



Concerns raised regarding the Suspected Inflicted Head Injury Service in family care proceedings

12 Jul 2024 | **OPINION**

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By **Max Konarek**

Max Konarek, Partner and Joint Head of the Family & Childcare Department at GT Stewart Solicitors, shares his thoughts on the Suspected Inflicted Head Injury Service and what it might mean

for care proceedings

Many involved in care proceedings will be asking what the Suspected Inflicted Head Injury Service (SIHIS) even is. The lack of awareness is concerning, yet understandable, as it has been introduced without fanfare. It is fair to say many will be surprised when I say that it is already operational in the form of three pilots running through hospitals in Manchester, Sheffield and Birmingham!

The aim

The SIHIS has been set up by the Family Justice Council with funding from the Department for Education (DfE), with an aim 'to create sustainable cross-system changes that bring down family court delays through testing the impact of this approach in a trial'. It proposes to do this with the input from 'experienced clinicians from different specialist disciplines within paediatrics' that feed into 'template document to produce a high-quality, uniform report that the SIHIS will submit to the court'.

When one considers the information provided thus far from the DfE, it is clear that it is woefully inadequate. For me it raises more questions than answers and is contradictory. The DfE for example says 'this report will not replace the current court report nor impact any statutory process but will bolster the information the court receives', yet then goes on to say that the SIHIS report 'aims to reduce the need for additional multiple court-instructed experts'. The benefit touted by the DfE is the report will 'reduce the number of court-appointed expert assessments required to support a judge's decision'.

The concerns

In recent times there has already been a clamp down by the courts in

allowing treating medical professionals to be cross-examined, as well as a seemingly higher threshold being applied in the necessity of Part 25 experts being instructed. With the creation of the SIHIS and the reports it will produce, I am very concerned that the courts will deem the instruction of medical experts in non-accidental injury (NAI) proceedings as not meeting the ‘necessity’ threshold required in Part 25 applications. The knock-on effect from this, in my eyes, is twofold:

1. The court will be relying on a team of clinicians that have been instructed very early on. The clinicians will not have the benefit of reading all of the paperwork a Part 25 expert usually receives. They will also not have the benefit of considering a detailed and lengthy statement from the person accused of causing the harm – a document that would have been produced with the assistance of a legal representative who knows what information is required and how to elicit that information from their clients – a process that takes tens of hours over a number of days.
2. The ability to cross-examine the SIHIS ‘experts’ remains to be seen. It is often the way that on paper a client’s case is very much against the person accused. It is only through the specialist and skilful cross-examination of an advocate at trial that a case really does turn. My own personal experience of clients reaching successful outcomes in NAI cases centre around this very issue. It is not as rare as some may think either – I know of two cases in recent weeks alone, where one parent had no findings made against them at the end of a fact-finding hearing and another case where the local authority were invited to withdraw mid-trial following cross-examination of the experts.

Conclusion

It is evident from the outcry from senior family lawyers in recent weeks

that we do not share the optimism of those that have brought in the SIHIS. Prior to the implementation of the SIHIS, there has been no consultation whatsoever with the very practitioners that deal with these cases day in, day out. The premise and implementation of the SIHIS, in my view, raises very legitimate concerns about the impact it will have on the Article 6 and 8 rights of the people we are instructed to represent.

I would urge all practitioners practicing in NAI proceedings to educate themselves, raise awareness of the SIHIS and vocalise any concerns they may have. The Department for Education has announced an information session aimed at providing information on the SIHIS pilot, which is being delivered by selected NHS Trusts in England. The speakers are Mr Justice Williams, Dr Fiona Straw, Professor Stavros Stivaros, Meana Alneami and Patricia Maphosa.

Venue: MS Teams (online)

Date: Thursday 25 July 2024

Register here: <https://events.teams.microsoft.com/event/6dbd6135-448a-4a01-b789-17a361ca0dbc@fad277c9-c60a-4da1-b5f3-b3b8b34a82f9>

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