

# Paternity testing

Guidance from the BMA Medical Ethics Department

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## Introduction

Genetic information is increasingly being used to establish family relationships, usually but not exclusively paternity. In the past this involved the taking of blood samples and so health professionals were invariably involved in the process, but developments in technology have led to tests being carried out on other material such as a few hair follicles or a mouth swab without medical involvement. As a result paternity testing is now offered as a direct to the public service, using home testing kits or tests obtained via the internet and sent off for analysis. Although samples from the putative father and the child are always required, it is no longer necessary for the mother to provide a sample in order to obtain a meaningful result. These developments have raised the possibility of samples being tested without the knowledge and consent of all parties. In 2001 the UK health departments published a *Code of practice and guidance on genetic paternity testing services* (currently under revision) which sought to address some of these issues.<sup>1</sup>

This guidance provides information and advice for health professionals who are asked for advice about or assistance with paternity testing.

## The legal position

As with other invasive procedures, consent is required before a sample of blood, saliva or hair is taken for analysis. Under the Human Tissue Act 2004 consent is also required (in England, Wales and Northern Ireland) for the use and storage of a sample to obtain scientific or medical information about an individual which relates to another person; this includes paternity testing. In addition, since 2006 it has been a criminal offence throughout the UK to have material that has come from the human body and consists of, or includes, human cells, with the intention of analysing its DNA for paternity testing without consent. (This does not apply if the material is an 'existing holding' ie it was in storage when the Human Tissue Act came into force on 1 September 2006.) For more information on this issue see the BMA's guidance on the human tissue legislation.<sup>2</sup>

## Children and young people

People with parental responsibility may give consent on behalf of children and young people but, where they are capable of understanding the issues, young people's own views should be taken into account when deciding whether testing would be in their best interests. Each individual case must be considered on its merits. Health professionals should only agree to provide assistance with testing where it is in the best interests of the child or young person.

A mature minor, who understands the test and what it involves, may give valid consent for testing. If, after discussion, a mature minor decides to withhold consent to paternity testing it may not be in that person's best interest to proceed, regardless of the views of the adults involved. In Scotland someone with parental responsibility can only give consent if the young person lacks capacity.

Where one of the adults does not consent to paternity testing, it is possible for a direction to be sought from the court.<sup>3</sup> Where the court issues a direction for the test to be carried out on a blood sample, this does not authorise the taking of blood without consent but 'inferences' can be drawn from an adult's refusal to provide blood for testing. If the person with parental responsibility refuses to consent to the testing of a child under the age of 16, this may proceed in England, Wales and Northern Ireland with an order from the court, which allows blood to be taken from a person under the age of 16 'if the court considers that it would be in his best interests for the sample to be taken'.<sup>4</sup> (At the time of writing there were no plans to make similar provision in Scotland.) The courts have taken the view that in the vast majority of cases the child's best interests are served by learning the truth.

## Adults with incapacity

Where an adult lacks the capacity to consent, the test can only be performed if it is deemed to be in his or her best interests.

In England, Wales (Mental Capacity Act 2005) and Scotland (Adults with Incapacity (Scotland) Act 2000), patients can appoint proxy decision-makers to make health and welfare decisions on their behalf, should they lose the capacity to do so themselves. If the incapacitated adult has appointed a proxy decision-maker, they must be consulted and can give valid consent for procedures that are in the patient's best interests. If there is serious dispute or doubt as to whether the procedure would be in the patient's best interests, a decision should be sought from the court. More information about the procedures to be followed can be found in BMA guidance.<sup>5</sup>

In Northern Ireland, no person can give consent on behalf of another adult. However, under the Regulations to the Human Tissue Act 2004, consent to test an existing sample may be deemed to be in place where the test is in the best interests of the individual.

## Ethical obligations

Although legally, paternity testing may be undertaken without further investigation where the necessary consents have been obtained, from an ethical perspective, the BMA considers that health professionals should agree to provide assistance with testing only where this is considered to be in the best interests of the child or young person. In some cases, the certainty of knowing may be better for the child than a persistent unresolved suspicion. However, there are likely to be cases in which, because of the ease with which such testing can be obtained, the test is requested without those involved having considered the likely impact of the result on all concerned. It is important therefore for health professionals to discuss with those concerned why the test has been requested and the implications for family relationships of receiving the result. The information given must be clear and unambiguous and should raise, for discussion, the possibility that the results may provide distressing information which those seeking the test do not want to hear and which may have a profound effect, with possible lifetime implications, for those involved.

Where a decision is made to proceed with testing, patients would be well advised to use an approved service provider, which gives assurances about standards. If a test is ordered by a court, only those bodies accredited to carry out court-directed tests may be used. An up-to-date list of accredited providers in England and Wales can be obtained from the Ministry of Justice.

## 'Motherless' testing

The Code of practice states that tests which do not involve testing the mother's DNA (motherless testing) should only take place if the mother consents to the child being tested, the father has parental responsibility or if a court considers the test to be in the child's best interests and authorises testing of the child on that basis. The Human Genetics Commission points out that motherless testing could have serious consequences for family life if large numbers of men decide to check whether or not the child they are supporting is genetically theirs.<sup>6</sup> Legally, where the putative father has parental responsibility for the child, such testing could be undertaken without the knowledge of the mother. The BMA believes that this could be very harmful to the child, as well as to the family unit as a whole, and would prefer to see a situation in which the consent of all parties is required for paternity testing. In the absence of such a legal requirement, where doctors are consulted they should encourage those seeking testing to discuss their plans with the child's mother and the BMA advises doctors not to become involved if that advice is rejected. Irrespective of the outcome, confidentiality must be respected and no information about the discussion should be passed to the mother or the child without the man's consent.

## Prenatal paternity testing

Some companies have begun to offer prenatal paternity testing using either fetal tissue or maternal blood. The accuracy and safety of these tests vary and those advising on such testing should ensure that women considering this option are informed of these issues and of the need to obtain the consent of the man or men to be tested.

### **For further information about these guidelines, BMA members may contact:**

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## References

- 1 UK Health Departments (2001) *Code of practice and guidance on genetic paternity testing services*. London: Department of Health.
- 2 British Medical Association (2009) *Human Tissue Legislation – Guidance from the BMA’s Medical Ethics Department*. London: BMA.
- 3 Family Law Reform Act 1969 s20. Law Reform (Miscellaneous) Provisions (Scotland) Act 1990 s70. Family Law Reform (Northern Ireland) Order 1977: art 8.
- 4 Child Support (Pensions and Social Security) Act 2000 s82. Child Support, Pensions and Social Security Act (Northern Ireland) 2000 s65(3).
- 5 British Medical Association (2008) *Mental Capacity Toolkit*. London: BMA. British Medical Association (2009) *Medical treatment for adults with incapacity: guidance on ethical and medico-legal issues in Scotland*. London: BMA.
- 6 Human Genetics Commission (2002) *Inside information: balancing interests in the use of personal genetic data*. London: HGC, 2002: 167.

