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INTRODUCTION

Surrogacy is the practice whereby another woman (the surrogate mother) carries a child for another couple/individual (the intended parents) as a result of an agreement prior to conception that the child should be handed over to them/her/him after birth.

This guideline is for use in all cases of surrogacy and involves the management and care of the surrogate (the woman who carries and gives birth to the baby)

It takes into consideration the role of the intended parents (the couple/individual to whom the baby is being given to).

It provides the multidisciplinary hospital team with guidance on how to support and manage cases of surrogacy.

PURPOSE

To ensure all maternity / obstetric staff is aware of how to care for all parties involved in a surrogate pregnancy.

SCOPE

To be used by any healthcare professional providing care for a pregnant woman who is acting as a surrogate.

LEGAL ASPECTS OF SURROGACY/DEFINITION

Altruistic surrogacy is an established and legal way of creating a family in the UK. Surrogacy agreements are not legally enforceable and the intended parents (IPs) need to apply for a parental order after their child is born in order to become the legal parents of the child. The legal framework allows for a surrogate to receive reasonable pregnancy-related expenses from IPs, as assessed by the family court.

Surrogacy is not prohibited by law however surrogacy through commercial arrangement is illegal (in accordance with section 2 Surrogacy arrangements act 1985) and therefore it is an offence for an individual or agency to act on a profit-making basis to organise or facilitate a surrogacy arrangement for another person.

Any persons or organisations that organise or facilitate a surrogacy arrangement must do so on a non-commercial basis. Therefore you must obtain confirmation from the parents that the arrangement is done on a non-commercial basis. You will need to seek confirmation of this from the Surrogate Mother also (see attached forms).

Staff should be alert to any third parties (i.e. parties outside the Surrogate mother and 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 the Maternity Safeguarding Team, for further advice and guidance.

In the United Kingdom the birth mother is the legal mother irrespective of the conception method and genetic make-up of the baby. The Surrogate's husband if married is considered the legal father of the child unless he can prove he did not consent to the surrogacy process.

The Courts have held that 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.

The Parental Orders (Human Fertilisation and Embryology) Regulations 1994 came into effect in November 1994 which brought into effect section 30 of the Human Fertilisation and Embryology Act 1990 also known as Parental Orders. This allows intended (commissioning) parents the opportunity to become the child's legal parents. The following criteria must be met in order to apply for a Parental Order issued by the Family Proceedings Court in the applicant's home area:

- Over 18
- Intended / 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 child must reside with the commissioning (intended) parent

Under English law, once the Parental Order is granted, the commissioning (intended) parents will receive a new birth certificate stating that they are the legal parents of the child (Surrogacy UK 2007). Further information for patients and staff can be found at www.hfea.gov.uk

Until this order has been granted the surrogate has the responsibility for consent of any medical treatment for the baby.

DUTIES AND RESPONSIBILITIES

The wishes of the surrogate are paramount and the intended parent(s) will only be allowed to become involved with her direct consent:

There should be good communication channels and the midwife's care should be supportive and non-judgemental.

Information should only be shared by professionals on a need to know basis and only with the consent of the surrogate.

Record keeping: details of the surrogacy agreement should only be documented in the handheld records if the surrogate consents.

Safeguarding midwives must be informed of the surrogate pregnancy via an Information Sharing Form.

The Manager on call should be informed when the surrogate mother is admitted in labour.

Details should be obtained about the intended parent(s) to ensure that there are no safeguarding concerns. This may include contacting children's social care to see if they are known to them.

A comprehensive plan should be written well in advance of the expected due date with both the surrogate and the intended parent(s) and all those directly involved in the delivery of care.

Parental responsibility in the context of who can make decisions and give consent regarding the baby's treatment and care must be explained to the Surrogate Mother and intended parents by a registered Midwife, Co-ordinator or Matron.

The Head of Midwifery should be informed if the intended mother requests to stay in hospital to arrange support and guidance for parenting skills and care of the newborn if required.

MENTAL CAPACITY OF THE SURROGATE MOTHER TO MAKE DECISIONS

Should staff have concerns regarding the mental capacity of the Surrogate Mother to make decisions about her pregnancy or labour and birth, a formal assessment of capacity should be performed, staff are advised to follow the Trusts Mental Capacity Act policy. In the event that the Surrogate Mother lacks capacity to make a particular decision, treatment should be given having regard for the best interests of the Surrogate Mother. However, staff are advised to consult the Adult Safeguarding Team on the Mental Capacity Act prior to administering treatment in such circumstances.

ANTENATAL CARE AND INTRAPARTUM CARE

Particular attention should be taken in antenatal care planning relating to:

- Screening tests and the plan of care if an abnormality is detected.
- Provision of parent education for the intended parent(s).
- Place of birth.
- Management of labour, including pain relief and birth support.
- Surrogate mother's wishes relating to the care of the baby and consent for medical intervention and treatment.

A surrogacy birth plan is normally prepared by the surrogate and IPs, often as part of the surrogacy agreement. This sets out the many issues commonly found in birth plans, such as: preferred method of birth; who will be present at the birth; who will hold the baby after birth; infant feeding choice. Every effort should be made to accommodate all reasonable requests.

POSTNATAL CARE

Routine postnatal care should be provided to the Surrogate Mother. Particular care should be paid to her psychological state and additional support offered. Additional postnatal visits may be beneficial and should be decided on an individual basis.

The legal guardianship of the baby remains with the surrogate mother, until the Court has granted a Parental Order. This means the consent for any treatment, medication or screening of the baby must be obtained from the Surrogate Mother, even if the baby is handed over at birth. The baby cannot be removed from the hospital by the commissioning (intended) parents without the Surrogate Mothers consent.

If the Surrogate Mother requires continued admission to hospital for medical reasons but the baby does not require admission, the Surrogate Mother may wish to delegate responsibility for care of the baby over to the commissioning (intended) parents.

Complete the following (as requested and prepared by the L&D Legal Team):

Surrogacy - Postnatal Checklist.

Surrogacy - Delegate Responsibility to intended parents.

Surrogacy – Consent to remove baby from hospital.

DISCHARGE OF SURROGATE AND BABY

The surrogate mother will require postnatal community care by the community midwife and should be arranged in the usual way. Information with regards to the surrogate mother's discharged should be notified and shared as it is for any postnatal mother.

A community midwife will also need to provide postnatal care for the baby and the intended parent(s), and should be arranged in the usual way. The discharge should be communicated to the baby's GP and health visitor.

REFERENCES

Department of Health and Social Care (Feb 2018) Guidance for the care of surrogates and intended parents in surrogate births on England and Wales.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684259/surrogacy-guidance-for-healthcare-professionals.pdf

Department of Health and Social Care (Feb2018) The Surrogacy Pathway. Surrogacy and the legal process for intended parents and surrogates in England and Wales.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684275/surrogacy-guidance-for-intended-parents-and-surrogates.pdf

Gov.UK (June 2018) Surrogacy: legal rights of parents and surrogates.

<https://www.gov.uk/legal-rights-when-using-surrogates-and-donors>

Legislation.gov.uk Surrogacy Arrangements Act 1985.

<http://www.legislation.gov.uk/ukpga/1985/49>

Legislation.gov.uk The Parental Orders (Human Fertilisation and Embrology) Regulations 1994.

<https://www.legislation.gov.uk/uksi/1994/2767/contents/made>

North West Anglia NHS Foundation Trust (Jan 2018) Surrogacy Guideline.

Surrogacy UK <https://www.surrogacyuk.org>

APPENDIX A

Mother's Details	
Baby's Details	

SURROGACY POSTNATAL PERIOD CHECKLIST

The Surrogate Mother is the "carrying" mother and therefore, in law is the legal mother of the child at birth. This applies even where there is full surrogacy and the Surrogate Mother has no genetic link to the child. The Surrogate Mother often hands over responsibility to the Intended Parents on an informal basis, at birth. However, the Surrogate Mother remains legally responsible for the baby until a Parental Order has been confirmed or the baby has been legally adopted by the Intended Parents. The Intended Parents have no legal rights over the baby until this time.

Required Actions	Y / N	Comments	Signed and Dated
Surrogate Mother's capacity confirmed by a registered midwife			
Parental responsibility explained to Surrogate Mother and intended parents by registered midwife, Co-ordinator or Matron			
Surrogate Mother's wishes documented, signed and filed in the notes relating to wishing delegated responsibility to the intended parents			
Consent from the Surrogate Mother for the baby to leave hospital with the intended parents			
Intended parents Temporary discharge details –		<u>Address</u> <u>Telephone numbers</u> <u>GP name and telephone number</u> <u>Midwife name and telephone number</u>	
Intended parents		<u>Address</u>	

<p>Permanent discharge details –</p>		<p><u>Telephone numbers</u></p> <p><u>GP name and telephone number</u></p> <p><u>Midwife name and telephone number</u></p>	
<p>Surrogate Mother's follow up midwifery care and GP in the community</p>		<p><u>Name of Midwife/date of referral</u></p>	

APPENDIX B

SURROGACY - DELEGATE RESPONSIBILITY TO INTENDED PARENTS

The Surrogate Mother remains legally responsible for the baby until a Parental Order has been confirmed or the baby has been legally adopted by the Intended Parents. The Intended Parents have no legal rights over the baby until this time.

I*[insert full name of surrogate mother]*
[date of birth] delegate informally responsibility for decisions made regarding
..... *[insert name and date of birth of the child]* to the
Intended Parents detailed below.

I understand I hold Parental Responsibility (PR) for
[insert name and date of birth of the child] as a matter of law, and this determines who can
make decisions about’s *[insert name of the child]* care
whilst he is an inpatient at this hospital, and indeed in relation to community midwife follow
up. As the child is to be adopted, I intend to delegate some of the responsibility in relation
to decision-making, to *[insert name of the child]*
Intended Parents.

This delegation of parental responsibility is done on an informal basis at this stage until
such a time that the Intended Parents either obtain a Parental Order or any adoption
proceedings are finalised. This arrangement will, however, allow decisions to be made by
..... *[Insert names of Intended Parents]* in the interim.

I understand that as the Surrogate Mother I retain Parental Responsibility as a matter of
law until adoption is formalised, and I am able to override this intention at any time up to
adoption, from a healthcare decision perspective.

Such a transfer of responsibility allows staff at Luton and Dunstable Hospital Foundation
Trust to:

1. Consult with *[Insert Names of Intended Parents]* in respect
of decision making about the child’s healthcare, and to give consent in respect of
clinical procedures for the child, without having to consult with me first.

And:

2. To discharge the child home with..... *[Insert Names of
Intended Parents]* the end of..... *[insert name of the child]* in-patient
stay.

If this note reflects your intentions, please confirm by signing below, in order that the
situation is as clear as it can be to those caring for you and your child.

Intended Parents details:

Parent 1..... DOB:

Parent 2..... DOB:
[insert full names of both intended parents including date of birth]

Signed by:

Surrogate Mother..... Dated:.....

Intended Parent 1 Dated:

Intended Parent 2 Dated:

Witnessed by:

Registered Midwife..... Dated:

Confirmed by:

Coordinator/Matron..... Dated:.....

Copies to:

- Baby's record
- Surrogate mother's record
- Intended parents

APPENDIX C

SURROGACY – CONSENT TO REMOVE BABY FROM HOSPITAL.

I *[insert full name of surrogate mother]*
consent for*[name of child]* to leave hospital with the
Intended Parents detailed below.

I can confirm the surrogacy is not through a commercial arrangement with the Intended
Parents on and is not on a profit-making basis.

Intended Parents details:

Parent 1..... DOB:

Parent 2..... DOB:
[insert full names of both intended parents including date of birth]

We can confirm the surrogacy is not through a commercial arrangement with the
Surrogate Mother and is not on a profit-making basis.

Signed by:

Surrogate Mother..... Dated:.....

Intended Parent 1 Dated:

Intended Parent 2 Dated:

Witnessed by:

Registered Midwife..... Dated:

Confirmed by:

Coordinator/Matron..... Dated:.....

Copies to:

- Baby's record
- Surrogate mother's record
- Intended parents