

~ Your Rights, Their Responsibilities ~

A BirthChoices Useful Guide

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The provision of maternity care is a complex issue - for both women and health care providers. Many guideline documents and even legislation can often be interpreted in different ways, by different individuals. The aim of this guide is to provide individuals with summary points of various documents that may help support them when planning their maternity care. The information gathered within it is by no means exhaustive and should be checked for accuracy by reading the specific documents quoted. We do not intend to promote or condone any particular course of action and we produce this document for information only. It should not in any way replace medical or any other professional advice.

In maternity health care there is frequently debate on 'rights' of women to access the care that they feel appropriate based on their own circumstances and needs, particularly when planning a homebirth. To understand what your rights are, it is important to start with an understanding of what a 'right' is. The key to understanding the value of a 'right' is by ***the obligation it places on others. An enforceable obligation can only exist within a legal system. This means that you cannot legally force any organisation or individual to meet your requests/needs unless they can be forced in law to do so.***

A Definition of 'A Right'

"An interest recognised and protected in law".

What is the function of rights?

Firstly, rights can be used to ensure that all individuals are treated with equal concern and respect. Rights can also be used to identify components of a person's well being that are so fundamental that they cannot be traded off for collective well-being.

In other words *a right makes sure that we are all entitled to an equal level of care* and your rights so are fundamental to your own well being that to remove or deny you of them for the benefit of others would be wrong. No-one can be deprived of their personal 'rights' to protect the majority.

However, there can be exceptions to this; for example, a convicted prisoner can be denied his/her right to freedom to protect the public if he/she is deemed to be a risk to others. But even this does not mean that he/she can be deprived of ALL of their rights.

Limits of Rights

Legal rights are largely based on the **protection of an interest** rather than **choice**, so in the case of maternity care, for example, **you have a right to have health care via the NHS & funded via the government**, but you do not have a right to choose to have an independent midwife funded via the government.

In this way your interest (to have access to health care) is protected, but not your choice of who you would choose to provide it. You do have the right to *decline* to be treated or cared for by specific individuals, but this is not the same as insisting that one specific individual of your *choosing must* provide your care.

Rights can also be used to **formalise obligations** to care for individuals without enhancing the patient's control over their care, e.g. your right to the services of the NHS, but not the right to demand a specific treatment or medication.

A good example of this would be the often-reported 'post code lottery' for women requesting specific drugs used in the treatment of breast cancer. It is left to the discretion

On 27th March 2007 Rosie Winterton Minister of State for Health Services launched the Human Rights in Healthcare - A Framework for Local Action. This framework was developed in conjunction with the British Institute of Human Rights and five NHS Trusts to assist organisations across the NHS use a human rights based approach to help improve the way services are delivered. If you are interested in human rights and healthcare please see;

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073473

Some of the reported aims of this document are to assist NHS Trusts to develop and use a human rights based approach (HRBA). As such, it is a starting point for Trusts seeking to put principles such as dignity, respect and equality into practice helping them to deliver patient choice and provide a more personalised service, ensuring that individuals have a stronger say and input into their healthcare.

of individual PCTs or Health Boards as to whether they will fund certain treatments/drugs or not, rather than whether the patient has requested them & their doctor has agreed!

Some Trusts have turned down requests from patients and doctors for specific treatments/drugs to be funded. The hospital would be **obliged in law to provide care** for women with breast cancer but would **not be obliged in law to fund specific treatments/drugs** at the request of the woman. So although your right to care is backed up and protected in law it does not necessarily mean that your right to the care YOU feel would improve or enhance your treatment is increased.

The rest of this Useful Guide deals with common questions women have about their maternity care.

Can I register with any GP that I want?

The simple answer is 'No'. To register with a GP you need to apply to that individual surgery. The surgery can then either agree to register you as an NHS patient or refuse to do so. If you live over a certain distance from a surgery, or if it has closed its patient list, your application may be refused. If this happens contact your local Primary Care Trust (PCT), or Health Board in Scotland, which should be able to find you a new doctor's surgery quickly.

The surgery that refused to accept you should give you reasons for its decision. It must not discriminate on the basis of race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

Once you have chosen a doctor's surgery, **you will need to register with it as an NHS patient.** To register with a surgery, talk to the receptionist, who can tell you whether you live in the area the surgery covers and whether it is taking on new patients.

You no longer need to register with an individual doctor; instead you can choose which doctor, nurse or health professional you wish to see, ***without giving a reason.***

If the surgery is willing to accept you as one of its NHS patients, you will need to fill out a registration form (GMS1) which the receptionist will give to you. Your medical records will then be transferred to your new surgery.

Registering your baby

To register your baby with a GP you will need to fill out form FP58, which you receive from the Registrar of Births, Deaths and Marriages when you register your baby's birth, and take it to your doctor's surgery.

For much more in depth information have a look at:

www.adviceguide.org.uk/index/family_parent/health/nhs_patients_rights.htm

Do I have to see a Dr before a midwife, or at all during my pregnancy?

No. All women have the right to access a midwife without seeing a doctor first. It is entirely your decision. It is not uncommon (in some parts of the country) for women who are registered with a surgery to be asked or told to see a doctor first when they try to make an appointment to see the midwife. Community midwives who are attached to a surgery are not employed by the Dr/surgery but are part of the wider maternity service that you are entitled to. **No GP surgery has the right to restrict your access to midwifery care.** To refer back to the previous question, you can choose which doctor, nurse or health professional you wish to see, *without giving a reason.*

The surgery cannot deny you access to a midwife for any reason. If you have chosen to *not* see your doctor during pregnancy, and are experiencing difficulty organising this through the surgery, contact your local maternity unit and **ask to be put through to the on-call supervisor of midwives (SOM).**

There is a SOM on-call 24 hours a day, seven days a week and you do not need to know her name prior to talking to her. *You are not obliged in any way to book any part of your maternity care with either a GP or any hospital based doctor, regardless of your 'risk' factors.*

You have the right to decline the involvement of any health care professional, at any time. You may choose to see your GP during your pregnancy and see a doctor at a hospital if you feel that this would benefit you most, but you cannot be *compelled* to do so for any reason if you are mentally competent.

Again it is not uncommon in some parts of the UK for women to be told that they 'have to' see an obstetrician at the hospital - **this is completely untrue.** Should any complications of your pregnancy arise your midwife can then refer you to a doctor as necessary, at any time.

You can also change your mind at any time during pregnancy and birth about how much you would like a Dr involved in your care. Obviously there are some circumstances that the services and care of a Dr would be wise or necessary, and some women are happy to involve their GP in their maternity care - but this is for *you* to consider at the time based on the information that *you* have.

Do I need a Dr or midwife's permission to choose a home birth?

No. The choice is yours alone to make. You have a right to give birth at home by refusing to give birth in hospital, and ***do not require any other person's permission or approval***, at any time.

A doctor or midwife cannot prevent you from having your baby at home, or force you to accept hospital treatment for any reason. **No-one can remove your right to give birth at home or decline hospital admission or medical care** if you are mentally competent.

Doctors can give ***urgent*** medical treatment if you are unable to give consent due to incapacity such as being unconscious and/or unable to make your wishes known. Despite the language some may use, **health care professionals can only act in an *advisory role*** and cannot deprive or remove your right to choose to give birth at home.

It is for you to decide if you would choose to accept or refuse any advice that you are given based on your own circumstances and information that you have at the time.

Do I have right to a home birth service?

There has been much controversy recently around the issue of a 'right' to a home birth (which you do have by declining to give birth in hospital) and the 'right' to a home birth ***service*** – that is a service provided by your local health board (in Scotland) or Primary Care Trust (in England & Wales).

Women in the UK still have a right to a *birth at home*, meaning there are no laws forcing a woman to go to hospital to give birth. But, confusingly, there is no law explicitly stating that a woman *can* give birth at home - ***you only acquire the 'right' to a home birth because you have declined to give birth elsewhere (i.e. in a hospital).***

Every woman has the right to insist that she is staying at home to give birth. She can choose to refuse to be admitted to hospital and/or decline any form of treatment and she cannot be compelled to go to hospital if she is mentally competent. However, most women do not only want to know that they cannot be forced to go to hospital against their wishes, but also that they will have a midwife come out to their home when needed.

In the past, women in the UK had a right to a home birth service, which meant that each local NHS service was obliged to provide a midwife to attend a home birth when the woman called saying she was in labour. However, **changes in legislation have made this less clear**. The duty of health authorities to provide a home birth service was specifically noted in the National Health Service Acts of 1946 and 1949. However, the 1977 National Health Service Act states only that:

“Section 3 (1) It is the Secretary of State's duty to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements: d) Such....facilities for the care of expectant and nursing mothers and young children as he considers are appropriate as part of the health service”.

There have been instances in the UK in recent years where a PCT has withdrawn their homebirth service due to staff shortages. This does not mean that a

woman's right to give birth at home has changed, but that the services of a midwife will not be provided as a planned part of that woman's care; **in other words a midwife may not be sent out to a woman in labour for a planned homebirth.** *The PCTs involved were not acting unlawfully because the provision of a 'homebirth' service is not explicitly made in any current legislation.*

In practice, though women who stand their ground are usually sent a midwife, it is not a foregone conclusion, nor is it a legal right at this time (Jan 2008). It could be argued, however, that a mother has a *moral* right to be attended by a midwife in labour, regardless of where she chooses to give birth.

If a woman calls a midwife when she is in labour, and a hospital was ***genuinely unable*** to send a midwife (due to staff shortages, for example), then the hospital could send an ambulance out to a labouring woman. What a hospital service, midwife or Doctor **cannot** do is nothing.

If this scenario happened (which it does on a regular basis), the mother would then need to decide if she is prepared to accept transport to hospital or treatment by the ambulance crew. ***She is not obliged to accept their assistance - the onus for her care at that time would be her responsibility.***

Under the terms of the **Congenital Disabilities Act of 1976 the professionals' duty of care is owed to the pregnant woman.** If her baby is born damaged as a result of proven antenatal negligence (in this case the failure of a midwife/health service to provide emergency care, such as sending out an ambulance), the child then acquires the right to sue, based on the breach of care owed to its mother.

“Although a health authority cannot be forced by law to provide a home birth service (e.g. if there is a shortage of midwives, all community midwives could work in the hospital), it is legally obliged to provide emergency care at home. For example, if a woman insisted on staying at home and called the hospital when in labour, then they would do their utmost to provide a midwife to go to her home to care for her.”

NCT Homebirth Briefing for journalists. March 2006

Conversely if a child is born injured because its mother refused to accept advice or treatment then **the child has no independent right to sue** (in this case her refusal to be attended by the ambulance crew).

So with choice comes responsibility - you cannot remove all responsibility for you and your baby's health and wellbeing by transferring it to another at will. Your health care provider has a professional and legal duty of care to provide/find care for you when they know you need it, but equally you have legal responsibility for your own wellbeing by accessing, accepting or declining that care.

An example of this in practice would be if a mother is informed that she requires an urgent caesarean (due to a cord prolapse) if her baby is to survive, but she declines the surgery despite being fully informed and knowing the possible/probable outcome of her choice. Her Doctor or midwife would *not* then be responsible in the event of the death of her baby, because the mother had exercised her right to choice.

If she is mentally competent, **a mother can decline any treatment that she chooses**, but the responsibility for doing so is hers. This is of course an unlikely and extreme example as most women would gladly accept treatment in a genuinely urgent life threatening situation.

Women planning homebirths are not wilfully placing them or their baby's life at risk by choosing to give birth at home. Indeed, it could be argued that they are protecting themselves and their baby from unnecessary intervention and the risk of a hospital-borne infection.

The purpose of this example was to highlight a shared responsibility between women and health care providers. To presume that a Doctor or midwife has **total responsibility** for your wellbeing places them in a position of power that they do not have and may well disempower you as an informed autonomous adult.

In summary, the following extract is taken from *NCT Homebirth Briefing for journalists. March 2006*. "As there has not yet been a test case in Court brought by women denied a home birth service, there is no legal precedent to show exactly how competing obligations would be weighed up in legal practice. However, one thing is clear; a woman cannot be forced to go into hospital against her will. She has a right to stay at home if she wishes to."

What does the Department of Health say about home birth?

The Department of Health (DOH) has made it clear that a woman's right to give birth at home should be supported by NHS services, but have stated that that **the NHS should provide a home birth service "where practicable"** rather than insisting that they provide one.

It is government policy that the NHS should support women who plan a home birth. Parliamentary Under-Secretary of State for Health, Lord Hunt of King's Heath said:

*"I certainly hope that when a woman wants a home birth, **and it is clinically appropriate**, the NHS will do all it can to support that woman in her choice of a home birth" and: "The Government want to ensure that, **where it is clinically appropriate**, if a woman wishes to have a home birth she should receive the appropriate support from the health service. At the end of the day, it must be the woman's choice."*

While this statement *apparently* supports and defends the woman's choice to give birth at home an important part of it is often ignored "**where it is clinically appropriate**" is the true measure of the value that this statement holds.

Who decides where giving birth is '*clinically appropriate*'? Is it the Doctor? Midwife? Mother? And could this be used to defend the withdrawal of midwifery services for a homebirth if the woman was judged to not fall into a '*clinically appropriate*' set of circumstances?

According to the late Tricia Anderson writing in 'Informed choice in Maternity Care' (2004. Page 261) this has already happened when a SOM in England wrote to a mother who had planned a home VBAC (vaginal birth after caesarean), informing her that hospital would not be providing her with a 'home delivery service' and that the woman could choose to ignore advice (in this case to have her baby in hospital) but if she did then the responsibility for what may happen would rest entirely with her.

So if you're planned homebirth is with twins, VBAC, breech or any other factor that would make you be perceived as 'high risk' etc.. then there is a **possibility** that a health service could refuse to provide you with a homebirth service based on this. At the time of writing the outcome of this case is unknown (Jan 2008).

The DOH Maternity Matters Document 2007

In 2007 the document "**Maternity Matters: Choice, access and continuity of care in a safe service**" was produced. This document discussed the Department of Health (DOH) vision for the future of maternity services. It states that;

"In 2005, the Government underlined the importance of providing high quality, safe and accessible maternity care through its commitment to offer all women and their partners, a wider choice of type and place of maternity care and birth. Building on this commitment, **four national choice guarantees will be available for all women by the end of 2009** and women and their partners will have **opportunities to make well informed decisions about their care throughout pregnancy, birth and postnatally.**

The national choice guarantees described in this document are:

1. Choice of **how to access maternity care**
 2. Choice of **type of antenatal care**
 3. Choice of **place of birth** – *Depending on their circumstances*, women and their partners will be able to choose between three different options. These are:
 - a home birth
 - birth in a local facility, including a hospital, under the care of a midwife
 - birth in a hospital supported by a local maternity care team including midwives, anaesthetists and consultant obstetricians. For some women this will be the safest option
 4. Choice of **place of postnatal care**
- As well as the choice of local options, a woman may choose to access maternity services outside her area with a provider that has available capacity. In addition, every woman will be supported by a midwife she knows and trusts throughout her pregnancy and after birth”.

It would be interesting to gain clarification on what “*Depending on their circumstances*” actually means for women. On page 14, point 2.7 states “*Maternity care must be made as safe as possible and should be provided within the context of any relevant clinical guidance from NICE and other relevant national standards and local protocols*”.

What if there is a local protocol for all women who have had a previous caesarean to give birth in an obstetric unit as recommended in the NICE guidelines? Would this then mean that hospitals could argue that they do not need to support these women choosing a home birth under the terms of this document?

These may well be issues that time will reveal of how much value this document will actually be to ALL women REGARDLESS of their circumstances. It is easy to miss the ‘small print’ when the headline of ‘choice for all’ is focused on.

Choice of place of birth is of course not a ‘new’ choice only now being bestowed by the government, because women have always had the ‘choice’ to give birth at home. On the whole, it would appear that the DOH have again made a commitment to offering women choice that they expect the NHS to support. With the above in mind, **the national choice guarantees detailed in this document would provide compelling evidence and support for any woman experiencing difficulty in arranging a home birth.** The full document can be read at:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073312

The views of the RCM and RCOG

The Royal College of Obstetricians and Gynaecologists (RCOG) and the Royal College of Midwives (RCM) Joint statement No.2, April 2007 states;

“3.1 Both the RCM and the RCOG believe that to achieve best practice within home birth services it is necessary that organisations’ systems and structures are built to fully support this service. These will include developing a shared philosophy, fostering a service culture of reciprocal valuing of all birth environments”.

The Nursing and Midwifery Council (NMC)

In March 2006 the Nursing and Midwifery Council (NMC) also issued a statement supporting woman’s rights to care for homebirth from midwives. The NMC is the governing body for all midwives in the UK.

The NMC circular explains the current regulatory framework within which midwives practise and replaces any previous guidance relating to home birth. The following quote is taken from it.

***“The NMC recognises that it can be difficult for midwives to balance the regulatory requirements, needs of women and the demands of service provision. Where there is time, most problems that relate to resources can be avoided by good planning.*”**

*If a midwife is concerned that a woman is making a choice that is not readily available, she should make her concerns known to the manager of the services in the first instance. If this is not successful in resolving the problem, the midwife should also make this known to her supervisor of midwives who has a duty to assist midwives in supporting women’s choices. **Whilst an employed midwife has a contractual duty to their employer, she also has a professional duty to provide midwifery care for women. A midwife would be professionally accountable for any decision to leave a woman in labour at home unattended, thus placing her at risk at a time when competent midwifery care is essential.***

It would be good practice for every local supervising authority (LSA) to have a plan of action in place to support home birth. This can be included in the standards for annual auditing of supervision of midwifery and midwifery practice in local areas. If a woman seeks advice in relation to her wish to choose a home birth, she may obtain advice from the LSA midwifery officer and seek help from the LSA.

LSA midwifery officers, supervisors of midwives, and managers who are registrants on the NMC Register have a duty to support midwives to work within their professional standards for practice and to promote the Code. This includes offering choice of home birth to women.

Should a conflict arise between service provision and a woman's choice for place of birth, a midwife has a duty of care to attend her. This is no different to a woman who has walked into a maternity unit to receive hospital care. Withdrawal of a home birth service is no less significant to women than withdrawal of services for a hospital birth".

The full document can be read at the following link:

www.nmc-uk.org/aDisplayDocument.aspx?DocumentID=1472

Frequently, women are advised by some that they can insist that ANY midwife MUST attend them in labour when they ask, no matter what. There can be a general misinterpretation of the phrase in the NMC statement;

"Should a conflict arise between service provision and a woman's choice for place of birth, a midwife has a duty of care to attend her"

Some people assume this means ANY midwife at ANY time - but this is a ***simplistic interpretation of the current midwives' rules and regulations because the rules do not apply solely to homebirths.***

The duty of care owed to women by midwives is not exclusive to women planning homebirths.

If you phone up your local hospital to ask for a midwife to be sent out, the midwife on the phone, or other midwives within the unit, ***may not be able to leave the women in the hospital to attend you*** because of their duty of care owed to the women they are currently providing care for.

However, the midwife ***does have a duty to try and secure a midwife for you by informing the on-call community midwife or on-call manager at the time.*** She can also inform the on-call SOM if finding a midwife to attend you proves problematic.

It may require that staff within the hospital need to be moved from one area to another or that, if possible, extra staff be called in. The midwife has a duty to attend you ***only if it would not mean putting women that she is currently caring for at risk by leaving them without care.***

The same would apply to a woman having a homebirth - the midwife attending her could not be called away to provide care for another woman, either at another home or in hospital, if it meant that the woman having the homebirth would be left unattended.

"A midwife would be professionally accountable for any decision to leave a woman in labour at home unattended"

A midwife cannot refuse to try and get you assistance but could, as a last resort, call an ambulance if there was no alternative and the situation was urgent. Again the mother

would need to decide if she was prepared to accept the use of an ambulance to transfer-in or to accept the crew's medical help at home.

It is a fact of life that **there is a national shortage of midwives in the UK, however no woman should bear the brunt of lack of staff** - staffing issues are an organisational problem and not the mother's responsibility. **Staffing issues should not be used to coerce a mother into hospital when she has planned a homebirth.** EVERY other option should be explored and facilities to support women in their choices should ideally be in place long before labour.

If you are told during your pregnancy that there is a staffing shortage and that you will need to give birth in hospital we would recommend that you contact the Association for Improvements in the Maternity Services (AIMS) urgently, as well as a local SOM as clearly there is time in advance to arrange a midwife in advance. To speak to a local Supervisor of Midwives, just call your local hospital & ask to speak to the SoM on duty.

AIMS Helpline - 0870 765 1433

Chair: Beverley Lawrence Beech

chair@aims.org.uk

5 Ann's Court, Grove Road, Surbiton, Surrey, KT6 4BE

Telephone 0870 765 1453, fax 0870 765 1454

Homebirth Support Co-ordinator:

Scottish Network:

Telephone 0870 765 1451

Northern Ireland: Jane Wright

Telephone 0870 765 1442

Republic of Ireland: Maire O'Regan

Telephone 00-353-21-342649

“Where there is time, most problems that relate to resources can be avoided by good planning”.

There is no excuse for a maternity service not being able to plan for the care of a woman having a homebirth. Most women book their maternity care early in pregnancy, so an impending birth a few months down the line should not be a surprise! Difficulties in planning arise when there is a last minute change of place of birth, however there should also be contingency plans in place to cover this situation. But, in reality, this is not always the case. The RCOG and the RCM statement says

“6.1 The recent recruitment and retention problems of midwives within the maternity services have led to some NHS trusts withdrawing home birth services or informing women at the last minute that staff are not available. For women to believe throughout their pregnancy that they will have a home birth and for this option to be withdrawn late in

pregnancy or in labour is not acceptable and will lead to further pressure on labour wards and midwives, as they have to manage women who are disaffected by the service at the start of their labour. Any possibility of not being able to provide the service should be highlighted in early pregnancy.”

“If a woman seeks advice in relation to her wish to choose a home birth, she may obtain advice from the LSA midwifery officer and seek help from the LSA”.

To find the contact details of your local LSAMO see:

<http://www.nmc-uk.org/aArticle.aspx?ArticleID=2096>

The LSA midwifery officer can be contacted by any woman in relation to difficulties in planning their maternity care.

What is an Independent Midwife & do I have a right to employ one?

Independent midwives are professionally trained and registered midwives who have chosen to work outside of the NHS in private practice. They are governed by the Nursing and Midwifery Council (NMC) in the UK and bound by the same regulations and codes of conduct as NHS midwives.

They charge a fee for their services which can range from around £2,500 up to around £4,500 depending on where you live in the UK. Many of them are prepared to let you pay over a period of time depending on your circumstances. Most of them will charge around £50 for an initial consultation for you to meet before booking to discuss your options and also to see if you feel that she would be the right midwife for you. You can also ask an independent midwife to go over your NHS notes with you to explain them if you have obtained copies for any reason, most will charge around £70 to £100 for this service.

Independent midwives can provide all of your antenatal care, care during labour and birth – if at home or in hospital depending on local arrangements within the NHS, although this is not common - and post natal care, usually for around 4 weeks after the birth.

Many independent midwives are very experienced in waterbirth, VBAC at home, twin births, and breech births. They are not bound by local policies used by the NHS but are under the same obligations as NHS midwives to remain up-to-date in their practice by attending regular updates and study days, as well as to have their equipment checked annually by a SOM. Some independent midwives are also SOMs as well. To contact or find an independent midwife in your area see;

www.independentmidwives.org.uk

In 2006 around 18,000 women in the UK had a planned homebirth. Around 4000 women a year choose to employ an Independent Midwife (IM) during their pregnancy, and for the

vast majority of them it is for a planned home birth. Some women planning a hospital birth still employ an independent midwife for their antenatal and postnatal care. **Many women feel that the continuity of one to one care, as well as the chance to form an equal relationship of trust with their midwife is one of the main advantages of having an independent midwife.**

Since 2002 there has been no professional indemnity insurance available for independent midwives due to their small numbers-around 150-200 throughout the UK and the potential for large payouts should negligence be proven against them. Five years ago, the NMC proposed to make insurance a 'requirement' for registration; a campaign then resulted in it becoming a 'recommendation' and every midwife practising without insurance therefore has an obligation to make the implications of the situation clear to every client she or he books. Independent midwives are not happy to be forced to practise without insurance but have had to accept it as the only way to be able to continue to practise.

Reliance on professional indemnity insurance cover is not synonymous with good practice, nor is it an indicator of good practice or indeed 'safety'; a quick look at the **NHS compensation bill for obstetrics and gynaecology should soon clear up that delusion! (£4.5bn over the past 5 years; NHS Litigation Authority 2007)**

All clients of IMs should be made fully aware at booking or at the initial consultation, of the fact that her IM has no insurance as she is required by the NMC to make sure that she informs her clients of this. Insurance does NOT protect mothers and babies. It provides financial compensation in the event of proven negligence and protects the material assets of the negligent party by providing a payout.

While all IMs practice without the benefit of insurance, **they are all at risk of severe financial and material loss should a claim against them be successful, more so than her NHS colleagues who are indemnified by their employer-the NHS.**

Many women choose care from an independent midwife because **they feel that the care available from the NHS did not or could not meet their needs on a number of levels.** They also feel that the benefits of care provided by IMs are enough to outweigh any potential financial disadvantage that may result in a case of proven negligence. This is an informed choice freely made by these women who are in no doubt about the issues of insurance for IMs.

Not having insurance of course does not mean that a client could not still pursue an IM for financial compensation in the event of negligence; it means that the IM will bear the financial burden of the award via her own funds or assets. If a client of an independent midwife wishes to make a complaint against her then a local SOM or the LSAMO should be contacted as soon as possible.

What you can do if you have difficulty arranging a home birth?

Contact your local Supervisor of Midwives (SOM)- you can do this by phoning your local hospital and asking to speak to the on-call SOM, there should be one available 24 hours a day seven days a week.

Write to the head of midwifery (HOM)-try to do this as soon as possible, AIMS www.aims.org.uk has some good template letters that it may be worth using. They can also be contacted for advice and support should you find yourself in this situation. Please see the contact details mentioned previously.

Contact your Local Supervising Authority Midwifery Officer (LSAMO)-you can do this by finding their contact details via <http://www.nmc-uk.org/aArticle.aspx?ArticleID=2096>

Do I have a right to see my medical records?

Yes - you have rights of access to your own health records in law. You are entitled to a copy of your case notes, and your baby's case notes, under the Access to Health Records Act 1990 and the Data Protection Act 1998.

The application for a copy of your maternity records and the computerised records should be made in writing to the Data Controller, Medical Records Department, at the hospital concerned. **Under the Data Protection Act (DPA) you are entitled to see all information relating to your physical or mental health which has been recorded by or on behalf of a health professional in connection with your care.** This applies not just to computerised data and structured files but to unstructured data as well. The right of access covers both NHS and private medical records, and information of any age, however long ago it was recorded.

The health professionals whose records can be seen are doctors, dentists, opticians, pharmacists, nurses, midwives, health visitors, clinical psychologists, child psychotherapists, osteopaths, chiropractors, chiropodists, dieticians, occupational therapists, physiotherapists, radiographers, speech therapists, music and art therapists, orthopaedists, prostheticists, medical laboratory technicians and scientists who head health service departments.

To obtain copies of **your GP notes** apply in writing to the Practice Manager; for the health visitor's notes apply to the Health Authority that employs her/him; and private notes to the professional holding them. It is wise to keep a dated copy of your letter. The Data Controller

may send you a form to complete to establish your identity. Although some forms ask the reason for your request, **you do not have to give a reason.**

Sometimes the Data Controller can tell you that you can come to the hospital to look at the notes first, but if you only want copies you can write back informing him/her that you do not want to see your notes in the hospital, you simply want to be sent a copy as you are entitled to under the Data Protection Act 1998 and would appreciate their speedy response. They are then required to supply you with a copy of your notes within 40 days.

If you would just like to view your notes without obtaining copies, then you have a right to do so at the hospital where they are kept. You can apply to see them by writing to the Data Controller.

If any NHS staff offer to attend with you to discuss your notes you can accept or refuse this as you feel necessary - you are not obliged to discuss your notes with anyone at that time. If you feel that you would prefer to not discuss your notes, then also put this in writing. **Again you do not have to give a reason to anyone as to why you want to see or have copies of your notes.**

Your access rights to your notes are more limited if:

- Information about your health is held by someone who does not fall within the DPA's definition of a health professional, such as records held by various kinds of psychotherapists or alternative practitioners.
- Information is held by a health professional who is not and never has been responsible for your care, such as a DSS doctor responsible for deciding whether you are entitled to disability benefit.

In these cases, you are entitled to see computerised data and structured files, but not unstructured information. However, you have additional rights to see medical reports supplied for insurance or employment purposes.

Charges

If you just want to look at your health records, and do not want copies, access must be given without charge so long as any information has been added to your record in the last 40 days. **This should allow free inspection by anyone who has recently been seen by a health professional. So if you apply to see your medical records within 40 days of the birth of your baby, or 40 days after you were last seen by any health care professional then there should be no charge.**

If you ask for copies of your health records, you can be charged up to a maximum of £10 for all copies supplied to you where the information is held on computer and a maximum of £50 for manual records or a mixture of manual and computer records, including copies of non-paper records such as X-rays. **You cannot be charged more than this however many copies are involved.**

Other People's Health Records

You will not normally be able to view confidential information about another person, such as another member of your family, which has been recorded in your own health record unless that person consents or it is reasonable in the circumstances to disclose this to you. The same applies to information identifying an individual who has supplied information about you, other than health professionals.

A health professional does not need another health professional's permission to show you information recorded by that person. So your GP cannot withhold a letter from a hospital consultant on the grounds that he or she needs the consultant's permission for disclosure.

Parents

Parents normally require their child's consent before they can see the child's health records. If the child is too young to give an informed consent, the parent may be given access except where the child gave information in the expectation that it would not be revealed to the parent or expressly asked for it not be disclosed. The same rule applies to a situation where the data subject is an adult incapable of managing his or her own affairs and the person seeking access is someone who has been appointed by a court to manage those affairs.

Your Rights In Summary

1. You can book your midwifery care **directly with a midwife**.
2. **You do not have to see a Doctor at all** during your pregnancy unless you would like to or feel it is necessary, either a GP or an Obstetrician.
3. You have the right to **accept or refuse any treatment, examination, test and screening or diagnostic procedure**.
4. You have a legal **right to refuse to give birth in a hospital and stay at home** regardless of advice, but must accept the responsibility of doing so.
5. You **cannot be forced to go to hospital** against your will if you are mentally competent.
6. You **do not have a legal right to a homebirth service from the NHS**, although in practice if you stand your ground a midwife will usually be sent.
7. **The NMC, RCM, DOH, RCOG all support women choosing to have a homebirth** and recommend that midwives and NHS services are able to support them in doing so.

However some of the recommendations from them state the words 'normal pregnancy' and 'where clinically appropriate'. This could possibly be used against women planning a homebirth when they are considered high risk.

8. You have the **right to take part in making decisions about your care and treatment.**
9. You have the **right to choose beforehand not to be treated or examined by a health care student.**
10. **You can ask for a second opinion** at any time during your care.
11. **You can decline to be treated by specific individuals** at any time whether at home or in hospital, but cannot insist that a specific individual alone provides your care.
12. You have a **right to NHS care but not a right to demand specific treatments or medications.**
13. You have a right under the Data Protection Act to have **access to your health records and notes.** If you apply to see them within 40 days of your last appointment with a health care professional there should be no charge. If you want copies you may be charged up to £50 for the copies.
14. You **do not need to give a reason for asking to see or have copies of your notes.**

This guide is intended as general information only, based on the available information that we have, as we understand it. It is not intended to replace professional advice. We would recommend that should you wish to validate or confirm the information within it that you find other sources. Our aim is to provide women with some information that may be of interest or of use to them on a basic level, in a straight forward way. This guide is not intended to support or condemn any choices that individuals may make based on the information contained within it, nor is it an in depth analysis of the current legal, or ethical issues surrounding rights.