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MEMORANDUM
SOCIAL SERVICES

CHILDREN & FAMILIES UNIT

✓ To: Bill Sulman
cc Norman Hanson
David Spicer
Martin Eaden

From: Rod Jones

Date: 7.10.93

Subject: County Council Duties to Children, Courts and Insurers
in the use of Information .

This is for background for the meeting on Monday 11th.
I attach for your info a copy of the position/legal advice as it stood and my drafting of what we might say to staff. The legal advice has been sent to the staff involved in the Hazelwood cases. Two at least have been interviewed by the solicitor defending NO-A90 already, although all have been told of the new advice ie not to assist the solicitor with what they know, until a full legal advice statement is provided.

It may be that much of the advice contained in the attachments is applicable at earlier points rather than the one at which the odd case ends up with the insurers. However there are still major consequences which this case highlights. I set out below some of the main ways in which we think the current insurers legal advice affects the C. C. and ultimately, the insurers.

1 The C. C. has some duties as former "parent" to such children. There are aftercare powers and duties to provide assistance and advice. People who have been subject to abuse will often want to see the people who cared for them and need help to talk it through/to get help in coming to terms with what happened. Former children in care are also entitled to have access to the C.C. records which relate to them. If a young adult in this situation asked the C. C. for help and thereby information, and if they were witness or party to the events which the insurers are concerned, the current advice obstructs our duties.

2 When the C.C. is informed of significant damage incurred by a child whilst in our care, the C.C. has a duty to establish whether there are current risks and actions required to prevent them eg in respect of staff discipline and to take reasonable steps to rectify the damage to the child either directly or by commissioning an agent. We would normally seek to offer counselling support to a young person. We did this with NO-A89 and we should be able to offer this to NO-A90

3 In Family Proceedings the Judges expect the C.C. to be open with

all relevant information even where this is adverse to the C.C.'s case. How can this be reconciled with the insurers position?

*Public Law
Immunity?*

4 For staff in the current or any future case where they have already given statements but then the case takes a new turn which on insurers advice leads them to cease being "open" with the various agencies - are we not putting them in a position where the Judge will view them as obstructive?

*Which
- Questions*

5 Many staff may be reluctant to follow C.C. advice fearing cover-ups and the C.C.'s collective interest being put in front of their individual duty to the client. It is likely that trade Union advice and involvement will follow. Staff will want the new legal advice in writing.

6 Staff frustration as a result of this instruction to not cooperate with enquiries is more likely to precipitate comments in court which are critical of the C.C. This will not be in anyones interest.

7 The current advice is likely to lead to staff being summonsed to appear to give evidence and this will increase :

- the C.C.'s lack of knowledge of what they will say in Court
- the chances of the C.C. being more open to further action.

8 The insurers advisers will need to list for us the full range of persons with whom staff may not deal in what circumstances and with what qualifications. It is our view that the Director must report to Social Services Committee on any condition which fetters his conduct of the duties delegated by the Committee.

I hope there can be some accommodation which realistically lives with the facts as they are known rather than a mechanistic approach which is more likely to rebound badly for the young people, C.C., and insurers.

DPA

Head of Children and Families Policy.