Human Rights Act claims against Social Workers-The serious ramifications of breaching Section 20 Children Act 1989

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Local Authorities have recently seen a marked increase in claims alleging breach of the Human Rights Act where it is said that they have misused s20 of the Children Act 1989.

S20 places a duty on local authorities to provide a child with somewhere to live when he or she has no home or no safe home. This is most commonly used where families agree to their children being accommodated on a voluntary basis. Legitimate reasons can include parents requesting short-term accommodation when they are struggling to cope with difficult behaviour or to cover periods of hospitalisation. Such accommodation will allow a breathing space for problems to be resolved.

Unfortunately, historically, voluntary accommodation has not always been used for the right reasons. This has come to the attention of the courts in the last couple of years and there have been a number of high profile decisions in both the Court of Appeal and Supreme Court where councils have been criticised for their actions. The main criticisms are:

- A failure to obtain fully and properly informed consent from parents
- Parents feeling under pressure to agree to accommodation to avoid care proceedings
- Deficiencies in the drafting of s20 agreements
- Arrangements under s20 being allow to carry on for far too long e.g. a failure to plan in a timely way for permanency
- A failure to return children promptly once consent is withdrawn

Often we see that the Guardian ad Litem has raised concerns during the course of care proceedings leading the judge to order that social care files should be sent to the Official Solicitor with view to considering a civil claim. The claims will usually be for breach of Article 8 of the European Convention on Human Rights i.e. a breach of the right to respect for private and family life, and sometimes also for breach of Article 8 which is the right to a fair trial. These claims will usually not be covered by the council's public liability insurance. However insurance cover may be available if the breach has led to the parents or children suffering a recognised psychiatric condition.

How much can councils expect to pay in settlement of such a claim?

The amount awarded in damages will usually vary from anywhere between £1000 and £20000 per claimant. The amount awarded will take account of the length of the breach, the severity of that breach, any distress caused and whether or not there has been insufficient involvement of the parents and children in the process. In one case of a 10 month delay in progressing care proceedings resulted in an award of £12000 to a parent and £4000 to the child. However a 2 month breach in another case resulted in awards of £10000 per parent due to excessive pressure by the council to elicit agreement.

Many of our clients have seen rising rates of these claims and an increasing workload. Can we help with targeted advice on specific claims and more general guidance and training?

DAC Beachcroft has a long history of acting for local authorities and has a specialist team in our Newcastle and London offices dealing with Human Rights Act claims. Please contact any of the team below if you would like some advice or help with these cases or advice on how you might reduce the risk of such claims going forward:

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