

Legal Update - Insurance

Local Authority Social Services Claims: After Baby P

25.3.09

Following the death of Baby P in August 2007 and the criminal proceedings that followed, the severe failings of the child protection agencies responsible for him were revealed. In response the government commissioned an investigation, headed by Lord Laming. The government has now published Lord Laming's report, *The Protection of Children in England: A Progress Report*.

Perry Hill, DWF Local Authority team reviews the report and the effect it may have on local authority social services claims.

Background

The provision of social services for children in England and Wales remains extremely stretched. In 2007-2008 55 children were killed by someone known to the child. In 43 of those cases the killer was one of the child's parents. It is estimated that at least 200,000 children live in households where there is a known high risk case of domestic abuse and violence. Against this backdrop there is a "recruitment and retention crisis within social work". Turnover rates for children's social workers are at 9.6%, whilst 64% of local authorities reported difficulties in recruiting children's social workers. The number of health visitors is at its lowest for 14 years.

The Protection of Children in England: A progress report

The death of Victoria Climbié in February 2000 led the Government to commission a report by Lord Laming, a former head of social services at Hertfordshire County Council. Laming's report led to the white paper "Every Child Matters" and the subsequent implementation of the Children Act 2004.

In November 2008 the Secretary of State for Children, Schools and Families invited Lord Laming to provide a progress report on safeguarding children. Lord Laming's report entitled "The Protection of Children in England: A progress report" was published on 12 March 2009.

The main findings

The overriding emphasis of Lord Laming's report is the need for greater partnership working and

information sharing between all stakeholders involved in the care of vulnerable children:

"organisational boundaries and concerns about sharing information must never be allowed to put in jeopardy the safety of a child or a young person"

Although the report makes a total of 58 recommendations the six key findings can be summarised as follows:

- There must be central government collaboration between the Secretaries of State for Health; Justice; the Home Office; and Children, Schools and Families with a view to setting explicit strategic priorities.
- A new National Safeguarding Delivery Unit should be established to drive the implementation of Lord Lamings' recommendations and to facilitate improved partnership working between police, health, children's services and central government.
- There should be a new programme implemented to address the adequacy and supply of frontline social workers. This includes compulsory postgraduate training for all children's social workers and management training for all leaders of children's services.
- The Secretary of State for Health must address the wariness of health professionals to engage in child protection work and needs to immediately address the status, training and responsibilities of health visitors.
- The Home Secretary must urgently address the adequacy of resources devoted to police child protection teams including the training and status of the work and quality of service provided.
- Immediate action should be taken in respect of the time taken for court processes relating to the care of children. The increased court fees for child protection matters (which in some cases can be as much as £4,825 per case) should be urgently reviewed and in all probability, scrapped.

Partnership working and data protection

It should come as no surprise that the emphasis of the report is on closer multi-disciplinary partnership working; increased accountability; improved leadership from those engaged in managing children's services; and more thorough training and education for those engaged on the "front-line" of children's care. At the centre of the public criticism

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of the relevant authorities' handling of the Victoria Climbié case, was the failure of social services, health professionals and police to engage with each other in respect of their concerns about the child's well-being.

With the establishment of Children's Trusts and of the Common Assessment Framework through the Children Act 2004, steps have been taken to address these issues and improvements have been made. But the tragic death of Baby P has demonstrated that more needs to be done.

The report emphasises that a far better understanding of data protection laws and privacy is required by frontline staff and managers:

"...It is clear that different agencies (and their legal advisers) often take different approaches"

Practitioners, it is said, need to appreciate that agencies can lawfully share confidential information about a child or the parent, without consent, if doing so is in the public interest. The protection of a child from harm and the promotion of child welfare is just such a public interest. Even in those cases where sharing of confidential medical information is considered inappropriate, it may be proportionate for a clinician to share the fact that they have concerns about a child. These are all matters which will need to be taken into account when legal advice is given.

Early intervention

The report makes clear that early intervention is paramount to safeguard children. Crucial to this is inter-agency working, information sharing and having sufficient technological resources in place so that an integrated children's system can be rolled out.

The Audit Commission has estimated that if effective early intervention had been provided for just one in ten of those young people sentenced to custody each year, public services alone could have saved over £100 million annually.

The report quotes favourably a study by MP's Graham Allen and Iain Duncan-Smith which highlights the vital influence of years 0-3 in a child's human development both from the child's perspective and their primary caregivers.

Once a child reaches schooling age the importance of early educational intervention is apparent. Studies between 2003 and 2005 showed that 68% of children aged over 4 who subsequently died or experienced significant harm had been showing signs of poor school attendance.

Comment

- Whilst the report has been welcomed by many lawyers with regard to the removal of court fees for child protection matters, from the perspective of claims litigation the prospect of increased early intervention, particularly if such intervention involves the removal of a child from the family home, poses real challenges.
- As practitioners will be aware, the courts have been reluctant to make findings of negligence or breach of section 8 Human Rights Act 1998 against social service departments for exercising such powers. In *RK and AK v United Kingdom* the European Court of Human Rights emphasised that:

"The authorities, medical and social, have duties to protect children and cannot be held liable every time genuine and reasonably-held concerns about the safety of children vis-à-vis members or their families are proved, retrospectively, to have been misguided".
- Nevertheless the emphasis of the report on the inadequacy of training and lack of experience of front-line social services staff sounds a very clear warning for the prospects of an increased number of future social services claims.
- Furthermore the increased involvement of external agencies and partnership working means that the issues of data protection, freedom of information and third party disclosure will require close consideration.

The DWF Local Authority team has genuine expertise in public sector litigation, delivering client focused pro-active solutions to the often challenging claims brought against local authorities. For further information please contact:

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