



# **Social Work, the Courts and the Consequences of Transparency**

*Report of a UNISON survey of social work practitioners*



**UNISON**

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# **SOCIAL WORK, THE COURTS AND THE CONSEQUENCES OF TRANSPARENCY**

## ***Report of a UNISON survey of social work practitioners***

UNISON represents some 40,000 social workers across the UK. Social workers are regularly called upon to prepare reports and give evidence in courts, hearings and tribunals. This is important, high-stakes work with sometimes life-changing consequences for individuals and families. As a result, it is often contentious and requires high levels of skill and expertise.

Traditionally court proceedings have taken place in private, with restricted access by the media. Judgments were not usually published. Pressure over a number of years from the media and from politicians about secrecy and lack of accountability has led to moves by the courts to 'increase transparency'.

In January 2014 Sir James Munby, President of the Family Court (England and Wales) issued two sets of practice guidance – *Transparency in the Family Courts, Publication of Judgments* and *Transparency in the Court of Protection, Publication of Judgments*. The guidance contains a presumption that judgments will be published and expert witnesses named, unless there are compelling reasons not to.

### **Concerns for social workers**

UNISON's experience of supporting members named in recent court judgments has illustrated the dangers of selective coverage of court proceedings. This can cause a backlash against the social workers involved, exposing them to public hostility and media hounding. Workers in these situations have no means of defending themselves because confidentiality obligations mean they cannot speak about the cases.

The social workers likely to be named are often the least senior staff involved in the decision-making chain. Senior managers and others involved in scrutinising and approving decisions are often not named. This is a skewed version of accountability and risks scapegoating staff for decisions which should be owned by the council at an organisational level.

### **About the survey**

UNISON became increasingly concerned about the effect these changes could have on morale, recruitment and retention in the social work profession. During December 2014/ January 2015 a survey of members was conducted in England and Wales to gather their experiences and views. **This report is based on responses from 1,028 social workers.**

## SUMMARY OF KEY FINDINGS

### Quotes from social workers:

“Earlier this year I had experience of being involved in a particularly complex court case. I managed and supported the social worker throughout the proceedings...[Then] I became aware that the judgments could be published naming those involved. A decision was made to publish the judgment and despite a request to the judge not to name the social worker; a request for my name rather than the social worker’s to be published; and other reasons being given by the local authority barristers – this was not agreed to.

The judge indicated to the social worker that it would all ‘blow over’ and be done with very quickly which I considered to be very naive...The social worker has been traumatised by their experience and has required significant support over the last six months, particularly emotionally, and we have rightly had to maintain a protected caseload for them.”

### Impact of the guidance

1. Only 31 per cent of respondents were aware that the new guidance about routine naming of social workers had been issued.
2. Only 2 per cent of respondents said their employer had taken steps to prepare for and protect social workers in connection with being named in media coverage. Forty per cent said their employer had not taken steps, and 58 per cent said they didn’t know whether their employer had done so.
3. Ninety seven per cent said they are worried by the prospect of their name appearing in media coverage of court proceedings.
4. Only 28 per cent said that they were confident their employer would support them if they were named in media coverage.
5. Eighty per cent said that they were concerned about the risk of social workers being scapegoated for decisions made by their local authority.
6. Seventy nine per cent agreed or strongly agreed that negative media coverage of social workers in court proceedings could lead them to consider leaving the profession.

## **Training, preparation and back-up**

*These questions were answered only by those respondents whose current job role involves appearing in court.*

### **Writing court reports**

7. Just per cent of respondents said their training and Continued Professional Development (CPD) had prepared them very well for writing court reports, while 45 per cent said it was adequate. However another forty five per cent said training and CPD was inadequate or very poor.

### **Presenting evidence**

8. Only 8 per cent of respondents said their training and CPD had prepared them very well for presenting evidence in front of a judge, while 39 per cent said it was adequate. However, over half (52 per cent) said training and CPD was inadequate or very poor.
9. 90 per cent of respondents said that due to heavy workload they often had too little time to prepare for court.
10. Over a third (35 per cent) of respondents said they sometimes had to appear in court at short notice on an unfamiliar case – and another 6 per cent said they often did.
11. Some 63 per cent said they felt adequately or very well supported by their managers during court proceedings. But over a quarter said support was inadequate with another 10 per cent saying it was very poor.
12. Just under half said they were very well or adequately supported by IT systems and administrative colleagues. A third said they were inadequately supported while nearly a fifth said they were poorly supported.
13. Some 61 per cent said that they felt fearful of the consequences after appearing in court.
14. Only half said that they felt confident appearing before a judge.
15. Just under half said they felt respected by judges while 49 per cent said they felt intimidated.

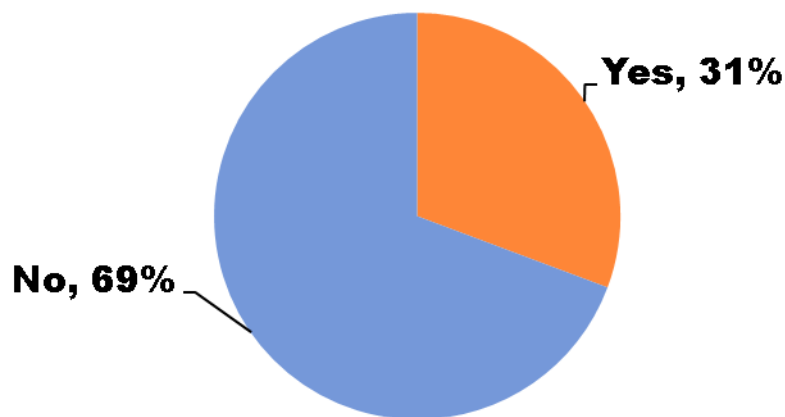
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## DETAILED FINDINGS

### SECTION 1

#### 1. Awareness of the transparency guidance

Were you aware of the Courts' guidance that social workers' names will usually be published in judgments ...and could be used in national and regional media coverage?



Under a third of social workers had heard of the guidance (and this figure was the same whether or not the respondent's current job involved court work). Many of the comments reflected shock and distress at the news. Even those who had heard about the policy had not necessarily appreciated that names published in judgments could then be used by the media. Some respondents who had heard about it expressed disappointment that they had done so through their own networks, and not from their employer.

Key themes emerging from the comments included:

- **Distortion of accountability** – naming of individual social workers could obscure the processes and 'chain of command' behind the cases they are presenting on behalf of their local authorities
- **Fears that naming will encourage targeting of social workers by opposing legal teams**

- **Media coverage is often not fair or balanced** – in the past it has been hostile and has set out to ‘name and shame’ social workers. Positive coverage of social work input is rare.
- **Adverse media coverage can have a negative impact on the health, safety and well-being of social workers**
- **Naming is likely to encourage hostile social media sites to seek to publish social workers’ names, photographs and addresses**
- **Fear of reprisals against social workers and their families from people involved in contentious cases** – many respondents already experience harassment and threats after court appearances. They fear that being publicly named will place their families at risk too – something that for many feels like ‘the last straw’.

**Quotes from social workers:**

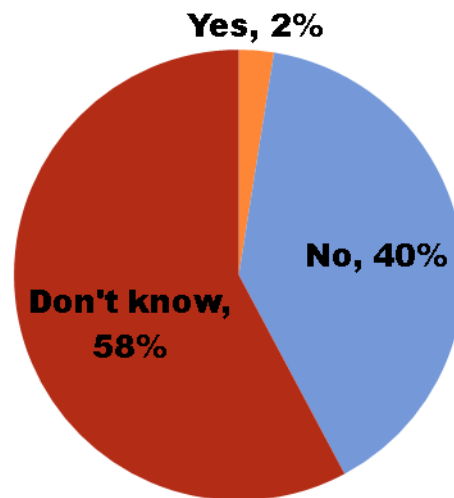
“I recently attended a court hearing where I was informed that the judgment was to be published with me being named as the practitioner working on the case. This has come as a complete surprise and I am left feeling exposed and vulnerable.”

“I am extremely concerned that my privacy and the welfare of my family and home is now compromised as my name and the evidence I give will be made public. Over the many years I have been a social worker, I have had threats made against me and dealt with harassment, bullying and intimidation as well as physical assault...Of crucial importance to me is that I always felt able to protect my family and loved ones from the more dangerous elements of my demanding and difficult job. This has now been removed.”

“We are acting on behalf of the local authority and presenting the local authority's care plan. Although we are the allocated social worker and may have written the reports and given the evidence, it is not just our personal view, but a professional one which has been developed through social work assessments and discussions with social work managers. It is a local authority care plan, and therefore not appropriate for the individual worker to be publicly named and put at risk for presenting the agency's view and for doing our job.”

## 2. Steps taken by employers to prepare and protect practitioners

Has your employer taken any steps to prepare for and protect social workers from being named and shamed in court judgments and in the media?



Given the low level of awareness of the new guidance, it is not surprising that so few staff were able to confirm that their employer had taken steps to prepare for the new guidance. Only 2 per cent were aware that their employer had taken steps to prepare and protect social workers for the change ( this figure was the same whether or not the social worker's current job involved court work).

Among the few respondents whose employer had acted, there were suggestions that this had been reactive following negative publicity, rather than pro-active. A couple indicated that their employer had tried to obtain anonymity for a social worker but had been over-ruled by a judge.

### Quotes from social workers:

"I do not disagree with this in principle but am concerned about the lack of support local authorities often provide staff when negative media attention is placed upon them. Local authorities also have a poor track record in responding to media reports, defending practice or even in providing full or balanced accounts in response to media stories."

"The issue of naming was raised by a member of staff at a team meeting and was dismissed as 'not the local authority's problem' and we returned to the agenda item of targets, data and KPIs."

"Senior managers are now briefed on all cases that could be contentious and therefore may end up in the media. Senior managers prepare a media briefing in

advance. But this has only happened recently and only after the local authority was 'caught out' by recent negative publicity in following court proceedings."

### 3. Impact of the transparency guidance

Statement	Strongly agree	Agree	Disagree	Strongly disagree
The prospect of my name appearing in media coverage of court proceedings would worry me	82%	15%	1%	1%
I am confident my employer would support social workers if they were named in media coverage of court proceedings	3%	25%	44%	25%
I am concerned my employer might allow social workers to be scapegoated for decisions the local authority made	35%	45%	13%	5%
Negative media coverage of social workers in court proceedings could lead me to consider leaving the profession	41%	38%	16%	3%

The responses to these statements show a high level of concern among social workers and low levels of confidence that employers will support them in relation to media coverage. There is a clear risk that such media coverage could cause further departures from the profession. Added to that is the fact that some respondents said negative coverage would make them think about changing jobs within the profession, even if they would not consider leaving it altogether.

#### Quotes from social workers:

"I was a social worker working in child protection and not so long ago I was mentioned in a court judgment by name by magistrates...They were critical of my relationship with the parent which was poor and said I could have done more. This was completely untrue. A lot of untrue things were said by the mother in court which went unchallenged. I feel I was completely used as a scapegoat by the magistrates who felt for the mother and knowing she disliked me they wanted to give her something to make the adoption order a bit more bearable...I was very unprepared for this and had no support from my managers on my return. I left child protection due to this."

"My employer would not shield me if the result was that they came under media coverage. The fear of the power of the press is understandable but ... my employer would throw me to the wolves without a second thought. The line of professional accountability is not clear, as a professional I need to be answerable for my choices but so should my employer who directs and agrees with those choices."

"The council has been careful in previous cases to protect social workers, and this is to be commended."



“Whilst accepting that social workers should be accountable, given – the very nature of the social work role in statutory organisations – it clearly must be considered there is a balance of responsibility between the individual worker and organisation, as the social workers...will be acting as the front line, but not necessarily the only decision makers.”

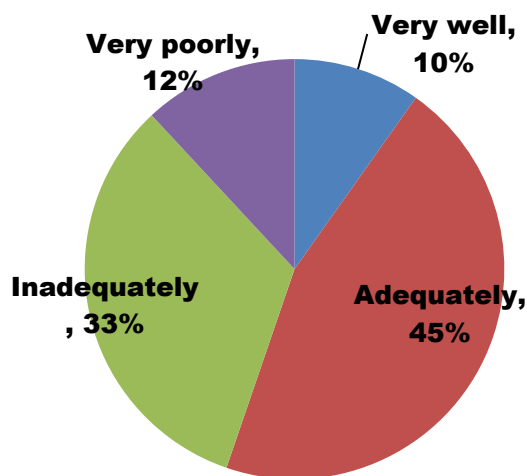
“[Provided it is] possible to maintain confidentiality for the children involved, I would like to see more authorities standing up and responding to these criticisms, explaining their rationale and allowing the public to understand the complex dynamics at play. The public very often only get to hear one side of the story which is very damaging to the profession.”

## SECTION 2

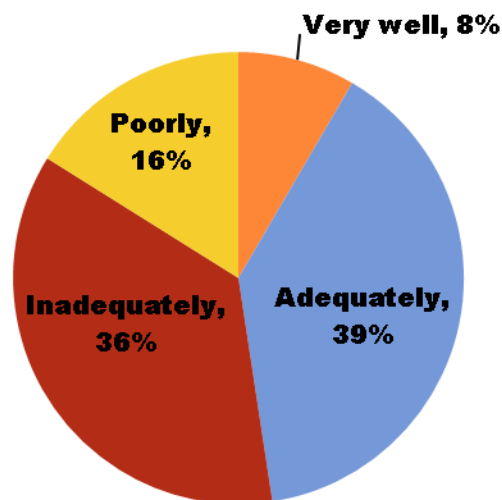
### 1. Training and continuing professional development for court work

*These questions were only answered by respondents who are in a job role which involves appearing in court.*

**How well do you feel your training and CPD have prepared you for writing court reports?**



And how well do you feel your training and CPD have prepared you for presenting cases in court in front of a judge?



Key themes emerging from the comments:

- **Many said they had never received any training or only very basic training** – there is a general view that the amount of training in this area varies considerably from employer to employer.
- **Many referred to themselves as self-taught** and described daunting experiences when they were first starting out, including the feeling that their inexperience could be exploited in court. The phrase '*lamb to the slaughter*' was often used.
- **Some mentioned how helpful their local authority's provision was** – regular training to cover changed requirements was particularly appreciated. Many said that their initial education had not covered court work.
- **Lack of coverage by formal training is often compensated by looking at other colleagues' reports, and where possible observing them in court** – the downside of this is that any problem areas are likely to be replicated throughout teams.
- **Cuts to training departments** have meant relevant courses are no longer available, or there are too few places.
- **The need for both formal practical training and opportunities for reflective discussion, shadowing and mentoring** was frequently mentioned.
- **Training and CPD have not kept up with the considerable changes** that have occurred in the courts arena and in what is required in court reports.

- **Even when practical elements are addressed in training,** the human, emotional and psychological dimensions of court work are rarely explored in CPD or in reflective supervision.

Many would appreciate more opportunities for role-play and mock proceedings to get a feel for the work, and have valued training delivered by barristers and judges. Cultural differences, local practices and attitudes vary from court to court and briefing on this kind of local intelligence is also seen as invaluable. However, respondents often commented that it was difficult for any training to prepare them for the realities of hostile cross-examination and vitriol from service users.

**Quotes from social workers:**

RIP [Research in Practice] course on critical thinking and analysis training was the best training I had in this area and I feel it prepared me well.”

“Court of protection cases are increasing in number. We haven’t recognised the importance of social workers all having court awareness sessions.

“The practical elements in preparing/training for court reports are good...it’s the emotional turmoil and difficulties you experience during the court proceedings and political games you have to play...as a social worker that are not recognised.

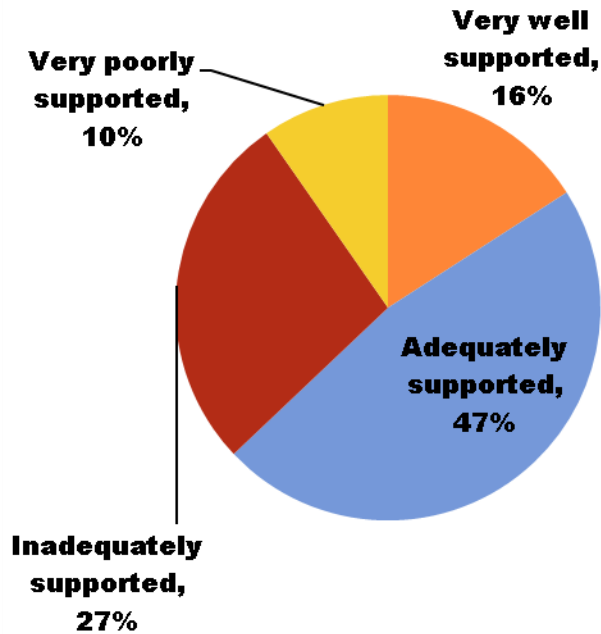
“Qualified around two years ago and wrote my first report two weeks into the job, had never seen a court report prior to this. University did nothing to prepare me for any aspect of court work.”

“I have been preparing reports for court, mostly parenting assessments, for many years and consider myself to be mainly self taught. We are currently looking at this issue, at a local level and making representation to senior managers. Many social workers are able to make good and accurate observations but struggle with writing the analysis. To date we have had some support from our legal department but it's patchy and not well resourced. Social workers are often reliant on their line managers for advice and training but their time is being squeezed from all directions.”

“Was cross examined for the first time earlier this year on a case in the High Court and was an awful experience. I'd had no formal guidance or training in giving evidence beforehand and felt that I was a lamb to the slaughter.”

## 2. Support from managers and employers for court work

How well do you feel you are supported by your managers/your local authority when you have to appear in court?



Key themes emerging from the comments:

- **Good practice** was commented on by many respondents. It usually involved consistent support before, during and after court and the expectation that managers would be available to attend court. Some commented favourably on the quality of back-up from legal services.
- **Inconsistency** – the level of support often varied widely depending on the individual manager.
- **Lack of capacity to provide support** – There were many comments on the insufficient capacity among managers to offer support. Some pointed out that managers often had no more experience of court work than they did. Others drew a distinction between good support from immediate line managers, but a feeling that the organisation would not necessarily back them. Other comments suggested that legal services were over-stretched.
- **Support is often too superficial** and does not address the emotional and psychological impact court work can have.

### Quotes from social workers:

“I appeared in court. The case was then reported on the front page of the local newspaper with my full name given. I was not offered any support regarding this.”

“It is important for line managers to attend court with social workers both to support social workers, and in order to learn for future cases.”

“There is always time made to prepare and the offer of support in court from the team leader, there are also good links with legal services in the local authority and they are keen to ensure information is well prepared.”

“Managers are either 'too busy' to help/support or they feel you can learn the same way as them eg. by going and attending, trial/error which in my opinion presents you as extremely unprofessional and open to criticism.”

“So poorly that as a Newly Qualified Social Workers I had to attend court alone. More recently I was required to attend whilst on maternity leave. I had to give evidence over four days without management support at all. My daughter was only six weeks old.”

### 3. Appearing in court

To what extent do you agree or disagree with each of the following statements?				
Answer options	Strongly agree	Agree	Disagree	Strongly disagree
Due to heavy workload I often have too little time to prepare for court work	47%	43%	7%	0.5%
I feel confident appearing before a judge	6%	43%	36%	14%
Generally I feel respected by judges	3%	44%	35%	13%
Generally I feel intimidated by judges	10%	39%	41%	7%
I am fearful of the consequences after appearing in court	20%	41%	31%	5%

Key themes emerging from the comments:

- **Many have to prepare during evenings and weekends** because there is not enough time available levels to get the work done in normal hours. The lack of time to prepare properly adds to stress levels and potentially undermines the strength of the local authority’s case.
- **Court can be an unsafe environment for social workers** – many have experienced threats, attacks and inadequate security. There were numerous examples given of assaults at or near court premises or arising from court appearances. The effect of naming is to make many fear, not only for their own safety and welfare, but for the safety and security of their families.

- **Many feel strongly that organisational accountability for decisions needs to be clearly recognised** and distinguished from individual social worker accountability for their assessments, reviews etc.

**Quotes from social workers:**

“...Often the social worker who is dealing with court work has to leave that work and deal with a crisis on their case load... Sometimes social workers have many proceedings in court at the same time. How is that manageable?...Social workers are working evenings and weekends in their attempts to complete court work and other things...It’s a nightmare”

“There is very little time to prepare for court and to revise...sometimes extensive court bundles. This can lead to a poor performance on the stand, however the supporting evidence may be within the bundle. Barristers and judges scour that bundle for information and then use it against you in the stand.”

“Following my last appearance in court I was assaulted in the court building by a family member.”

“Security at court is poor and ineffective. Last year I was followed round the building; spat at, screamed at and called a paedophile by the extended family. Another occasion a dad (abuser) gained access to the courts as he told the usher he was the child’s uncle.”

“Court security are able to remain with social workers whilst in the Court building but cannot walk them to their cars which are parked several minutes away from the building.”

“Confident in my abilities to express my analysis of the situation and justify my assessment. I do not, necessarily, feel confident in representing the final decisions of the assessment. This is where the current system and, most especially, the media coverage of social workers in court is woefully inadequate. The social worker assesses the situation and makes recommendations based on their analysis; however, the decisions are made by the managers, following their, supposed, review of that analysis. The social worker should not be the one in the dock, justifying the outcome, it should/must be the manager.”

## Newly qualified social workers and court work

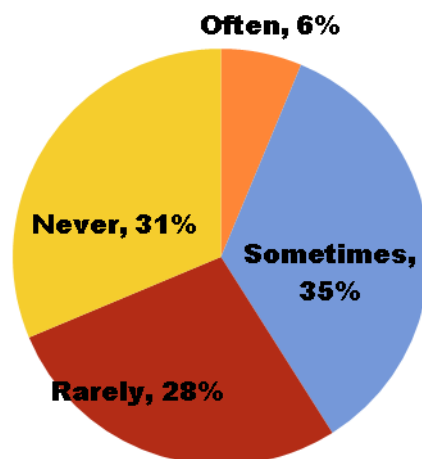
We filtered the results to highlight responses from workers who are newly qualified. They were more likely than the total sample to say that their training had not prepared them adequately (57 per cent compared with 45 per cent for court report writing and 65 per cent compared with 52 per cent for presenting evidence in front of a judge).

Just over three-quarters of newly qualified respondents said they felt well or adequately supported by their managers/local authority when they had to appear in court. This compares favourably with the 63 per cent in the whole sample. It suggests that employers are managing to put in place additional support for newly qualified social workers. However, it is concerning that over one in five newly qualified social workers feel inadequately supported when appearing in court.

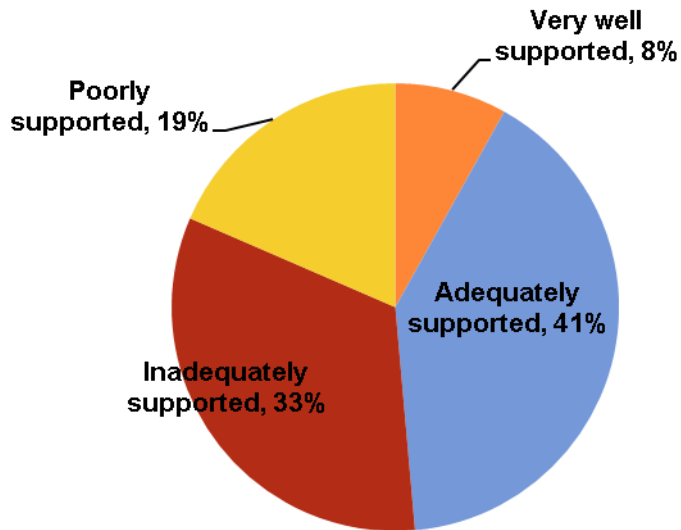
Newly qualified social workers were less likely than the whole sample to feel confident appearing before a judge and more likely to feel intimidated and fearful of the consequences of appearing in court. However, there was little difference between them and the whole sample in whether they felt well-respected by judges.

### 5. Staffing issues

Do you ever have to appear in court at short notice on an unfamiliar case because a colleague has left or is off work?



How well are you supported by IT systems and administrative colleagues?



Key themes emerging from comments:

- Some said managers or senior social workers usually pick up cases that need covering at short notice
- Duty social workers are often called upon to cover

**Quotes from social workers:**

“Agency social workers only need to give one week notice.”

“I have just picked up a case from a colleague who’s off with stress. I have to write the final statement and will have to appear in court. I don’t really know the case.”

“I have arrived at work and been informed as that 'duty' worker and the most experienced SW present that I must attend Court.”

“A frontline SW should never be made to justify the assessments and analyses of colleagues. This is a management role. Managers sign off the SW’s assessments and analyses and they must be held accountable for their decisions. If a worker is not available the department must be made to assign a manager, ideally the one who signed off the report, to justify the decisions.”



## SECTION 3: CONCLUSIONS & RECOMMENDATIONS

“I believe in professional accountability and that means owning my own work and taking responsibility as well as promoting open justice. However, I worry about the negative and half-truth stories that have been written about social workers and their cases in the media. This makes me very concerned about being named in judgments.”

Social work is a high risk profession. The consequences for individual social workers of being publicly named can be grave. In addition to hounding from the media they are vulnerable to attack from angry family members and members of the public.

Such experiences take social workers away from the frontline, increase stress and anxiety, and have a impact on their health and well-being. Their professional reputations may be badly damaged, making it difficult to secure co-operation and respect from service users/families and other agencies.

Our survey suggests that the prospect of putting their families in danger may be the last straw leading some social workers to leave the profession altogether, or to seek alternative roles that do not involve court work. Furthermore, a number of respondents expressed concerns that the effect of the guidance could be to encourage defensive practice.

Ultimately anything which adds to retention problems in social work will damage the smooth running of the courts and the interests of people who need social work services.

This survey was carried out 11 months after the guidance appeared yet only a minority of respondents were aware that the guidance had been issued. More needs to be done by employers to brief, prepare, support and protect social workers.

### **Quotes from social workers:**

“If society had a reasonable view of social workers and what was possible within our role and the constraints upon us, then naming us would not be a problem. My fear is the undeserved hysteria.”

“My employer would not protect me...hence my membership of the union because no one else would try and shield me.”

“I think that it could be off-putting to some workers within the profession if they aren't clear about how their employer would provide support if a case was reported in the press. A story that reflects negatively on the profession/local authority is far more likely to be published than one where.

“Following what happened to me, a number of my colleagues have begun to practice very defensively which is not always in the client's best interests.”

“There is often a strong senior management approach that we should proceed with our original plans such as adoption, despite legal advice that the threshold is not met, so that the decision...is made by the court, taking responsibility away from the authority should something go wrong when the child is returned home.”

## **RECOMMENDATIONS**

1. Social worker training needs to formally include modules about presenting in court and writing court reports. This will need to include ongoing training and development to ensure there is a comprehensive coverage of court skills including the emotional and psychological dimensions.
2. Local authorities need to engage with the judiciary to: a) review the impact of the guidance on social work practice and identify circumstances and develop a protocol for when social workers' names will not be published in order to protect them.
3. Local authorities should develop and facilitate awareness raising programmes involving social workers to consider the implications of being named in a judgement report for practice and to develop a process to protect the staff who have been named.
4. Employers should work with UNISON branches to agree comprehensive protocols on how to discharge their duty of care to social workers, and how they will protect their staff from media hounding.

(UNISON branches have already been sent detailed guidance to help them with this.)

5. Employers to review safety provision in the court environment to better protect social workers.