

## CLINICAL POLICY ADVISORY GROUP (CPAG)

### Surrogacy Involving Assisted Conception Policy

#### Statement

Derby and Derbyshire CCG, in line with its principles for procedures of limited clinical value 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.

These commissioning intentions will be reviewed periodically. This is to ensure affordability against other services commissioned by the CCG.

#### 1. Background

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 surrogacy.

Surrogacy may be appropriate where a medical condition makes it impossible or dangerous to get pregnant and to give birth, for example, 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.

This policy has been prepared by East Midlands Affiliated Commissioning Committee (EMACC) which was 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 commissioning of the creation, storage and implantation of eggs/embryos falls outside the remit of this policy.

## 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 individual 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 CCG policies)

EMACC's participating CCGs do not support the commissioning of assisted conception treatments involving surrogates for any patient group. This policy falls under 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 criterion 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 medicolegal 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 Authority 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.

#### **Professional Bodies:**

The Royal College of Obstetricians and Gynaecologists highlight key medical, ethical and legal considerations in surrogacy arrangements.

## **4. Useful Resources**

- Human Fertilisation & Embryology Authority. Surrogacy. <https://www.hfea.gov.uk/treatments/explore-all-treatments/surrogacy/>
- Surrogacy UK. <https://surrogacyuk.org/>
- Childlessness Overcome Through Surrogacy (COTS). <https://www.surrogacy.org.uk/>
- Stonewall UK. Surrogacy. <https://www.stonewall.org.uk/help-advice/parenting-rights/surrogacy-1> [Accessed April 2022]
- HM Government. Surrogacy Guidance. <https://www.gov.uk/government/publications/having-a-child-through-surrogacy>

## **5. References**

- 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
- Human Fertilisation & Embryology Authority. Surrogacy. <https://www.hfea.gov.uk/treatments/explore-all-treatments/surrogacy/>
- National Institute for Health and Clinical Excellence (2013) Fertility Problems: Assessment and Treatment. NICE guideline (CG156) <https://www.nice.org.uk/guidance/cg156>
- HM Government (1985) The Surrogacy Arrangements Act
- HM Government (2008) The Human Fertilisation and Embryology Act
- Childlessness Overcome Through Surrogacy (COTS) <https://www.surrogacy.org.uk/>
- Surrogacy UK <https://www.surrogacyuk.org/>
- Bhatia K, Martindale EA, Rustamov O et al. (2009) Surrogate pregnancy: an essential guide for clinicians. The Obstetrician and Gynaecologist 11(1),49-54
- 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

All relevant providers/stakeholders will be consulted via a named link consultant/specialist. Views expressed should be representative of the provider/stakeholder organisation. CPAG will consider all views to inform a consensus decision, noting that sometimes individual views and opinions will differ.

Consultee	Date
Obstetrics and Gynaecology Consultant, CRHFT	February 2022
Obstetrics and Gynaecology Consultant, UHDBFT	February 2022
Public Health Derby City Council	February 2022
Public Health Derby County Council	February 2022
East Midlands Affiliated Commissioning Committee (EMACC)	February 2022
Clinical Policy Advisory Group (CPAG)	May 2022
Clinical and Lay Commissioning Committee (CLCC)	June 2022

### Appendix 2 - Document Update

Document Update	Date Updated
Version 3.0	May 2022

### 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. In altruistic surrogacy arrangements there are no financial gains to the surrogate.</p> <p>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</p>

	for carrying the pregnancy. These arrangements are illegal in the UK.
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.
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 Obstetrician & Gynaecologist.15,113– 9.	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 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