

CLINICAL POLICY ADVISORY GROUP (CPAG)

Surrogacy Involving Assisted Conception Policy

Statement

Derby and Derbyshire CCG has deemed the assisted conception treatments involving surrogates for any patient group should not routinely be commissioned. Support and funding will not be provided for any associated treatments related to those in surrogacy arrangements.

This policy has been prepared to reflect the situation at the time of its development and will require periodic review to reflect subsequent changes in law, guidelines, evidence etc. and to ensure affordability against other services commissioned by the CCG.

1. Background

This policy has been prepared by East Midlands Affiliated Commissioning Committee (EMACC). EMACC has been established as a joint committee of nineteen participating CCGs in the East Midlands to enable CCGs to work collaboratively on the development and maintenance of Commissioning Policies. The aim of the policy is to confirm the commissioning arrangements for assisted conceptions involving surrogates for CCGs participating in EMACC. The commissioning of the creation, storage and implantation of eggs/embryos falls outside the remit of this policy.

Surrogacy is defined as the process by which a woman bears a child for another individual/couple and once delivered, the child is surrendered to the requesting individual/couple. There are two types of surrogacy: partial/traditional surrogacy and full/gestational surrogacy².

Surrogacy may be appropriate where a medical condition makes it impossible or dangerous to get pregnant and to give birth, for example³, the absence or malformation of the womb, recurrent loss of pregnancy and repeated in vitro fertilisation failure. Surrogacy can also be a fertility option for male couples.

It is difficult to quantify the exact incidence of surrogacy within the UK as only altruistic surrogacy is lawful in the UK and not all individuals adopt a formal process when entering into surrogacy arrangements. With better recognition, social acceptance and regulation of surrogacy, and with medical advances in assisted conception techniques, the recognised incidence is rising^{9, 10}.

2. Recommendation

Derby and Derbyshire CCG, has deemed the assisted conception treatments involving surrogates for any patient group should not routinely be commissioned. Support and funding will not be provided for any associated treatments related to those in surrogacy arrangements. The CCG will not therefore:

- Be involved in the recruitment of surrogate mothers.
- Fund that element of treatment which relates specifically to addressing fertility treatments directly associated with surrogacy arrangements.
- Fund any payments to the surrogate mother.

(The East Midlands Commissioning Policy for In Vitro Fertilisation (IVF)/Intracytoplasmic Sperm Injection (ICSI) within Tertiary Infertility Services (2014) does not elaborate on surrogacy beyond advice on referring to individual CCG policies¹.)

EMACC's participating CCGs do not support the commissioning of assisted conception treatments involving surrogates for any patient group. This policy falls under the commissioning responsibility of CCGs. It is applicable to any patient group and relates to patients registered with general practices which are members of the CCGs which constitute EMACC.

CCGs will consider individual cases for funding outside this commissioning policy in accordance with their Individual Funding Request (IFR) Policy which sets out a decision

making framework for determining these cases. For an IFR request to be considered, it must be demonstrated that the patient fulfils the strict criteria for exceptionality.

It should be noted that the criteria for exceptionality is very unlikely to be satisfied if an individual is part of an identifiable cohort of patients, who at the same disease stage would derive similar benefit from the intervention.

3. Rationale for Recommendation

The CCG's decision to not commission assisted conception treatments involving surrogates is due to the following points:

- (a) There are concerns that the funding of such treatment raises substantial medico-legal risks that NHS bodies and doctors providing care connected to surrogacy arrangements would be exposed to.
- (b) NHS bodies are unlikely to be in a position to properly assess whether the parties have concluded a lawful surrogacy arrangement.

Ethical considerations:

- Surrogate mother wanting to keep the child.
- Rejection of the child by the surrogate mother and the commissioning parents.
- Decision making during the pregnancy.
- Long term psychological effects on all those involved in the surrogacy arrangement.
- Commercial surrogacy arrangements are illegal, but reasonable expenses can be paid for altruistic surrogacy.

Legal considerations:

- Surrogacy is regulated by the Surrogacy Arrangements Act 1985 and Human Fertilisation and Embryology Act 2008.
- Commercial surrogacy arrangements are not permitted.
- The Human Fertilisation and Embryology Authority¹¹ states that surrogacy involves complicated legal issues and people are advised to obtain legal advice prior to making any decisions. The Authority provides information on a number of legal issues.
- Surrogacy agreements are not legally enforceable.
- The surrogate mother is always the legal mother and a parental order is required to transfer parentage.

The Royal College of Obstetricians and Gynaecologists highlight key medical, ethical and legal considerations in surrogacy arrangements^{12, 13}.

4. Useful Resources

- The National Institute for Health and Care Excellence (NICE) Clinical Guideline for

Fertility do not include specific advice on surrogacy⁴. Surrogacy does not fall within the scope of the NICE guideline.

- The Surrogacy Arrangements Act 1985⁵ and the Human Fertilisation and Embryology Act 2008⁶ regulate surrogacy from a legal standpoint.
- The Human Fertilisation and Embryology Authority (HFEA) acts as the UK regulating body for fertility in clinical practice and research, however does not regulate surrogacy itself. The HFEA provides Code of Practice in the form of guidance on the assessment and screening in surrogacy arrangements.
- Altruistic surrogacy (but not commercial surrogacy) is legal in the UK. Healthcare professionals in fertility clinics are not permitted to be involved in surrogacy arrangements but can be involved in providing routine maternity services for the pregnant surrogate.
- Patients can seek advice on surrogacy from non-profitable organisations such as Childlessness Overcome Through Surrogacy (COTS)⁷ and Surrogacy UK⁸.

5. References

1. East Midlands Clinical Commissioning Groups (2014) Commissioning Policy for In Vitro Fertilisation (IVF)/Intracytoplasmic Sperm Injection (ICSI) within tertiary Infertility Services. Nottingham: East Midlands Clinical Commissioning Groups
2. Human Fertilisation and Embryology Authority (2014) Surrogacy [online; accessed 1st February 2017] <http://www.hfea.gov.uk/fertility-treatment-options-surrogacy.html>
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4. National Institute for Health and Clinical Excellence (2013) Fertility Problems: assessment and treatment. NICE guideline (CG156)
5. HM Government (1985) The Surrogacy Arrangements Act
6. HM Government (2008) The Human Fertilisation and Embryology Act
7. Childlessness Overcome Through Surrogacy (COTS) [online; accessed 17th March 2017] <https://www.surrogacy.org.uk/>
8. Surrogacy UK [online; accessed 17th March 2017] <https://www.surrogacyuk.org/>
9. Bhatia K, Martindale EA, Rustamov O et al. (2009) Surrogate pregnancy: an essential guide for clinicians. *The Obstetrician and Gynaecologist* 11(1),49-54
10. Surrogacy UK (2015) Surrogacy in the UK: Myth busting and reform. Report of the Surrogacy UK Working Group on Surrogacy Law Reform. Kent: Surrogacy UK
11. Human Fertilisation and Embryology Authority [accessed online 17th March 2017] <http://www.hfea.gov.uk/>

12. Bhatia K, Martindale EA, Rustamov O et al. (2009) Surrogate pregnancy: an essential guide for clinicians. *The Obstetrician and Gynaecologist* 11(1),49-54
13. Burrell C, O'Connor H. (2013) Surrogate pregnancy: ethical and medico-legal issues in modern obstetrics. *The Obstetrician & Gynaecologist*.15,113–9.

6. Appendices

Appendix 1- Consultation

Consultee	Date
Lincolnshire Public Health Directorate (Public Health Consultant), Foundation Year 2 Doctor, Public Health Programme Manager, Knowledge Officer (Public Health Intelligence Team)	March 2017
NHS South Lincolnshire CCG Chief Commissioning Officer	March 2017
East Midlands Affiliated Commissioning Committee Commissioning Manager	March 2017
East Midlands Affiliated Commissioning Committee's Clinical Priorities Steering Group (EMACC's CPSG)	March 2017
CCG IFR Managers	March 2017
East Midlands Affiliated Commissioning Committee	November 2017
CPAG including Public Health Consultant	June 2019
Clinical and Lay Commissioning Committee	July 2019

Appendix 2- Document Update

Document Update	Date Updated
Policy Produced By East Midlands Affiliated Commissioning Committee (EMACC)- Version 1	November 2017
Policy Reviewed-version 2	June 2019

Appendix 3 – Glossary

WORD / PHRASE	MEANING
Altruistic surrogacy	<p>A surrogacy arrangement is one in which a woman carries a pregnancy for another individual/couple.</p> <p>In altruistic surrogacy arrangements there are no financial gains to the surrogate. However, the intended parent(s) can pay reasonable expenses to the surrogate, for example, travel. These arrangements are legal in the UK.</p>
Commercial surrogacy	<p>A surrogacy arrangement is one in which a woman carries a pregnancy for another individual/couple.</p> <p>In commercial surrogacy arrangements, the surrogate is paid for carrying the pregnancy. These arrangements are illegal in the UK.</p>
Human Fertilisation and Embryology Act 2008	This Act follows on from the Human Fertilisation and Embryology Act 1990 and the Surrogacy Arrangements Act 1985, with updates on lawful parentage.
Human Fertilisation and Embryology Authority (HFEA)	The HFEA is the UK's independent regulator overseeing the use of gametes and embryos in fertility treatment and research.
The National Institute for Health and Care Excellence (NICE)	NICE provides national guidance and advice to improve health and social care.
Surrogacy Arrangements Act 1985	This Act legally oversees surrogacy arrangements.

Appendix 4 – Some Evidence on the Legal and Ethical Issues in Relation to Surrogacy

Source	Evidence
The Human Fertilisation and Embryology Authority (HFEA).	The HFEA provides information on the legal issues around surrogacy. This includes for example: the rights of the surrogate, what if the surrogate mother changes her mind, becoming the child's legal parents (parental orders and adoption), arrangements prior to parental order/adoption and what happens if the child is born outside the UK.
Burrell C, O'Connor H. (2013) Surrogate pregnancy: ethical and medico-legal issues in modern obstetrics. The	This paper provides a literature review of the medico-legal challenges of surrogacy. It highlights the relevant UK law, the limited guidelines and legislation available, and the legal requirements for parenthood and parental rights. The paper also outlines ethical and legal dilemmas for healthcare professionals

Source	Evidence
Obstetrician & Gynaecologist.15,113–9.	in managing surrogate pregnancies in the absence of professional guidance.
Bhatia K, Martindale EA, Rustamov O et al. (2009) Surrogate pregnancy: an essential guide for clinicians. The Obstetrician and Gynaecologist 11(1),49-54.	This guide provides information on some of the main ethical and legal issues in relation to surrogacy. This includes for example issues in relation to the surrogate unwilling to surrender the child and rejection of a child by the surrogate mother/commissioning parent. The guide provides information on the law and surrogacy and what constitutes reasonable expenses in altruistic surrogacy arrangements.