

Corporate Governance Committee – 23 April 2018.

'If claims relating to uninsured (unfunded?) risks materialise or continue to increase then LCC will need to find increased payments from reserves, impacting on funds available to support services'.

David Marshall-Rowan – Insurance Manager
Amanda Rowlinson – Senior Claims Negotiator
Heather Hughes – Team Manager Around the Child
DBSEC HCPC

Leicestershire County Council – Insurance Position

- Pre-1964 No insurance purchased
- 1964 – 1969 Eagle Star
- 1969 – 1992 Municipal Mutual Insurance (23 Years – In administration)
- 1993 – 1998 Independent Insurance (5 Years – Wound up)
- MMI Scheme of Arrangement (SoA) – Solvent run off of claims anticipated
- Mesothelioma ‘trigger point’ litigation – Bolton BC v MMI & CU 2006 (2012 SC decision adverse to MMI)
- 2011 Uninsured Loss Fund established
- November 2012 MMI directors conclude SoA should be triggered

Leicestershire County Council – Insurance Position

- April 2013 – Scheme administrator imposes a levy of 15% or £2.2M for LCC
- Deterioration of claims experience – Meso / Abuse / NIHL
- Second levy of a further 10% or £1.5M for LCC
- June 2017 still showing a deficit of £1.4M
- December 2018 showing surplus of £7.2M
- Volatility / Long tail claims forecast out to 2050

Leicestershire County Council – Insurance Position

- Constant new developments:
- Extension to vicarious liability – Woodlands / Armes / Barclays Bank / Morrisons
- Independent Inquiry into Child Sexual Abuse (IICSA)
- Limitation (Childhood Abuse) (Scotland) Act 2017
- Change to Ogden Discount Rate: -0.75% to +2.5%
- New types of claim: Idiopathic Pulmonary Fibrosis (IPF) – ‘The second wave of asbestos claims?’
- New heads of claim: Mesothelioma – future medical development costs.

The development of the law relating to child care claims

- Fast changing area of law affecting legal liability of the Authority in foster care and failure to remove claims
- We receive civil claims for alleged abuse dating from the 1950s to the present
- Earlier claims up to 31.07.64. uninsured
- In February we ran a seminar to update CFS, our internal legal services and neighbouring LA colleagues on the development of the law

Development of the law – Cont.

The 3 most important recent cases in this area of law are:

Woodland v Essex CC

- A school contracted with a 3rd party to provide swimming lessons to pupils. During a lesson a 10 year old girl tragically suffered life changing brain injuries.
- Supreme Court held the school liable for the negligence of the independent contractor.

Development of the law – Cont.

Armes v Nottinghamshire CC

- Female alleged abuse by foster carers who she was placed with as a child by NCC.
- The judgment of the Supreme Court held that NCC was vicariously liable for the tortious acts of its foster carers.

Development of the law – Cont.

CN v Poole

- Claimants suffered from learning difficulties.
- They were harassed by neighbours in housing provided by the LA.
- In a favourable judgment to LAs the Court of Appeal held that no duty of care was owed to a child not the subject of a formal care order unless the LA had assumed responsibility for the child's welfare.

Development of the law – Cont.

- As a result of the decisions in Armes and Poole we have reviewed our current outstanding cases.
- Potential for an influx of foster care and failure to remove cases but, to date, this has not occurred. However, it is still early days.
- Whilst we can do nothing about cases arising from time past we can adapt to case law and mitigate LCCs exposure to claims for the future.

Mitigating against current and future risks

Compliance

- The fostering sector is regulated by a number of acts and fostering regulations, as well as statutory guidance.
- These provide the legal and statutory framework for our organisation
- National Minimum Standards- best practice
- Independent scrutiny and professional challenge

Supporting and Supervision

- **Team** around the child- ensuring needs of child met
- Lower case loads - good quality supervision
- High support – emotional/ practical
- Training Officer – deliver a full training programme (incl TSDs) building knowledge and confidence, strategies- reducing risk
- CAMHS consultation

Assessments and reviews

- Ensuring rigorous challenge leading to good quality assessments
- QA at each stage
- Role of Panel Advisor
- Foster panel Role of ADM
- Role of Reviewing Officer
- Annual Reviews
- Management oversight

Allegations

- Training to prepare foster carers
- Role of LADO
- Role of Independent Support
- Role of Reviewing officer
- Foster panel recommendation
- ADM decision

Questions?

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