

Private Law Children Act

VHCC Care Case Fee Scheme - Case Plan

| NAME OF CLIENT | NAME OF FIRM | NATURE OF PROCEEDINGS |
|---------------------------------|------------------|-----------------------------------|
| Mr A | Sorabji & Hinton | Care |
| Legal Aid certificate reference | Date of Issue | Case Plan version number and date |
| ABCDEFGH1234/A/T/1 | 07-07-12 | PLAN 3 – 21-08-13 |

CASE INFORMATION

A. Brief Summary of Case

Borough City Council is seeking a full care order in respect of the two subject children, namely A and B, who were born in July 2000 and March 2011 respectively. The client is the mother of the two children and is the 1st Respondent to the Local Authority's application. The 2nd Respondent is the children's father and the 3rd Respondent is the maternal grandmother. The client and the 2nd Respondent are no longer in a relationship and accordingly they are separately represented.

The Local Authority's application was issued out of the North Shire Family Proceedings Court in May 2012. The matter was administratively transferred to the county court on grounds of complexity and gravity. The Local Authority's interim care plans provided for B to be placed with the 3rd Respondent under the auspices of residence and interim supervision orders and to be joined by A following the latter's discharge from hospital.

The parties returned to court for the scheduled case management conference in June 2012. By this time, A had been discharged from hospital into the care of the 3rd Respondent and although she was no longer in a critical condition the prognosis for her future recovery and development remained guarded. Following discussions at the advocates meeting an agreement was reached for the court to be invited to endorse the instruction of a consultant paediatrician, namely Dr Chetcuti, to provide an overview of the injuries sustained by A, together with a long term prognosis; a consultant neuroradiologist, namely Dr Stoodley, to interpret the various scans and x-rays performed during A's time at hospital; a consultant paediatric neurologist, namely Dr Agrawal, to report upon the clinical nature of the injuries sustained by A and the likely cause of each of the same; and a consultant ophthalmic surgeon, namely Miss Allen, to provide an independent opinion as to whether A had suffered retinal haemorrhages.

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Work was subsequently undertaken in order to implement the case management directions. Letters of instruction to the medical experts were agreed and duly submitted. The police disclosure was extensive. The body of evidence provided by the medical experts was also voluminous and highly complex. The divergence of medical opinion was of greater import due to the fact that there are no reported cases that demonstrate unequivocally the approach that the courts should take with regard to issues of interpretation before determining whether a case involves "shaken baby syndrome".

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The most probable time frame for the brain injury and retinal haemorrhages was put at between 12 and 24 hours of A examination at hospital and accordingly neither the client nor the 2nd Respondent can be ruled out as a possible perpetrator. No other potential perpetrator

has been identified. No formal charges have yet been laid although the situation in this regard is likely to be reviewed in light of the outcome of the fact finding hearing and leave for the reports of the jointly instructed medical experts to be disclosed to the police has been granted by the court.

B. Objectives

To defeat the application for a care order allowing the children to return to the client's care without restriction. The initial objective is to present the client's case at the fact finding hearing with a view to avoiding adverse findings being made against the client or to minimise the adverse impact of any such findings. If the client is ruled out as a perpetrator of A injuries it is likely that she will seek the immediate return of both children and hence will be opposed to the further renewal of the interim care and supervision orders.

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Alternatively, if adverse findings are made, the focus will be upon obtaining directions for suitable assessments to be carried out with a view to establishing that the client does not pose a significant risk to the children and that rehabilitation into the client's sole care would be in the children's best interests.

C. Case Analysis

The central issues are whether the injuries sustained by A are non-accidental in origin and, if so, whether the client or the 2nd Respondent was the perpetrator. In the event that the 2nd Respondent is so identified it is understood that the Local Authority will also seek a finding that the client is guilty of a failure to protect. The expert evidence is highly complex and there is a divergence of opinion as to precisely when certain of the injuries were likely to have been sustained.

The legal issues are:

- Whether the Local Authority can establish that the threshold criteria in Section 31 of the Children Act 1989 are satisfied.
- The burden of proof having regard to the House of Lords' decision in the case of Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35.
- The weight that should be attached to the court's findings if neither the client nor the 2nd Respondent can be excluded as a possible perpetrator.

The favourable facts are:

- The client has been consistent in her account of the relevant history and has maintained a vehement denial of responsibility throughout.
- There is a time frame of several hours during which the 2nd Respondent had ample opportunity to cause the injuries.
- It is alleged that the 2nd Respondent has a violent temper and has been physically aggressive throughout his relationship with the client.
- There were previously no concerns in relation to the client's parenting of B.
- The matter has been fully investigated by the police and thus far no criminal charges have been laid.
- It appears that the 3rd Respondent is a potential long term carer for the children such that it will be unnecessary for the Local Authority to issue placement proceedings.

The unfavourable facts are:

- The client has been unable to provide any explanation as to how the injuries were caused.
- There is a suggestion that at the material time the client was inebriated such that she may not have been fully in control of her handling of A.
- The experts are unequivocal in concluding that, on the balance of probabilities, the

subdural and retinal haemorrhages were non-accidental in origin.

- If a finding of failure to protect is made against the client her position in relation to the disposal hearing is likely to be compromised.
- Given the seriousness of the injuries the client faces the very real prospect of permanent separation from her two young children.

D. Funding Code Assessment

Not required in Special Children Act proceedings.

E. Case Theory

The prospects of success are unclear. The case involves complex issues in relation to precisely what injuries should be regarded as indicative of baby shaking and what degree of force is required. The medical literature in this regard is ambiguous and there are currently no reported cases demonstrating the approach to interpretation that should be adopted by the courts. The client and the 2nd Respondent have separated and are in direct conflict. The outcome of the fact finding hearing is therefore likely to be significantly influenced by the performance of the client and the 2nd Respondent under cross-examination.

F. Chronological Schedule of Events

Please put the initials of each solicitor or counsel in the actual column for past events and the anticipated column for future events and list each person and their initials in the "Team Personnel" section. When Billing please list all actual events and any main hearing days which over ran or where listed but under ran.

| Date | Event (type of hearing, or advocates meeting, or substantive client conference) | Solicitor | | Leading Counsel | | Junior Counsel | |
|----------|---|-------------|--------|-----------------|--------|----------------|--------|
| | | Anticipated | Actual | Anticipated | Actual | Anticipated | Actual |
| | | | | | | | |
| 28-07-12 | Directions | | 1107 | | | | - |
| 04-08-12 | Directions | | 1107 | | | | - |
| 28-09-12 | Directions | | 1107 | | | | - |
| 27-02-13 | Directions | | 1107 | | | | 1188 |
| 15-03-13 | Client consultation | | - | | | | 1188 |
| 20-04-13 | Advocates meeting | | 1107 | | | | 1188 |
| 27-04-13 | Directions | | 1107 | | | | 1188 |
| 25-05-13 | Directions | | 1107 | | | | 1188 |
| 10-07-13 | Advocates meeting | | 1107 | | 2079 | | 1188 |
| 17-07-13 | Directions | | 1107 | | - | | 1188 |
| 01-10-13 | Client consultation | | | | 2079 | | 1188 |
| 03-10-13 | Advocates meeting | | - | | 2079 | | - |
| 04-10-13 | PHR | | 1107 | | 2079 | | - |
| 18-11-13 | Client consultation | | 1107 | | 2079 | | 1188 |
| 20-11-13 | Directions | | 1107 | | 2079 | | 1188 |
| 03-12-13 | Fact-finding Day 1 Judges reading day | | - | | - | | - |
| 04-12-13 | Fact-finding Day 2 Judges reading day | | - | | - | | - |
| 05-12-13 | Fact-finding Day 3 | | 1107 | | 2079 | | 1188 |
| 06-12-13 | Fact-finding Day 4 | | 1107 | | 2079 | | 1188 |
| 07-12-13 | Fact-finding Day 5 | | 1107 | | 2079 | | 1188 |

| | | | | | | | |
|----------|------------------------|------|-------|--|-------|------|-------|
| 10-12-13 | Fact-finding Day 6 | | 1107 | | 2079 | | 1188 |
| 11-12-13 | Fact-finding Day 7 | | 1107 | | 2079 | | 1188 |
| 12-12-13 | Fact-finding Day 8 | | 1107 | | 2079 | | 1188 |
| 13-12-13 | Fact-finding Day 9 | | 1107 | | 2079 | | 1188 |
| 14-12-13 | Fact-finding Day 10 | | 1107 | | 2079 | | 1188 |
| 17-12-13 | Fact-finding Day 11 | | 1107 | | 2079 | | 1188 |
| 18-12-13 | Fact-finding Day 12 | | 1107 | | 2079 | | 1188 |
| 19-12-13 | Fact-finding under run | | 657 | | 729 | | 468 |
| 20-12-13 | Fact-finding under run | | 657 | | 729 | | 468 |
| 21-12-13 | Fact-finding under run | | 657 | | 729 | | 468 |
| 12-01-14 | Judgment | | 1107 | | | | 1188 |
| 20-01-14 | Client consultation | - | | | | 1188 | |
| 22-01-14 | Directions | 1107 | | | | 1188 | |
| 11-02-14 | Directions | 1107 | | | | 1188 | |
| 13-03-14 | Advocates meeting | 1107 | | | | 1188 | |
| 01-04-14 | Client consultation | - | | | | 1188 | |
| 05-04-14 | Final hearing Day 1 | 1107 | | | | 1188 | |
| 06-04-14 | Final hearing Day 2 | 1107 | | | | 1188 | |
| 07-04-14 | Final hearing Day 3 | 1107 | | | | 1188 | |
| 08-04-14 | Final hearing Day 4 | 1107 | | | | 1188 | |
| | | | | | | | |
| | | | | | | | |
| | TOTALS | 7 | 23(3) | | 16(3) | 9 | 21(3) |

| G. Disbursements | | |
|--|------------------|----------------------------|
| Disbursements subject to VAT | £:p | For office use only |
| | | |
| TRIMEGA DRUG TESTING | 398.00 | |
| FORENSIC SCIENCE SERVICE (1/4 SHARE) | 535.80 | |
| DR V (REPORT ON MR CASTRO)(1/4 SHARE) | 417.60 | |
| DR V (REPORT ON FAMILY) (1/4 SHARE) | 2737.87 | |
| DR V COURT ATTENDANCE (1/4 SHARE) | 572.22 | |
| DR W REPORT AND COURT ATTENDANCE (1/4 SHARE) | 1304.38 | |
| DR H REPORT (1/4 SHARE) | 1950.00 | |
| DR H REPORT (RE-OPENING FACT FINDING) (EST) | 1000.00 | |
| DR H COURT ATTENDANCE (EST) (1/4 SHARE) | 500.00 | |
| DR B REPORT (EST) (1/4 SHARE) | 1000.00 | |
| DR B COURT ATTENDANCE (EST) (1/4 SHARE) | 500.00 | |
| | | |
| Total | 10,915.87 | |
| VAT | | |
| Total | 10,915.87 | |
| Disbursements not subject to VAT | | |
| | | |
| DR F REPORT | 2915.00 | |
| BT TELEPHONE CONFERENCING (1/4 SHARE) | 63.39 | |
| DR T COURT ATTENDANCE (1/4 SHARE) | 337.50 | |
| TRAVEL TO COURT (CLIENT AND SOLICITOR) | 2,915.00 | |
| DR T REPORT (On T) (1/4 SHARE) | 412.50 | |
| DR T REPORT (On S)(1/4 SHARE) | 750.00 | |
| | | |
| | | |
| | | |
| | | |
| Total | 7,393.39 | |

Please submit all disbursement vouchers and counsel's fees notes when billing. Please note any estimated experts fees will be subject to assessment on billing and to any relevant guidance in place at the time the certificate was issued. Where hourly rates are detailed and agreed in the case plan these will be binding on assessment.

H. Costs Summary (all figures ex VAT.)

See guidance for event rate for solicitor advocate and lead junior

| | | | |
|--------------------------------|----|----------|--------------------|
| Solicitor Events | 30 | X £1,107 | £33,210 |
| Solicitor under run days | 3 | X £657 | £1,971 |
| Solicitor over run days | - | X £450 | - |
| Solicitor Total | | | £35,181 |
| Junior Counsel Events | 30 | X £1,188 | £35,640 |
| Junior Counsel under run days | 3 | X £468 | £1,404 |
| Junior Counsel over run days | - | X £720 | - |
| Junior Counsel Total | | | £37,044 |
| Queen's Counsel Events | 16 | X £2,079 | £33,264 |
| Queen's Counsel under run days | 3 | X £729 | £2,187 |
| Queen's Counsel over run days | - | X £1,350 | - |
| Queen's Counsel Total | | | £35,451 |
| Disbursements | | | £18,309.26 |
| Total costs | | | £125,985.26 |

I. CASE MANAGEMENT INFORMATION

Team Personnel – Names and initials (including Solicitors Employees, Experts and Counsel and/or Solicitor Advocate)

Solicitor – Mr B

Assistant Solicitor – Ms B

Queens Counsel – AC QC

Junior Counsel – WA

Confirmation to be signed when billing;

I confirm that the events listed in part 5 of this case plan actually occurred and were attended as indicated.

Signed

On behalf of

Notes on completion.

What happens if the number of agreed events changes?

A case plan is agreed on the basis of the current known listing. If additional interim hearings are listed then the agreed costs are simply increased by the relevant number times the event fee. In respect of main hearings it needs to be recognised that preparation is front loaded and therefore if a main hearing under runs the full event fee for each such day is reduced by a refresher rate or if the hearing overruns the a refresher rate is allowed for each such day. The refresher rate for junior counsel is £800 (£720) for Queen's Counsel £1,500 (£1,350) and for Solicitor £500 (£450). The figure applied to under run days is therefore £520 (£468) for junior counsel, £810 (£729) for Queen's Counsel and £730 (£657) for solicitor.

How much detail do I need to include for disbursements?

All disbursements will be subject to assessment by the Special Cases Unit at the end of the case. Particularly large or unusual disbursements should have information to explain and support how the figure included has been arrived at. In the case of experts their hourly rate and the number of hours necessary to undertake a task should, where possible, be included. If this information is not known then a best estimate should be included on the understanding it can be amended when greater detail is known. If a disbursement is to be apportioned this should be made clear and only the apportioned amount included in the case plan. If experts fees remain estimated in the final agreed case plan these will be subject to assessment on billing.

What happens on billing?

This case plan becomes the schedule to the CLAIM1. Please ensure the case information is updated to reflect the outcome of the case and that the schedule of events shows only actual events. If the events actually undertaken is different to that anticipated in the last agreed case plan an explanation should be provided with a covering letter but you should bear in mind that additional costs will not be granted retrospectively except where the final anticipated hearing overran.

The finalised case plan is attached to the CLAIM1. In the CLAIM1 you only complete pages one, two, six and seven. There is no need to complete pages four or five. Submit the CLAIM1, the finalised case plan, disbursement vouchers and counsel's fee notes to the contract manager.