes between parties are very rare.

The actions and attitudes of healthcare staff can have a significant impact on the experiences of surrogates and IP(s). Surrogates can be stigmatised and IP(s) have often been through distressing experiences before turning to surrogacy, so compassion, dignity and sensitivity are important. Perceived negative attitudes can cause particular stress or distress.

Definitions used in Surrogacy

*The Surrogacy Arrangements Act 1985 defines a **surrogate mother** as, 'a woman who carries a child in pursuance of an arrangement'*

a) Made before she is carrying the child and

b) Made with a view that any child carried in pursuance of it being handed over to, and parental rights being exercised (so far as practicable) by, another person or persons.

Intended/commissioning parents are couples or individuals who are considering surrogacy to become a parent. To apply for a parental order at least one of the intended parents must be a genetic parent of the child born to them through surrogacy. Intended parents generally prefer to be referred to as the parent(s) of the child.

A surrogate may or may not have a genetic relationship to the child that they carry for a couple. Surrogates generally do not prefer to be referred to as the mother or parent of the child.

There are two types of surrogacy

- Straight/partial surrogacy - when the surrogate uses their own egg, fertilised with the intended parent's sperm; this may be done by self-insemination using a syringe or done in an infertility clinic.
- Gestational/Host surrogacy is when the surrogate carries the intended parent's genetic child conceived through in-vitro fertilization at an infertility clinic i.e. gestates embryos usually created from the eggs and sperm of the intended parents (or where applicable, donor eggs and/ or sperm).

Legal Aspects of Surrogacy in the UK

In the United Kingdom **whoever carries and births the baby (i.e. the surrogate) is the legal mother of the surrogate baby from birth, irrespective of the conception method and genetic make-up of the baby unless and until the situation is altered by a Court Order** (s33 Human Fertilisation and Embryology Act 2008)i.e. until legal parenthood is transferred to IP(s) through a parental order made by a family court

Any spouse or civil partner of the surrogate mother will be the other legal parent (unless they did not consent to the conception) – see s35 and 42 of the 2008 Act.

Where the surrogate mother is unmarried, the biological father will generally be the legal father at common law, though s36 and 43 of the 2008 Act allow someone else to be nominated as the second parent instead.

Surrogacy legal requirements regarding finance

- Surrogacy is not prohibited by law, though it is subject to various legal requirements. For example, surrogacy through commercial arrangements is prohibited by section 2 of the Surrogacy Arrangements Act 1985.
- It is an offence for a third individual or agency to act on a profit-making basis to organise or facilitate a surrogacy arrangements for another person.

- Surrogate mothers can, however, receive reasonable expenses from the intended parents, such as maternity clothing, and travel expenses.

Note Surrogacy arrangements are not legally binding contracts and therefore the terms will not be legally enforceable by or against the parties to the arrangement.

What happens if the intended parents change their minds?

- If the intended parents change their minds and no longer want to take or keep the child, the surrogate mother (and her partner) will be the legal parent(s) for the child.
- In the event that the surrogate mother also declines to assume parental responsibility, Local Authority Children Services should be contacted in the usual way.

What happens of the surrogate mother changes her mind?

- If the surrogate mother changes her mind and wants to keep the baby, or no longer wishes to transfer the child to the IP(s), this must be respected by staff and accurate notes of the circumstances should be kept . Where a surrogacy arrangement breaks down, and the IP(s) want to challenge this situation, then it will be a matter for the family courts to determine the child's living arrangements. In doing so, the child's welfare will be the paramount consideration.
- If there is a disagreement /dispute between the surrogate mother and the intended parents, then the HDUHB Corporate Child Safeguarding Team are to be informed.

Parental Orders

A Parental Order allows intended parents the opportunity to become the child's legal parents and obtain parental responsibility for the child.

In order to apply for a Parental Order to be issued by the Court it is necessary to meet certain criteria.

The criteria includes[1]:

- Over 18 years old
- Intended 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 reasonably incurred expenses must have been paid in respect of the surrogacy arrangement, unless authorised by the Court.
- The child must reside with the intended parent.

Once the Parental Order is granted the intended parents will then receive a new birth certificate stating that they are the legal parents of the child. The Parental Order extinguishes the legal parenthood of the surrogate mother.

General guidance

Health care professionals have a legal duty of care to the surrogate mother and the baby once born.

The wishes of the surrogate are paramount and the intended parents will only become involved with direct consent from her unless / until the situation is altered by a Court Order.

If care providers have any queries or concerns then this should be raised directly with the legal team within HDUHB.

Further advice can be found on the UK Government

[1] The requirements are set out in s54 of the 2008 Act (in relation to a couple) and s54A of the 2008 Act (in relation to a sole applicant).

https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales (opens in a new tab).

Surrogacy and Safeguarding

The Wales Safeguarding Procedures (2019) do not include a specific section relating to surrogacy. In such cases, safeguarding practice is guided by the overarching principle of identifying and responding to risk of harm, rather than the nature of the surrogacy arrangement itself.

All safeguarding activity relating to surrogacy must be undertaken in accordance with UK legislation, which applies in Wales. Under current law, the surrogate is the child's legal mother at birth until a parental order is granted. This legal position may present complexities in relation to safeguarding responsibilities, decision-making, and discharge planning.
To ensure the safety and wellbeing of the child, the following must be in place:

- Early and effective multi-agency planning prior to birth, involving all relevant professionals
- Clear understanding and documentation of parental responsibility at each stage
- Robust arrangements for the safe care, transfer, and discharge of the child

Where safeguarding concerns are identified, practitioners must adhere to the core duties set out in the Wales Safeguarding Procedures, including:

- Completion of a duty to report where a child is suspected to be at risk
- Appropriate and timely information sharing between agencies
- Undertaking proportionate assessment and intervention
- Ensuring all actions are child-centred and promote the best interests of the child

Surrogacy, in itself, does not constitute a safeguarding concern. Any safeguarding intervention must be proportionate and based on identified risk of harm, in line with statutory safeguarding responsibilities.

A Safeguarding in Pregnancy 2 report (SIP 2) should be completed to ensure that any sensitive and confidential information that other maternity professionals would need to be aware of is accessible

Initial Conversations

The Midwifery Staff booking the pregnant woman/person who disclose it as a surrogate pregnancy, will be expected to have initial conversations with the surrogate and the IP(s) to explore the arrangements of the surrogacy and establish if the conception was completed via a licensed clinic or as an informal arrangement between the surrogate and IP(s).
During these conversations, maternity staff should remain professionally curious regards all the individuals involved with the arrangement and discuss any safeguarding concerns with HDdUHB Children's Safeguarding team.

If the surrogacy has been organised through a licensed clinic, assessment of the family in relation to safeguarding will have been undertaken prior to commencement of treatment. If the treatment has been undertaken by a licensed clinic, local authorities can be assured that the treatment will have been

in accordance with the HFEA Code of Practice The intended parents may have written confirmation from the licensed clinic so it is advised that the written evidence be obtained and a copy should be filed in the appropriate Maternity Record.

As per all pregnancies when there are any concerns about the case a Safeguarding in Pregnancy 2 report (SIP2) should be completed and a file generated following Sharing Information in Pregnancy Policy. If there are identified safeguarding risks to the Unborn baby (UBB) to other associated children within either the IP or surrogate families, then a Safeguarding referral should be completed and shared to the appropriate Children's Social Service team (607)

Staff should be alert to any third parties (i.e., other than the surrogate or intended parents) who may be acting illegally on a profit-making basis. Should staff become suspicious that the parties are involved in a commercial arrangement, they should contact HDdUHB Safeguarding team, for further advice and guidance.

Where the circumstances of the conception and subsequent arrangements for the baby are not clear the parents should be informed of the need to inform the Local Authority Children Services and the HDdUHB Safeguarding Midwife and/or Safeguarding team.

When arrangements for the birth and subsequent arrangements for the baby are in question, such as: surrogacy break down, unclear who will be caring for the baby, refusal by the IP to take the baby, surrogate refusing to give over baby to r, the HDdUHB Safeguarding Team must be informed for guidance.

Unbooked women in labour

In the event of the surrogate mother and intended parents arriving at hospital without prior booking, when the surrogate mother is in labour. Contact should be made with the relevant Maternity unit that the surrogate pregnancy is receiving care. If this information cannot be provided then contact with the Local Authority Children Services should be immediate, with consideration of contacting Dyfed Powys Police force.

This will allow for emergency action to be considered to promote the welfare of the child and ensure its immediate safety whilst further enquiries are undertaken.

Antenatal Period

Refer to the following government 'Care in Surrogacy' Guidance:
https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales
(opens in a new tab)

1	Birth preferences discussion to be completed with the surrogate mother and intended parents
2	Include full details for the intended parents:

	• Their names and how they wish to be addressed as parents • Contact telephone numbers • Home address • Name and address of GP
3	Email the plan to: • Named Consultant Obstetrician • Operational Lead Midwife for Community • Operational Lead Midwife where the surrogate mother intends to give birth • Head of Midwifery • Children's Safeguarding team/Named Safeguarding Midwife • Surrogate mother's GP

Antenatal Care

Antenatal Screening

Where treatment has been provided in a licensed clinic, the eggs, and the sperm to be used will be tested for HIV, hepatitis and other transmittable diseases. However, with self-insemination, there will be a risk of transmission of infection to the surrogate. It is therefore important that the surrogate is counselled of this risk and offered testing accordingly.

The guidance from the British Medical association also recommends that the intended parent who provides the sperm is tested prior to insemination.

Should the surrogate be identified as having a transmittable disease, staff are prohibited from sharing this information with the intended parents or other third parties without the consent of the surrogate. To do so would be a breach of patient confidentiality. The surrogate should, however, be counselled of the risks of the transmission of infection to the child and any recommended steps at birth to minimise the risk of transmission.

The surrogate should be offered all recommended antenatal screening tests for abnormalities. Staff should only perform tests that the surrogate has consented to. The intended parents have no authority to request testing that the surrogate does not consent to.

Should an abnormality be identified in the unborn child, staff should not share this information with the intended parents or other third party without the consent of the surrogate.

Termination of Pregnancy

Where a termination of pregnancy is being considered and the relevant legal conditions are met, the surrogate makes any final decision about a termination. If the surrogate discloses that she is considering termination, then she should be referred to a counsellor and the relevant healthcare professionals in accordance with the gestation period of the pregnancy. If the surrogate has given her consent the IP(s) should be included in this counselling, information sharing and decision making.

Planning of care

Planning of care during pregnancy is vital so that the midwife ensures that the surrogate receives the care she requests and requires which may include involvement of the intended parents with the surrogates consent.

It is important to recognise that the Trust's duty of care is to the surrogate. Antenatal care should be delivered in accordance with relevant clinical guidance which is based on individual risk assessment.

The intended parents can be involved in the process provided that the surrogate consents to this, the intended parents have no legal rights to be involved . The Trust should facilitate this so far as is practical.

- The community midwife should make contact with the intended parents so she can make an assessment of the intended parents and the home the baby will be going to. The community midwife should also offer antenatal education to the intended parents and support them to make decisions surrounding infant feeding. The intended parents may wish to induce lactation, therefore liaison with the GP and lactation consultant may be required

Birth Preferences

The community midwife should ensure that they contact the Maternity Manager for the area the surrogate mother intends to give birth so that a meeting can be arranged which may include the attendance of:

- Community midwife
- Maternity manager
- Surrogate mother
- Intended parents
- Labour Ward Manager
- Postnatal Ward Manager

If necessary the following should also be invited:

- Safeguarding Midwife
- Consultant obstetrician

During the meeting the template in appendix 1 should be discussed and agreed.

Intrapartum Period

Refer to the following DoH 'Care in Surrogacy' Guidance:

https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales

Ensure that the midwife caring for the surrogate mother is aware of the plan.

- If the surrogate mother agrees the intended parents may be present at birth, but the wishes of the surrogate mother remain paramount.

Postnatal Period

Refer to the following DoH 'Care in Surrogacy':
https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales
(opens in a new tab)

Postnatal Ward staff are aware of the plan

- Two sets of postnatal notes should generated (refer to Local BadgerNet guidance) ; one for the baby and one for the surrogate mother
- Check the intended parents discharge details
- Obtain address/email/telephone numbers for the following: community midwife, GP, health visitor
- On discharge ensure both surrogate mother and baby details are sent to the relevant community midwife.
- Inform the GP and health visitor of both the surrogate mother and the intended parents.
- Usually, the baby will be cared for by the intended parents following birth as the surrogate considers her role to be finished after the birth.
- Care should be taken to ensure that visiting guidelines and policies do not prevent intended parents from being able to care for their baby (overnight stays and use of side rooms should be considered)
- Particular care should be paid to the psychological wellbeing of the surrogate, and additional support offered. Additional postnatal visits may be beneficial and should be decided on an individual basis.
- The intended parents may require additional support relating to baby care and feeding. If an intended parent is inducing lactation, they should be admitted to the postnatal ward and provided with inpatient meals and support to establish feeding.

Monitoring

Any complaints received in relation to equality, diversity or human rights will be addressed on an individual basis and appropriate action taken.

References

Human Fertilisation and Embryology Act (HFEA) 2008; Human Fertilisation and Embryology (Parental Orders) Regulations 2018: Powers and Duties of Local Authorities, Health Authorities and Guardians ad Litem available at
www.dh.gov.org/enPublications and statistics/LettersSmith's Law and Medical Ethics
Seventh edition, Oxford University Press

Department of Health and Social Care. 2021. Care in Surrogacy. https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales

Safeguarding Wales

Social Services and Well-being (Wales) Act 2014

Safeguarding guidance | GOV.WALES

The surrogacy pathway: surrogacy and the legal process for intended parents and surrogates in England and Wales - GOV.UK- **This may be useful for maternity staff to be refer to in supporting the intended parents and surrogate in sign posting.**

National Institute for Health and Clinical Excellence (NICE) CG110**Pregnancy and complex social factors: a model for service provision for pregnant women with complex social factors External**

National Institute for Health and Clinical Excellence (NICE) NG201 **Antenatal care**

National Institute for Health and Clinical Excellence (NICE) NG 194 **Postnatal care**

Appendix 1: checklist of information to be included in surrogacy birth plan

Aim: to ensure that maternity care is appropriate for both the surrogate, as the woman receiving care, and IP(s) and to ensure that communication between them and the multi-professional maternity team is facilitated.

Where the surrogate and IP(s) are supported by a national altruistic surrogacy organisation, their documentation for birth planning can be used. Parties are encouraged to seek support and guidance from their organisation as needed.

Names and contact details

Surrogate name, date of birth and contact details.

IP(s)' name(s), date(s) of birth and contact details.

Where the surrogate has a spouse/partner, name and contact details.

Details of community midwife/midwives supporting surrogate and IP(s).

Birth-planning meeting

Date of surrogacy birth-planning meeting.

Who attended birth-planning meeting.

Which healthcare professional(s) the plan was created and agreed with.

Surrogate pregnancy details

Surrogacy organisation used (if any).

Form of surrogacy – straight or host.

Expected due date for child.

Summary of fertility treatment from clinic (if available).

Antenatal care

Confirm that all routine antenatal care has been/will be received.

Who will attend scans and appointments with the surrogate.

The birth

Where the surrogate would like to give birth, and what would happen in the instance of a BBA

The surrogate's birth partner.

Whether the IPs will be present

Who will attend the birth, if:

- Vaginal
- planned caesarean birth
- unplanned caesarean birth, epidural
- unplanned caesarean birth, general anaesthetic

Pain-relief options.

Who will advocate for surrogate if she can't speak during birth.

Handling of child at birth:

- cord cutting including intentions for delayed cord clamping
- skin-to-skin
- holding the baby thereafter

Post-partum care discussions

Who will care for the child following birth, and when and where will transfer of care take place.
Who will make medical decisions about care/treatment for child.
Feeding method:

- surrogate breast milk through expressed feeds
- intended parent breast milk
- donated breast milk
- formula

Name bands:

- what name appears on child's name band
- can IP(s) request one
-

Intended parent staying in the hospital, especially if intending to induce lactation
Admission to the Neonatal unit

Discharge of surrogate, IP(s) and child, including surrogate's wishes regarding early discharge if birth is uncomplicated.
Who the child will be discharged with.
Surrogate postnatal healthcare needs (assessment and care should include physical, emotional and mental health).
IP(s)' and baby's postnatal healthcare needs (for example, midwifery support with care of baby and feeding; assessment of, and support for, IP's emotional well-being and mental health).
NBBS where/ when this will be completed, does the surrogate mother need to provide written consent
Where surrogate, IP(s) and child will stay after birth, both in the immediate post-partum period and if longer stay is required (including possibility of amenity room for IP(s) and child following birth).
Parental Order

Registering the birth- Parental responsibility is joint if not married

Communication and consents

Confirm that the following professionals have been informed of the pregnancy and impending arrival of the child. Provide names and contact details of:

- surrogate's GP and community midwives
- IP(s)' GP, community midwives and health visitors

Confirm birth plan has been communicated with / made available to the following people, and provide their names and contact details to:

- head of midwifery at surrogate's local hospital
- supervisor / supervisory team at surrogate's local hospital
- maternity unit at surrogate's local hospital

Confirm that the appropriate professionals will be informed of the discharge of the surrogate and child following birth and relevant documentation sent to ensure appropriate and seamless care is provided to all:

- surrogate's community midwives, health visitors and GP
- IP(s)' local maternity hospital, community midwives, health visitors and local GP surgery

- ‘Child health’ information to include IP(s)’ and their local GP’s address and contact details to ensure information, for example vaccination appointments and so forth is addressed appropriately

Appropriate written consents from the surrogate for transfer of care for the child to the IP(s), for neonatal screening tests and for decision making for treatment.