

## Best practice for local authorities seeking an interim care order for a newborn baby

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**Family analysis:** The decision in *Nottingham City Council v LW* is the latest example of judicial chastisement of a local authority, and provides clarification on the steps which should be taken when seeking the removal of a child soon after birth. Sarah Inchley, associate solicitor at Russell Cooke, talks us through the details of the case.

### Original news

*Nottingham City Council v LW and others* [2016] EWHC 11 (Fam), [2016] All ER (D) 59 (Mar)

*The Family Division considered the applicant local authority's application for an interim care order (ICO) regarding LW, who had been born on 16 January 2016. The court criticised delays arising from the local authority's conduct and stressed the importance of making applications for public law proceedings in respect of newborn babies timeously and especially, where the circumstances arguably required the removal of the child from its parent(s), within at most five days of the child's birth.*

### What was the background to the case?

The case concerned a baby girl who was the subject of care proceedings issued by Nottingham City Council.

It was the local authority's case that she was at risk of suffering significant harm if she remained in either of her parents' care following her discharge from hospital. The local authority were concerned about the parents' reported drug taking and domestic violence in their relationship, and the harm that the child was at risk of suffering as a result. Children services had been involved with the family for a period of two years and there had been care proceedings for a half sibling who had subsequently been placed with his grandparents with the mother's consent.

The case concerning the new baby came before Keehan J when she was 12 days old. This was a first hearing for a judge to determine the local authority's application for the baby to be removed from her parents and placed in foster care under an ICO. This was contested by the parents.

What was, on the face of it, in the words of the judge 'a run of the mill case', highlighted to him a number of failings and poor practice in local authorities. He found in this case that this local authority had 'wholly and unreasonably failed the child, her parents and her guardian'.

### What were the judge's criticisms of the local authority legal department and children services department? How unusual is the award of an adverse costs order against the local authority?

The judgment of Keehan J expresses his dissatisfaction as to a number of 'contumelious failures' by Nottingham County Council who he said had placed the court in a very difficult position. The judge did make an ICO, however, on the basis that there were reasonable grounds to find that the child was at risk of suffering significant harm in her parents' care so as to endorse the care plan that she should be placed in foster care on an interim basis.

The judge set out that he had 'no choice' but to make an ICO, notwithstanding that the hearing could in his judgment 'hardly be categorised as fair hearing so far as the parents are concerned' and in his view was 'wholly ineffective' because of the local authority's practices and procedures which he found to be simply flawed.

He identified various failures which are not uncommon to many of us who practice in this area.

First, the local authority did not issue proceedings for their 'urgent' ICO until eight working days after the baby was born which the judge found to be inexcusable. The late issue was despite the existing involvement of children services with the family who were fully aware of the pregnancy and due date. There was a pre-birth plan but this, in the words of the judge, was 'ignored by everyone connected with the local authority'.

The hospital notified the social worker of the baby's birth, but it took three days for the social worker to notify their legal department, and it in turn took a further seven days to issue proceedings.

The reason for the delay was largely due to the local authority awaiting medical information pertaining to allegations that the baby was withdrawing from methadone taken by the mother during pregnancy and that the father had taken a drugs overdose. The delay was compounded by the fact that once the medical report was provided, it was not picked up immediately by the social worker (who was on sick leave) and, once forwarded to the local authority lawyer, it was again not picked up (as she was absent from the office).

Secondly, the local authority did not provide the parents' solicitors with their application and supporting evidence until two and a half hours before the hearing, meaning that they had insufficient time to consider their position and prepare their case. Likewise, because of the late issue of the application, the child's guardian could undertake only 'rudimentary enquiries' having been appointed shortly before the hearing.

The parents sought to contest and challenge the local authority's case but were hampered in doing so because of the late service of evidence.

Such were, what the judge called (at para [29]), the 'egregious errors' of the local authority that he ordered that Nottingham County Council pay the costs of the publicly-funded parties. It is rare for costs to be ordered against a local authority but such were the failings of this local authority that the judge said he had no hesitation in making a costs order in this case.

### **What clarification has this case provided for interim care applications of new born babies?**

The judge ordered that the director of social services and legal services manager provide statements setting out explanations for the failures he identified. Nottingham County Council offered apologies to the judge, which he acknowledged. The local authority offered reassurance that lessons had been learnt.

These lessons are applicable to all local authorities to prevent the failures in this case being repeated. The case provides clarification as to the steps which should be taken by a local authority when seeing removal of a child soon after birth. Keehan J was clear that local authorities must issue care proceedings for newborn babies timeously, especially when the care plan is for removal from a parent's care (para [41]). He also highlighted that it is a flawed approach to place too great a reliance on the period of time for which a hospital is willing to keep a baby as a patient before discharge, saying (at para [30]):

'The indication of a maternity unit as to the date of discharge should never, save in the most extraordinary of circumstances, set or lead the time for an application for an ICO for a new born.'

Local authorities need to keep in mind that a hospital may not detain a baby against the wishes of parents with parental responsibility, that a hospital's willingness to accommodate a baby can change and it is open to a local authority to consider emergency remedies if appropriate— such as an application for an emergency protection order or inviting the police to exercise a police protection order (para [30]).

If the pre-birth plan for an unborn child is removal at birth, it is essential and best practice for the application for the ICO to be made on the day of the child's birth (para [31]). Once a local authority has determined that sufficient evidence is available to make their application, the availability of additional evidence such as medical evidence should not be the cause of any delay and can be provided subsequently (para [32]).

At para [33] of his judgment, Keehan J set out the following basic, but fundamental, steps that are required as a matter of good practice, ie:

- o the birth plan should be 'rigorously adhered to by all social work practitioners and managers and by the local authority's legal department'
- o a risk assessment should be commenced immediately upon the social workers being made aware of the pregnancy, and be completed at least four weeks before the due date
- o the assessment should be shared with parents and their solicitors forthwith on initial completion, to give them the opportunity to challenge both the assessment of risk and the proposed care plan

- o all relevant documentation required for the issue of proceedings should be provided by the social work team to their legal department no less than seven days before the due date
- o the legal team should issue the application on the day of birth, and in any event no later than 24 hours after the birth (or the time the local authority is notified), and
- o the local authority should seek an initial court date immediately upon issue and provide a best time estimate

**This judgment is the latest example of judicial chastisement of local authorities. How is this criticism impacting on lawyers and social workers at the frontline at times when budgets are being cut?**

The majority of social workers and lawyers for local authorities, parents and children are dedicated to trying to keep children safe and ensuring good outcomes for families. All face huge work pressures and the challenges of financial restraints. Social workers on the frontline have a particularly challenging role. They require practical and financial resources at a time when funding is being cut. This contributes to a low sense of morale, periods of sick leave and a high turnover of staff which produces an environment in which the above routine failures can occur. Notwithstanding the pressures however, the lessons from this judgment need to be taken on board and all of us practising in this area have a duty to ensure the highest standards for the families and children we seek to help.

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