

7 February 2017

Dear All,

I had hoped my recent letter to you would be the last for some weeks if not months. My apologies for yet another letter.

I wish to raise one important matter in respect of unborn babies where the plan is for the removal of the child at or shortly after birth.

In the case of *Nottingham City Council v. LW (Rev 1)* [2016] EWHC 11 (Fam) at para 33 I said the following:

*“The local authority should have adopted good practice and the following basic, but fundamental, steps should have been taken:*

- a) The birth plan should have been rigorously adhered to by all social work practitioners and managers and by the local authority's legal department;*
- b) A risk assessment of the mother and the father should have been commenced immediately upon the social workers being made aware of the mother's pregnancy. The assessment should have been completed at least 4 weeks before the mother's expected date for delivery. The assessment should then have been updated to take account of relevant events immediately pre and post delivery which could potentially affect the initial conclusions on risk and care planning for the unborn child;*
- c) The assessment should have been disclosed, forthwith upon initial completion, to the parents and, if instructed, to their solicitors to give them an opportunity, if necessary, to challenge the assessment of risk and the proposed care plan;*
- d) The social work team should have provided all relevant documentation, necessary for the legal department to issue care proceedings and the application for an interim care order, no less than 7 days before the expected date of delivery. The legal department must issue the application on the day of birth and, in any event, no later than 24 hours after birth (or as the case may be, the date on which the local authority is notified of the birth);*
- e) Immediately upon issue, if not before, the local authority's solicitors should have served the applications and supporting documents on the parents and, if instructed, upon their respective solicitors.*
- f) Immediately upon issue, the local authority should have sought from the court an initial hearing date, on the best time estimate that its solicitors could have provided.*

Sadly, my observations in that case have not been followed. There remain too many cases where very late applications are made for a very urgent hearing to authorise the removal of new born babies shortly after birth, particularly on the day when they are declared fit by the clinicians to be discharged from hospital.

In a case I dealt with very recently the circumstances and arrival of the child were well known to the local authority many months in advance of the expected date of delivery. Moreover the child was born on date well known to the local authority because the mother

had been booked in to undergo an elective caesarean section. Nevertheless, care proceedings and an application for an interim care order were not issued until seven days after the child was born. An urgent hearing was requested for the following day, which was the day when the hospital was ready to discharge the child.

I required the relevant Director of Children's Services to provide me with an explanation for the, apparently, unjustified delay in issuing proceedings. The director readily conceded there was no satisfactory or reasonable explanation for the delay but asserted the following:

“As a result of this issue being identified, new practice guidance has recently been launched which aims to ensure compliance with procedures and prevent similar situations arising. Additionally, the Local Authority has an Advanced Practitioner in post who has a lead role in relation to pre-birth assessments. They have responsibility for tracking cases in relation to unborn babies and ensuring that they are progressed in a timely way. All cases are currently being tracked and have a high level of scrutiny. We are continuing to offer training for Social Workers to ensure practitioners are fully compliant with the pre-birth procedures.”

May I ask that you ensure there are clear procedures in place in your authority to deal with cases where there is likely to be an application to remove a child at birth and to ensure that these procedures are adhered to?

It is vital that your care centre is given the earliest possible notice that such an urgent application may have to be made.

Kind regards,

Michael Keehan