



Excluded: Procedure not routinely funded

**Bedfordshire, Hertfordshire, West Essex and Milton Keynes
Priorities Forum Statement**

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| Number: | 22 |
| Subject: | Surrogacy |
| Date of decision: | May 2018 |
| Date review due: | May 2021 |

GUIDANCE

Surrogacy

Surrogacy is an option for childless couples and is effective. Brazier et al¹ define surrogacy as 'The practice whereby one woman (the surrogate mother) carries a child for another person (the commissioning couple) as a result of an agreement prior to conception that the child should be handed over to commissioning couple after birth'.

There are broadly two types of surrogacy; *partial surrogacy* where the carrier is also the genetic or biological mother and *full surrogacy* where the carrier has a fertilized embryo implanted in the womb using in-vitro fertilisation technology.

Legal position

Surrogacy is legal in the UK but the Surrogacy Arrangements Act 1985 makes commercial surrogacy illegal². The legal parentage remains with the mother carrying the child – regardless of whether the child is genetically related or not. If the host mother, therefore, wishes to keep the child she has been carrying, it is her right to do so. Normal paternity rights apply to the genetic father. In the past the commissioning couple had to apply for formal adoption. This process (a Parental Order), has now been simplified providing that certain conditions are met.

In order to apply for a parental order, one of the intended parents (IPs) must be genetically related to the child, otherwise the child will need to be legally adopted. Single people cannot currently apply for parental order in surrogacy cases, however the government intends to introduce legislation that would enable them to do so.

The medical profession's position

The BMA has endorsed its use as an acceptable treatment but only as an option of last resort. Guidelines for clinical practice have been issued by the BMA's Ethics Committee³. The Human Fertilisation and Embryology Authority have agreed to its use.

¹ https://webarchive.nationalarchives.gov.uk/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4009697

² [Surrogacy Arrangements Act 1985. London HMSO, 1985](#)

³ British Medical Association. Changing conceptions of motherhood. The practice of surrogacy in Britain. London: BMA, 1996

The Department of Health position

The Department of Health published two guidance papers⁴ in January 2018 entitled *The Surrogacy Pathway* and *Care in Surrogacy*.

The guidance states that 'The Government supports surrogacy as part of the range of assisted conception options'¹ however neither paper provides any guidance regarding governance, commissioning or the legal status of policy-making bodies in reference to commissioning surrogacy services. The guidance states clearly that it is 'intended to give the reader key information about surrogacy and the relevant legal process in the UK.'¹

Similarly *Care in Surrogacy* gives guidance to health professionals in caring for individuals who have chosen to be either surrogates or intended parents, and the legal and professional duties regarding patient counselling and appropriate and sensitive care. No mention is made of the role of CCGs in commissioning or funding these processes.

Despite these new publications, there is no clear guidance for policy-making bodies regarding NHS funding of surrogacy.

Issues with surrogacy

Some of the issues surrounding surrogacy are:

1. What is the position if there is any question of parentage?
2. What is the position if the host mother wishes to keep the child?
3. What is the position if the host mother changes her mind and wishes to have an abortion?
4. Whose responsibility is it if the genetic parents change their mind or both parents reject the child - for example if the child is disabled at birth?
5. What if the host mother becomes disabled or dies as a result of the pregnancy – who looks after the host mother and her family?
6. What are the long term effects on the child and existing children – particularly in the host family?
7. What are the long term effects on the host mother?

Recommendation

There are no clear studies in to the long term physical, mental or social consequences for children, commissioning couples, hosts or the children of the host.

In the absence of a clear legal and/or Department of Health position on the role and responsibilities of public bodies funding surrogacy, it is recommended that the CCGs should not fund cases. There are also concerns over the ethics of surrogacy given the unknowns above.

Human Rights and Equalities Legislation has been considered in the development of this guidance.

⁴ <https://www.gov.uk/government/publications/having-a-child-through-surrogacy>