



Social workers criticised for 'shocking misunderstanding' of the law

A mother and daughter were awarded record damages after a judge ruled Medway council unlawfully removed the daughter from the mother's care

by **Luke Stevenson** on October 26, 2015 in **Child safeguarding, Children, Looked after children**



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Social workers have been criticised for the “most shocking misunderstanding of the law” in a court case that ended with a mother and daughter being awarded a record £40,000 in damages for a case of its kind.

Social workers at Medway council had unlawfully taken a child into care, a judge **ruled**, and as a result had breached the mother and daughter’s right to a family life, and the right to a fair trial, by failing to issue care proceedings in a timely manner. Judge Mary Lazarus said the 27-month process from 2013 to 2015 was the “longest currently reported” in a case of this kind.

The child, T, was placed in foster care under a voluntary section 20 arrangement by Medway Council in 2013 after her mother was detained in hospital under the Mental Health Act. The mother did not know about T’s whereabouts and care until she was discharged six months after being detained.

After she was discharged, social workers tried to obtain the permission needed for T to be continually looked after by the local authority, but there were concerns over the mother’s capacity to make the decision. A social worker said a mental health capacity assessment needed to be undertaken, but one was not done until care proceedings two years after. In October 2013, T’s case was transferred to the looked-after children’s services where discussion of her legal status

was not held until the start of 2015.

Unlawful

The case brought before the judge argued that T's accommodation was unlawful because it was not sanctioned by the mother or by an order of court, and that care proceedings should have been brought as soon as possible after the child was accommodated.

"There is certainly no document suggesting that there was any agreement by mother to this accommodation. What Medway Council claims is that this was a different kind of lawful accommodation under s20, until she was well enough to consider T's accommodation by Medway Council. It was not," Judge Lazarus said.

"What is betrayed is the most shocking misunderstanding of the law by both social work and legal teams at Medway Council, and of the proper limitations of their exercise of power over this family, compounded by an ignorant or arrogant disregard for the advice and recommendations being provided by the [looked-after children] review process and the permanency panel," she said.

Concerns

Judge Lazarus also raised concerns about the high turnover of independent reviewing officers (IROs) before care proceedings began. The role of the IRO is to review and improve care planning, and challenge drift and delay, but five different IROs were involved in the case in the two years before proceedings were issued.

"[T] was not afforded a review of her care within 20 days of her accommodation as is required under the IRO Handbook and Placement Regulations," the judge said.

While awarding damages, the judge said: "T was removed not simply without lawful authority but without her mother even being properly informed until months afterwards, and her poor mental health does not justify this failure. This was an egregious breach, albeit in good faith, being exactly that which should not happen."

She said Medway had "failed to observe" the correct legal approach which had been highlighted in a [2008 case where Nottingham council was accused](#) of "conflating absence of objection with actual consent".

Damages

Judge Lazarus added: "It is clear that the circumstances of this case are very grave and merit an award that is higher than those currently reported. Other than an absence of inappropriate pressure on [the mother] and there being no element of bad faith, all other factors are shockingly poor, and the length of time over which these breaches were maintained despite advice to

readdress the situation is extreme.”

The judgement kept anonymous the names of social workers, head of services and the independent reviewing officers involved as those named are no longer employed by the council and had not been notified of the proceedings.

A Medway council spokesperson clarified that no-one lost their jobs as a result of this case, and that the staff were no longer employed by the council due to natural staff turnover.

The spokesperson added: “The child is thriving... and the judge has granted the local authority a court order and the child remains in our care.

“This was an extremely complex case and it is important to highlight that the judge said at no point did she believe the local authority were not acting in good faith to protect the child. The council maintains that all actions taken by us were carried out because we believed they were necessary and beneficial to safeguard the child at the time. We have already put more recent measures in place, identified by the judge, to address the concerns she raised, and we will ensure that this good practice continues.”

The mother now lives in a specialist mother and baby psychiatric unit with her youngest daughter.

2 Responses to *Social workers criticised for ‘shocking misunderstanding’ of the law*

Peter Endersby October 29, 2015 at 8:23 pm #

This would be comical if the decisions weren’t so life changing. To paraphrase Eric Morcombe, this was case made up of, ‘some good decisions being made at the wrong time’. I cannot believe that no one was sanctioned, there must of been paperwork gathering some serious dust waiting for people to make some timely decisions. I wonder what other decisions are being delayed at Medway, such geological decision making should be reflected upon.

Betty gunn October 31, 2015 at 11:37 am #

I am aware lots of children are being kept in care on sec 20 and not aware that they can give notice to ssd .i feel clients should be given information of their rights as a parent it also appears that the clients legal reps don't do that either .

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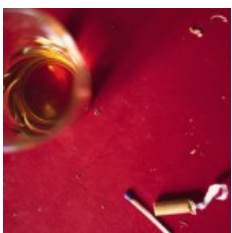


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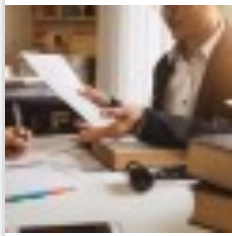
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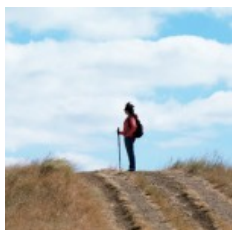
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