

## FACING CRITICISM: CHILD PROTECTION

## AND MATERNITY CARE

### Your choices

You may find that you face criticism for the choices you make during your pregnancy and birth.

Healthcare professionals or others might suggest that the choices you have made could harm your unborn child or even that there is a 'child protection' or 'safeguarding' issue.

This factsheet explains child protection law and policies in England and Wales.

### What is child protection?

Child protection describes the wide range of actions that can be taken by Local Authorities Children's Services departments, known as social services, to intervene in families when children are believed to be at risk of 'significant harm'.

It is the overall responsibility of the Department for Education, which provides guidance to social services who are responsible for planning and providing child protection services.

The [Children Act 2004](#) established Local Safeguarding Children's Boards, which ensure that the key agencies involved in safeguarding children work effectively together.

Child protection principles are enshrined in the [Children Act 1989](#). Government guidance '[Working Together to Safeguard Children](#)' (2010) is the core government guidance on inter-agency cooperation to promote child protection. It is intended to provide a national framework within which local agencies and professionals agree on their own practices.

The guidance is currently being revised and new and more concise guidance will be published during 2013.

### Does it apply to unborn children?

In the UK, unborn children are not given legal recognition. However, child protection procedures can apply to parents-to-be if there is a reasonable belief that the baby will be at risk of significant harm when it is born.

### What does 'significant harm' mean?

The legal term 'significant harm' is defined in the Children Act 1989. It includes physical and non-physical ill-treatment and impairment of a child's health or development.

The guidance explains that there are no absolute criteria for determining what constitutes significant harm. The decision whether a child is at risk is a decision that will be made by local social services departments. If they decide to start child protection proceedings, that decision can be challenged in a court.

There is no national guidance on what constitutes a risk of harm to an unborn child. Local Safeguarding Children's Boards and social services departments have varied protocols on protecting unborn children. Common issues often identified in these protocols include:

- maternal drug and alcohol dependence
- domestic violence
- parent aged under 16
- parent who has previously harmed a child



- previous unexplained death of a child where abuse or neglect is suspected
- denial of pregnancy
- avoidance of antenatal care, and
- non-cooperation with healthcare services and/or non-compliance with medical treatment.

## How are child protection concerns reported?

Anyone, including members of the public, can refer concerns about the welfare of a child to their local authority child protection team.

Healthcare organisations have designated individuals who deal with child protection issues, and procedures for referring concerns to social services. They will have clear policies on how such issues should be dealt with and when they should be referred.

Healthcare professionals, including doctors, midwives and health visitors, are expected by their professional bodies to know what to do if they have concerns about risk to an unborn child and to act in accordance with national and local child protection policies.

Child protection policies require healthcare professionals to discuss concerns with parents-to-be and obtain their consent before a referral to children's services, unless this action in itself may place the welfare of the unborn child at risk.

## Can a referral be based on my birth choices?

Child protection policies sometimes suggest that healthcare professionals should make a referral to social services when they consider that a woman's choices about medical care during her birth put her unborn child at risk.

Referral to social services would be inappropriate unless the mother's choices indicated that there was

a threat of significant harm to the baby once it was born.

If you have made an informed decision to refuse care or to birth outside hospital, you cannot be compelled to accept care unless you lack mental capacity to make your own decisions about medical treatment. See our factsheet, [Consenting to Treatment](#).

The threat of referral to social services should never be used to intimidate, bully or coerce a you into accepting a particular medical intervention for you or your child.

Consent that is given on the basis of such a threat is not given freely and the healthcare professional may be legally liable for battery and violation of Article 8 of the European Convention if they perform the intervention and they know, or should know, that consent has not been freely given.

## What happens if child protection concerns are reported?

After a referral is made to a local authority the guidance states that an initial assessment must be carried out within ten working days in accordance with the Local Safeguarding Children's Board's procedures. These procedures vary across the country, but they should always be publicly available for any person who wishes to access them.

If, following the initial assessment, the baby is judged to be at risk of significant harm, professionals from relevant agencies will meet to decide whether to initiate an enquiry under section 47 of the Children Act 1989.

## Section 47 enquiries

Section 47 enquiries are based on a 'Core Assessment'. This involves gathering more information from the parents, family members and other professionals



in order to determine whether the baby is at risk of significant harm.

The core assessment is the responsibility of the social worker but information from other agencies, such as hospitals, will be collected and analysed.

Parents must be consulted in a section 47 enquiry, unless their involvement would increase the risk to the unborn child.

If parents refuse to cooperate or provide information, a local authority can apply to the court for a child assessment order. In these circumstances, the court may direct the parents to cooperate with an assessment.

## Child protection conferences

If the section 47 assessment concludes that the baby is at risk of significant harm an initial, pre-birth, child protection conference will be arranged.

The conference brings together family members and professionals involved with the family. Its purpose is to analyse the information which has been obtained; to make judgements about the likelihood of the baby suffering significant harm in the future; and to decide what future action is required in order to safeguard and promote the welfare of the baby.

The guidance gives advice on holding pre-birth child protection conferences. It states that the involvement of midwifery services is 'vital'. The conference must proceed in the same way as any other child protection conference, including deciding during the conference whether to make a 'child protection plan'.

## Child protection plans

A child protection plan should be made in the conference if there is reason to suspect that the unborn baby may be at continuing risk of significant harm.

The plan must consider the immediate safety needs of the child once it is born, as well as future needs and details of any further assessments required.

The plan must explain what action social services intend to take after the birth of the child, including whether they intend to seek an emergency protection order from the court removing the child from its parents at birth.

If a child protection plan is made, the child's name will be placed on the Child Protection Register.

A further child protection conference will be held after the child is born to decide whether any action needs to be taken to protect the child.

## Care Proceedings

"Care proceedings" is the phrase used to describe the legal process by which social services ask the court whether or not a child should be taken into care. If a court decides that a child should go into care this is called making a "care order".

Care proceedings cannot be started before a baby is born. In rare circumstances and particularly where there has not been time to prepare an application for an interim care order (see below), if it is felt that a baby will be in immediate danger at birth, social services can apply to the court for an "emergency protection order" as soon as the baby is born.

If an emergency protection order is granted, the baby can be removed from its parents shortly after birth for up to eight days. The order may be extended if needed.

If social services intend to take the baby into care for the long-term, they will ask the court to make "interim care orders" while matters are investigated further and plans made. Interim care orders are made for eight weeks at first, and must be renewed every four weeks.



If, after investigation, social services still think a care order is necessary, they will ask the court to make a full care order.

A court will only make a care order if it finds that the child is suffering, or likely to suffer, significant harm, and that the harm is attributable to the parents or carers. The court may decide that a less interventionist order is appropriate, for example providing for supervision of the child by social services or restricting the exercise of parental responsibility while leaving the child in the care of its parents. The court must be convinced that making an order is better for the child than making no order at all.

## Can I make a complaint?

If you feel that a healthcare professional has acted inappropriately by threatening you or making a referral to social services, you can make a complaint to that individual's employer.

NHS organisations will have people responsible for dealing with complaints. If you are unhappy with the outcome of a complaint, you can refer the matter to the [Parliamentary and Health Service Ombudsman](#). For further advice about complaints, see our fact-sheet [Making a Complaint](#).

If your complaint is about a social worker you can complain to the local authority social services department. They will have a formal complaints procedure.

If you wish to complain about a child protection conference then you should make a complaint to the chair of the conference or his/her manager. If you are still unhappy you can make a complaint to the [Local Government Ombudsman](#).

Complaints should be made as soon as possible after the event being complained about. The NHS and social services departments ask for complaints to be made within 12 months unless there is a good reason why you could not have complained sooner.

You can find more information about challenging decisions and making a complaint on the [Family Rights Group](#) website.

*Disclaimer: Our factsheets provide information about the law in England and Wales. The information is correct at the time of writing (January 2013). The law in this area may be subject to change. Birthrights cannot be held responsible if changes to the law outdate this publication. Birthrights accepts no responsibility for loss which may arise from reliance on information contained in this factsheet.*

