

EXECUTIVE SUMMARY

Local authorities have statutory responsibility for the delivery of many essential social and other services. On occasion, things go seriously wrong. The authority will want to find out why. To do this, it may set up an inquiry. The public will not feel confident that the issue has been properly investigated if the inquiry report cannot be published. In February 2000, when Sir Ronald Waterhouse published his report into abuse of children in care in North Wales, he found that there were situations where a local authority had found itself unable to publish its own inquiry report. Sir Ronald recommended that the Law Commission should be asked to investigate the issue.

The matter was formally referred to the Commission in February 2001. In particular, the Commission was asked to review:

- the law of defamation as it applies and the privilege that local authorities can claim, in such circumstances;
- the possible loss of public interest immunity or privilege against disclosure, and the making of admissions of liability in such circumstances; and
- the way in which existing practices for insuring local authorities against liabilities in relation to defamation, or other torts, may contribute to these problems.

The Commission was also asked to recommend courses of legislative and/or administrative action that would better enable local authorities to take effective action in response to matters of serious public concern revealed by such inquiries, and to do so in as open a way as possible.

From the outset, the Commission has not limited its work to issues arising in the specific context of the abuse of children. Its analysis covers any serious failure in the delivery of local authority services. The Commission also noted that, increasingly, local authorities deliver their services in partnership with or through other organisations.

The Commission issued a consultation paper in April 2002. In the light of responses to the consultation and further analysis of the issues, the Commission now publishes its final report and draft Bill.

The principal conclusions of the Commission are as follows.

- (1) Many of the problems relating to inquiries would not occur if inquiries were properly run and established. New guidance has been issued by the Society of Local Authority Chief Executives (SOLACE). It is essential that careful note is taken of this.
- (2) The code of practice issued jointly by the Association of British Insurers (ABI) and the Local Government Association (LGA) should be refined to ensure that local authorities can act in the public interest without putting

their insurance cover at risk. The Commission will provide the ABI and LGA with a note of issues it thinks the code should address.

- (3) The law of defamation, in particular the defence of qualified privilege, should be amended. Where there has been an ad hoc inquiry into a failure in the delivery of a local authority function, then so long as the inquiry has been conducted fairly, and neither the inquiry nor the local authority is motivated by 'malice', publication of the report, either in whole or in part, should be privileged. This means that the local authority will have a defence against any action brought by a person alleging that he or she was defamed in the report.
- (4) Ad hoc inquiries may be established jointly with another local authority. The new statutory qualified privilege should similarly attach to the report of such an inquiry.
- (5) In addition, a joint inquiry may be established by a local authority and another public body. In this case, the new form of qualified privilege will attach only to the local authority. The other public body will continue to rely on the common law defence of qualified privilege.
- (6) An inquiry will be treated as having been conducted fairly where: the report's conclusions are based upon findings of fact derived from evidence put before it; those criticised in a report have notice of the criticisms and the opportunity to respond; and any response is fairly represented in the report.
- (7) There should be a statutory power to set up a new form of special inquiry. This power should be exercisable where there has been a *serious* failure to deliver a service, and the local authority anticipates that those who have relevant information may not be willing voluntarily to provide that information to the inquiry. Such a special inquiry may be set up jointly with another local authority. The special inquiry will have power to seek an order from the High Court requiring persons to attend the inquiry or to produce documents or other things to the inquiry.

The draft Bill deals with items (3) to (7).

In making these recommendations the Commission has been conscious of the difficult balance that must be struck between enabling local authorities to be open and accountable to the public while at the same time ensuring that officers and others connected with the delivery of services are not unfairly maligned in any report.

In addition, the Commission has taken into account significant developments in Human Rights law, the effect of which is that if the state cannot provide an effective means of investigating serious service failures, in particular where a life has been lost, the United Kingdom may be in breach of its obligations under the European Convention.