

Questions and Answers to support the Next of Kin and Decision Making in Perinatal Services guidance.

Consent

In order to treat a child a clinician needs consent. Consent can be obtained from the child (if Gillick competent), someone with PR or the Court.

In an emergency, treatment can proceed in the absence of consent in the child's best interests in order to save life or to prevent a serious deterioration in the child.

Outside of an emergency situation, best interests alone do not provide the same level of protection and there should be consideration of how to establish a valid route of consent, including swift registration of the father and/or an application to court.

Proportionality and the circumstances of each case will, of course, play a part but, as a general rule, consent is required unless treatment is required urgently.

Withdrawal of Care

Clarification about obtaining a court order is needed("should") about withdrawal of care. There is an overlap of withdrawal of care and discontinuation of failed resuscitation that can occur relatively infrequently e.g.category 1 CS for fetal bradycardia, baby doesn't respond to resuscitation, mum has a General Anaesthetic and they are not married. The neonatal team would stop resuscitation based on clinical assessment, is this still acceptable or do we need to seek legal advice bearing in mind this can happen 24/7?

A clinician cannot be forced to provide care that they do not consider to be clinically indicated. Therefore, stopping chest compressions once it is clear that they are not going to succeed in resuscitating the baby would certainly not require legal advice.

However, looking to turn off the ventilator for a baby/child who is relatively stable, with that support on the basis of poor quality or quantity of life in the absence of agreement from a parent is a different and would require consideration of legal advice.

There are two basic principles (1) no clinician can be forced to provide care that is not clinically indicated and (2) where there is a dispute, or an absence of information, about the best interests of a child then legal advice should be sought.

In case of unmarried birthing mothers and partner with no parental responsibility. If mother is unavailable for medical reasons, we can escalate care / do lifesaving interventions as appropriate and contact legal team at the same time? For example: Is there any threshold of these interventions which do not require legal team (iv cannula, antibiotics, respiratory support, intubation, cardiac medications) OR does any intervention needs discussion with the legal team?

All of these interventions are acceptable as acting in best interests but legal team should be informed of the situation as soon as practicable.

What are the rights of partner/biological father (but not on birth certificate so far) in this case?

None legally, but medics should involve in decisions but ultimately decision lies with the medics

If deciding for withdrawal of intensive care, it needs to go through court. Am I getting it correct?

Yes, but it is preferable for a decision to be reached by all involved before going to court. Court is last resort when all other avenues have not reached agreement

In case of surrogate mother

There is a mention of 'formal transfer of PR'. I am right in assuming that father will get the PR, once he is on the birth certificate (in case the sperm is from him) and vice versa? In case of both the sperm and egg are not from the intending parents, do they get PR through court only?

The woman who carried and gave birth to the child will have PR until such point as this is removed by the Court. This is the case regardless of which woman provided the egg prior to fertilisation.

If the surrogate is married at the time of birth, then her husband will have PR of the child regardless of whose sperm was used to fertilise the egg.

If the surrogate is unmarried and the biological father's name is entered onto the birth certificate then he will have PR from that point forward.