

## Social work negligence claims – is there a link between case loads and performance?

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## How are abuse cases pursued in negligence usually framed?

Cases usually fall into approximately two categories:

1. The first is where the allegation is that a local authority failed to remove a child from a situation in which they were being harmed. Most frequently the complaint is that there was a failure to remove the child from an abusive family environment. These cases are often triggered by a referral from the Family Court permitting the release of the papers in those proceedings to the Official Solicitor who will instruct solicitors to investigate and advise.
2. The second category of claims is those where it is alleged that a local authority failed to protect a child or young person from their own risk taking behaviours. These are commonly where teenagers are being groomed for or engaging in sexually exploitative behaviours.

## Remind me what the 'Bolam test' is

To establish that a local authority breached the duty of care it owed, a claimant has to demonstrate that, the practice of the individuals in the team of local authority professionals around the child fell below the lowest acceptable standards of practice at the relevant time.

The Bolam case, (*Bolam v Friern Hospital Management Committee*) dated back to 1957. It has been qualified and clarified by a number of subsequent decisions, but the basic principal remains the same. In order to establish that a professional has been negligent, a claimant will usually have to show that 'the professionals in question acted (or in some instances failed to act) in way that no responsible body of professionals in the same field of expertise would regard as acceptable or reasonable'.

## What has all this got to do with caseloads?

At the end of February 2019, the Department for Education released its [report on statistics for children and family social work workforce](#) in England for the year ending 30 September 2018.

It is worth bearing in mind that statistics also recorded an increase in the number of children in need by 4% to 404,710 in 2018, and simultaneously the number of child protections plans has increased by 5.3% to 53,790.

The statistics are interesting, because they show that the number of cases held was 'significantly smaller' than the number of children in need. Explanations for this are not immediately obvious. The way in which different local authorities define, hold, share and make data available is not consistent nationwide, so a report was never going to be comparing like with exactly like.

Instinct would suggest that where social workers were holding a higher number of cases, there would be an increased risk of poorer quality social work, and therefore damages claims. In Kingston upon Thames, the lowest average caseload was recorded as 12 and the latest OFSTED rating is good. Other local authorities with caseloads below 13 and outstanding OFSTED ratings are Kensington and Chelsea, Westminster and Hertfordshire.

However, some of the local authorities who hold the highest social work caseloads have also performed reasonably in the latest OFSTED inspection, with North East Lincolnshire (26.8 average caseload) and Calderdale (22.7 average case load) both receiving a good OFSTED rating last time they were seen.

## Learning points

First of all, despite the above the broad theme of the statistics is that the lower the recorded caseload, the better the OFSTED rating and the lower the risk of negligence claims. Similarly, themes suggest that the higher the tendency to use agency social workers and the higher the turnover of staff, the lower the quality and consistency of social work that is provided to service users.

How these learning points are applied is ultimately a question for each authority in its work force planning. What we suggest should be done in each local authority, regardless of the number of social workers they employ, or the turnover of staff they have is to ensure that the following features are in place:

- A clear statement of exactly what thresholds are in place and how they should be applied both for children in need and children at risk.
- Regular effective and compulsory training of all social workers, including all agency and temporary staff. We recommend that an additional training programme be put in place to make sure that agency staff are regularly reviewed, and their training kept up to date so that it meets the standards of their permanent colleagues.
- Investment in a supportive, collaborative and team based working culture to minimise the risk of sickness, performance issues and the need for drastic intervention. This should include effective monitoring and supervision of all social work practice within teams and clear recording of this.

Instilling these standards will mean it is more likely that local authorities will be able to demonstrate to the court, and OFSTED, that the systems they have in place are the best available ones bearing in mind the budgets and resources available to them.

## Contact



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