



## **Key practices for social workers**

*Children and the law*

### **Lesley Ann Cull**

The next speaker is Nick Crichton, who's been a stipendiary magistrate for 13 years and has been presiding in the family proceedings courts for the last 4. He begins by describing some of the issues arising in public law cases and his personal approach as the magistrate hearing these cases.

### **Nick Crichton**

Public law are the cases that arise out of concerns for the safety, health and welfare of children that have been drawn to the attention of local authorities, to the point where local authorities feel that there is a need for them to intervene and ask the court to take measures to protect a child. Measures such as seeking care orders or seeking supervision orders and it's intervention by public authority which is why we call it public law. Private law is the arrangements within a family for children of that family where the child should live, should the child live with mother and father or somewhere else, and should the parent who hasn't got the child living with them have contact, and if so what the contact arrangements should be, and those sort of matters. In public law we are, more often than not, talking about very serious situations involving the safety, welfare protection of children, and you have distressed parents and you've got to hear evidence and make decisions. Although it is fair to say that sometimes, the evidence is so overwhelming that rather than get involved in a conflict situation, you can make comments and even talk directly to parents about how a situation appears to be and try to give a preliminary indication as to what you are thinking in the hope that it might just draw the heat... For instance, if you've got a child who has come by a very serious injury and needs to be hospitalized, or indeed is hospitalized, usually they come to you with a child already in hospital receiving treatment for injuries, and it is clear that those injuries were received in the home, but completely unclear as to how the child came by those injuries, it isn't helpful on that first hearing to have a full-blooded contest in which everybody is pointing the finger at everybody else. What is important is that this child came by these injuries and therefore wasn't safe in the home environment and what is important is that the child should now be held secure and given the treatment it needs while an investigation goes on as to how it came about. And sometimes you can get that point across to parents who are reasonably receptive, and get some sort of a consensus as to how we should move forward for the child's best interests, rather than as I say have a heightened conflictual situation which in the long term isn't going to help anybody least of all the child.

### **Lesley Ann Cull**

You are going to hear about the work of the Children's Legal Centre, in promoting children's rights, as well as some of the issues raised when representing or assisting children caught in disputes. Carolyn Hamilton.

### **Carolyn Hamilton**

It was set up in 1981 as the major project for the United Nations Year of the Child, and since 1981 its been representing children's interests and children's rights. We are a group of lawyers and people from other disciplines who spend their time trying to promote, trying to particularly encourage others to accept notions of children's rights in the way that they work.

### **Lesley Ann Cull**

The centre deals with a wide range of cases.

### **Carolyn Hamilton**

The centre has a varied workload. We run a national legal advice line for 5 hours a day and that covers all issues relating to children, anything legal or policy or practice. We get about

five and a half thousand calls a year coming in. About half of our calls come from parents and about another 30% from professionals and voluntary organisations. The most popular phone calls are about either private law proceedings, which is disputes over contact to a child, or residence or whether a parent can have parental responsibility, or take the child out of the jurisdiction. And the second most popular form of call is about education. We get huge numbers of calls on education issues, about 1,250 a year, and that covers special educational needs, exclusions, lots on bullying, quite a number on local education authority duties, transport, whether or not trips have to be paid for. Almost anything and everything that you can think of. We will help parents who want either to have their child assessed for special educational needs, or who would like to dispute the assessment that's made by the local educational authority. We have a free representation unit, an education legal advocacy unit staffed by two lawyers, and we accompany parents to meetings, we help them draft papers that they submit to the local education authority, and if necessary we will represent them in a special educational needs tribunal. To begin with we found that we were going to more and more tribunal cases, actually fighting cases in tribunals, but as we've become better known and we tend to operate only in the south east of England, we don't find ourselves in the tribunal nearly as much, we seem to be able now to negotiate a settlement before the case actually reaches the tribunal, which we think is much better for the child, much better for the relationship between the parents and the LEA, and the parents and the school. What we try and do always is to take a best interest of the child approach, and in fact if we felt that the parent wasn't acting in the child's best interests we would say to the parent that we could no longer represent them. We try to encourage the school and the local authority to see this case from the child's point of view, and really concentrate on providing that child with what is needed. And I think we've been fairly successful in that.

#### **Lesley Ann Cull**

Carolyn raised the particular issue of children who are being looked after by local authorities.

#### **Carolyn Hamilton**

I think one of the main problems for children is powerlessness in the face of the local authority exercising their powers and duties; they really have very little say in what happens to them. There is a duty to consult children, but an awful lot of that is affected by the circumstances that these children find themselves in. I think one of the great sadness's of the Children Act is that it hasn't really made the situation much better for children who are looked after by the local authority. And my belief is that we need to pay a lot more attention to providing children with more resources and better facilities.

#### **Lesley Ann Cull**

I asked Carolyn if she thought that very young children had rights, and whether social workers took these rights seriously. Did she think there had been any changes in the attitudes of local authorities to children's rights?

#### **Carolyn Hamilton**

Rights come in different forms, when you look at the UN convention on the rights of the child, rights are generally categorized into 3 sorts of rights. There are protection rights, like the right to be protected from abuse; there are provision rights like the right to an education, or the right to a reasonable standard of living; and then there are participation rights, the right to be heard, the right to take part. I think very young children have protection rights, they certainly have some forms of provision rights, they might not yet be able to exercise their participation rights, but as children begin to get older and begin to mature, the rights they have, and the ways those rights are exercised, obviously begins to change. Some of them certainly take children's rights very seriously. I think one of the problems is that a lot of people don't know about children's rights and they're not sure what to include in the idea of children's rights. I don't think they always take very seriously the right to be heard, and have those views taken into account. I think sometimes social workers need to sit back and think and listen to that child before they make a decision that's going to affect that child's life. I think there need to be mechanisms and structures for hearing children, and I don't think we can always expect social workers to perform that role. After all, a social worker isn't there just for the child, they have also to deal with parents, and they also have an employer, the local authority.

We're very keen on there being independent advocates for children so that children are able to make their voices heard, and someone who is detached from the situation, who doesn't have a supervisor or an employer who has expectations of them, is able to hear that child and put that child's point of view into the decision-making body. One of the developments over this decade has been that of the child rights officer, and if you look around the various local authorities you will see that a considerable number do have children's rights officers. I think they are a very welcome innovation but I do think that their remit is limited, they are employed by the local authority, they are answerable to the local authority and their ability to represent children and take up issues is constrained by the local authority itself. If the local authority really do not like what the children's rights officer is doing, or don't wish to take a particular issue any further, that local authority can simply put a stop on the activities of the children's rights officer, and that, I don't think, is desirable.

### **Lesley Ann Cull**

Is there anything in the way the system operates which would make the whole process more child friendly?

### **Carolyn Hamilton**

I think the child should certainly be able to participate to the extent that they want, and I do think that children should have a right to take legal action if that's what they want. If they want to seek a residents order or they want to take action against a school, I think that should be made much easier for the child. It's not that easy at present – in fact it's very difficult

### **Lesley Ann Cull**

Jill Keep is a senior policy officer in ChildLine's policy and research department. She begins by telling us why ChildLine was set up, and about the kind of issues raised by callers to ChildLine.

### **Jill Keep**

ChildLine was set up in 1986, and came about as a result of a programme that Esther Rantzen did called Child Watch which was about child abuse, and after the programme they set up a helpline for anybody to phone in who'd experienced child abuse. There were so many calls, over 90,000 in one night, that people became very aware that this was a huge problem which hadn't been looked at. Last year we counselled 115,000 children and children called about everything under the sun. They called about not getting on with their mums and dads, about having arguments with their brothers and sisters, about being worried about their exams, through to very serious problems about being abused sexually or physically, being thrown out of their homes in the middle of the night and having nowhere to stay, about being bullied, about their feelings about their parents being divorced. Children still call in large numbers about being abused, and last year there were over 9,000 calls about sexual abuse, and rather more about physical abuse, and those are still after all these years, those are still the problems that children call in largest numbers about. In terms of age, most children who call ChildLine are about between 10 and 14, we do get calls from younger children, we've had calls from children as young as 5 or 6. On the whole, the children who call us are that age, between 10 and 14, and we don't encourage people to call who are over 18 although we do receive calls from adults, and we do help them if we can.

### **Lesley Ann Cull**

ChildLine is very successful. I asked Jill why.

### **Jill Keep**

When a child calls ChildLine they often have not spoken to anybody else about the problem, and even the act of calling can be very frightening to a child, it can feel as though they are exposing themselves, putting themselves on the line. They don't know the reaction they are going to get. I think children and young people have made ChildLine successful, they very much see it as their own line, and I think the reason for that is because ChildLine is unique in the service it offers because children can access it directly. They don't have to go to an adult; they don't have to ask any other service. Wherever they are, if there's a phone they can use ChildLine. It's open 24 hours a day, 7 days a week, Christmas Day, Boxing Day, Easter, whenever, so at any time of day or night if they need somebody to speak to it's there.

On top of that I think that the advantages of the phone line are that the children aren't seen, that they can completely control how much information they give to the counsellor, that nobody is going to do anything as a result of what they're saying, that they can in absolute safety and with absolute confidentiality, say anything they want, any of their fears or recounting the awful things that have happened to them, and they know that it's in their control what happens next. One of the great strengths of ChildLine, and one of its great successes, is that we listen to children, we don't judge children, we let them tell us what they want to tell us, and that includes personal details about their age, where they live, we never ask children anything like that, it's up to them to volunteer it. Very often children talk to us, and by the end of the conversation it's become clear to them who in their own immediate circle they can go to with this problem. The ChildLine counsellor, by talking about the problem with the child, will be able to help the child think, 'Well, who is there that I know who I would feel safe going to, could I go to my aunt, is there a favourite teacher, maybe the parent of a friend?' Obviously ChildLine can only help so far, most children phone once and that's enough for them. It's given them the confidence that they need to then go somewhere else with the problem if they need to. Or perhaps it's been resolved themselves just through the one phone call.

### **Lesley Ann Cull**

ChildLine also has a special service for children in care.

### **Jill Keep**

The reason for setting up the ChildLine for children in care is that when ChildLine was first set up we found that we were getting a disproportionately large number of calls from children in care, and that these children were particularly isolated. They really found that they had nobody to go to, they weren't happy about going to their care-workers; they often didn't see their social workers from one month to the next. They felt they had nobody to go to. What was very interesting about these calls was that they didn't want to use the official complaints system; it wasn't something that they felt comfortable about using. They wanted something that was much more informal, that they could simply have an opportunity to speak to an adult about whatever it was that was bothering them. And obviously children who were calling about abuse or very severe problems, perhaps they had run away from their residential care home, often ChildLine would refer them to social services or to the police or whatever, but very often children who called on our Children in Care line simply wanted an opportunity to talk about something that was bothering them. It wasn't a very serious problem necessarily. And I think that's something that's very hard, that children who live in homes with their birth parents almost can take for granted that isn't available to children who live in residential care homes or even perhaps sometimes in foster homes.

### **Lesley Ann Cull**

What about confidentiality?

### **Jill Keep**

If we break confidentiality we'll probably never hear from that child again, and that opportunity to help has been lost. What we try to do is to provide a place where children, even if they are suffering the most horrendous experiences, there's someone they can talk to about it, and we can slowly lead them to the point where they will feel safe about contacting social services. And so many times children have said 'I don't want to contact social services because I don't know what will happen, that my family might get broken up, I won't be in control of the decision that's made. They'll come in; they'll take it all away'. If we work with them and try and increase their confidence and talk about all the options, and sometimes we feel social services may not be the appropriate option, then children are much more likely to stick to it. They'll feel much more confident about telling whoever it is what's happened. We do occasionally get children who have taken many paracetamol, or who have slit their wrists, are in a phone box and they say 'I've slit my wrists, I am standing here' and then we trace the call and we do send an ambulance, you know, we won't let a child die.

**Lesley Ann Cull**

Jill finished by giving her view of how social workers could support children in a range of difficult situations

**Jill Keep**

What children have told ChildLine that they most appreciate, is being listened to and their views respected even though, and they do realise that it isn't always possible for what they want to happen to happen, they are sophisticated enough to understand that. But the process of listening and treating them with respect and their views with respect is very important, especially if the reason that they are involved with adult professionals is a traumatic one, abuse or divorce or whatever, it's very important that they are given the opportunity to say their piece. Children want to feel that any action which is taken on their behalf happens with their consent. What they really want is to feel that action is being taken one step at a time. That professionals are not going to come in and make some major decision which is not necessary, that they like to feel that they are being taken on one step at a time towards an outcome which they then will feel much more comfortable with. The other thing that they say is that they value an opportunity to talk to other people, perhaps to ChildLine, to other confidential help-lines outside the system, where they can say what they want to say without fear of consequences, even if they are being treated sensitively by social services, it's very important for their sense of power I think, that they have an opportunity to talk confidentially.