

Coercion and Informed Consent: Birthrights Responds to Reports of RCM Legal Birth Conference

Press Release. 18 July 2013. For Immediate Release.

Following troubling reports of the recent Royal College of Midwives Legal Birth Conference (<http://www.rcm.org.uk/midwives/news/choice-not-an-option-for-some>), Birthrights founder and barrister Elizabeth Prochaska expressed concern that the speakers may have made inaccurate statements about the law.

Dame Lorna Muirhead, former RCM President and current NMC fitness-to-practise panelist, reportedly said that: 'If continuous monitoring is right for a woman, then we can't give her the choice not to have it.'

In response Elizabeth Prochaska states: "if this is an accurate reflection of what Dame Muirhead said, it reveals a serious misapprehension about the law on consent. The law requires the healthcare professional to inform the woman about her condition and give her a choice about whether to accept or decline treatment, including continuous monitoring. If Dame Muirhead's approach were right, women could be coerced into any medical treatment, such as caesarean section. As our courts have said time and again, no one, pregnant or otherwise, can be forced to accept medical treatment of any kind."

Birthrights' concerns about the statement are magnified as Dame Muirhead sits on the NMC panels that determine whether or not a midwife is fit to practise midwifery. As Prochaska adds, "cases come up before the NMC where midwives are criticised for failing to follow hospital policies on procedures such as continuous monitoring. A midwife may say in her defence that the woman refused to accept monitoring, as she is lawfully entitled to do. If the NMC panel do not understand the basic principle of consent, they could sanction a midwife for 'giving the woman the choice'. This turns midwives into instruments of coercion."

Birthrights is seeking clarification from Dame Muirhead about her true position.

At the same conference, barrister Barbara Hewson is reported to have suggested that the NHS can deny women the choice of home birth. It is worth clarifying the legal position on providing a midwife at a home birth.



To quote from the Birthrights' factsheet on choice of place of birth (www.birthrights.org.uk/library/factsheets/Choice-of-Place-of-Birth.pdf):

'All NHS Trusts are expected by the Department of Health to make out-of-hospital services available to women in their area. According to Department of Health guidance issued to the NHS, women's choice of place of birth, whether in hospital, in a birth centre or at home, should be a 'national choice guarantee'. However, there remains regional variation in the out-of-hospital services available to women.

Article 8 of the European Convention on Human Rights protects every person's right to respect for their autonomous choice about their private life. In *Ternovszky v Hungary* (2010), the European Court found that this includes women's right to decide the circumstances, and location, in which they give birth.

Article 8 is a qualified right. Respect for private life and autonomous choices can be limited only if there are legitimate reasons for doing so. But the public body refusing to respect a person's choice would have to prove both the reasons for limiting choice and that these are proportionate, i.e. they outweigh your right to make the choice. If an NHS Trust refuses to provide a home birth service, this may breach your Article 8 rights unless it can give good reasons for its decision, which must be backed up by evidence.

If you have been told by your midwife or other healthcare professionals during your pregnancy that you can give birth at home or in a birth centre, you may have a 'legitimate expectation' of giving birth there. This is simply a legal way of saying that you should get what you have been promised. It is only lawful to refuse to honour a legitimate expectation if there are proportionate reasons for doing so.

If staffing shortages are given as a reason for refusing your choice of place of birth, a hospital may be expected to have contingency plans in place (such as hiring independent midwives) to ensure that there are enough staff to provide the services it has promised.'

In conclusion Elizabeth Prochaska adds: "There has not (yet) been a case before the UK courts about legal entitlement to a home birth service, so it is not possible to give a clear answer about the reasons that might be accepted by the court for refusing to provide a midwife at home. But it would be misleading to suggest that Trusts are not open to potential liability for failing to provide a midwife at a home birth. They are. Indeed, the only case in which legal action of this sort has been formally threatened led to the NHS Trust engaging independent midwives to cover a suspension in its home birth service."

Birthrights exists to make sure that the law on maternity care is explained clearly, accurately and in all its nuance. A campaign to promote 'Dignity in Childbirth' will launch on 16 October 2013 to



mark Global Dignity Day. The launch will be marked by a high-profile Forum on the issues launching a new survey in collaboration with Mumsnet on women and midwives' experiences of childbirth.

Please contact press@birthrights.org.uk or call 07793084945 for more information or to arrange interviews.

ENDS

Notes to Editors

- Birthrights is a registered charity funded entirely by donations and run by volunteers. We are currently raising funds for our Dignity in Childbirth campaign: <http://www.birthrights.org.uk/dignity-in-childbirth>
- Further details about the Forum and Campaign can be found on our website: www.birthrights.org.uk
- Biographies of the Board of Trustees can be provided
- A summary of the human rights in childbirth situation in the UK is provided below

WHY DO HUMAN RIGHTS MATTER TO PREGNANT WOMEN?

The care that pregnant women receive during pregnancy and childbirth has a long-lasting effect on the physical and psychological health of women and their babies. Lack of respect for women's basic rights during childbirth can lead to women feeling degraded and dehumanised. The fundamental human rights values of dignity, privacy, equality and autonomy help guarantee women access to appropriate maternity services and respectful treatment during childbirth.

WHAT IS A HUMAN RIGHTS VIOLATION IN CHILDBIRTH?

Failure to provide adequate maternity care, lack of respect for women's dignity, invasions of privacy, procedures carried out without consent, failure to provide adequate pain relief without medical contraindication, unnecessary or unexplained medical interventions, and lack of respect for women's choices about where and how a birth takes place, may all violate human rights law.

ARE WOMEN'S RIGHTS BEING VIOLATED IN THE UK?

Sadly, there is evidence that too many women in the UK are experiencing maternity care that does not respect their basic rights. Strain on under-resourced maternity services, a culture of excessive emphasis on clinical policy rather than individualised care, and misunderstanding of basic legal responsibilities, all contribute to poor quality care than can lead to violations of women's dignity and autonomy.

ARE HEALTHCARE PROVIDERS COVERED BY HUMAN RIGHTS LAW?

Under the Human Rights Act 1998, all UK public bodies must respect the rights set out in the European Convention on Human Rights. Public bodies include all NHS institutions, such as hospitals, Primary Care Trusts, NHS Trusts and Clinical Commissioning Groups. This means that



NHS bodies must respect human rights when making decisions. It also means that caregivers working for public bodies must respect human rights as they go about their work.

DOES HUMAN RIGHTS LAW PROTECT UNBORN CHILDREN?

No. Unborn children do not have separate legal recognition from their mothers. Women are free to make choices against medical advice and, so long as they have mental capacity, they cannot be forced to accept treatment which is said to be in the interest of their unborn child.

