

VARIOUS LEGAL ISSUES – FURTHER UPDATE

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1 Supervision Orders

The appeal in the Re SB and MB case has been discontinued on the basis that the government did not intend section 12(5)(b) of the Criminal Justice and Court Services Act 2000 to have the effect of allowing a children's guardian to have a continuing role after the order is made. The government has therefore asked parliament to repeal this in the Adoption and Children Bill.

Although the decision of Wall J stands, it remains a decision of first instance (ie not binding on another judge at first instance) and should be seen in the context of the amendment and the decision of the House of Lords in Re S(FC). Whilst in principle it may in the meantime be open to a judge to make an order requiring the continuing role of a children's guardian after a supervision order is made, in the light of the amendment now included in the Adoption and Children Bill the CAFCASS position must be that such orders should not now be sought. If any such orders are made they should be referred to Simon Bartrum at Operations.

2 Starred Care Plans

These have been abolished by the House of Lords' judgment in Re S(FC) (formerly Re W and B). The concerns expressed by the House of Lords led to further amendments in the Adoption and Children Bill that will provide for reviewing officers.

3 Reviewing Officers

Under the Adoption and Children Bill, a new scheme will be established so that reviews by local authorities of the cases of looked-after children and children in care will have to involve a reviewing officer, who will have the power to refer unsatisfactory cases to CAFCASS. How will this work?

(a) The RO will first try to get local authorities themselves to remedy any gaps in the implementation of the care plan.

(b) If not, the RO can refer cases to various people (including parents) or to CAFCASS. CAFCASS can then:

- decide that it can or should do nothing further;
- bring or defend any form of family proceedings on behalf of the child (eg a Children Act 1989 application such as for discharge of the care order); or
- as litigation friend of the child, bring or defend judicial review proceedings or a freestanding Human Rights Act 1998 claim against local authorities (as part of the amendments to the Adoption and Children Bill, CAFCASS's remit will be extended to cover certain restricted categories of proceedings which are not "family proceedings").

It is important to remember, however, that the Bill has not yet been enacted, far less has it come into force or the necessary regulations been prepared.

4 What can and can't CAFCASS officers do in the meantime?

- There is a gap in the protection of children identified by the House of Lords and until the legislative changes have been passed and implemented it is not possible under s12 of the CJCSA 2000 or otherwise for officers of CAFCASS to act on behalf of children in proceedings which are not "family proceedings".
- It is wrong for CGs whether acting as officers of CAFCASS, as freelance social workers, or in their private capacity to use information gathered from the local authority's file during care proceedings to sue them. Quite apart from any issue under Rule 4.23 FPR 1991, it would be contrary to public policy to allow someone who by virtue of their role as a CG had privileged access to local authority files to use that knowledge to bring such cases, as this might inhibit future co-operation and thus jeopardise other children's care cases and the CAFCASS CG role. In the absence of anyone else able and willing to act as litigation friend in such cases it is already open to you to refer the matter to other agencies such as the Official Solicitor.
- Many local authorities (two-thirds) have already appointed ROs or an independent element to the CA section 26 review process. So increasingly notice will be given of possible failings by local authorities some of which may be brought before courts under the existing law (see above).

5 Data Protection Act 1998

Mel Georgiou has been seconded from LCD to deal with Data Protection. She is working on a protocol for all staff. In the meantime, please refer all Data Protection problems to her which she will deal with in conjunction with CAFCASS Legal.

6 Civil Claims against CAFCASS

Please refer any and all civil claims against officers of the Service or against CAFCASS itself to CAFCASS Legal. Please send an email and post a copy of the documents you will have received.

7 Freestanding Human Rights Act 1998 claims and any other unusual actions (e.g. for judicial review) which a CAFCASS officer may be contemplating

It is important to remember that the work of CAFCASS and its officers is limited to “family proceedings” by section 12 of the Criminal Justice and Court Services Act 2000. Any application or proposed application which does not obviously fall within this definition must, for the time being, be referred to CAFCASS Legal for initial review. A response will be given by CAFCASS Legal within five working days of receipt.

8 Parental Alienation Syndrome

An article about parental alienation syndrome by a Tony Hobbs was recently published by Family Law ([2002] FamLaw 381) in which the author asserted that “the Court of Appeal in Re C ... has now acknowledged the existence of PAS. This is a significant development in UK family law practice.” This is incorrect. The Court of Appeal has not done so in this case or in any other case.

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