Browne Jacobson

Shared Insights: Safeguarding Forum. Child Safeguarding in childcare proceedings

15 March 2022

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Vicky Nevin is a Policy and Public Affairs Manager at NSPCC and as an introduction to this session gave an overview around Child Protection and key statistics and multiagency safeguarding partnerships.

Statistics on child abuse and neglect

- There were more than 28,000 offences of cruelty to children recorded by police in England and Wales in 2020-21— an increase of 22% offences since 2019/20 (source: Office for National Statistics)
- A total of 206 children died due to abuse or neglect in England between 1 January and 31 December 2020.
- A further 267 children were seriously harmed due to abuse or neglect. Serious harm involves the "ill treatment or the impairment of the health or development of a child". (source: Dept for Education)

Four Rs of safeguarding

The Four Rs of child safeguarding are:

1. Recognise
2. Respond
3. Report
4. Record

There is a free number or email address if you are not sure what to do next and the NSPCC can help refer on if needed:

0808 800 5000

help@nspcc.org.uk

NSPCC | The UK children's charity | NSPCC

It is important to record the key points about the disclosure or concerns so you can remember them in future. Any of the details of names and locations are helpful.

The Children Act 1989

- If children's social care has 'reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm', they must carry out a section 47 enquiry.
- Concerns about a child's immediate safety: emergency protection order to remove child or exclusion order to remove abuser.
- If there is a concern about a child there will be a Child Protection Conference where various professionals get together to discuss the child’s safety, health and development. A Child Protection Plan can be put in place for short and long term aims.

- Pre-proceedings meetings: efforts to keep child with family and avoid court. e.g. NSPCC Infant and Family Teams.

Outcomes for children

- **Care order:** local authority gain parental responsibility for a child.
- **Supervision order:** local authority monitor child's needs while living at home or elsewhere.
- **Special guardianship order:** child lives with someone other than their parents on a long-term basis.
- **Placement order:** a child is placed up for adoption.

Multi-agency safeguarding partnerships

Multi-agency safeguarding partnerships came into force in September 2019 and replaced Local Child Safeguarding Boards. Three lead safeguarding partners — the Clinical Commissioning Group, the Police, the Local Authority - who have joint and equal responsibility for a local area's safeguarding arrangements.

Working Together to Safeguard Children, 2018 sets statutory guidance on joint responsibilities, including:

- Early identification of new safeguarding issues and emerging threats.
- Commission inter-agency training for practitioners working with children.
- Undertake local child safeguarding reviews and embed learning across agencies and organisations.

Health's role in child safeguarding

Health professionals provide a universal service and are in a prime position to recognise and report child safeguarding concerns. A child at risk of harm may not yet be known to Social Services, but could come into contact with their GP or Health Visitor.

The Health and Care Bill

Clinical Commissioning Groups are being abolished. In July, their statutory child safeguarding duties will be transferred to new Integrated Care Boards, established under the Health and Care Bill.

It is vital that Integrated Care Boards are supported, both by the Government and the NHS to take on their child safeguarding duty, and to work effectively with local authorities and the Police.

The NSPCC is working to flag how important this is with the Government. Integrated Care Boards will now be required to report on their safeguarding duty every year, but wider reform is still needed to strengthen multi-agency safeguarding. For further information visit: https://www.nspcc.org.uk/globalassets/documents/policy/multi-agency-safeguarding-briefing.pdf

Child Safeguarding in childcare proceedings

Naomi De Silva, an Associate at Browne Jacobson, explained that often there can be limited collaboration between Local Authorities and NHS organisations in matters involving care proceedings.

- Care proceedings involve the safeguarding of children and are highly sensitive. Proceedings are held in private with no public reporting at the moment.
- Clinicians may be asked to provide statements with limited or no information about the case from the local authority who are often wary of disclosing privacy rules by sharing information.
- Requests for statements are often urgent or last-minute and clinicians have limited/no training on drafting statements.

What can Trusts do to help Clinicians?

- Clinicians can sometimes be caught unawares by criticisms in an expert report which can cause distress and reputational issues. Ensuring clinicians understand what the case is about before they give evidence is key to helping clinicians prepare adequately.
- Consider whether a clinician needs legal representation. Is there likely to be aggressive questioning of a clinician?
- Engage with the children’s legal team at the local authority as early as possible to understand what is going on and what is needed from the statement. Developing good working-relationships with key personnel at the Local Authority can help with this. Multi-agency working is evermore important in light of the local report following the death of Arthur Labinjo-Hughes.

- Make it clear a statement is factual, based on the records and that whilst some opinion on how an injury was causes is permissible the statement should make clear what is fact and what is opinion. It is evermore important at this time that statements are open, honest and an accurate reflection of the records/what happened.
- The President of the Family Court, Sir Andrew McFarlane, spoke last week about the volume of work before the Family Court being at an all time high. All involved in Family Proceedings are at capacity and so inevitably there will be delays to hearings and an event which took place yesterday may not be heard until next year. It's so important to make sure that records and statements are in good order as staff will be relying heavily on these when giving evidence in person.
- When asked to provide statements it is important to consider whether clinicians need legal advice. Proceedings of this kind can have a detrimental effect on the mental health and morale of staff. Staff also risk employment issues arising as a result of their evidence/any findings made against them. Having the legal team involved helps to steer the process and support staff.
- If the local authority are resistant to sharing information keep pushing for it. There is case law to compel the Local Authority to give limited disclosure where clinicians are giving evidence as experts which can be drawn on when giving factual statements (see W (A Child), Re [2016] EWCA Civ 1140 (17 November 2016) (bailii.org) Paragraph 95)
- You may find this article useful: Top tips for addressing allegations against staff in child care proceedings (brownejacobson.com)

Use of reporters in Family Courts

Care proceedings in the Family Court are currently heard privately. However, the Family Court is trialling reporters in Court. This is likely to be extended to apply to all Courts across the Country by the end of this year or early next year.

Individuals are likely to be granted some anonymity but it is unlikely that Trusts will be so Trusts will therefore be held to public opinion. It may lead to Trusts, clinicians and most public bodies thinking about their approach.

When safeguarding referrals may trigger proceedings

Safeguarding referrals by clinicians may trigger care proceedings. It seems ever-more pressing that clinicians strive to resurrect good connections with local authorities and re-engage multi-agency working. We know from the recent local report concerning that sad case of Arthur Labinjo-Hughes that through the pandemic, joined up working across safeguarding agencies has fallen away somewhat. Clinicians, often, are the first professionals to spot/suspect signs of abuse. It is important to make sure that concerns are openly, accurately and honestly reported. Clinicians should not be afraid to make reports because it is always better for investigations to be completed and find that nothing has occurred than to shy away from reporting and for abuse to occur/continue. The main principle of Court proceedings for Children, is always on the best interests of the child. When you reflect simply on protecting and maintaining the well-being of the child then all other concerns about reporting potential abuse fall away.

County lines and older children

Older children are quite often overlooked and there are county lines concerns that gangs are using older children for sex trafficking or drug dealing. Are clinicians trained to look out for this sort of abuse? E.g. A child being accompanied by someone who is not a parent or guardian, is that something to think about with safeguarding?

Discussion

Where a Trust has had a request from the local authority for statements from 5 midwives in a 4 day time period with little understanding that the Trust can't just produce statements that quickly, how much push back does the Trust have?

Find out who the local Court is that is dealing with the matter and if you have been asked to provide statements by a certain date, take steps to say that there has been delay in being provided with the Order and set out a reasonable date by which your staff member can prepare a statement. Copy the Court into the email to the local authority. The Court will often accept delays by medical professionals because there is a recognition that they have other commitments.

Does the Trust have any pushback about where babies are being kept on the ward as a place of safety because there is no placement for them as this is effectively bed blocking.

There are not enough services to provide the care that is needed while the Court are looking through the application. The safest place for them often is in the hospital setting whilst there are no other private or social care settings for them and until the outcome of the initial hearing has been decided.

There was some discussion about whether a maternity ward can be a place of safety during the pandemic and an example was given of a mother who contracted COVID-19 whilst being held on the ward. This led to a discussion about mothers seeking to be discharged from hospital prior to the initial Court Hearing.

Naomi responded that most mothers who are subject to care proceedings upon birth of their baby will know due to pre-birth conferences that they will not be able to go home with their child until the Court decides they are fit and able to do so. Any commissioner should bear this in mind and raise this point when looking at discharge and the available options when planning.

It was highlighted that delays caused by patients having to wait for vaccines can have a significant impact on the time frame for discharge/move into placements or local authority accommodation.

Delays caused by patients having to wait for vaccines can have a significant impact on the time frame. Some placements may require individuals to be double vaccinated which can cause further delay given the timeframe required between each dose before the person can then be discharged to their new home.

Delays in discharge are not just seen on maternity wards, and are of course sadly increasingly common for adults and older children due to lack of beds and suitable onwards placements. Open lines of communication between all involved are key.

Child Safeguarding in childcare proceedings – the Trust's perspective

Marilyn Whittle, Legal Services Director, Sheffield Children's NHS Foundation Trust

Marilyn is the Legal Services Director at Sheffield Children's NHS Foundation Trust. She spoke about the issues facing the Trust with regards to child safeguarding and what can be done to support clinicians during childcare proceedings.

Issues faced within the Trust and ways to push back

Practically, first thing to do is build working relationships with the local authority. Have a discussion about the pressures and practicalities faced by the Trust in meeting very short deadlines for statements and understand that the local authority also have pressures that need to be balanced.

Check court orders thoroughly. There is the chance they might have the wrong names and wrong details on there. You can be getting documents ready but don't disclose any information until you have an order with the right details on it.

Call the local authority and ask what needs to be covered in statement. At the same time, if you can't meet the deadlines, explain why and propose an alternative.

Work with the safeguarding team to know what children are on their radar. In some cases you can propose to exhibit a Child Protection Medical to a short statement rather than rewrite the full entry in the statement to save time.

A closer working relationship with the police means cases in both arenas can be joined up. The Trust may often be that conduit between the local authority and the police.

Pre-court order statement requests

Clinicians get very concerned about this. It should be emphasised that the statement will be provided imminently or following a court Order. It is also emphasised that ultimately, this is for a child and the best interests of the child. Practically just making sure clinicians understand what they are being asked to do is important. A buddy system is useful where frequent Court attenders buddy up with someone new to it and go through their experience.

Where the focus of the statement should lie

Clinicians often focus on the best interests of the child. The local authority are looking at the serious harm which may be caused. It is important to understand and use the appropriate language.

Clinicians' statements need to be factual and focused simply on what they have seen or suspect. They should not worry about trying to pre-empt the local authority's case.

Supporting clinicians

Clinicians need full support when attending hearings, often things change last minute, regarding the numbers and who needs to attend court. Prepare clinicians for this by explaining the worst case scenario (having to give evidence) and that they may be let go at the last minute or let go but then called back.

Better relationships between all parties ensure that better preparation and delivery is achieved.

Discussion

One Trust explained that several years ago and pre-pandemic they began to only allow staff to attend court virtually. This has worked well and it allows the legal team to support them better.

The President of the Family Court has indicated they are moving away from virtual hearings which are not as effective as those held in person. So, Trusts should be prepared to attend Court in person again.

What exactly is an 'Intervenor' and what are the implications?

An intervenor, is a person who is alleged to also have caused harm to a child. It arises in cases where there has been serious injury/death of child and the parent or another party makes allegations against treating clinicians. The implications are that a clinician may be found to have caused the harm so it could result in employment problems/reputational problems for the Trust.

i.e. a child taken into care and the family suggested the fractures were caused by the clinicians. The intervenor is then to provide evidence that this did not happen.

The Family Court look at allegations against the Trust and it is important to look at the potential reputation implications for those involved.

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