

Via First Class Post

Mr & Mrs Pedro
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Our Ref: MDK/CLD013.67
Date: 12 June 2014

Dear Mr & Mrs Pedro

**Your Proposed Claim for Judicial Review against Lincolnshire County Council
Response to Letter before Claim**

I am instructed by Lincolnshire County Council ("**the Council**") in connection with the above matter. I am in receipt of your letter of claim dated May 2014 which was received by the Council on 27 May 2014. This letter sets out the Council's response to your proposed claim.

The Claimants

Mr Jose Manuel Pedro and Mrs Carla Pedro
2 Nene Court
Grantham
Lincolnshire
NG31 7RD

From

Lincolnshire County Council
C/O Legal Services Lincolnshire
County Offices
Newland
Lincoln
LN1 1YS

Reference Details

This matter is being dealt with under reference MDK/CLD013.67.

Details of the matter being challenged

Whilst you do not set out the specific actions/decisions of the Council that you propose to challenge within your letter of claim, it seems to the Council that the issues raised by you fall broadly into 3 separate categories as follows:-

1. The procedures for reuniting the children with you and the Care Orders in place in respect of the children;
2. Your contact with the children;
3. Your arrest by Lincolnshire Police on 21 March 2014;

With regard to your reference to the 'legitimation for the Defendant having care of the Claimants' five children' you will no doubt be aware that Lincoln County Court made Final Care Orders in respect of the 5 children on 10 December 2013. Those Orders of the Court provided the Council with the legal duty to provide care in respect of the children.

Following the making of the Final Care Orders, a Care Plan was put into place which provided for you to have contact with the children once every 8 weeks. That is an appropriate level of contact having regard to all of the circumstances of the case and in particular that there are no plans to return the children to your care.

Subsequent to the making of the Final Care Orders, information was received that you were conspiring to make an attempt to abduct the 5 children. That information was provided by Mr Rui De Sousa. The Council are aware that you have had involvement with you previously. In particular, the Council are aware that Mr De Sousa was providing advice to you in connection with the care proceedings of the 5 children. Mr De Sousa has previously been involved in removing a child from the jurisdiction in an attempt to prevent that child being the subject of a Care Order.

Specific detail of the alleged attempt to abduct the children was provided by Mr De Sousa which was indicative of inside knowledge of the security arrangements at the contact centre and planning in relation to the alleged attempt to abduct. The level of detail provided by Mr Sousa gave weight to the information he provided about the conspiracy to abduct.

The Council are also aware that you have had involvement with a campaign group against forced adoption which advises parents to remove their children out of the jurisdiction if care proceedings are forthcoming. The Council are further aware that you are committed to returning the children to Portugal.

Following receipt of the information received, Lincolnshire Police arrested you on 21 March 2014. The bail conditions set by the police denied you direct contact with the 5 children. In so far as your letter refers to the actions of Lincolnshire Police, the

Council is a completely separate body from the police and cannot therefore comment upon the same.

The Council understand that Lincolnshire Police informed you on 21 May 2014 that you would be released without charge on the ground that there was insufficient evidence to provide a realistic prospect of conviction.

Subsequently, the Council's Officer's met with you on 27 May 2014 to discuss the issue of contact. It was agreed that your direct contact with the 5 children could resume with the same frequency as previously, namely once every 8 weeks. That contact was to be subject to certain conditions as follows:-

1. You will be provided with a one or two hour notice prior to the contact taking place;
2. You will not be informed of the venue that the contact shall take place and you will be collected and taken to the venue by a security firm;
3. You shall be searched prior to the contact taking place;
4. You are to hand over your mobile phones to security before contact;
5. Your contact will be monitored and you will be require to sign a contact agreement;

The Council considers that those conditions are necessary, justified and proportionate to ensure the children are adequately safeguarded and protected from the risk of abduction pursuant to the Council's statutory obligations of safeguarding.

Those conditions and the contact in general will be monitored and reviewed as appropriate.

Those conditions were confirmed to you after your letter of claim was sent and therefore your letter of claim contains no challenge to the conditions. However, the email from your McKenzie Friend, Sabine McNeill, sent on 28 May 2014 at 08:44 requests that the contact arrangements are `put right asap` implying that you consider the conditions are not acceptable and are contrary to Article 8 of the Human Rights Act. Although the conditions do not form part of your challenge, I shall set out below the Council's position in response to Sabine's email for completeness.

Response to the proposed claim

The Final Care Orders made by the Court on 10 December 2013 were made before any allegations of conspiracy to abduct the children were made. Quite plainly, the decision by the police to release you without charge in connection with those allegations has no bearing whatsoever upon the Final Care Orders made by the Court on 10 December 2013. Accordingly, any challenge to the `legitimation for the Defendant having care of the claimants' five children` based upon the decision of the police to release you without charge on 21 May 2014 is entirely misconceived.

Moreover, it is very important that you understand that a claim for judicial review against the Council cannot be made in respect of a decision made by a Court. It follows that you cannot legitimately bring a judicial review challenge against the Council in respect of Final Care Orders made by the Court.

In the circumstances, any challenge brought against the Council relating to their having care of the children is plainly without any foundation and is inarguable.

You request that the Council compensates you for the emotional harm and financial loss you have suffered as a direct result of your arrest, mistreatment and abuse of power. The Council are not the decision making body responsible for your arrest, the appropriate decision making body in that regard is Lincolnshire Police. There is absolutely no basis upon which compensation can be claimed from the Council in respect of your arrest.

With regard to the issue of contact, the Council have agreed to promote direct contact between you and the children at the same frequency as provided for in the Care Plan implemented following the making of the Final Care Orders. There is no basis for increasing the frequency of the contact and you do not attempt to provide any reasoning for your assertion that the frequency of contact should be increased.

With regard to the conditions attached to your contact, the fact that the police have released you without charge does not mean that the Council should completely disregard the information in their possession about the risk of abduction to the children.

The burden of proof to provide a realistic prospect of criminal conviction is a high one as a successful criminal prosecution requires the charge to be proved beyond reasonable doubt. In circumstances where there is insufficient evidence to proceed with a criminal prosecution, the Council are still under a duty to consider all of the information in their possession relevant to the risk of abduction to the children.

In undertaking that assessment of risk, the Council have had regard to the information provided by Mr De Sousa which included specific detail about a planned attempt to abduct the children, the fact that Mr De Sousa has previously been involved in removing a child from the jurisdiction and your links with Mr De Sousa, your links with the campaign against forced adoption and their policy of advising that children should be removed from the jurisdiction and your known commitment to return the children to Portugal.

In light of the above information in the possession of the Council and in order to safeguard the children and protect them from the risk of abduction in accordance with their statutory duties, it is necessary for the Council to impose conditions on your contact with the children as set out above. Those conditions are necessary, proportionate and justified as they are pursuant to the Council's legal obligation to safeguard the children and are therefore in accordance with the law. Further, the conditions are justified under Art 8(2) of the Human Rights Act to protect the rights of the children to be safeguarded from harm. In those circumstances, there is no breach of Article 8 arising from the conditions.

Further, the approach of the Council and the conditions attaching to your contact have been endorsed by the Family Court. That Court approved the conditions attached to your contact in an identical case a matter of weeks ago. It is therefore

beyond doubt that the conditions attached to your contact are necessary, justified and proportionate to ensure the safeguarding of the 5 children.

However, as indicated above, the conditions of contact will be monitored and reviewed at appropriate intervals.

There is absolutely no basis for the Council to issue an apology to you in this matter. The Council have, at all times, acted in accordance with their statutory duties to safeguard the children.

Details of Interested Parties

The Council does not consider there are any Interested Parties in this matter. The issue of contact is a matter that only directly effects the Council and yourselves.

Details of any information sought

1. You have requested reasons for the search warrant and arrests carried out on 21 March 2014. That information is not held by the Council as the Council is not the relevant decision-making authority in respect of the search warrant and arrests;
2. The Council acknowledge your request for a written record of the meeting held on 17 April 2014 and shall respond to you shortly in connection with your request;
3. The Council have separated the two youngest children from their sister to ensure that details of the location of the two youngest children are not disclosed pursuant to the Council's duty to safeguard the children.

Address for service of further correspondence and Court Documents

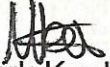
The address for service of further correspondence and Court Documents on the Council is the address stated at the top of this letter.

Summary

For the reasons set out above, your proposed claim is entirely without merit. The challenges you propose in connection with the Council having care of the children and with regard to your arrest on 21 March 2014 are entirely misconceived and cannot, in any event, be legitimately made against the Council. Any proposed challenge in respect of the Council's contact arrangements are inarguable for the reasons set out above. For the avoidance of doubt, I confirm that the Council will vigorously defend any claim that you are minded to pursue.

In the circumstances, I would strongly recommend that you obtain independent legal advice in connection with this matter before you take any further action.

Yours sincerely



Mark Keal

Senior Solicitor

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For Legal Services Lincolnshire