

16 August 2015

Dear Baroness Cumberlege and the Maternity Review team,

We write to you as a group of health professionals, academics, campaigners and human rights lawyers who have a long-standing commitment to improving maternity care. As leaders in healthcare and human rights, we ask that the Review makes the fundamental principles of respectful care a priority in its investigation of maternity services. We believe that safe maternity care is contingent on respectful care and that a rights-based approach offers the best means of improving maternity services in the UK.

We outline the principles of respectful care and human rights below in the expectation that they will inform the Review's consultation process and discussion with stakeholders. We would be grateful for an opportunity to explore these issues with you in greater depth during the Review process.

***Women's fundamental human rights are at stake in maternity care***

Pregnancy and childbirth are an intensely vulnerable time for women. Not only is the long-term physical health of women and babies at stake in the care they are given, women's fundamental rights to human dignity and autonomy can be profoundly affected by their experience of maternity care.

The way a woman is treated during childbirth affects her at a time in her life when her identity as a mother is being forged. We know that many women experience anxiety, depression and post-traumatic stress disorder following childbirth and women with pre-existing mental health conditions may suffer a recurrence. Poor maternal mental health can affect the mother-child relationship and outcomes for children. Care providers have a critical role to play in ensuring that women emerge from childbirth physically and psychologically healthy and are able to develop a responsive and nurturing relationships with their children.

***Dignity is the basis of respectful maternity care***

Human dignity is the ultimate value on which respectful healthcare depends. It is most powerfully articulated in the imperative to treat a person as an end in their own right and not a means to an end. The relevance of this is clear in maternity care, when a woman risks being viewed as a means for the creation of life rather than as a person worthy of respect in herself. Dignity reinstates the woman as the central agent in childbirth. It means that her caregivers treat her as capable of making her own autonomous decisions about her child's birth. Caregivers who protect women's dignity listen to women and respect their perception of what it means for them to thrive as human beings.

### ***Human rights law protects women's health***

The law protects people's health by imposing obligations on governments and healthcare providers to respect human rights. Professional caregivers employed by NHS bodies are under a legal obligation to respect rights as set out in the European Convention on Human Rights. Article 2 of the Convention protects the right to life and requires the state to take positive action to ensure that critical healthcare services, including maternity care, are available to everyone.

Human rights do not stop at ensuring access to maternity services. The rights in the European Convention and under international treaties, including the Convention on the Elimination of Discrimination against Women and the Convention on Human Rights and Biomedicine, extend to protecting the way in which individuals are treated by their caregivers. These include the right not to be subjected to degrading treatment, the right to informed consent and the right to non-discrimination.

Healthcare professionals commonly consider the law to have a negative and distracting influence on care. The climate of litigation, particularly in maternity care, can make the law appear punitive. In fact, a human rights-based approach offers the potential for transformative impact on healthcare. The principles of dignity, autonomy and respect can create the foundation for a maternity service that is truly fit for purpose.

### ***Human rights are an essential basis for safe health care***

Respectful care is an essential component of safe care. Caregivers who listen to women, provide them with accurate information and respect their choices make a fundamental contribution to a safe maternity service. As the investigations into failing hospitals have repeatedly shown, lack of respect for patient dignity has gone hand in hand with clinical and systemic failings that have compromised patient safety.<sup>1</sup>

The recent decision of the UK Supreme Court in *Montgomery v Lanarkshire Health Board* (2015) reveals the interdependence of safety and respectful care. Mrs Montgomery's doctor treated her with condescension and withheld important information about the risks of vaginal birth for diabetic mothers. As a consequence, her right to make a safe choice was denied to her and her baby was damaged during birth. The Court found that clinicians must adopt a woman-centred approach to advice giving during pregnancy. It deprecated the use of consent forms and information leaflets and held that the law required clinicians to have detailed and personalised discussions with women that enabled them to make their own decisions on the basis of information about 'all material risks'. The Court explained that it was necessary to impose legal obligations of this sort, so 'that even those doctors who have less skill or inclination for communication, or who are more hurried, are obliged to pause and engage in the discussion which the law requires.'<sup>2</sup>

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<sup>1</sup> Report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry (February 2013); The Report of the Morecambe Bay Investigation (March 2015).

<sup>2</sup> *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, paragraph 93. Available here: <http://bit.ly/1gb5Zyl>.

The *Montgomery* decision has profound consequences for the interaction of the principle of informed consent, clinical practice and the structural implementation of choice in maternity services. If the Court's judgment is to be upheld, professional carers must be given the time to discuss choices with women in their care and must respect the decisions that women choose to make.

At a global level, there is increasing awareness that protection of women's human rights in maternity care offers the best chance for progress in maternity services. The recent Bohren systematic review on the mistreatment of women in health facilities provides powerful evidence that childbirth is a particularly vulnerable time for human rights abuses globally (that seemingly developed/ industrialised democracies and countries shouldn't forget or need to continually guard against). As the WHO stated in 2014, '*Rights-based approaches to organizing and managing health systems can facilitate the provision of respectful, quality care at birth.*'<sup>3</sup> In countries as diverse as Nigeria and Venezuela, which have legislated for human rights in maternity care, services are being configured with respectful care at their heart.<sup>4</sup>

In the UK, in response to systemic failures, the NHS is increasingly using dignity principles not only to improve patient experience but as means to ensure patient safety. Queen's Hospital Romford experienced a cluster of maternal deaths in 2011, blamed in part on poor culture and disrespectful behaviour amongst staff. The midwives acted to introduce mandatory respectful care training based on the White Ribbon Alliance Respectful Care Charter.<sup>5</sup> It has had a measurable impact on the quality of care, reduced complaints, improved communication and staff behaviour.<sup>6</sup>

We believe that the response to the tragic failures at Morecambe Bay and elsewhere must put respect for women at its heart. Safety can only be achieved by full recognition of women's right to dignity and respect in maternity care. This entails much more than compliance with protocols or improved documentation; it means genuinely personalised care given by staff who listen to women and respect their individual needs.

### ***Services built on human rights provide the best start in life***

Human rights and high quality, safe maternity care are inseparable. The provision of maternity services that have the capability to provide appropriate, affordable, accessible and safe services that lead to the best start in life to all women and their

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<sup>3</sup> WHO, 'Prevention and elimination of disrespect and abuse during childbirth' (2014). Available here: <http://bit.ly/1rmFFCs>. See also, Bohren MA, Vogel JP, Hunter EC, Lutsiv O, Makh SK, Souza JP, et al. (2015) The Mistreatment of Women during Childbirth in Health Facilities Globally: A Mixed-Methods Systematic Review. PLoS Med 12(6). Available here: <http://bit.ly/1NwjhA7>.

<sup>4</sup> Perez D'Gregorio, *Obstetric violence: a new legal term introduced in Venezuela*, Int J Gynaecol Obstet 2010 Dec;111(3):201-2

<sup>5</sup> The WRA Respectful Maternity Care Charter was published in October 2011. Available here: <http://bit.ly/1hZAndf>.

<sup>6</sup> Felicity Ukoko, *Respectful care included in training*, White Ribbon Alliance (June 2013). Available here: <http://bit.ly/1T5uzih>.

babies require models and systems that provide care respectful to the dignity and autonomy of each woman and respond to individual and community needs.

The capability to provide respectful care that leads to healthy physical and psychological outcomes as well as supporting strong family relationships and reducing the impact of inequalities, requires structured development of culture and care pathways in models of care that meet each woman and baby's health, personal and social needs and preferences.

This more personal and appropriate care should reduce variations in outcomes between services, while providing care that is tailored to each individual woman's needs, values and preferences.

The ability of all carers to provide personalised care, supporting informed consent and offering genuine choices requires evidence-based information and information aids. All professionals must be able to convey information in an understandable way and work with the woman without prejudicing her decisions. This unified approach may be supported by human rights-based interdisciplinary education. It will also require that choices are available and visible. Time to talk and listen, not only to women but also to other professionals when consulting, referring and transferring care, is crucial.

***Continuity of carer is the model of care that promotes human rights and a safe maternity service***

Continuity of carer is the most appropriate means of enabling personalised care that respects women's human rights. By developing services that ensure that every woman is cared for by named midwifery and medical staff, it is possible to create a relationships of trust that prevents fragmentation in care and reduces risk for women and babies. Continuity of carer is a critical part of a human rights based approach to maternity services because it enables respectful and safe care that is responsive to the woman and her family's needs.<sup>7</sup>

Preventive or public health approaches to reduce inequalities and the impact of social economic deprivation may be built in part by strengthening current community midwifery services, through the development of models of continuity of carer to provide more personal services, and integration of the pathway between primary care, social services and acute hospital based services.<sup>8</sup>

***What is quality and safety in maternity care?***

The assessment of high quality, safe maternity care goes beyond measures of

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<sup>7</sup> Sandall J et al (2013). Midwife led models of midwifery care for childbearing women and other models of care for childbearing women. Cochrane Database Systematic Review (8) CD004667; Sandall J (2014). The contribution of continuity of midwifery care to high quality maternity care – a report by Professor Jane Sandall for the Royal College of Midwives.

<sup>8</sup> Rayment-Jones H, Murrells T Sandall J (2015). An investigation of the relationship between the caseload model of midwifery for socially disadvantaged women and childbirth outcomes using routine data - A retrospective study. *Midwifery* 31(4):409-17.

mortality or morbidity and encompasses multiple outcomes.<sup>9</sup> For example, the most commonly used definition globally, and which is used by the WHO includes the following dimensions: women's experience and woman-centred care, effective, efficient, equitable, timely and safe care.<sup>10</sup> Using this definition, safer care is focused on services that do no harm to those who use or work in them, rather than just focusing on the potential risk that women or staff create.

This inclusive approach to safety encompasses a positive experience of care in which the woman is respected and listened to, secure relationships between woman and baby and within the family, the capacity to mother and care for the newborn and reduction in mental health problems. Healthy outcomes require respectful support for physiological processes, with medical intervention when needed or desired. The culture and systems of healthcare must ensure that women and their babies are given optimal chances of healthy outcomes without threat to their personal and legal autonomy.

### ***Conclusion***

Respect for human rights is fundamental to all healthcare. It is particularly critical in maternity care, given the transformative nature of childbirth and the moral and legal imperative to respect the autonomy and dignity of women. Moreover, quality maternity care improves experiences for the woman and her family, and affects a baby's start in life and subsequent life chances. Every mother and baby should have an equal access to quality care. We have described some principles that will enable professional carers to provide respectful, woman-centred, personalised care which, we argue, will contribute towards optimal physical and psychological outcomes and secure family relationships. Observing and building on human rights principles has the potential to transform maternity care.

We look forward to further discussion on this topic and thank you in advance for your time.

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<sup>9</sup> Magee H, Askham, J (2007). Women's views about safety in maternity care: A qualitative study. (London, Kings Fund). Available here: <http://bit.ly/1MxZrMt>.

<sup>10</sup> Institute of Medicine (US). Committee on Quality of Health Care in America. Crossing the quality chasm: a new health system for the 21st century. National Academy Press, 2001.

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