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PRIVATE AND CONFIDENTIAL

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URGENT LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

Response required 4pm on 26 November 2021

12 November 2021

BY EMAIL: cthb_claims@wales.nhs.uk

Dear Sirs

BIRTHRIGHTS: JUDICIAL REVIEW AGAINST CWM TAF MORGANNWG UNIVERSITY HEALTH BOARD'S POLICY ON VISITING RESTRICTIONS REGARDING ANTENATAL AND POST-NATAL SERVICES

LETTER BEFORE ACTION IN ACCORDANCE WITH PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

We write pursuant to the Judicial Review Pre-action Protocol to give formal notification of a proposed claim for Judicial Review. We are instructed to act on behalf of the UK Charity, Birthrights, to challenge Cwm Taf Morgannwg University Health Board's ('the Health Board'; 'CTMUHB') policy on visiting restrictions regarding antenatal and post-natal services.

Please note that we request a response to this letter by **4pm on 26 November 2021**.

In the absence of a satisfactory response within that timeframe, we are instructed to take steps to issue Judicial Review proceedings without further notice to you. Should such a step be necessary, we also place you on notice of our intention to seek to recover our costs in accordance with the case of *M –v- Croydon* [2012] EWCA CIV 595.

Proposed Defendant

 0370 1500 100  irwinmitchell.com  @IrwinMitchell

 Riverside East, 2 Millsands, Sheffield, S3 8DT

Cwm Taf Morgannwg University Health Board (the “Health Board”).

Interested Parties

There are no interested parties in respect of the proposed judicial review. If you consider there are interested parties please let us know.

Proposed Claimant

Birthrights is a UK Charity dedicated to improving the experience of pregnancy and childbirth by promoting respect for human rights. Birthrights registered address is Union House, 111 New Union Street, Coventry, CV1 2NT.

Birthrights are aware of / have supported a number of the Health Board’s service users who have been affected by the current policy. Birthrights has worked with and heard from a number of people who have described their experiences after giving birth, while unable to have visitors, and from partners denied the opportunity to care for and bond with their baby during the first few days of life.

Birthrights, by reason of its expertise and experience in maternity care matters has sufficient standing to bring a claim in its own name to challenge a relevant NHS policy in this area. However, Birthrights reserves the right to bring the claim jointly with an individual (or individuals), and reserves the right to do so (adjusting the grounds as required).

Matter being challenged

The Claimant challenges the decision dated 8 September 2021 of the Health Board to amend its visiting policy, and specifically the decision to prohibit all visiting to the Health Board’s antenatal and postnatal wards (“the Decision”; “the Policy”). The Policy came into force on 10 September 2021.

Details of what is being challenged

Background

In November 2020, the Welsh Ministers produced Government guidance in respect of visiting hospital settings during the Covid-19 pandemic. The guidance was implemented at a time that England and Wales were in national lockdown.

The guidance was updated on 18 June 2021. The most recent guidance “Hospital visiting during the coronavirus outbreak guidance: July 2021”¹ (the “Guidance”) is published on the www.gov.wales website and is said to supersede previous versions of NHS Wales visiting guidance.

¹ [Hospital visiting during the coronavirus outbreak guidance: July 2021 \[HTML\] | GOV.WALES](http://www.gov.wales)

The Guidance states that the Welsh Government supports a “*person-centred, flexible approach to visiting*” but records that Wales is still in a phase of “sustained community transmission of COVID-19” and that the first priority is the prevention and control of infection in healthcare settings.

The Guidance records that “*this updated guidance aims to assist health boards and trusts to strike a balance in terms of the visiting principles between allowing visiting with a purpose and the clear need to maintain robust infection prevention and control strategies at this stage in the pandemic, for the safety of patients, visitors and staff.*”

The Guidance permits visiting through the health board’s arrangements for visiting subject to certain conditions and emphasises that health boards and trusts have discretion, when operating the guidance, to agree to visiting requests that are not outlined in any of the categories set out therein where they are satisfied that “*the benefits to the well-being of the patient or visitor in agreeing a visit outweigh the infection control risks and any other practical difficulties in facilitating access.*”

Annex 2 of the Guidance includes a framework to “assist NHS health boards to assess visitor access for partners, visitors and other supporters of pregnant women in Welsh maternity services during the COVID-19 pandemic”. Within Annex 2, it is stated that:

- Health Boards must tailor policies to the local situation and be innovative in the way that visiting access is enabled.
- In periods of high local COVID-19 transmission rates and/or variants of concern health boards should revise guidance according to need, working with Maternity Service Liaison Committees, local staff representatives (including health and safety representatives), other professional groups (e.g. sonographers) as well as appropriate infection control and public health experts.
- Health boards are encouraged to undertake a risk assessed approach, following a meaningful and documented assessment, making any necessary changes according to local transmission of the virus to either relax or reinstate previous levels of restrictions.
- Policies on permitting access to women’s partners, visitors or other supporters should be regularly reviewed, be tailored to the local context and take account of current national pandemic risk and policy, local trends in Covid-19 incidence and prevalence, the number of women expected in an inpatient maternity unit, physical space in the maternity service and staffing of the service.
- Consideration should be given to the needs of women who require additional support to access maternity services and for whom reasonable adjustments may be required.
- While it is anticipated the risk levels will be set by predominately following the overall health board’s risk levels, localised risk assessments should also be undertaken for individual maternity units/services.
- Pausing the reintroduction of visitors, or reversal back to more stringent restrictions, may be warranted in response to the local or national transmission risk. The decision-making process for pausing or reversal should be clearly recorded. Reasons should be discussed with local Maternity Services Liaison Committees and staff-side representatives. Consider sharing why you’ve made the decision, to help assure women and visitors that the

leadership team has considered all reasonable approaches and adjustments but finds the practice unsafe.

A supplementary statement published alongside the Guidance sets out the baseline for visiting in Wales during the pandemic but allows health providers to depart from the guidance in response to rising or falling levels of COVID-19 transmission in their areas. The supplementary statement states that *“When further restrictions are being contemplated, the balance between the need to protect public health and the impact on patients and their loved ones caused by restricted access will need to be considered along with any reasonable adjustments to support access to health assessment or intervention.”*

On 22 September 2021, Birthrights wrote to the Defendant expressing its concern about the changes to visiting arrangements in maternity services. The letter stated that “There is now significant evidence about the adverse impact of visiting restrictions during the pandemic (see this analysis for example, by health economist Rachel Hunter about the mental health cost of visiting restrictions on pregnant women/birthing people). Just this week the Health and Safety Investigation Branch have published a report into stillbirths in England between April and June 2020. The report concludes that, unlike in other industries, NHS providers appear to have no system in place to enable them to weigh up any increased risks of COVID transmission against any unintended clinical consequences of changes they make to services in order to reduce the risks of COVID transmission. This is a safety issue.”

The letter requested disclosure of relevant documents related to the policy to exclude partners from inpatient antenatal and postnatal wards and asked for an urgent response by 29 September 2021. A response was provided on 1 November 2021 and enclosed limited extracts of the decision making documents.

Decision

This information is taken from the limited documents provided by the Health Board and so is correct to the best of our knowledge based on the information we have seen.

On 7 September 2021, a Silver command meeting was held at which an SBAR² Report dated 7 September was considered. The SBAR Report was prepared by the Deputy Executive Director of Nursing and sponsored by the Director of Nursing and Midwifery.

The SBAR Report records that cases of Covid-19 cases in the community had risen rapidly in the last few weeks. This was said to be resulting in an increase in numbers of patients with Covid-19 admitted to the Health Board’s acute sites. The SBAR Report stated that *“Several of the hospital outbreaks have been linked to visitors”* and that in view of the high community transmission rates and increasing numbers of patients admitted to acute sites there was a need to review the level of visiting restrictions. It is recorded that the current level of AMBER restrictions permitted some

² Situation Background Assessment Recommendation.

visiting, while a move to a RED level would mean an increase in restrictions across all sites within the health board whether or not the site was in outbreak situation.

A number of options were set out in the report:

Option 1 – CTMUHB to remain with current AMBER visiting restrictions

Option 2 - CTMUHB to remain with current AMBER visiting restrictions with an enhanced visitor check list due to be ratified at the next Outbreak Control Team Meeting.

Option 3 – All sites in CTMUHB to move to RED visiting restrictions which would include visiting with a purpose and end of life visiting. Red visiting restriction would impact on the maternity services and apply to all community hospitals

Option 4A– CTMUHB to move to RED visiting restrictions for those Integrated Locality Groups which have sites which have confirmed outbreaks. If the site is declared RED for visiting this will include all the sites in the locality and include maternity settings.

Option 4B - CTMUHB to move to RED visiting restrictions for those Integrated Locality Groups which have sites which have confirmed outbreaks. If the site is declared RED for visiting this will include all the sites in the locality but will exclude maternity settings.

The SBAR Report concludes that *“Following consultation with the ILG Nurse Directors and following discussion at Silver (7th September 2021) with Public Health Wales in attendance it is felt that Option 4 A is the most appropriate to move towards.”* No further explanation of the reasons for choosing Option 4A over and above the other options is recorded on the document disclosed to Birthrights in response to the Freedom of Information request.

On 8 September 2021, the Health Board convened a “Gold Command Operational Resilience meeting”. It is not clear whether the Maternity Service Liaison Committee were present at that meeting. Extracts of this meeting, described as post meeting notes, have been disclosed in response to the Freedom of Information request. The notes confirm that a decision was made to change the visitor status from ‘amber’ to ‘red’ for the whole health board and this change was implemented on 10 September 2021.

On 14 September 2021, a meeting with the Health Board Maternity Service Liaison Committee (which has the title ‘My Maternity, My Way’) took place. Extracts of discussions have been disclosed. These record that members understood the reasons for change but felt that no visiting postnatally would be the most difficult.

The defendant’s postnatal visiting policy

Whilst the Health Board was subject to an ‘amber’ rating, the arrangements for partner attendance on maternity wards were as follows:

- Partner attendance permitted at 12 and 20 week ultrasound scan;
- Partners invited to labour assessment;
- Partners permitted to be present during labour;
- Increased schedule of face to face appointments in the antenatal and postnatal period; and
- Partners offered the opportunity to visit mothers and babies on the postnatal wards for 1 hour each day on an appointment basis.

Following the decision to change the status to a 'red' rating, the arrangements for partner attendance on maternity wards is as follows:

- Partners permitted to be present during active labour;
- Partners permitted to be present in immediate postnatal period only (up to either discharge home or admission to postnatal ward);
- No visiting on antenatal and postnatal wards;
- One partner attendance at ultrasound scan appointments limited to the appointments at 12 weeks (dating scan) and 20 weeks (anomaly scan) and some scans arranged via our Early Pregnancy Service.

Current situation and approach of other Health Boards

It is understood that the Health Board's restrictions remain in place such that no visits are permitted to its antenatal and postnatal wards.

This is in stark contrast with the restrictions in other areas of society. Wales is currently at alert level 0 and has been since 7 August 2021. There are no legal limits on the number of people who can meet, including in private homes, public places or at events. In addition all businesses and premises may be open. This has the effect of making it particularly hard for families to understand why such draconian measures are needed within maternity services, at such an important stage of people's lives.

The Defendant's policy for maternity visiting is more onerous than the other health boards in Wales; notwithstanding that some of the local areas have higher rates of Covid-19 transmission than Cwm Taf. Most Boards are allowing 2 hours a day of inpatient visiting in maternity services. While Birthrights does not agree that this is sufficient, it is far better than a complete prohibition on such visits.

Aneurin Bevan University Health Board is facilitating visits between 8am to 8pm for maternity services despite its geographical proximity to the Defendant.

Hywel Dda University Health Board has recently suspended visiting to its hospitals but it is still permitting inpatient visits for 2 hours in maternity services <https://hduhb.nhs.wales/news/press-releases/non-essential-visiting-to-all-hospitals-suspended-temporarily/>

Grounds

Ground 1: Departure from the Guidance without giving reasons for doing so

In making the Decision the Health Board has departed from the Guidance, without giving reasons for doing so, as set out below. Further or alternatively, in doing so it has failed to take into account various relevant considerations.

- (a) The Guidance requires visiting restrictions regarding maternity services to be based on “a risk assessed approach, following a meaningful and documented assessment”. Further, “localised risk assessments should also be undertaken for individual maternity units/services”. It does not appear that the Health Board carried out a proper risk assessment in this instance (including a localised risk assessment for the Health Board’s antenatal and postnatal wards), and certainly not a properly documented risk assessment. In particular, there is no evidence the Health Board assessed risk with reference to specific Covid-19 incidence rates or hospital case numbers, or that the Health Board assessed risks of Covid-19 transmissions within the specific maternity settings affected.
- (b) The Guidance requires increased restrictions regarding maternity services to be made in liaison with Maternity Service Liaison Committees. The extent to which the Health Board sought the views of the relevant Maternity Service Liaison Committee is unclear.
- (c) The Guidance indicates that consideration should be given to “the needs of women who require additional support to access maternity services and for whom reasonable adjustments may be required” and also that a “person-centred, flexible approach to visiting” is required. However, nothing disclosed to date indicates that consideration was given to the needs of women who require additional support. It is concerning that it does not appear that the Policy provides for any exceptions though Birthrights would welcome clarification that there is a mechanism by which exceptions are able to be, and have been considered.
- (d) The overarching principle set out in the Guidance is the need to balance public health concerns against “the impact on patients and their loved ones caused by restricted access”. There is no evidence, based on the disclosure provided to date, that the Health Board undertook this balancing exercise and/or that it took into account the impact of the Policy on patients and their loved ones. In particular, despite the Guidance setting out an extensive list of possible mitigations – and the SBAR outlining a range of less restrictive options – no proper consideration was given to whether such mitigation measures could be used to assuage the public health concerns while also reducing the harmful impact on patients and their families.
- (e) The Guidance requires visiting restrictions regarding maternity services to be “regularly reviewed”. The Policy fails to specify when the first formal review will be carried out and, if the restrictions remain in place, the frequency of further reviews thereafter.

- (f) The Guidance requires the decision-making process that led to the imposition of more stringent restrictions to be “clearly recorded”. To date, the Health Board has failed to disclose a clear record of the reasons for the Decision.

Ground 2: Breach of the Public Sector Equality Duty

The Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010 (“the Equality Act”) applies to Local Health Boards and NHS Trusts in Wales.

Under s. 149 of the Equality Act 2010, the NHS trust, is required to consider three equality objectives both when formulating policy. The three objectives are to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

“Protected characteristics” as defined under section 149(7) of the Equality Act 2010 include sex, pregnancy and maternity, and disability.

Case law on the PSED sets out the following principles on what a relevant body must do to fulfil its obligation to have due regard to the aims set out in the PSED: (R (on the application of Brown) v Secretary of State for Work and Pensions [2009] P.T.S.R. 1506)

- d. Those in public authorities who have to take decisions that do or might affect the protected classes – including women - must be aware of their duty.
- e. The “due regard” duty must be fulfilled in advance of a particular policy that will or might affect the protected classes being adopted. It is an essential preliminary to lawful public decision making. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision will not be enough to discharge the duty.
- f. Compliance with the duty involves a conscious approach and state of mind. Such can only occur where the decision maker is aware of the duty.
- g. It is good practice for the policy or decision maker to keep an adequate record showing that they had considered the PSED and any relevant questions. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed.

Despite the fact that the prohibition on visits to antenatal and postnatal wards obviously has the potential to result in negative equality implications for those with certain protected characteristics (namely sex, pregnancy/maternity and disability) there is no evidence to date (either disclosed in

response to the FOIA request or publicly available) which indicates that the Health Board had “due regard” to these implications are s.149 Equality Act 2010 requires. Indeed, given the extreme nature of the Policy – an outright probation of antenatal and postnatal visits, one would normally expect a thorough Equality Impact Assessment to demonstrate that the requirements of the s.149 Equality Act 2010 had been discharged.

Ground 3: Unlawful fettering of discretion

It is “a general principle of the common law” (*R (West Berkshire DC) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441 at [19]) that public bodies are prohibited from unlawfully fettering their discretion. That means that where a public body has a power to act, it must not inappropriately fetter that power: it must not disable itself from giving proper consideration to the exercise of the relevant discretion (*British Oxygen Co Ltd v Minister of Technology* [1971] AC 610). It also means that policies with presumptive approaches to an issue must envisage that the public body may depart from them: *R v Secretary of State for the Home Department, ex p Venables* [1998] AC 407, HL, 497, Lord Browne-Wilkinson.

In this instance the Policy appears to make no provision for exceptions. Accordingly, an employee of the Health Board following the Policy may not be aware that the law requires them to consider each case on an individual basis, and whether departing from the Policy is justified in the circumstances. Further, service users would not appreciate that they are entitled to ask for the Policy to be departed from. In the absence of any provision for exceptions, it follows that the Policy is unlawful.

Ground 4: Breach of section 183 National Health Services (Wales) Act 2006

Section 183 of the National Health Service (Wales) Act 2006 states that:

183 Public involvement and consultation

(1) Each Local Health Board must make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on–

(a) the planning of the provision of those services,

(b) the development and consideration of proposals for changes in the way those services are provided, and

(c) decisions to be made by the Local Health Board affecting the operation of those services.

It is contended that there has not been sufficient involvement of service users, either directly, or through representatives, both prior to and since the decision was taken such that the Health Board is in breach of s183 (1) (a) and/or (b) and/or (c) above.

Compliance with the above statutory duties – and therefore the involvement of and consultation with those affected prior to the making of the Decision - is plainly particularly critical given the increasing

and significant evidence about the adverse impact of visiting restrictions during the pandemic (set out in the FOIA request from Birthrights dated 22 September 2021).

Ground 5: Indirect discrimination on the basis of sex

As the provider of a service (of a public function), the Health Board is subject to s.29 of the Equality Act 2010 which prohibits it from discriminating. Such discrimination includes indirect discrimination, which is defined by s.19 of the Equality Act 2010:

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

age;

disability;

gender reassignment;

marriage and civil partnership;

race;

religion or belief;

sex;

sexual orientation.

The provision, criterion or practice (“PCP”) is the Policy which prohibits visits to patients across all sites in the Health Board’s locality (including visits to maternity settings). Accordingly, the PCP applies to all visitors of patients, not just visitors of female patients. The PCP puts female patients at a particular disadvantage given their vulnerability having recently given birth, and their need for family support at that time. To date, there is no evidence that the PCP is a proportionate means of achieving a legitimate aim in circumstances where it seems no proper risk assessment (to include consideration of mitigation measures) has been carried out.

Ground 6: Failure to give reasons

In some circumstances the common law imposes a duty to give reasons for a decision (Dover DC v CPRE [2017] UKSC 79). Given the draconian nature of the Decision, the compelling evidence of its detrimental impact on service users and their families, as well as the Guidance which encourages

decision-makers to share the reasons for their decisions with those affected, it is submitted that the duty applies here. The Health Board is in breach of the duty because it has not published reasons for the Decision.

Ground 7: Breach of Article 8

While Birthrights, as an organisation, lacks standing to bring a claim for breach of Convention rights, this letter nonetheless explains why the total prohibition on antenatal and postnatal visits amounts to an unlawful interference of the Health Board's service users' rights in accordance with Article 8 of the European Convention of Human Rights. As a responsible and law-abiding public body, Birthrights trusts that the Health Board will, in light of the obligation in s.6 Human Rights Act 1988 not to act incompatibly with Convention rights, amend the Policy to prevent to breach. If the Health Board does not consider there to be a breach, it is asked to explain its reasoning so that the point may be taken by a service-user (or users) acting as a co-Claimant with Birthrights.

The effect of the policy to prohibit visits is that fathers/ birthing partners will be separated from the mother/birthing person and from the child prior to and following the birth. It follows that the "family" limb of Article 8 is plainly engaged. Moreover, the interference:

- (a) is not in accordance with the law as there is no legal basis for the implementation of such a stringent policy – on the contrary, it is not in accordance with the flexible approach required by the Guidance.
- (b) is disproportionate in circumstances where it has a significant detrimental impact on the families affected but is not based on a proper risk assessment (which draws on case numbers, hospitalisations and death rates arising from Covid-19, and which explains why mitigation measures could not manage the public health risk appropriately).

Ground 8: Irrationality

Regulations 15 and 16 of the Health Protection (Coronavirus Restrictions) (No.5) (Wales) Regulations 2020 permit contact between two people from the same household in regulated premises, including hospitals, provided that reasonable measures are implemented to minimise exposure to Covid-19. There is therefore no Regulation which precludes visiting taking place.

In making decisions on what constitutes a reasonable measure, a decision maker must have regard to guidance issued by the Welsh Ministers, including the Guidance.

Though the Guidance does not sanction a 'return to normal' approach, it is clear from the Guidance that Health Boards can make local decisions, should consider innovative approaches and that visiting with a purpose is a legitimate and important factor in the wellbeing of hospital users. It is submitted that reasonable measures, such as evidence of a negative lateral flow test and use of personal protective equipment, can and should have been implemented in maternity settings,

alongside detailed risk assessments, or, at the very least that robust risk assessment and impact assessments should have been undertaken prior to making a decision.

Vaccinations have now been available for some time and 'booster' vaccinations are now being made available to those who are eligible. It is also possible for visitors to take lateral flow tests in advance of a visit to the hospitals. Therefore, it is irrational that such stringent measures be implemented where visitors have been doubly vaccinated, can evidence a negative lateral flow test and have access to personal protective equipment. It is highly unlikely that, in these circumstances, a visit would contribute to the transmission of Covid-19. In contrast, there is a clear benefit in permitting a partner to visit the hospital during both antenatal and postnatal appointments.

The decision to prohibit visits is therefore unreasonable and irrational, having a disproportionate impact on those affected without due consideration of the mitigating factors and alternative options which could have been put in place before visits were ceased. The policy does not reflect national policy regarding the current stage of the pandemic, or allow for discretion to be exercised in respect of cases where there is particular need for service users to have visitors. The policy appears to ignore the specific circumstances of users of inpatient maternity services for support from visitors. For example, it is people with more complicated pregnancies and births who need to stay in hospital around this period. In addition partners are denied the opportunity to care for and bond with their own baby during the first few days of life. The policy is also at odds with the policies of other Hospital Boards/Trusts in Wales and England.

Further, the Policy is irrational in circumstances where, as explained above, it amounts to an unlawful interference with the Article 8 rights of service users and their families.

Details of the action that the Defendant is expected to take

The Defendant is asked to revert immediately to the previous practice of allowing two hours per day inpatient visiting in maternity services pending review of the Policy.

If the Defendant does not agree to implement two hours visiting per day, the Defendant is asked to respond to this letter before claim in full and to provide details by 4pm on 26 November 2021 12as to:

- i) The risk assessment on which the Decision was based (this should be disclosed in full);
- ii) The reasons why the other options in the SBAR report were discounted;
- iii) Whether the birth partners/visitors of inpatients can contact the nurse in charge to ascertain whether a specific risk assessment can be undertaken and a visit permitted if the risk assessment allows. And, if so, how this possibility is to be advertised to service users and their families;
- iv) Whether the Health Board maintains the view that implementation of the 'red' status is appropriate;
- v) The current risk rating of the maternity inpatient wards;

- vi) The reviews that have taken place since the implementation of the policy on 10 September 2021.

The Board should then undertake a further review to assess if further changes to visiting in maternity services at Cwm Taf beyond are appropriate and should involve service users and the other relevant parties referred to in the Guidance. This should take place within a calendar month.

Please also provide copies of all relevant documents, correspondence and minutes in respect of the decision taken on 8 September 2021 to include: minutes/discussions/emails between the Defendant's executive team, infection and prevention control team, Public Health Wales regarding the policy and/or restrictions to maternity visiting arrangements. Please provide copies of any review meetings or related correspondence, any evidence of consultation with service users or My Maternity, My Way. Please provide copies of all risk assessments and equality impact assessment undertaken and evidence that the Defendant has complied with its duty under section 149 of the Equality Act 2010.

Details of legal adviser dealing with this claim and their address

Faith Salih, Irwin Mitchell LLP, Riverside East, 2 Millsands, Sheffield, S3 8DT. Telephone: 0370 1500 100, E-mail: Faith.Salih@IrwinMitchell.com

Alternative Dispute Resolution

Birtherights would welcome the opportunity to engage with the Health Board in open discussions about the Defendant's policy and how the process of agreeing any future changes to visiting in maternity services will be conducted to ensure human rights considerations are taken into consideration as well as infection control.

Birtherights work with healthcare professionals on right-respecting care and would be happy to discuss whether any changes to the current policy can be made and support the Health Board to consider whether a less restrictive approach can balance the right to safety and the need of maternity service users.

As the date for limitation for issuing any claim is 7 December 2021, Birtherights would be willing to consider proposals for discussions upon agreement by the Health Board to immediately implement two hours' visiting per day, and to review the policy and take a fresh decision about visiting restrictions for maternity services ensuring that local service users are involved and/or consulted.

Proposed reply date

Please provide a substantive response to this letter as soon as possible and in any event, no later than **4pm on 26 November 2021**.

In the absence of a satisfactory response within that timeframe, we are instructed to take steps to issue judicial review proceedings without further notice to you.

We will not be able to agree extensions of time beyond the limitation deadline and absent a positive response. We will need to issue proceedings by 7 December 2021 subject to any agreement by the Health Board to take a new decision about the continued implementation of the policy.

Yours faithfully

Irwin Mitchell LLP

IRWIN MITCHELL LLP