

Social work and contempt of court update

March 2015

On 16 December 2013 two social workers employed by City of Edinburgh Council were found guilty of contempt of court in relation to a decision they took over parental contact. That case was appealed to the Court of Session and we issued some interim guidance to members. In an e-brief last year we also set out the actions UNISON Scotland had taken over the wider implications of the case, including representations to the Scottish Government.

We are pleased to report that the Court of Session has decided on appeal that the conduct of social workers in Edinburgh City Council did not amount to contempt and that the decision of the Sheriff is quashed.

The Court has confirmed that contempt proceedings could be used in certain circumstances. However, they would be exceptional and social workers in this case did act in the best interests of the children. Lord Carloway, the Lord Justice Clerk said:

“The petitioners (social workers) elected to discontinue the contact ordered by the court. Such conduct may, of course, amount to a contempt in certain circumstances. It may well constitute a prima facie case. However, it must be accepted that there are situations in which social workers, who are entrusted with the task of supervising contact, may stop contact ordered by the court where, for example, the child’s safety would be put at serious risk were the contact to take place. That being so, whether that cessation amounts to contempt will depend upon the facts and circumstances of the particular case. In this instance, whether the petitioners were correct or not in their professional evaluation of the situation, it is evident that they acted for reasons which they considered to be in the best interests of the children. They did so with a view to having the issue of contact re-ventilated as soon as practicable by the appropriate legal authority, namely the Children’s Hearing.”

The Court of Appeal was also critical of the way the Sheriff handled the proceedings including:

“The action taken by the sheriff thereafter proceeded at her own instance and without any form of written application, setting out the precise nature of the contempt. The court does not consider that it is appropriate to proceed in this fashion.”

This should provide guidance for other Sheriff’s considering using contempt proceedings in future.

UNISON Scotland’s statement today includes: *“The court has recognised complex and difficult decisions social workers have to take in their work in protecting the welfare of children. We hope this decision will assist in providing some clarity for them in exercising their duty in good faith to hold the child’s interests as paramount. UNISON backed our members from the beginning and we are glad that the long months of uncertainty are now over for them.”*

The full decision of the Court of Session can be read here <https://www.scotcourts.gov.uk/search-judgments/judgment?id=63d8cea6-8980-69d2-b500-ff0000d74aa7>. The UNISON Scotland Social Work Issues Group (SWIG) will look at the decision in detail and consider if any further action is necessary.

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