Supporting surrogacy teams through miscarriage and stillbirth

Brilliant Beginnings is a leading UK surrogacy agency. We are a professional not–for-profit organisation, founded in 2013, and we promote and support ethical and safe surrogacy in the UK. We work with intended parents and surrogates to facilitate positive matches and provide robust support for all concerned, from match through to delivery and beyond. We also work closely with government and policymakers, including consulting with the Department of Health to support the creation of its 2018 guidance on surrogacy for healthcare professionals.

Background

This document has been drafted to act as a guide for hospital and midwifery teams caring for a surrogate and intended parents who experience a late miscarriage or stillbirth during a surrogate pregnancy. Its purpose is to help give insight into the needs of surrogacy teams, and to consider practical adjustments that may be made to accommodate them given the unique circumstances. A range of sources have been used to compile this information to ensure currency and accuracy.

Glossary

For the purpose of this document, the following terminology has been provided:

Surrogate: The woman who has conceived, carried and delivered a baby on behalf of a person or couple, with the intention to pass legal parental responsibility to the person/couple upon birth of the baby.

Intended Parent(s): the person or couple who intends to take on the care and legal parental responsibility of a baby born through surrogacy. Intended parents could be a straight or same-sex couple, or a single person. In the UK most intended parents will have a genetic link (if a couple, at least one of the intended parents will have this) to the baby.

Surrogacy team: the surrogate and intended parent(s) who have come together and agreed for the surrogate to carry a baby for the intended parent(s). Most surrogacy teams will have established a bond together and will be invested in ensuring each individual is supported and cared for at all points of treatment, pregnancy and delivery of a baby born through surrogacy. Disputes between the members of a surrogacy team are very rare.

Government guidance on surrogacy

The Department of Health has issued guidance on surrogacy for healthcare professionals. See 'Care in Surrogacy, 2018'
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843891/Care_in_surrogacy_-_guidance_for_the_care_of_surrogates.pdf

This makes clear that:

- the vast majority of surrogacy cases are straightforward, positive and rewarding for all involved and that disputes are very rare;

- the attitudes of healthcare staff can have a significant impact on the experiences of both surrogates and intended parents;
- it is important to ensure the involvement of all parties; and
- it is usual for the intended parents to be treated as the parents of the child, subject to the agreement of the surrogate (who does not see herself as the mother).

Legal issues

Surrogacy is an established and legal way of creating a family in the UK. Surrogacy agreements are typically put in place by surrogacy teams, but they are not legally enforceable and the intended parent/s need to wait until after the birth to apply for a parental order which will make them the legal parents.

During pregnancy, the surrogate is the patient in terms of healthcare and has autonomy in respect of any decisions affecting her own health or the health of the child. She also has the ultimately decision about any termination of pregnancy.

Once the baby is born, the surrogate will legally be the mother. However, she will typically expect the parents to assume immediate responsibility for care and decision-making, and will not regard herself as the mother. Handover of care at birth is perfectly legal (indeed the law expects this to happen before the intended parents apply for their parental order). There is no need for social services to become involved in the handover of a child within a surrogacy arrangement where the intended parents plan to apply for a parental order.

Managing stillbirth and late miscarriage for surrogacy teams

When a surrogate experiences a late miscarriage (after the first 3 months of pregnancy, but before 24 weeks) or a stillbirth (where the baby dies after 24 weeks of pregnancy) there will be a number of people she will need to notify, depending on how the miscarriage has become apparent. This can include the intended parents, extended family and friends and her employer.

If the surrogacy team is working with an agency like Brilliant Beginnings, the agency can provide invaluable support and help facilitate good communication among everyone (including healthcare professionals) so it is important to suggest they are involved at an early stage. Brilliant Beginnings can be contacted in or out of normal office hours at hello@brilliantbeginnings.co.uk.

If the miscarriage or stillbirth is found during a scan or other medical appointment, it is possible the intended parent(s) will be present. This means that communication with a medical professional about what has happened and next steps can occur quickly.

If a miscarriage is suspected elsewhere and away from a medical setting, the surrogate may have the weight of responsibility for informing the intended parent(s) and (possibly) explaining a medical process she has little knowledge or understanding of herself. It is important she is given excellent support in doing this and that provision is made for the intended parent(s) to speak with a member of the medical care team to discuss any specifics, rather than it being an additional burden for the surrogate to have to relay information.

Despite the surrogate's legal status as the person carrying the child, it is important to include the intended parents in all communication and decision-making, assuming (as is typically the case) that the surrogate agrees. Decisions may need to be made around termination or inducing labour which will affect all involved in different ways. Surrogacy teams will typically have considered these scenarios before proceeding with their surrogacy arrangement and recorded their wishes in writing, to ensure they have considered how to deal with things if difficult decisions need to be made. Healthcare professionals should therefore not assume there will be any misalignment in their wishes. Everyone involved should be included sensitively in decision-making on the basis they are a team.

Involving everyone sensitively:

- Give clear medical information to the surrogate (who is experiencing the miscarriage), and seek her consent to sharing information with the intended parents and anyone else supporting her (with the expectation that the surrogate will typically want the intended parents to be fully involved in any decisions).
- Ensure that the intended parents are given clear information and are involved in decision-making about the baby, assuming the surrogate gives consent.
- Understand and acknowledge that the intended parents are the parents of the child.
- Bear in mind that the intended parents may have also experienced previous losses in their journey to surrogacy which may make the pain of the loss particularly acute.
- Acknowledge that the grief being felt by the surrogate and intended parents may be slightly different. For instance a surrogate may be feeling a sense of loss and guilt for her intended parents, while the parents may feel grief for themselves and fort their surrogate.
- It may be possible for pictures of the baby to be taken. If so, everyone should be involved and should have their own opportunity for photographs (together and/or separately) if they wish.
- Some teams may ask for a post mortem, or for funeral arrangements to be made. At these times, inviting the surrogates and intended parent(s) to take time to discuss and agree a plan that is comfortable for all concerned will help to avoid issues of exclusion for anyone.

Recording any documentation sensitively: late miscarriage

Although a certificate of death is not legally issued following a late miscarriage, some hospitals will informally provide informal documentation recording the baby's birth/death via a nurse or the PALS (Patient advice and liaison) officer or hospital bereavement service. Some hospitals may also have a book of remembrance. (Tommy's, n.d.) Since the parents will never have the opportunity to complete the legal process to become their child's legal parents, the documentation issued at the hospital may be the only record they have of their child, making it very important that this is dealt with sensitively. It is particularly important to ask how names should be recorded on any documentation relating to the baby, and whether the intended parents' surname should be used (in place of or in addition to the surrogate's) with everyone's agreement.

Recording any documentation sensitively: stillbirth

If a baby dies at or after 24 weeks of pregnancy, the doctor or midwife will issue a certificate of stillbirth which will be used in the registration later on. The registration of a stillbirth needs to take place within 42 weeks. (Gov.uk, n.d.).
Under current UK law, a stillbirth certificate needs to record the baby's legal parents, which will be the surrogate and either her spouse (if she is married) or one of the intended parents (if she is not married). However, the baby can be registered with the intended parents' surname, if everyone agrees. It is important for any documentation to be completed sensitively and for everyone's wishes to be followed where possible.

The Law Commission is currently undertaking a project to review UK surrogacy law and has made provisional proposals that stillbirth certificates issued in surrogacy cases should record the intended parents. This is not yet possible but is likely to become so in the future.

Bibliography

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3. https://www.gov.uk/register-stillbirth

4. https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/retention-of-health-records