



Paternity testing – guidelines for health professionals
Guidance from the Ethics Department
Revised February 2004

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. These developments have also led to the provision of paternity testing direct to the public, using testing kits that are sent off for analysis. This raises the possibility of samples being tested without the individual's consent. 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. This raises the possibility of testing without the knowledge or consent of the mother. In 2001 the UK health departments published a Code of practice and guidance on genetic paternity testing services which sought to address some of these issues.[1]

General principles

- Consent is required before a sample is taken for paternity testing
- People with parental responsibility may give consent on behalf of children or young people, but where they are capable of understanding the issues, the views of young people should be taken into account when deciding whether testing would be in their best interests
- Ethically, health professionals should only agree to provide assistance with testing where it is in the best interests of the child
- Health professionals should discuss with those requesting a test the possible implications of the result
- The BMA believes that, ethically, 'motherless' paternity testing should only go ahead where the mother, and, if sufficiently mature, the child, consents.

The legal position

As with other invasive procedures, consent is required before a sample of blood, saliva or hair is taken for analysis. People with parental responsibility may give consent on behalf of children or young people, but where they are capable of understanding the issues, the views of young people should be taken into account when deciding whether testing would be in their best interests. Each individual case must be considered on its merits. 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.

Where one of the adults does not consent to paternity testing, it is possible for a direction to be sought from the court.[2] 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".[3] (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.

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. 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 the adults 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. An up-to-date list of approved paternity testing services in England and Wales can be obtained from the Family Division at the Lord Chancellor's Department.

"Motherless" testing

The code of practice on paternity testing states that tests which do not involve testing the mother's DNA (motherless testing) should only take place where the mother consents to the child being tested, or where the father has parental responsibility. In addition, motherless testing may be undertaken if a court in England, Wales or Northern Ireland 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.[4] 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 the mother and putative father (and the child if sufficiently mature) is required for paternity testing. In the absence of such a requirement, where doctors are consulted they should encourage those seeking testing to discuss their plans with the child's mother and the BMA would advise 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.

Testing without consent

As mentioned above, due to the ease with which a DNA sample can be obtained unobtrusively and sent off for testing, the Human Genetics Commission has advised that there should be a new criminal offence of the non-consensual or deceitful obtaining and/or analysis of personal genetic information for non-medical purposes.[5] The BMA supports this recommendation in principle.

Suggested further reading

- British Medical Association. Medical ethics today: the BMA's handbook of ethics and law. London: BMJ Publishing Group, 2004, 337-40.
- British Medical Association. Human genetics: choice and responsibility. Oxford: Oxford University Press, 1998: 179-82.
- UK Health Departments. Code of practice and guidance on genetic paternity testing services. London: Department of Health, 2001.

References

1. UK Health Departments. Code of practice and guidance on genetic paternity testing services. London: Department of Health, 2001.
2. Family Law Reform Act 1969 s20. Law Reform (Miscellaneous) Provisions (Scotland) Act 1990 s70. Family Law Reform (Northern Ireland) Order 1977: art 8.
3. Child Support (Pensions and Social Security) Act 2000 s82. Child Support, Pensions and Social Security Act (Northern Ireland) 2000 s65(3).
4. Human Genetics Commission. Inside information: balancing interests in the use of personal genetic data. London: HGC, 2002: 167.
5. Ibid: 60-2.