Barnsley Hospital NHS
NHS Foundation Trust

Title	**Guideline for the Care of surrogates and intended parents in Surrogate births**	
Author/Owner	Safeguarding Lead Midwives/ Maternity Guideline Group	
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1.0 Introduction

Surrogacy is when a woman carries and births a baby for someone else who is usually unable or does not wish to do so themselves. The surrogate is referred to as the surrogate and the parents to be as the intended parents. The intended parents may be of any sexual orientation and do not have to be married or in a civil partnership. A single person may also utilize the surrogacy process to enable them to parent (Department of Health (DOH), 2018).

2.0 Objective

To provide guidance for obstetricians, midwives and neonatal staff and support them whilst caring for surrogates and intended parents (IPs) during the antenatal, intrapartum and postnatal period.

3.0 Scope

This guideline applies to all medical and midwifery staff working on the maternity unit and maternity staff working in the community.

4.0 Main body of the document

4.1 Definitions

4.1.1

A surrogacy arrangement is one in which a woman (the Surrogate Mother) agrees to bear a child for another woman (the Intended Mother) or a couple (the Intended Parent/s) and surrender the child at birth.

4.1.2

There are two types of surrogacy:

Host Surrogacy: The Surrogate Mother has no genetic link with the child but gestates embryos usually created from the eggs and sperm of the Intended Parents or where applicable donor eggs and /or sperm.

Straight Surrogacy: The Surrogate Mother provides the egg. The egg is then fertilised (either naturally or through artificial insemination) by either the Intended Father or sperm donor.

4.2 The Law Relating to Surrogacy

4.2.1

In the UK surrogacy is regulated by the Surrogacy Arrangements Act 1985, The Human Fertilisation and Embryology Act 1990, and the Human Fertilisation and Embryology Act 2008. These permit such arrangements under tightly defined

circumstances and prohibits commercial agencies organising surrogacy for profit. Reasonable expenses can however, be paid to the surrogate mother.

4.2.2

Those participating in surrogacy must reach an agreement as to how the arrangements will proceed.
However, regardless of whether the arrangement is in writing and whether expenses have been paid, The Human Fertilisation and Embryology Act 2008 renders surrogacy contracts unenforceable, therefore:

- If the surrogate wishes to keep the child she is entitled to do so
- If the Intended parents decide they do not want the child, the surrogate as its legal mother is responsible for its welfare

4.2.3

The Legal Mother – The Surrogate Mother is the "carrying mother" and therefore, in law is the legal mother of the child at birth. This applies even when there is full surrogacy and the Surrogate Mother has no genetic link to the child.

4.2.4

The Legal Father – The law in relation to the Legal Father is complex:

- **Where the Surrogate Mother is married** – the husband is deemed to be the legal father of the child at birth unless he can prove he did not consent to the surrogacy process.

- **Where the Surrogate Mother is unmarried** – the Intended Father will only gain parental responsibility for the child once he is named on the birth certificate. At this point he becomes the legal father of the child. Once named on the birth certificate the intended father shares parental responsibility with the Surrogate Mother.

- **An intended father who donated the sperm** – An intended father who donated the sperm cannot be considered the legal father upon birth because the law states that sperm donors cannot be treated as the father of the child (s.41 HFEA 2008). An intended father who donated the sperm does not become the legal father unless and until a parental order is made or the adoption is approved.

- **An intended father who did not donate the sperm** – If the Intended Father did not donate the sperm he can be registered on the birth certificate **only** if he fulfils the relevant "fatherhood conditions", which are:
  - The Surrogate Mother is not married
  - The Surrogate Mother was treated in a UK licensed clinic
  - Both the Surrogate Mother and the Intended Father gave written, signed consent to the Intended Father becoming the father, and the consent was not withdrawn

- The consent must be given at the time when the embryo or sperm and eggs are placed in the Surrogate Mother
- The sperm used to fertilise the egg was **not** from the Intended Father and
- The man was alive at the time.

It will be exceptional for the Intended Father to satisfy the above fatherhood conditions. If the conditions are not satisfied then the Intended Father does not become the legal father unless and until a parental order is made or the adoption is approved.

4.2.5

The Legal Parents -To be legally recognised as the child's parents the Intended Parents must apply for a Parental Order or an Adoption Order

4.2.6

Parental Order - A Parental Order is a form of expedited adoption and the application is made to the family courts but cannot be obtained until the child is at least six weeks old. To get a Parental Order the Intended Parents must satisfy the all following conditions:

- At least one of the parents must be genetically related to the baby (i.e. is either a sperm or egg donor)
- The Intended Parents must be married, civil partners or a couple living in a long term stable relationship
- The Intended Parents must apply within six months of the child's birth for the order
- The child must be living with the Intended Parents at the time of the application.

If the child is not genetically related to either Intended Parents, then the couple must apply for adoption. Additionally, a single person cannot apply for a Parental Order but must adopt the child.

A Parental Order/adoption will transfer all legal rights over the child to the Intended Parents and extinguish the legal rights of the Surrogate Mother. The Intended Parents should seek independent legal advice from their own solicitor when seeking to obtain a Parental Order or to adopt the child.

4.3 Safeguarding Children

4.3.1

Referral to Social Care is not routinely indicated unless professionals have concerns about:

- The Suitability of the Intended Parents to care for the child;
- Conflict between adults in surrogacy arrangements e.g. that the surrogate mother is under pressure to relinquish the child against her will.

4.3.2

Staff should be alert to any third parties (i.e. parties outside of 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 Named Midwife Safeguarding Children for further advice and guidance.

4.4 Antenatal Period

4.4.1

The Community Midwife will commence the Surrogacy Checklist (Appendix 3) at booking and forward with maternity booking paperwork. If it is an out of area booking, Antenatal clinic staff will commence the Surrogacy Checklist and file it in the Maternity Notes at the first Booking/Scan appointment.

4.4.2

The Surrogate Mother's confidentiality should be respected at all times. This means that no information about the Surrogate Mother or unborn child should be shared with the Intended Parents or any other third party without the express consent of the Surrogate Mother.

4.4.3

The midwife should respect the needs of the Surrogate Mother and encourage her to express her views. An open and supportive relationship between the midwife and the Surrogate Mother will help to alleviate any potential conflicts.

4.4.4

In addition, the midwife should encourage the two parties to engage in discussion about any screening tests and to undertake counselling regarding these tests. Both parties will need to consider how they might react should an abnormality be detected and how it would affect the surrogacy arrangements.

4.4.5

Ideally, discussions regarding the needs and preferences of the Surrogate Mother and Intended Parent/s regarding antenatal care, labour and beyond will take place well in advance so as to avoid any conflict or misunderstanding. The Surrogate Mother and Intended Parent/s (if agreed by the Surrogate Mother) should be offered an opportunity to meet with the Maternity Matron to discuss their wishes and preferences and these will be documented in the maternity records. This should include the plan for labour, birth, and the post-natal care in hospital.

A copy of the birth planning meeting will be filed in the Surrogate mother's hospital records, and staff providing care should refer to this information.

Discussions around completing the Surrogacy Consent Form (Appendix 2) should also take place.

4.4.6

Surrogate Mothers have the right to accept or refuse any medical treatment during pregnancy so clinicians should ensure that the Intended Parents are not coercing her.

4.5 Intrapartum

4.5.1

A decision about the presence of the Intended Parents at the birth should be made beforehand, and clearly documented in the hospital records. In the event of any conflict, the midwives should ensure that their duty always lies in supporting the Surrogate Mother. Staff providing care should refer to the notes of the Birth Planning meeting in the Surrogate Mother's hospital records.

4.5.2

It is important to remember that even where a birth plan has been agreed in advance (either within the unit or a formal written agreement drawn up independently by the parties) the Surrogate can change her mind at any time.

4.5.3

Decisions about feeding and caring for the baby should be made in advance by the Surrogate Mother and the Intended Parents and documented on the birth plan

4.6 Postnatal period

4.6.1

The immediate postnatal period can be an emotional time which may be compounded in a surrogacy arrangement and sensitivity is required in communications with the Surrogate Mother and Intended Parents. Where there is conflict, the midwife must focus her care on the Surrogate Mother and baby.

4.6.2

The Surrogate Mother remains the legal guardian of the baby until a Parental Order has been granted. Therefore, consent for any treatment such as medication and screening of the baby must be obtained from the Surrogate Mother even if the baby is handed over at birth. Staff should refer to the completed Surrogacy Consent Form (Appendix 2).

4.6.3

Every effort should be made to fulfil all reasonable requests made by Intended Parents and Surrogate Mother regarding postnatal care in hospital.

4.6.4

In the event that the baby is unwell or requires admission to the Neonatal Unit, wherever possible decisions about the baby's treatment should be made jointly by the Surrogate Mother and Intended Parents in conjunction with health professionals.

Please remember that even if an informal agreement has been made regarding responsibility between the Surrogate Mother and the 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. The Intended Parents have no legal rights over the baby until this time and the Surrogate Mother has the legal right to consent/ refuse treatment on behalf of her child.

4.6.5

An early discharge from hospital should be facilitated if both mother and baby are fit and well.

4.6.6

As the Surrogate Mother is the legal mother at birth, the baby cannot be removed from the hospital by the Intended Parents without her consent. Written consent from the Surrogate Mother should be provided (Appendix 2) if the baby is to be discharged with the Intended Parent's and independently of her. A photocopy of this should be filed in the medical records and the original copy should be given to the Intended Parent.

4.6.7

Social Care do not need to be notified of the birth and discharge from hospital unless indicated to do so in the hospital records by the Named Midwife Safeguarding Children or if new safeguarding concerns arise.

4.6.8

The intended discharge address and GP details of both the Surrogate Mother and the baby should be confirmed by staff in order to arrange appropriate postnatal care.

4.6.9

The Surrogate Mother should have her own set of postnatal records and her community midwife should be informed to ensure she receives appropriate postnatal care.

4.6.10

The baby should have his/her own set of postnatal records with details of the Surrogate Mother and the Intended Parents including the address of discharge and GP. The post-natal records should be given to the Indented Parents when the baby is discharged.

4.6.11

Follow up at home for the Surrogate Mother and the Intended Parents and baby should be arranged with the community midwifery service in their respective discharge areas. This may be out of the Barnsley locality.

4.7 Birth Registration

4.7.1

The Law requires a birth to be registered within 6 weeks.

- **Where the Surrogate Mother is married** she and her husband will be named on the birth certificate as the parents. If the husband of the Surrogate Mother writes a letter stating that he did not give permission for the arrangement, the Intended Father can be named as the father.

- **Where the Surrogate Mother is unmarried** the Intended Father is usually the legal father, and he can be named as such on the birth certificate. However, because he is not married to the child's legal mother, he will have to attend the birth registration in order to be named on the birth certificate.

In both cases the baby can be given the Intended Parents' surname.

4.7.2

After a parental order is granted the Intended Parents are issued with a new birth certificate, which replaces the original birth certificate. This names both Intended Parents on the birth certificate.

4.7.3

UK birth certificates issued to fathers and mothers in same sex relationships following the granting of a parental order record both as parents.

5.0 Roles and responsibilities

Midwives

- Are responsible for providing care and support to the Surrogate Mother, baby and where applicable the Intended Parents during the antenatal period, labour, birth and the postnatal period.

Named Midwife Safeguarding Children

- Will ensure that where a referral has been made to social care, any action or feedback is recorded in the hospital records prior to the birth
- Any new concerns will be actioned appropriately.

6.0 Associated documents and references

COTS (Childlessness Overcome Through Surrogacy) information leaflet. Department of Health (1997) “Surrogacy: Consultation paper and questionnaire”. October 1997. London

Department of Health, 2018, The Surrogacy Pathway: Surrogacy and the legal process for intended parents and surrogates in England and Wales, Department of Health, UK.

The Adoption & Children Act 2002.

Surrogacy UK. Information support community. Surrogacy Law in the UK. [online] <accessed 24/03/2016> www.surrogacyuk.

7.0 Training and resources

Training will be given as documented in the Maternity Training Needs Analysis. This is updated on an annual basis.

8.0 Monitoring and audit

Any adverse incidents relating to the care of Surrogates and Intended Parents will be monitored via the incident reporting system. Any problems will be actioned via the case review and root cause analysis action plans. The action plans are monitored by the risk midwife to ensure that improvements in care are made. The trends and any root cause analysis are discussed at the monthly risk meetings to ensure that appropriate action has been taken to maintain safety.

The guideline for the Care of surrogates and intended parents in Surrogate births will be audited in line with the annual audit programme, as agreed by the CBU. The audit action plan will be reviewed at the monthly risk management meetings on a quarterly basis and monitored by the risk midwife to ensure that improvements in care are made.

9.0 Equality and Diversity

The Trust is committed to an environment that promotes equality and embraces diversity in its performance as an employer and service provider. It will adhere to legal and performance requirements and will mainstream equality, diversity and inclusion principles through its policies, procedures and processes. This guideline should be implemented with due regard to this commitment.

To ensure that the implementation of this guideline does not have an adverse impact in response to the requirements of the Equality Act 2010 this policy has been screened for relevance during the policy development process and a full equality impact assessment is conducted where necessary prior to consultation. The Trust will take remedial action when necessary to address any unexpected or unwarranted disparities and monitor practice to ensure that this policy is fairly implemented.

This guideline can be made available in alternative formats on request including large print, Braille, moon, audio, and different languages. To arrange this please refer to the Trust translation and interpretation policy in the first instance.

The Trust will make reasonable adjustments to accommodate any employee/patient with particular equality, diversity and inclusion requirements in implementing this guideline. This may include accessibility of meeting/appointment venues, providing translation, arranging an interpreter to attend appointments/meetings, extending policy timeframes to enable translation to be undertaken, or assistance with formulating any written statements.

9.1 Recording and Monitoring of Equality & Diversity

This section is mandatory for all Trust Approved Documents and must include the statement below:

The Trust understands the business case for equality, diversity and inclusion and will make sure that this is translated into practice. Accordingly, all guidelines will be monitored to ensure their effectiveness.

Monitoring information will be collated, analysed and published on an annual basis as part of Equality Delivery System. The monitoring will cover the nine protected characteristics and will meet statutory employment duties under the Equality Act 2010. Where adverse impact is identified through the monitoring process the Trust will investigate and take corrective action to mitigate and prevent any negative impact.

Appendix 1

Glossary of terms

GP – General Practitioner
NHS – National Health Service
PMA – Professional Midwifery Advocates
PGS – pre-gestational screening
PGD- pre gestational diagnosis
IPs – Intended Parents

Appendix 2

Surrogacy Consent Form

I ……. hereby give my consent to (Surrogate)
…….. and

……. (Names) who are the intended parents of

……. (Name of baby) to take care of him/her under a gestational surrogacy arrangement pending a joint application for a Parental Order (S54 Human Fertilisation and Embryology Act 2008).

I also confirm that I authorise them to give consent to any treatment that the baby might need between its birth and the making of a Parental Order and that the baby can be discharged from hospital with them.

Printed…….

Signed ……. (Surrogate)
Dated ……

Printed…….

Signed ……. (Intended Parents)
Dated ……

Printed…….

Witness ……
Dated …….

To be signed after the birth of the baby.

A copy is required to be given to the surrogate and copies must be placed in the surrogate and the baby hospital records. The original is given to the Intended Parents.

Appendix 3

Surrogacy Checklist

Antenatal checklist	**date**	**signed**	**comments**
At booking ensure full contact details for the Intended Parents (IPs) and the Surrogate Mother (SM) are recorded on the family assessment form: • Names • Contact details • Home addresses • Local hospital of the IPs if different to Barnsley			
At booking agree with the SM and the IPs a preferred terminology i.e. the IPs to be referred to as the *actual parents,* or the SM may wish to be identified as the *birth mother*. Clearly document this in the hospital records.			
At booking discuss and document how medical and informed consent works.			
After the 20 week scan e-mail the Health Visitors to inform of the surrogacy arrangement in the locality of the SM. This is to ensure that antenatal visit is not undertaken.			
At the 28 week appointment make contact with the IPs local Health Visitor (can be done via the IPs GP). Arrange a home visit from the Health Visitor to the IP's.			
From 28 weeks onwards, a birth plan is completed with the SM (and IPs if appropriate). The wishes for the birth and the postnatal period should be recorded and filed in the hospital notes. This should be done no later than 32 weeks.			
Inform the Lead Midwives in all areas of the planned birth wishes. Also inform the Pediatric team of consent arrangements and birth plan			

This checklist is not exhaustive and is tailored to each individual situation.

At the earliest opportunity following the birth ensure the *Surrogacy Consent Form* (Appendix 2) is completed. The original copy of this must go to the IPs and a copy must be placed in the SMs notes and if required into the Baby's notes. Ensure all staff are aware of this form and what it means.			
Whilst the baby's name bands must be in the name of the Surrogate Mother whilst in hospital, it is acceptable to offer a further set with the IPs surname on as a keepsake.			
When discharging: • Check IPs discharge address/telephone number • Ensure the discharge is forwarded to the IPs local maternity unit to ensure appropriate visits and support occur. • Photocopy the baby's section of the postnatal documentation for the IPs to take home for community midwife. • Check the SMs discharge address/telephone number • Ensure that details of the SMs discharge are forwarded to the appropriate community services for postnatal follow up			
Telephone 0-19 health visitors in Barnsley (01226 774411) to confirm the birth of the baby and discharge address/Intended parents details. Inform that **no birth visit** is needed for SM.			

Ensure that both the surrogate and child receive follow-up care in the community

- **Hand over the SMs details to her community midwife and GP**
- **Hand over the child's discharge details to the community midwife and GP of the IPs**

Appendix 4

Version	Date	Comments	Author
1	05/04/2016		Maternity guideline group
2			Maternity guideline group
3			Maternity guideline group

Review Process Prior to Ratification:

Name of Group/Department/Committee	Date
Reviewed by Maternity Guideline Group	14/05/2020
Reviewed at Women's Business and Governance meeting	22/05/2020
Approved by CBU 3 overarching Governance	26/08/2020
Approved at NICE and Clinical Guidelines Group	12/11/2020

Archived	Date

NICE AND CLINICAL GUIDELINES GROUP (NCGG)

Checking Form – Clinical Guidelines and Procedures

Please complete the following information and attach to your document when submitting a clinical guideline or procedure for the final checking process. Email to:

Jan Micallef, NICE Lead jan.mathieson@nhs.net or

Lisa Batty, Clinical Audit Administrator lisa.batty@nhs.net

Clinical Guideline/Procedure Title	Guideline for the Care of surrogates and intended parents in Surrogate births
Clinical Business Unit and specialty or Trustwide	CBU 3 Maternity
Guidelines developed by (Specialty/staff involved)	Practice Educator Midwife
New or Reviewed guideline/procedure	New
Source of guidelines - specify **Please ensure all relevant guidance has been considered (NICE, Royal Colleges, National Specialty Groups, locally adapted/developed)**	COTS (Childlessness Overcome Through Surrogacy) information leaflet. Department of Health (1997) "Surrogacy: Consultation paper and questionnaire". October 1997. London Department of Health, 2018, The Surrogacy Pathway: Surrogacy and the legal process for intended parents and surrogates in England and Wales, Department of Health, UK. The Adoption & Children Act 2002. Surrogacy UK. Information support community. Surrogacy Law in the UK. [online] <accessed 24/03/2016> www.surrogacyuk.
All staff groups/departments involved or affected by the implementation of the guideline/procedure are informed and aware of their role	**List who has been informed** All medical and midwifery staff working on the maternity unit and in community
Where approved:	**Maternity guideline group 14th May 2020** **Women's Services Business & Governance meeting 22nd**

Committee(s) and date. **Consider all relevant groups (eg IPC, medicines management, medical education, specialist consultants). Final approval must be with relevant CBU Governance.**	**CBU 3 Business and Governance meeting 26th August 2020**	
Guideline/procedure owner	Lead Safeguarding Midwives	
Issue date and version number	Issue date: 13/11/2020	Version number: 4
Date of next review (minimum 2 years)	3 years 13/11/2023	
FINAL APPROVAL:	**I confirm that this is the FINAL version of this document.**	
Key words for search criteria on SharePoint (max 10 words)	**Name: Charlotte Cole**	
	Designation: Practice Educator Midwife	

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Date reviewed by NCGG: .....

Date owner informed: .....

Date added to SharePoint: .....