November 2021

Family Law Week

NEWS

Legal aid expenditure for family matters rose 12 per cent in April to June 2021

In April to June 2021 legal aid for family matters rose 12 per cent to £152.1 million. Legal aid for public family law, which accounts for more than 80 per cent of all civil legal aid, amounted to £124.1 million (an increase of 7 per cent). Legal aid in private family matters came to £28.1 million (an increase of 42 per cent).

In April to June 2021 family legal help starts increased by 11 per cent compared to the same quarter last year. Completed claims also increased by 19 per cent and expenditure increased by 19 per cent. However, compared to the same period of 2019 (pre-Covid), family legal help starts are down by 13 per cent, completed claims are down by 12 per cent and expenditure has fallen by 10 per cent. There was a steep decline immediately following the implementation of LASPO Act in April 2013, with a more gradual decline over the last two to three years.

Certificates granted for family work increased by 6 per cent in April to June 2021 compared to the previous year. Certificates completed increased by 5 per cent and associated expenditure increased by 12 per cent compared to the same quarter the previous year. Compared to the same quarter of 2019, certificates completed decreased by 11 per cent. The volume and expenditure for closed case domestic violence civil representation increased following COVID-19 and now exceeds pre-covid levels (42 and 46 per cent higher respectively – compared to April to June 2019).

Applications for civil representation supported by evidence of domestic violence or child abuse increased by 21 per cent, compared to the same period of 2020.

For the full figures, **click here**.

3/10/21

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MIAMs increased by 43 per cent in April to June 2021

Mediation Information and Assessment Meetings (MIAMs) increased by 43 per cent in the quarter April to June 2021, compared to the previous year, and currently stand at over a third of pre-LASPO levels. Family mediation starts increased by 55 per cent and total outcomes increased by 60 per cent, of which 62 per cent were successful agreements, and are now sitting at around two-thirds of pre-LASPO levels.

The figures are included in **the latest legal aid statistics** released by the Ministry of Justice.

MIAMS, family mediation starts, and outcomes decreased significantly following the COVID-19 restrictions in March 2020. Since, volumes and expenditure have recovered fully and now exceed levels seen pre-Covid. In the last quarter, MIAMS increased by 16 per cent compared to April to June 2019. Family mediation starts increased by 7 per cent and outcomes by 27 per cent over the same period.

For the full statistics, **click here**.

3/10/21

New family case starts rose 14 per cent during April to June 2021

Between April and June 2021 there was an increase in new cases started across nearly all types of family law matter. In all, 66,357 new cases started in family courts in April to June 2021, up 14 per cent on the same quarter in 2020.

The figures are included in the **latest statistics** for the family court released by the Ministry of Justice.

There were increases in financial remedy (76 per cent), private law (11 per cent), adoption (11 per cent) and matrimonial (7 per cent) cases. However, there was a decrease in public law (7 per cent) and domestic violence (4 per cent) case starts.

On average, care proceedings took longer with more disposals within 26 weeks. The average time for a care or supervision case to reach first disposal was 44 weeks in April to June 2021, up eight weeks from the same quarter in 2020. Twenty-two per cent of cases were disposed of within 26 weeks, down 11 percentage points compared to the same period in 2020 and the lowest since 2012.

In divorce, the mean average time from petition to decree nisi was 25 weeks, and decree absolute was 50 weeks – up two weeks and four weeks respectively when compared to the equivalent quarter in 2020. The median time to decree nisi and decree absolute was 14 and 29 weeks respectively.

There was an increase in both divorce petitions and decree absolutes. There were 26,301 divorce petitions filed in April to June 2021, up 7 per cent on the equivalent quarter in 2020. There were 30,645 decree absolutes granted in April to June 2021, an increase of 23 per cent from the same period last year.

The number of domestic violence remedy order applications decreased by 6 per cent compared to the equivalent quarter in 2020, while the number of orders made decreased by 2 per cent over the same period.

In April to June 2021 there were 1,060 adoption applications, up 27 per cent on the equivalent quarter in 2020. Similarly, the number of adoption orders issued increased by 96 per cent to 1,156 (from a record low base at the start of the covid-19 UK lockdown period).

There were 1,538 applications relating to deprivation of liberty in April to June 2021, up 51 per cent on the equivalent quarter in 2020. Orders increased by 20 per cent in the latest quarter compared to the same period last year.

For the full statistics, **click here**.

3/10/21

Resolution Awards shortlist announced

Resolution has announced the shortlist for the inaugural Resolution Awards which will celebrate the achievements of professionals who have supported families and children during a global pandemic, and championed the organisation's Code of Practice.

This year sees three new award categories join the established and prestigious John Cornwell Award to recognise the diverse and outstanding talent within the family justice community. The award categories and shortlisted nominees are as follows.

The YRes Rising Star Award: **Henry Dawson** (**Charles Russell Speechleys**), **Emma Doughty** (**Harrogate Family Law**), **Marjana Uddin** (**Taylor Rose**), **Shanika Varga** (**Stowe Family Law**).

The Resilience Award: **Annmarie Carvalho** (**Carvalho Consultancy**), **Laura Clapton** (**Consilia Legal**), **Fiona Lyon** (**Anthony Gold**), **Gilva Tisshaw** (**Tisshaws Family Law Solicitors**).

The Working in Collaboration Award: **Adele Ballantyne** (**Eleda Consultancy**), **Peter Burgess & Antonia Mee**, (**Burgess Mee Family Law**), Annmarie Carvalho (Carvalho Consultancy), **Sussex Family Solutions** (group entry).

The winner of the ***John Cornwell Award*** will be announced during the ceremony.

In total 54 entries were made to the Resolution Awards which are sponsored by Iceberg Client Credit. Winners will be announced at a ceremony on the final day of the upcoming Family Practice Conference (19-22 October).

The judging panel was made up of Juliet Harvey (Chair, Resolution), Remyhs Baker (Chair, Resolution EDI Committee), Pauline Fowler (2020 John Cornwell Award

Winner) Andrew Watson (Chair, Resolution Standards Committee), David Emmerson (Chair, Resolution Dispute Resolution Committee) and Jane Craig (former Resolution Chair).

3/10/21

783,000 children are currently covered by Child Maintenance Service arrangements

There are currently 783,000 children covered by Child Maintenance Service arrangements. Of these:

- 506,600 children are covered through Direct Pay arrangements.
- 267,100 children are covered through the Collect & Pay Service.
- 9,300 children have not yet been assigned to a service.

The figures have been released by the Department for Work and Pensions.

The number of children covered by CMS arrangements increased by 13,400 between March 2021 and June 2021.

For the full figures, **click here**.

3/10/21

Civil and Family Court fees from 30 September 2021

HM Courts & Tribunals Service has published EX50, a leaflet setting out a selection of civil and family court fees.

For the leaflet, **click here**.

3/10/21

Do you believe mediation should be voluntary?

On 18th October at 3 pm the Family Mediation Trust is holding a live debate before an audience of family mediators, solicitors, barristers, judges and magistrates and will consider the motion:

> 'This house believes that mediation should be a mandatory process, when safe, for all separating couples before making an application to the court.'

The debate will be chaired by His Honour Judge Stephen Wildblood QC.

The judges are:

- Juliette Dalrymple, Chief Assessor for the Family Mediation Council
- Claudia Megele, Assistant Director at Cafcass
- His Honour Judge North, Designated Family Judge for Norfolk.

Speakers for the motion are:

- Karen Barham, solicitor, mediatior and parenting coordinator, and
- James Pirrie, solicitor and director at FLYiP.

Speakers against the motion are:

- Jane Bridge, mediator and PPC, and
- Angela Lake-Carroll, mediator and PPC.

For full details of the event and how to book, **click here**.

For a poster of the event, **click here**.

8/10/21

Financial Remedy Court Organogram (October 2021)

For the latest details of the court structure in the Financial Remedy Court Organogram, **click here**.

8/10/21

Divorcée receives £60k state pension windfall after DWP mistake

iNews has reported that a divorced woman has received a back payment of more than £60,000 having previously assumed that she was not entitled to a pension.

Under the old state pension system, applicable to those who were born before 6 April 1953, the 'basic' state pension (currently worth up to £137.60 per week) is normally based on an individual's own record of National Insurance contributions. Those who are divorced when they reach pension age can ask DWP to substitute the NI record of their ex-husband up to the date of the divorce. Working with pensions consultancy LCP, Mrs Yvonne Hooper, 77, submitted a claim for the unpaid pension and has now been awarded a full basic state pension and back payments of more than £60,000.

For the report, **click here**.

8/10/21

Financial support for kinship carers

The House of Commons Library has published a helpful **briefing paper** explaining what help is available for grandparents and other family and friends carers (also known as kinship carers) looking after children where their parents are not in a position to do so.

Financial help may be available for family and friends carers from local authorities and/or the social security/tax credits systems. Eligibility for assistance may depend upon the legal basis of the care arrangement and financial assistance may be means-tested.

The first section of the paper provides information on financial support available from local authorities for different types of kinship care arrangements, and the second gives details of the social security benefits and tax credits that may be available.

This briefing paper applies to England only.

For the briefing paper, **click here**.

8/10/21

Bertarelli settlement shows the value of 'a good prenuptial agreement'

Following the news that a £400 million settlement has made Kirsty Bertarelli one of the richest British-born divorcees, lawyers have suggested she could have been awarded a far greater slice of the £9.2 billion fortune she shared with her industrialist former husband but for the existence of a prenuptial agreement between the couple.

Jo Carr-West, a partner in **Hunters' family department**, commented:

> "With assets like these at stake, I cannot imagine that Kirsty Bertarelli did not take legal advice about the possibility of proceeding with a divorce in this jurisdiction. It is likely that she was advised that the court here would have given the existing Swiss prenuptial agreement considerable weight and the outcome might not have been any different, despite the purported generosity of the English divorce court.
>
> "Clients and family lawyers alike should take this as a sign that a good prenuptial agreement, entered into with all the right safeguards, is worth its weight in gold."

8/10/21

Play about legal implications of baby shaking to be broadcast via Teams

On Thursday 4th November 2021 at 7 p.m. Hidden Lemon Productions will be presenting by Microsoft Teams a freely available play about a young baby who gets shaken and badly injured whilst in the care of her parents. The family portrayed in the play are involved in care proceedings. The play shows the social circumstances, so frequently encountered in criminal and family proceedings, which lead to this sort of injury.

The play is graphic, and some may find it distressing. It lasts for about 40 minutes. We show it as an acted play-reading. It has been written be HHJ Wildblood QC. There is no charge for attendance.

After the play, there will be a short talk by Dr Imelda Bennett, Consultant Paediatrician explaining the nature of injuries that are often encountered when a baby is shaken. That will be followed by a short talk by DCI Kristina Windsor about the criminal procedures that may arise and the charging options that may need to be considered. Finally, HHJ Wildblood QC will speak about Family Court procedures and the need for communication between the Family and Criminal proceedings. There will be a chance to send in questions using the Teams 'chat' function.

We estimate that the event will last a total of about 1½ – 2 hours. The intention is to improve our understanding of how these distressing injuries can occur and the consequences that may arise for everyone involved. Those attending are asked to turn off their microphones and cameras when joining the Teams link.

The Teams link is below. If you have difficulty joining on the night, please email HHJ Wildblood QC on his email address: **stephenwildbloodqc@gmail.com**

If you are attending, please could you send a brief email to Stephen on the above email address so that we have some idea of numbers. And please join by 18:50 hrs on the day so that if there are difficulties with your link, you can email me for help before the play starts.

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Join with a video conferencing device
494469532@t.plcm.vc
Video Conference ID: 124 901 523 8

Alternate VTC instructions
Or call in (audio only)
+44 20 3443 8791,,967692441# United Kingdom, London
Phone Conference ID: 967 692 441#

New private law cases received by Cafcass in September fell by 13 per cent

Cafcass received a total of 3,623 new private law cases in September 2021 which is 543 cases (13.0 per cent) fewer than the same month in 2020. These cases involved 5,130 children, which is 1,107 (17.2 per cent) fewer children than September 2020.

For the month-by-month figures, **click here**. From that page, a further link shows private law case demand and number of subject children by DFJ area.

14/10/21

New public law cases received by Cafcass fell by 14.5 per cent in September

Cafcass received 1,290 new public law cases in August 2021 featuring 1,977 children; this represents a decrease of 14.5 per cent (219 public law cases) and a decrease of 17.1 per cent (408 children) on the 1,509 new public law cases received and the 2,385 children on those cases in September 2020.

For the month-by-month figures for public law applications, **click here**.

14/10/21

Children's Commissioner's proposals to help children by helping families

The Children's Commissioner for England has proposed new policies as a starting point for making support available when families need it, and ensuring that the support is good enough.

The proposals follow the largest ever survey of children in England. Half a million responded. The 'Big Answer', published this September, is the Children's Commissioner's first response to "this outpouring of children's voices".

The proposed policies are as follows.

> "First, an expansion of the Family Hubs network would mean a welcoming and convenient access point for families to get help in every community. We want to see Family Hubs across the country being able to link families up with any support they might need, for themselves and for their children of any age. Universal services like Health Visiting, should be based in hubs so that they become familiar and friendly places to all families, from all backgrounds.
>
> "Second, the Supporting Families programme helps bring positive change for families facing multiple disadvantages. Doubling funding for this programme would build on progress to date helping hundreds of thousands of families, delivering real results, such as getting parents into work, helping children stay in school and diverting children away from social care involvement.
>
> "Thirdly, to provide support for families and children who are need. Free breakfast clubs and an extension of the Holiday Activities Fund, which provides food and activities to children during the school holidays are both measures that would tackle child hunger. Free school meal enrolment should become automated and free school meals should also be extended to families with no recourse to public funds, who are some of the most vulnerable families in this country."

To read more about the Children's Commissioner's proposals to support families, **click here**.

14/10/21

President of the Family Division's memorandum: Experts in the Family Court

The President of the Family Division has issued a memorandum seeking to explain the principles applied by the Family Court when it considers whether to authorise or admit expert evidence.

It repeats the reminder that experts should only be instructed when to do so is 'necessary' to assist the court in resolving issues justly.

For the memorandum, **click here**.

14/10/21

Report Abuse in Education helpline will run until the end of the year

The Report Abuse in Education helpline, launched on 1 April 2021 and run by NSPCC, will continue to operate until at least the end of the year.

The helpline, funded by The Department for Education, opened after thousands of testimonies of sexual abuse and harassment, mostly perpetrated by other young people, were posted on the Everyone's Invited site. Helpline staff have helped victims of recent and non-recent abuse make reports, signpost to recovery, advise professionals on how to handle safeguarding incidents and support concerned parents.

NSPCC's latest monthly data shows 129 contacts received through the helpline were serious enough to be referred to an external agency, such as the police, local authorities or the NHS.

Where information about the caller was known 130 contacts were from adult or child victims, of which 78 were female, 45 were male, two were transgender and five were unknown. Seventy four of the contacts were from parents with concerns about their child.

To contact the helpline, call 0800 136 663, or email help@nspcc.org.uk . Opening hours are 8am – 10pm Monday to Friday or 9am – 6pm at the weekends.

For more details, **click here**.

14/10/21

Domestic abuse cases being dropped at increasing rate: BBC News

BBC News has reported that victims of alleged domestic abuse are having their cases dropped at a rapidly increasing rate.

According to the BBC, in the last five years nearly 13,000 cases of alleged common assault were dropped in England and Wales at the time limit for charging the offence, ie six months.

For more details, **click here**.

17/10/21

CMA outlines concerns on availability and price of children's care

The Competition and Markets Authority's interim report on children's social care has outlined significant concerns about the availability of placements and the profits of private providers.

The initial findings are the result of a market study that the Competition and Markets Authority (CMA) launched in March. The study's interim report, published on 22 October 2021, provisionally finds that there is evidence of a shortage of appropriate places for children and that high prices are often being paid to place them.

The interim report finds that there are too often no placements available, in children's homes, with foster carers or in independent accommodation, that fully meet the needs of children – with some being too far away or requiring siblings to be separated.

Each local authority is responsible for providing accommodation for any children in their care. They must take steps to ensure, so far as reasonably practicable, that sufficient accommodation is available within their area in order to meet the needs of the children they look after. Children may be placed with foster carers, who are recruited either directly by the local authority or by an independent fostering agency, which can be run for-profit in England and Wales but not in Scotland. Children may also be placed in children's homes which can be run directly by local authorities, by the private sector or by charities. In England and Wales, they may also be placed in unregulated accommodation in certain circumstances.

The interim report finds that because local authorities must find an appropriate placement, often under considerable time pressure, their position in the market is inherently weak. This means they are often paying private providers for those placements at prices that are higher than they would otherwise be. As a result, large private sector providers of children's homes and fostering services appear to have been making higher profits in England and Wales than the CMA would expect in a well-functioning market.

However, the CMA's interim study has not seen evidence of systematic differences in the outcomes of care for children between local authority and independent provision.

New figures from the interim report show that in 2020, for the largest providers:

- for children's homes, the average weekly price was £3,830, with an average operating profit margin of 23 per cent;
- for fostering agencies, the average weekly price for fostering was about £820 per week, with an average operating profit margin of 19 per cent.

The CMA's analysis suggests many of these problems are the result of the relatively small numbers of children each local authority is placing. This means they are limited in their ability to purchase placements in larger numbers and plan for future needs, which could drive up prices and make it harder to place children in appropriate accommodation.

The CMA is also concerned about the evidence it has seen of particularly high and increasing levels of debt being carried by private equity-owned firms in the sector. This could leave the businesses vulnerable to financial distress and ultimately having to unexpectedly exit the market in the event of tightening credit conditions, as we have seen in other sectors. This could in turn risk huge disruption to children in their care and could put pressure on local authorities to suddenly find new homes for them.

The CMA will be testing these initial findings, looking in more depth at profits in the market and exploring possible solutions to these issues for the study's final report, which is due to be published in March 2022.

The recommendations being considered include the creation of larger-scale national or regional bodies with a remit to help ensure that children are able to access the right placements, where these do not already exist. They could do this either by helping local authorities to secure appropriate placements at lower prices or by taking over responsibility for placing children. This might help local authorities to purchase placements in larger numbers. This is being considered alongside other possible solutions, such as updating the regulatory frameworks of the sector and the introduction of constraints on debt levels in the sector.

For the interim report, **click here**.

24/10/21

Farquhar Committee reports on the Financial Remedies Courts

A committee led by HHJ Stuart Farquhar (Lead Judge of the Kent, Surrey & Sussex Financial Remedies Court (FRC)) has published **its report** on the Financial Remedies Courts.

HHJ Stuart Farquhar was asked by Mr Justice Mostyn earlier in 2021 to convene and lead a committee consisting of a geographically diverse collection of judges at all levels of the judiciary and practitioners to consider (i) the role of remote courts in the post-pandemic environment and (ii) the procedures of the Financial Remedies Court.

The committee's report considers the issues in two parts.

Part 1 – The role of remote courts in the post-pandemic environment

Part 1 finds:

Remote Hearings: The advantages of continuing with the use of remote hearings outweigh the disadvantages and there should be a number of hearings that should continue to be heard remotely. There now exists a good understanding of the benefits and disadvantages of remote hearings.

Which hearings are to be heard remotely? The majority of hearings at which no evidence is to be given should be heard remotely. The exceptions to this will be FDRs, enforcement hearings where the liberty of the individual is at risk and appeals. Hearings for MPS and LASPO applications should be attended. All final hearings are to be held at court.

How should parties attend remote hearings? The issues of (i) inability to connect/dropping out and (ii) inability for a party to provide a quick response to their legal team, could be reduced if the parties attended the hearing from the same venue as their representative where there would hopefully be the availability of reasonable technology.

Process for considering which hearings are to be remote: The default position for each type of hearing is set out above. If any party wishes to apply for the default position to be varied then this must be by way of formal application. Each application will be considered on its own merits but the type of issues that are likely to be persuasive include lay parties or litigants in person without the appropriate facilities/equipment to conduct a remote hearing; to avoid parties in the same household attending remotely from the same location; where an interpreter is required if this cannot be managed otherwise; or where a litigant has a disability which makes remote attendance more difficult for them.

E-Bundles: All hearings which require a bundle will use electronic bundles unless specifically ordered otherwise. This is to be the case whether a hearing is remote or attended. It is vital that all bundles comply with the Protocol and are paginated, searchable and bookmarked. There must be more rigorous use of PD27A paragraph 12 which states that a failure to comply may result in a Judge removing the case from the list or the making of adverse costs orders.

Which platform? In terms of video platforms, the conclusion is that the best performing platform is Zoom and, although Zoom is not currently 'supported' by HMCTS, it is the recommended one to use.

Technology: It is axiomatic that all parties and the Judge involved in any remote hearing must have access to the appropriate technology. In particular all Judges, including fee paid Judges must have the use of a laptop and at least two screens as well as access to training/technical assistance whilst sitting.

Litigants-in-person: It is not considered appropriate to make any separate rules concerning those that represent themselves in remote hearings any more than it is at attended hearings. The vulnerabilities and ability to access justice of any litigant-in-person must be taken into account at all times.

Part 2 – The procedures of the Financial Remedies Court

In Part 2 of its report, the committee recommends as follows:

Listing: This needs to remain at a local level but it is considered that each case should be provided with its own time slot and that First Appointments should be allowed 1 hour and FDRs 1.5 hours – the FDRs should all be provided a morning listing.

Staffing: Each Court should have a dedicated FRC member of staff who would be familiar with the digital platforms and would be responsible for ensuring all of the documents are before the Judge. They should also provide the judge with available dates for future hearings in advance.

Explanation of the law and procedure: The parties should be provided with a simple, neutrally phrased set of guidelines and principles which should be sent to all parties upon the issue of Form A.

Form E: There should be amendments to include date of cohabitation, information on mortgage capacity, suggested property particulars and a change of wording in relation to "orders sought" to make it more user friendly.

Valuation of matrimonial home: This should be agreed or obtained prior to the First Appointment.

First Appointment documents: The Statement of Issues should no longer be required. A composite schedule of assets, chronology and case summary should be prepared at each hearing with input from each party, noting which areas are not agreed. There is a minority view that the costs and logistics of this

occurring would be too great at any hearing other than the Final Hearing.

Length of documents: There should be limits on the number of pages for skeleton arguments and S.25 statements.

Advocates meetings: These should occur three days prior to a hearing to attempt to narrow the issues between the parties and agree a hearing template to include reading time and time to prepare/deliver judgment. There is a minority view that these should occur "when possible".

Orders and hearing dates: The order should be drafted in advance of any hearing and settled on the day. All parties should attend with their availability and a date for the next hearing provided before they leave court.

Encouraging non-court dispute resolution: This should be encouraged at all stages of the proceedings.

Consent orders: The D81 form should be amended to assist the judge in being able to approve the order.

Appeals: The ability to prohibit oral hearings for appeals that are judged to be totally without merit should be extended to the Circuit Judges that are ticketed to hear such appeals.

The committee also considers that if a fast track procedure is introduced to deal with the less complex cases, then this could ameliorate the situation for the parties and also alleviate some of the back logs within the FRC. The committee proposes that this procedure should be utilised in cases where the net assets do not exceed £250,000 at this stage. This threshold could be increased to £500,000 in due course if the pilot scheme is successful.

For both parts of the report, **click here**.

24/10/21

'Victims of domestic abuse are discriminated against in the family courts'

Campaigners, social workers and lawyers have told *Sky News* that victims of domestic abuse are being discriminated against in the family courts.

According to the domestic abuse commissioner Nicole Jacobs, the situation is so bad that lawyers advise clients not to tell the court they have been victims of domestic violence in case it is used against them. It is claimed that the courts are regularly removing children form victims of domestic abuse.

For the article, **click here**.

26/9/21

President of the Family Division addresses priorities for the rest of his term

At the FLBA's national conference, recently held in Manchester, Sir Andrew McFarlane, the President of the Family Division, set out some of his priorities for the remainder of his term. He was at pains to stress that the matters considered were not an exhaustive list of his priorities.

Within his speech, the President raised the future of remote hearings; the wellbeing of those who work in the Family Court and the CoP; the recommendations contained in the main report of the Public Law Working Group under the chairmanship of Mr Justice Keehan; the Family Public Law digital programme; reform programme; and Financial Remedies Courts.

For the speech, **click here**.

24/10/21

Providers given legal aid financial eligibility tool to trial

The Legal Aid Agency is making a caseworker spreadsheet tool available to providers on a trial basis as support guidance when calculating client eligibility for legal aid.

The spreadsheet should only be used as a guidance support tool. It is not a replacement for the resources available on the LAA's **means testing page**.

Please also note that it is recommended that the spreadsheet should be used only by legal aid providers and not wider members of the public. Clients should continue to use the public-facing 'legal aid checker' tool.

For more details, **click here**.

24/10/21

First winners of prestigious Resolution Awards revealed

Resolution revealed the winners of the Resolution Awards 2021 during the final day of its Family Practice Conference.

Alongside the already established John Cornwell Award, the inaugural Resolution Awards saw three new categories added to the line-up to celebrate the professionals who have supported families and children while championing the Resolution Code of Practice.

The YRes Rising Star Award, which recognises members with fewer than 10 years PQE who have demonstrated potential as a future leader in family justice, was won by **Marjana Uddin** of **Taylor Rose Solicitors**. The judges said Marjana was "a true champion for the vulnerable and those who cannot access paid-for legal advice," working with local law clinics as well as with numerous domestic abuse

charities across Essex. As a positive voice and role model, Marjana is already helping to shape the next generation of lawyers acting as a Family Clinic Supervisor at BPP Law School.

The Resilience Award went to **Fiona Lyon** of **Anthony Gold Solicitors** for "going above and beyond to support clients and colleagues through the challenges of the pandemic". Fiona founded a topical talk-show style webinar called "Family Law in Lockdown" which featured solicitors and barristers to discuss a range of topics that reflected the impact the pandemic was having on family law practice. It has grown from a handful of attendees in April 2020 to 150+ regular viewers now.

The Working in Collaboration Award was won by family therapist **Adele Ballantyne** of **Eleda Consultancy** for helping families work together with other professionals to achieve the best solutions. Adele has long pushed for a multi-disciplinary approach to become the norm for separating families and her work as a trainer has been instrumental in demonstrating the value of therapeutic support for families.

The prestigious **John Cornwell Award** has gone this year to **Peter Jones** of **Jones Myers Family Law Solicitors**. Named after Resolution's founder, the award recognises a family professional who has made an outstanding contribution in the field of family justice. Peter has played an important and consistent role for Resolution since its creation and has always been at the forefront of change within the profession, spearheading Resolution's prestigious specialist accreditation programme.

Judges said:

> "He is an outstanding family lawyer, technically excellent and utterly committed to conducting cases in accordance with the Code. He is someone who has 'given something back' to the family law community and wider society throughout his career."

24/10/21

Child abduction: accredited solicitors referral list

The Official Solicitor and Public aTrustee has published an updated list of solicitors accredited to deal with cases where a child is taken abroad without a parent's permission.

For the list, **click here**.

24/10/21

Commissioner 'deeply concerned' by latest CPS statistics on domestic abuse

The Domestic Abuse Commissioner, Nicole Jacobs, has expressed deep concern that fewer perpetrators of domestic abuse are being held accountable for their actions.

In response to the latest Crown Prosecution Service statistics, she said:

> "I am deeply concerned to see that fewer perpetrators of domestic abuse are being held accountable for their actions, with the number of convictions for these offences falling by almost 15 per cent in the last year. The past year has been an incredibly difficult time for many victims of domestic abuse across England and Wales, with calls to helplines remaining significantly higher than they were before the pandemic. Given the welcome increase in referrals from the police to the Crown Prosecution Service in the last quarter, it is disappointing to see that charges have fallen by 18 per cent and prosecutions by 9 per cent.
>
> "In August 2020, along with the Victims' Commissioner, I called on the Government to take urgent action on the fall in prosecution rates for domestic abuse cases. I am disappointed to see that in this time, little progress has been made by the criminal justice system on holding perpetrators to account. The public interest on this matter has increased substantially, with the public looking to the criminal justice system to take firm action on perpetrators of domestic abuse. For far too long, victims have failed to see their perpetrators brought to justice. It is time to take action.
>
> "It is positive to see that the re-opening of Crown Courts across the country has led to an improvement in the number of rape convictions in the last year. I welcome the work carried by the Government and criminal justice agencies as part of the End to End Rape Review to drive improvements in this area and will be closely following plans for the implementation of its recommendations. We must reverse the falling outcomes of the past few years as a matter of urgency."

For the latest statistics, **click here**.

24/10/21

Financial Remedy Update, October 2021

Stephanie Hawthorn, associate, and Robert Jackson, trainee solicitor, at Mills & Reeve LLP, consider the important news and case law relating to financial remedies and divorce during September 2021.

Case Law Update

Hussain v Parveen [2021] EWFC 73

In 2000 the Respondent married her first husband in Pakistan. They lived together only for a short period before he returned to the United Kingdom. He later said that he did not have the financial resources to bring her over to the UK to join him and hence he was given an ultimatum- bring her to the UK or divorce.

In February 2008, the Respondent's first husband pronounced Talaq (male-initiated Islamic divorce) in the form of a letter given to the Respondent's brother in England. The letter went to the mosque in Bradford where it was converted into a divorce certificate. This was then provided to the Respondent in Pakistan and provided to the local Union Council in Pakistan. This procedure followed the Muslim Family Laws Ordinance of 1961 which governs marriage and divorce in Pakistan.

The Respondent subsequently married the Petitioner in a Nikha ceremony in Pakistan on 19 December 2008 and moved to the United Kingdom in March 2009. The marriage subsequently broke down.

The Petitioner sought to claim that their marriage was bigamous, as her previous divorce was transnational in nature and could not be recognised in this jurisdiction. The Respondent argued that her previous divorce should be recognised and relied heavily on public policy reasons to prevent marriages being valid in one country but not another ("limping marriages").

The key legislation involved was the Family Law Act 1986 ("FLA 1986") which sets out that an overseas divorce will be recognised if:

- it was obtained by way of 'proceedings' in the relevant country;
- it was effective in the law of the country where it was obtained; and
- either party was habitually resident or domiciled in the country where the divorce was obtained or a national in that country when proceedings were commenced.

If a divorce is not obtained 'via proceedings', other requirements relating to domicile and habitual residence apply.

Ultimately, Mrs Justice Arbuthnot concluded that, whilst the Respondent was a Pakistani national and had habitual residence when proceedings were commenced, the divorce was in fact a transnational divorce, given it started in the UK and concluded in Pakistan. The judge drew on the authorities of *R v Secretary of State for the Home Department Ex p. Fatima (Ghulam)* [1986] AC 527 and Berkovits v Grinberg [1995] Fam 142 to conclude that transnational divorces are not overseas divorces for the purposes of recognition in the UK under the FLA 1986.

As such, the marriage was declared to be a nullity.

News Update

New Family Law Fees

At the end of September, Article 7 of the Court Fees (Miscellaneous Amendments) Order 2021 increased court fees to keep up with inflation. This was an amendment to the table in Schedule 1 of the Family Proceedings Fees Order 2008.

Some of the key increases include the fees for:

- An application for a decree of divorce or a decree of nullity, or a dissolution order or nullity order has increased to £593.
- A defended application for the court to consider making a decree nisi, conditional order, decree of judicial separation or a separation order has increased to £54. This does not include undefended cases, as no fee is due.
- Applications made with notice, during existing proceedings, increased to £167. This excludes applications separately listed in Schedule 1.
- The fee for filing (i) a notice of intention to proceed with an application for a financial order subject to FPR 9.4(a) or (ii) an application for a financial order subject to FPR 9.4(b), other than a consent order application, increased from £255 to £275. This increase is under Art 7(39).

For the full Amendment Order, **click here**.

Domestic Abuse Support (Local Authority Strategies and Annual Reports) Regulations 2021

The new Regulations concern the support local authorities give to victims of domestic abuse under Part 4 of the Domestic Abuse Act 2021.

When publishing a section 57 strategy, a local authority must now adhere to Part 2 of the Regulations, including:

- They must publish a section 57 strategy before 5 January 2022.
- They must review their section 57 strategies within 3 years of their first publication, and within each subsequent 3 years.
- Part 2(5) sets out what the local authority must consider when preparing a section 57 strategy.
- They must publish a draft of the section 57 strategy at least 10 weeks before they intend to publish it.

When publishing a section 59 report, a local authority must adhere to Part 3 of the Regulations. Part 3 concerns the form and content of the section 59 reports.

For the full Regulations, **click here**.

Online divorce applications

All divorce applications must now be filed online using MyHMCTS. This meets the requirements of the Divorce, Dissolution and Separation Act 2020, which is coming into force on 6 April 2022.

The only exceptions, which should be filed at the Bury St. Edmunds Regional Divorce Centre, are applications for:

- Civil partnership dissolution.
- Judicial separation.
- Nullity.

MyHMCTS allows applications to be submitted at any time and from any location.

Since moving online it has been said that less than 1% of applications are being returned (compared to a previous figure of 20% of paper applications). This is according to Adam Lennon, Deputy Director of the MyHMCTS Family team. He highlights that divorces applied for online are being finalised in an average of 20 weeks, whereas those applied for on paper are taking 60 weeks.

There was a transitional period when paper applications continued to be accepted, which ended on 4 October 2021.

For support registering with MyHMCTS, contact **HMCTSFinancialRemedy@justice.gov.uk** .

Family Mediation Vouchers

The Government has extended the mediation voucher scheme which helps support separating couples to access alternative dispute resolution and resolve their dispute without litigation.

The scheme gives a £500 voucher to separating couples to use on mediation services. The mediator can automatically claim the value from the Government.

The uptake in the scheme has been clear, with the Ministry of Justice stating that around 130 vouchers are used each week, since its launch in March 2021.

There will be a further £800,000 allocated to the voucher scheme by the Ministry of Justice. This is on top of their £1,000,000 initial investment in the scheme.

Given mediation is usually provided at a cost, unless a party has legal aid, this additional investment should help a further 2,000 more families. Those running the voucher scheme, the Family Mediation Council, highlight that up to 75% of those using the vouchers have been helped to reach full or partial agreements.

Jane Kerr, an FMC Accredited mediator commented that:

> "The mediation voucher scheme has been invaluable in providing clients with access to mediation at a time when money is tight […] I have worked with several couples who were interested in the benefits mediation offered, however were not financially in a position to get started."

In addition to helping the separating couples who use the scheme, the pressure on the family courts would only be eased if more couples resolve their disputes out of court.

For more information, **click here**.

Justice Committee inquiry into court reporting

A new inquiry has been launched investigating open justice and court reporting in the digital age. The inquiry was launched by the House of Commons Justice Committee on 17 September, and they are seeking evidence on the topic by 18 October.

Following the rise of social media and instant reporting, together with the pandemic-driven ability to follow court proceedings remotely, questions are raised about how the court reporting will look moving forwards and whether the long-held rules can continue.

The inquiry will:

- Focus on technology's impact and court reform.
- Investigate potential issues of transparency and accessibility of court proceedings.
- Consider whether technology can be used to enhance open justice, and how social media has impacted court reporting.

The Committee is seeking evidence on the following topics, by 18 October:

- How has the media's coverage of courts changed and what are the implications for open justice?

- What are barriers to the media obtaining information from the courts?
- What could be done to make information on court cases more transparent and accessible?
- What is the impact of social media on court reporting and open justice?
- What is the effect of court reform and remote hearings on open justice?

To submit evidence, no longer than 3,000 words, **click here**.

Pension Sharing : How important is it?

New research shows just how important seriously considering pension sharing on divorce is and how much it can impact finances in later life.

The research was conducted by the Manchester Institute for Collaborative Research Seedcorn Project, supported by the Pensions Policy Institute. It investigated the implications of divorce for pension provision and later life welfare, finding that:

- Pension sharing on divorce could substantially effect women's finances in later life.
- Any trade-offs between property and pensions during divorces may not be balanced. For example the roper shows that households in the top 40% of household income, the median pension wealth is higher than the median property wealth. Such disparity if particularly prevalent for those living outside London and the South-East.
- Pension wealth is generally shared unequally between men and women, with men having substantially more private pension wealth than women.
    - For couples with pensions, around half have a partner with 90% of the pension wealth, and fewer than 15% have partners with roughly equal pension wealth.
    - The disparities in pension wealth between men and women increase with age.

More research is needed on the cause and effect of this imbalance and how this varies across the population. The researchers also note that an especially interesting question here is how the asset mix changes across cohorts in response to changing patterns of homeownership and women's employment, and the impact of debt.

For the full report, **click here**.

08.10.2021

Less is more: my practical advice after almost forty years of practising

Gabrielle Jan Posner, Barrister and Recorder, Trinity Chambers, Chelmsford, passes on some hard-earned tips.

I started practising as a family barrister in the mid-1980s. My pupil mistress, which was the correct title for the rather formidable lady who took me under her wing, gave me the following advice which has stood me in very good stead over the years:

1. Always wear lipstick (particularly apposite for CVP and MS Teams)

2. Always check out where the loos are as soon as you get to court

3. Always be nice to the court staff, they run the place.

The fourth piece of advice she gave me is now completely redundant:

4. Always carry a stack of 2p and 10p pieces.

This was necessary because in those days the only way to communicate with somebody not present was via a public pay phone. There was one of these in every robing room and in the corner of the foyer of every court building. Mobiles, word processors, personal computers and laptops had yet to be invented. For me, the innovation that revolutionised my life was the fax machine – no more hanging around until after 6.30pm for the courier to arrive with my brief for the following day. Instead at 4-ish it would pop out of this wondrous machine in long streams to be cut into individual pages and bundled up in a red ribbon. After about six months, the print faded away, but who cared about that if you could be home in time for Neighbours instead of long after the rush hour. Of course, faxes got more sophisticated before becoming largely obsolete.

My mother gave me her old typewriter for the odd occasion I needed to type a document urgently and it couldn't wait to go to one of the chambers' typists. Position statements, case summaries and attendance notes from counsel were all unheard of. Chronologies weren't, but I loathed doing them because of the problem of formatting on a typewriter. Every judge had their own clerk who was the person who drew up the order, the lawyers were rarely asked to do it and if they were, a scribbled note on a piece of paper before leaving court was acceptable. This was one of the reasons you needed phone money so you could tell your instructing solicitor what you thought had happened in the case and what needed doing next.

My work /life balance was undoubtedly better in the late 1980s and early 1990s although I am not saying it was necessarily better for the case. I tended to operate in vague ignorance of what was going on, not least because in care cases pre-Children Act, amazingly, statements and reports were not ordered until after the initial stage at which the social worker would have proved the case: similar to fact-finding with little advance information. I remember turning up at Seymour Place Juvenile Court to do a case which my instructing solicitor told me was about incest only to realise as the evidence emerged that it was about truancy.

In these days of mobiles, laptops, computer records, e-mails, text messages, WhatsApp etc etc, I do wonder if we have gone from the sublime to the ridiculous. There appears to be information overload in every case and the prevailing sentiment seems to be 'if in doubt, bung it into the bundle'; indeed, why not rehearse the entire history and cut and paste a treatise on the relevant law into your position statement? Yet as a recorder what I need more than anything to help me with my judgment is an advocates' chronology, and it's rarely there.

We are constantly being urged to apply proportionality, but with every new edict, for example, bundles limited to 250 pages, witness statements limited to six pages, your six best findings of fact, within a few months everything has mushroomed again because with instantaneous communication and e-bundles, it's just so much easier to err on the side of caution. The good old days were quite terrible in some ways, but I am not sure we've got the balance any better now. I don't have any solutions and this is just tinkering around the edges, but if I still took pupils, as well as the first three pieces of advice my pupil mistress gave me, I would add:

1. The clue in position statement is the word "position"

2. Grit your teeth and do a chronology, it will help you focus your preparation and the judge will love you

3. If in doubt leave it out. You can always have a court bundle and a separate bundle with everything in it which you don't give to the judge unless it becomes imperative for him / her to have more documentation

4. Even if you have had to stay up until midnight to finish a document or work on something over the weekend, don't triumphantly press 'send' the minute you've done it; leave it until first thing the following morning

Of course, these days you may well have not left home at all, so you will know where the loo is and there's no pressure to get back before the rush hour, but if you can manage to switch off your computer before *Pointless* and resist the temptation to switch it on again mid-evening to check if anything has come in, you will be doing yourself a big favour. And, as I said, if you confine sending things until the next working day, you will be doing everyone else, including the judge, a big favour too.

13/10/2021

Guarding Special Guardianship: the need for legal aid reform

Jessica Johnston, Legal Adviser with **Family Rights Group**, explains a major challenge to prospective special guardians and how it might be overcome.

There are more than 180,000 children in the UK being raised by kinship carers – relatives or friends who have stepped in, often in an emergency. Kinship carers are often grandparents, but also aunts, uncles, brothers, sisters, and family friends. Many more children are raised in kinship care than are in the care system or adopted, yet support for kinship families is variable and often very limited. A significant number of kinship carers are, or become, special guardians, raising a child from their family or friends' network under a special guardianship order until the child reaches adulthood. While the legal order ends when a child turns 18, a special guardian's love and commitment are enduring.

One of the key difficulties that relatives and friends face when they are looking to take on the care of a child, is a lack of access to legal advice and representation. They are often being asked to care for a child against the backdrop of children's services having commenced public law care proceedings. Others have been encouraged by children's services to bring private law proceedings themselves by applying for a special guardianship order which effectively avoiding the need for children's services to begin care proceedings. In each of these scenarios, relatives and friends are being asked to step in to avoid a child from remaining in, or entering into, the care system. Yet these (potential) carers are often then left having to navigate the family justice system, understand their rights and options, and make huge decisions for their family without access to free, independent legal advice.

This article highlights the challenges prospective special guardians face when unrepresented, and how relatively small changes by government could make the world of difference to many families.

A parliamentary milestone for kinship care

From 2018, a cross-party group of parliamentarians were supported by Family Rights Group to establish the Parliamentary Taskforce on Kinship Care. Operating between 2018 and 2021, the Taskforce aimed to raise awareness about, and support for, children in kinship care, and to highlight this option for children who cannot live with their parents. With legal and policy secretariat provided by Family Rights Group, the Taskforce's inquiry took extensive evidence from kinship carers, as well as children raised in kinship care. And in September 2020, the Taskforce published its report **First Thought: Not Afterthought**.

The report presented the Taskforce's key findings and set out recommendations for national government, local government, and other agencies, to deliver a vision for kinship care. In doing so, it reflected on the legal and practice framework relevant to kinship care and presented the Taskforce's key findings. The findings included that legal aid for prospective special guardians is extremely limited post-LASPO[1] with many kinship carers finding themselves having to navigate the assessment and Family Court processes without any early or ongoing legal advice and representation:

> 'The key point made repeatedly to the Taskforce was that had these carers had access to legal advice before the orders were made, they would have been able to weigh up the pros and cons of all types of order and related support…Without legal advice, many carers simply do not understand the legal ramifications of the order that they are entering into and so cannot make the best decision for the child and their family.'

The type of legal order that a kinship carer has will have long term ramifications for the child and the family, including the support they can access. Limited access to legal advice can have a significant, lasting impact – for example, 30 per cent of kinship care respondents to a September 2019 survey by Family Rights Group [2] concluded the child was not subject to the right type of final legal order. Even where respondents felt the right order was in place, many had concerns about the type and level of support that they and the child were receiving under the order.

The Taskforce has been succeeded by the **All-Party Parliamentary Group (APPG) on Kinship Care**, set up in March 2021, which is taking forward the Taskforce recommendations. The APPG is led by Andrew Gwynne MP, himself a special guardian with experience of the emotional, practical and financial challenges of becoming a kinship carer. One of the key recommendations the APPG is now working to take forward and which is relevant to the challenges prospective special guardians without legal advice and representation is:

> 'That the Ministry of Justice should fulfil their pledge to extend the scope of legal aid to prospective special guardians.' [3]

A promise unfulfilled

In early 2019, **Legal Support: The Way Ahead** was published by the Ministry of Justice. Described as an action plan to deliver better support to people experiencing legal problems, this set out ambitious aims to make changes across the legal aid system, including in relation to family law.

It included some good news for special guardianship – a proposed extension of means and merits-tested legal aid for prospective special guardians. [4] The proposed reform would allow those prospective kinship carers who have been positively assessed by children's services to have legal advice and representation when seeking to secure a special guardianship order in private law proceedings. This was a significant step. But nearly three years on progress has stalled. This, and most of the other proposed legal aid changes, are yet to come into force.

As significant government focus and resource pivoted to dealing with Brexit and thereafter to responding to the Covid-19 pandemic, the need for prospective special guardians to understand their legal rights and options continues to be forgotten. And so it is that many prospective special guardians still do not have access to any free, independent legal advice when they are being asked by children's services to take on the permanent care of a child. Whilst advice can be sought from services such as Family Rights Group's advice service [5] , this should not be a substitute for a legal aid regime which caters to prospective kinship carers, and enables them to be represented in court proceedings.

The need to go further

The commitment to extend legal aid in private law proceedings for prospective special guardians, though welcome, has not been matched with a recognition of the many special guardianship orders pursued and made in public law children's proceedings. The majority of special guardianship orders are made within the context of care proceedings, rather than within private law proceedings. To have real impact for kinship families, it is crucial that any changes to the legal aid regime for prospective special guardians also apply within public children law.

Private law proceedings in which applications for special guardianship orders are made are often pursued with the encouragement and support of children's services. With children's services providing the assessments, the process can feel akin to care proceedings. It is incongruous not to ensure parallel provision in terms of legal aid where the special guardianship order follows the commencement of public law proceedings. This is especially so following the case of ***P-S (Children)*** **[2018] EWCA Civ 1407**. In this case, the Court of Appeal made clear that when a special guardianship order is being considered within care proceedings, a formal application for that order should usually be made (see paragraph 56 of the judgment). Prospective kinship carers who have not had any access to legal advice cannot be expected to know that this should be done. The Court of Appeal recognised this, and further stressed the importance of these relatives and friends having proper access to legal advice and representation.

Children's services' provision of funding for kinship carers

At present, children's services departments will usually pay for a prospective special guardian who has been positively assessed to have legal advice. Such funding is typically limited to about two hours' work at legal aid rates [6], or up to a total of £250 plus VAT. This funding is offered to help ensure that the prospective kinship carer understands the nature of the proposed order, to advise on the proposed support plan and recommendations for contact. However, such funding is not on offer to those with a negative assessment, who may wish to challenge that assessment. As Jerry Bull, Head of Care and Publicly Funded Team at Atkins Hope solicitors explains, such limited funding does not cover what is really needed and does not plug the legal aid funding gap:

"The reality is that such fees do not really allow for sufficient time for the lawyer to assess the court documents disclosed and local authorities rely on a considerable amount of good will from solicitors in providing this advice at these rates.

In addition, children's services do not provide funding for those who are about to be assessed to ensure that they understand the purpose of the assessment and why they are being asked to be a possible long-term carer. A significant number of those assessed 'fail' the assessment because it is said that they do not understand the seriousness of the issues. If they had access to legal advice before being assessed, then it could well help prospective carers make more informed decisions about whether they can potentially offer the child a home, what support they may need to do that and for some, whether they want to be assessed at all. This would save time and money."

Will provision of means-tested legal aid really help?

The Taskforce heard that many kinship carers struggle financially when they take on the care of a child. Older carers, including grandparents, are often on a limited income. But many will have some savings, such as a small pension. This does not of course mean that they have access to the potentially significant funds necessary to instruct a solicitor to advise and represent them on a private basis. But it may well mean that they are not eligible for legal aid. Means testing this group would therefore still leave a great many without access to legal aid.

Where proceedings are contested, legal costs can be significant. Evidence gathered by the Taskforce identified that special guardians spend an average of £5,446 on legal fees to secure a legal order but with the range of expenditure spanning from just under £100 up to more than £50,000. Most will either represent themselves (putting themselves at a serious disadvantage to the other parties who will all be legally represented). Or more worryingly, and probably more commonly, not fight at all as they cannot face a contested court hearing on their own. This risks children not having 'all the realistic options' properly litigated and some children ending up in the care system in unrelated care, when this may not have been necessary.

Provision of non-means but merit-tested legal aid for prospective kinship carers would ensure that all carers who are assessed as a realistic option for the child would be able to receive legal aid when being asked by children's services to step in to care for the child.

The bigger picture

Those working within the child welfare and family justice sectors know that pressure on children's services and the Family Court has never been greater. The average time for care proceedings to conclude is currently 44 weeks[7] – the highest since 2012, and far beyond the 26-week time limit. Factors that may lead to justifiable extensions to the 26-week time, even pre-pandemic, include where a realistic alternative carer emerges late in the day. If the system is looking to reduce further any unnecessary delays to care proceedings, a good place to start is by ensuring that anyone being considered as a potential special guardian has access to early legal advice to help them understand what this will entail, and what the child's needs are. If prospective carers have access to the right advice, at an early stage, the common scenario of a relative coming forward late in the day, which can often extend the length of care proceedings, is more likely to be avoided.

Law Society of England and Wales president, Stephanie Boyce, said:

"In February 2019 the government recognised that legal aid should be made available to support clients involved in cases related to Special Guardianship Orders and committed to address this.

Access to legal aid in these cases, to ensure all involved receive advice and representation, is vital for the long-term wellbeing of the children involved. It is disappointing that since then there has been no further progress on introducing legal aid in these cases.

Not only are the proposed changes necessary and overdue, but we are at a point where care proceedings are taking longer and longer.

There are considerable backlogs in the family courts. In May 2021, there were 20,886 outstanding public family law cases and 81,224 outstanding private family law cases. If kinship carers were able to access legal advice and representation, this would help to ease some of the strain and avoid the scenario of an unrepresented carer arising late in the day."

Concrete proposals, and a call for support

Together with colleagues from the Law Society, the Association of Lawyers for Children, Resolution and other key stakeholders, Family Rights Group has prepared a **briefing** which details specific changes to ensure prospective special guardians have adequate access to justice. This includes extending legal advice for special guardians to cover: early advice, including during the pre-proceedings stage, and equivalent access to legal aid in both public and private law proceedings concerning children.

We would encourage children lawyers to consider this briefing, and to support work to push for these necessary changes to be implemented, including supporting the APPG on Kinship Care. As expressed by Andrew Gwynne MP:

> "Families shouldn't have to navigate a complex legal system alone when they are seeking to provide a safe and loving home for children. It's crucial that families can make informed decisions on what is best for the child's future. Let's not forget, they are stepping in to care for children who would likely otherwise be in the care system and we should be making that as easy and as fair as possible. We are doing kinship carers a disservice by not ensuring they have this crucial support. All kinship carers, including those looking to become special guardians, need access to legal advice and representation from the outset."

At a time when sector reviews and reports, including those from the President's Public Law Working Group, are highlighting the importance of partnership working, we surely cannot continue with a system which does not allow for potential kinship carers to be supported to make informed decisions. These are relatives and friends doing the right thing by children who they love, and in doing so save the public purse the cost of another child entering the care system with unrelated carers. But they should not do so in a vacuum of information, without knowing what challenge they can make if they are unhappy with proposed support, or without representation in what are likely to be difficult and contested Family Court proceedings.

For further information, including on how to become involved with the APPG on kinship care, please contact Jessica Johnston, Legal Adviser at Family Rights Group – **jjohnston@frg.org.uk** and Jordan Hall, Public Affairs Officer at Family Rights Group – **jhall@frg.org.uk**

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[1] Under the **Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO)**, virtually all private family law issues were removed from the scope of legal aid. There are limited exceptions to this, including where the applicant for legal aid has evidence of either domestic abuse, or child abuse by the person who will be the respondent in the case. This 'gateway evidence' will bring the case back into scope for legal aid. However, the applicant for legal aid still then needs to pass a means test and a merits test. Where a kinship carer or prospective kinship carer is seeking a special guardianship order in private law proceedings, they must be able to provide such gateway evidence in order to secure legal aid.

[2] **The highs and lows of kinship care: analysis of a comprehensive survey of kinship carers 2019**

[3] See page 81 - '**First Thought Not Afterthought First Thought Not Afterthought: Report of the Parliamentary Taskforce on Kinship Care**'

[4] Within a means test, the legal aid applicant's capital and income must be below a certain threshold. The merits test assesses the strengths and weaknesses of the legal aid applicant's case, and considers whether a reasonable person who could afford to pay their own legal fees would use their own money to pay for the case.

[5] Family Rights Group runs a free, independent and confidential advice service, which includes:

- Easy-to-follow, online advice. Features include an A-Z, FAQs, films, 'top tips' and legal advice sheets
- Online forums where families can receive advice, discuss issues and find support from others
- A free telephone advice line open Monday to Friday between 9.30am and 3pm (excluding Bank Holidays) on 0808 801 0366. For Textphone dial 18001 followed by the advice line number.

For more information, **click here**.

[6] The legal aid hourly rate for this type of work is £52.57 for solicitors based outside of London and £55.24 within London

[7] **Family Court Statistics Quarterly: April to June 2021**

CASES

Birmingham City Council v R & Ors [2021] EWHC 2556 (Fam)

This case concerned T, a 16-year-old child who was placed in an unregistered children's home – Nurtured Future Living (NFL) – under a Deprivation of Liberty Order (DOLS). The court had previously granted authorisation of the DOLS and approved the placement as a short-term measure whilst a long-term, registered placement could be identified.

Initially, NFL had informed the local authority that it was in the process of registering the placement; however, it later resiled from this position. Oftsed threatened to prosecute NFL if T remained at the placement and as a result, NFL served notice to terminate T's placement, though they were prepared to continue to care for T until an alternative placement had been found. At the time of this hearing, the local authority had been unable to identify any suitable Ofsted-registered placement for T.

The local authority, supported by all of the parties, invited the court to continue the DOLS order and authorise the continued placement of T at NFL until an alternative could be identified. Having set out the relevant statutory provisions under s.22 of the Children Act 1989 and the amended Practice Guidance, the court concluded that it had the power to authorise the deprivation of liberty at the placement whether or not the local authority has the power to place T there [25] and did so, with a direction for the matter to return to court in 4-weeks to allow the local authority to make further inquiries of placements and both NFL and Ofsted to set out their positions in writing.

Case summary by **Bianca Jackson**, Barrister, **Coram Chambers**

R (On the application of Cornerstone (North East) Adoption and Fostering Services Ltd v Her Majesty's Chief Inspector of Education, Children's Services and Skills (Ofsted) [2021] EWCA Civ 1390

The Appellant ('Cornerstone') is an independent fostering agency ('IFA'). It recruits and supports carers for children in local authority care who need to be fostered and in some cases adopted. The Respondent, 'Ofsted' is the statutory body whose functions include the registration, regulation and inspection of IFAs.

The issue in this case is whether it is lawful for Cornerstone only to accept heterosexual evangelical Christians as potential carers. Ofsted considered that this breached the Equality Act 2010 and the Human Rights Act 1998 and required Cornerstone not to discriminate on grounds of sexual orientation or religious belief. In June 2019, Cornerstone issued judicial review proceedings, seeking a declaration that Ofsted's findings about the recruitment policy was unfounded, an order quashing the requirement in the draft report, and damages.

This is an appeal from Mr Justice Julian Knowles in a judgment reported at ***R (on the application of Cornerstone (North East) Adoption and Fostering Service Ltd v Office for Standards in Education, Children's Services and Skills*** **[2020] EWHC 1679 (Admin)**. The judge made the following findings:

> 1. Cornerstone's recruitment policy is not unlawfully discriminatory on the grounds of religious belief because the exception in para 2 sch 23 EA 2010 applies.
>
> 2. The policy was unlawful and discriminatory against gay men and lesbians.
>
> 3. Ofsted's report did not violate Cornerstone's rights under Article 9-11 and 14 of the ECHR.
>
> 4. Ofsted's report was not unlawful as being in breach of its guidance on the inspection of IFAs, entitled 'Social Care Common Inspection Framework: Independent Fostering Agencies' (Feb 2017 ('SCCIF').

Cornerstone was given permission to appeal on 5 of their pleaded 12 grounds meaning the remaining findings of the judge are undisturbed: That Cornerstone were providing a service to the public, recruitment of foster carers is done on behalf of a public authority and is done under the terms of a contract, and that Cornerstone is a 'hybrid' public authority for the purposed of s6 HRA 1998.

Cornerstone were allowed to produce a witness statement from Reverend Matthew Mason to counter the Judge's assertion that there are gay evangelical Christians and therefore that there were no victims of this policy. Rev Mason contends that a person who embraces a sinful lifestyle (Rev. Mason includes in this definition same-sex relationships) cannot validly claim to be an evangelical Christian. Each Cornerstone foster carer must sign up the code of practice which includes at Clause 10

> 'Set a high standard in personal morality which recognises that God's gift of sexual intercourse is to be enjoyed exclusively within Christian marriage; abstain from all sexual sins including immodesty, the viewing of pornography, fornication, adultery, cohabitation, homosexual behaviour and wilful violation of your birth sex'.

These beliefs are not imposed on the children within placements who may be of Christian faith, another faith or no faith.

The Charity Commission in January 2011 accepted that Cornerstone did not discriminate on the grounds of sexual orientation, although it gave no reasoning. It noted that Cornerstone was providing services only to evangelical Christians, which required justification but within para 2 of sch 23 EA 2010 which permits the restriction of services because of the purpose of the organisation and/or to avoid causing offence on grounds of religion or belief.

The appellate court dealt with the grounds of appeal as follows:

Ground 1: The judge erred in concluding that Ofsted has properly exercised its power and jurisdiction to require Cornerstone to modify the recruitment policy as contained in its charitable instrument, that when acting in pursuance of this charitable instrument, Cornerstone did not contravene the EA 2010.

- Rejected. Ofsted are entitled to have regard to the EA 2010 and HRA 1998 when inspecting IFAs. The Charity Commission does not have exclusive jurisdiction.

Ground 3: The judge erred in concluding that Cornerstone's recruitment, selection and appointment of foster carers was direct discrimination because of sexual orientation, within the meaning of s.13(1) EA 2010.

- Rejected. The Judge at first instance was right to reject the false distinction between sexual behaviour (banned) and sexual orientation (not mentioned).

- There is no potential for an exception for a religious organisation under sch. 23 para. 2 because of the public character of Cornerstone's provision of services.

Ground 4: The judge erred in concluding that Cornerstone's recruitment, selection and appointment of foster carers is not a proportionate means of achieving a legitimate aim, and is therefore unlawful indirect discrimination.

- Rejected. Cornerstone sought to show that their policy is a proportionate means of achieving a legitimate aim (discussed below).

Ground 9: The judge erred in holding that Cornerstone acts incompatibly with the Convention right under Art. 14 (read with Art. 8) of hypothetical gay or lesbian evangelical Christians who might wish to become Cornerstone foster carers.

- Rejected. The process of regulation is different from bringing a claim of discrimination. A regulator is entitled to identify a breach in the law where it finds it.

Ground 10: The judge erred in holding that Ofsted's requirement that Cornerstone disapply or modify its recruitment policy for foster carers as contained in its charitable instrument was compatible with respect for the Convention rights under Arts. 9-11 and/or 14 which Cornerstone could pray in aid of as a religious organisation.

- Because Ofsted is a public authority, it is unlawful for it to act in a way which is incompatible with a Convention right.

- The appellate court found that Cornerstone's rights under Art. 9 were engaged because its recruitment policy is a manifestation of religion.

- It also found that Ofsted's requirements materially interfered with Cornerstone's right to manifest its beliefs.

This ultimately came down to proportionality. The Judge's starting point was that particularly weighty reasons are required to justify differential treatment on the grounds of sexual orientation. Cornerstone pleaded its legitimate aims as: 'increasing the pool of evangelical Christian foster carers; affording critical support to carers; allowing those with the evangelical Christian community to serve by promoting stable and durable placements; and manifesting the beliefs of evangelical Christianity in practice of Christian charity and the support of Christian family life, to the benefit of the carers, the children cared for, Cornerstone and society as a whole'.

The court noted this was an appeal which sees a collision of two protected characteristics. However, Parliament has, in relation to religious organisations that offer a service to the public, given a clear indication that discrimination on the basis of sexual orientation is impermissible.

Looking at the final stage of the Bank Mellat test, the court concluded that in order to justify its policy, Cornerstone needed to provide credible evidence that there would be a seriously detrimental impact on carers and children. It did not do this, and its case failed on the facts.

Appeal dismissed.

Case summary by **Harriet Dudbridge**, Barrister, **St John's Chambers**

Nottinghamshire County Council v LH (A child (No. 1) [2021] EWHC 2584 (Fam)

This case highlights the national shortage of suitable accommodation for vulnerable children.

Introduction:

The Local authority applied for an interim care order in respect of a 12 year old girl LT who had been subjected to her mothers poor mental health, domestic abuse, physical assault and alcohol abuse within the family home. LT had been diagnosed with ASD, and ADHD, and her behaviours escalated becoming more aggressive, violent and challenging to manage. LT's mother made repeated requests for LT to be accommodated as LT was beyond her control. Matters escalated further and LT was taken to a place of safety pursuant to s.136 MHA 1983 and later admitted to a unit for acute adolescent psychiatric admissions where she remained. The Court at the first hearing made an interim care order and gave permission for the inherent jurisdiction to be invoked authorising LT's deprivation of liberty on a very short term basis, fixing a further hearing to consider LT's interim placement.

The conclusion of LT's psychiatric assessment (by treating clinicians) was that LT was not considered suitable for detention under the MHA 1983, on the grounds that she was not suffering from a mental illness of a nature or degree which made it appropriate for her to receive treatment within a hospital setting. She did not have a psychiatric condition, her degree of distress was assessed to be due to her social circumstances. LT's need was for a therapeutic placement. Further, detaining LT in an acute psychiatric unit was detrimental to her welfare which would not only adversely affect LT psychologically but would be likely to result in long term negative impact on her behaviour. Every hour she spent on the unit said the clinicians was harmful to her. LT was also having a negative effect on other young vulnerable persons on the ward.

The local authority conducted a nationwide search for a therapeutic placement, none was available. At the return date the local authority invited the Court to continue LT's deprivation of liberty at the same acute psychiatric unit, it having nowhere else to place her:

> "The sole reason why the Local Authority invites the court to find that it is in LT's best interests to be deprived of her liberty whilst accommodated in the acute psychiatric admissions unit is that there is nowhere else for her to go - nowhere in the whole of the country - such is the national shortage of accommodation suitable for vulnerable children such as LT. The local authority are not able to provide any information to the court to give cause to believe that accommodation would be identified as available for her were I to adjourn the case for another few days."

The Law:

The court adopted the analysis set out in ***Wigan MBC v W, N and Y*** **[2021] EWHC 1982 (Fam)**, ***Lancashire County Council v G v N*** **[2020] EWHC 2828**, ***Re T*** **[2021] UKSC 35**, and ***Tameside MBC v AM and others*** **[2021]EWHC 2472**.

Decision:

Refusing the Local Authority's application to authorise LT's deprivation of liberty on the following grounds:

> (i) In many cases the High Court does exercise the inherent jurisdiction to authorise the deprivation of a child's liberty in unregistered placements, which the courts are ill-suited to monitoring, on the grounds that there is no other available solution. In the present case, the proposed continued accommodation of LT in a psychiatric unit could not possibly be described as a means of properly safeguarding her. It would not keep her safe or protect her.
>
> (ii) If the inherent jurisdiction is a means of meeting the need *as a matter of public policy* for children to be properly safeguarded then, it is also appropriate to take into account the adverse impact of continued authorisation on the other vulnerable children and young people on the unit.
>
> (iii) Whilst deeply uncomfortable to refuse authorisation and to contemplate future uncertainties, LT is a looked after child and the local authority must find her an alternative placement - it has a statutory duty to provide accommodation for her, and the state has obligations under Arts 2, 3 and 8 of the European Convention on Human Rights (see Sir James Munby in ***Re X (No. 3) (A child)*** **[2017] EWHC 2036**.)

(iv) There is no doubt that the local authority has striven to find alternative accommodation but the national shortage of resources has led to the current position. Nevertheless, authorisation of the deprivation of LT's liberty in a psychiatric unit which is harmful to her and contrary to her best interests would only serve to protect the local authority from acting unlawfully, it would not protect this highly vulnerable child.

The Court further directed that a copy of the judgment be provided to the Children's Commissioner for England; to the Secretary of State for Education; to the Minister for Children; to the Chief Social Worker; and to Ofsted.

Case summary by **Judi Evans**, Barrister, **St John's Chambers**

Nottinghamshire County Council v LH (A child (No. 2) [2021] EWHC 2593 (Fam)

Nottinghamshire County Council v LH, PT and LT **[2021] EWHC 2584 (Fam)**. The fact that the local authority could not find a suitable placement was not a basis for authorisation.

The local authority identified an alternative placement in a children's home which would only accommodate LT and a team of carers while LT is resident (it would normally accommodate 4 children). The arrangements involved a high staff presence (3:1) and constant supervision. Poole J considered the arrangements for staffing and the use of physical restraint, the plans for transition and was satisfied that it was in LT best interests to move there from 27 September 2021. Poole J therefore authorised the move and placement and the consequent deprivation of liberty but not the period from 23th. In doing so he noted that the local authority had sought a secure welfare bed for a secure accommodation order, but there were 50 children ahead of LT awaiting secure welfare bed. He also noted:

> "… although the inherent jurisdiction must be available in these troubling cases, it cannot be treated as a rubber stamp to authorise the deprivation of a child's liberty whenever the court is told that there is no other option available"

Case summary by **Nicholas O'Brien**, Barrister, **Coram Chambers**

A Borough Council v E and Others (No 2) (Refusal of Secure Accommodation Order) [2021] EWHC 2699 (Fam)

In February 2021 the court authorised the deprivation of E's liberty in an unregulated placement (reported **[2021] EWHC 183 (Fam)**). In March 2021 the court made a secure accommodation order in respect of E by consent, and a further secure order in August 2021. E had been accommodated under that order at a unit called X for some 7 months.

E had been unable to contain her negative behaviours which were a function of her inability to contain her emotional responses in light of the psychological needs, including post-traumatic stress disorder. However, she made significant progress in behaviour whilst detained at X.

In September 2021 a Secure Accommodation Review meeting concluded that the Children Act 1989 section 25 criteria were no longer met. A secure provision was no longer appropriate or proportionate to E's needs. X agreed, notwithstanding that E's anxiety in anticipation of a transition from secure accommodation had led to a number of incidents. The transition plan remained unclear though an alternative placement at Y was under consideration.

E became dysregulated whilst returning from a visit to the proposed new placement Y. She was restrained and police became involved. E returned to X. She made threats to abscond and to harm herself and others.

The local authority decided that E's behaviour was such that E should not transfer to Y and that she should be accommodated in another secure unit until a therapeutic placement could be identified.

In October a further Secure Accommodation Review concluded that the s25 continued not to be met: E's recent behaviour was likely a manifestation of her anxiety about moving on from secure accommodation.

In disagreeing with its Secure Accommodation Panel, the local authority contended, relying on E's recent behaviour, that the section 25 criteria continued to be met.

E agreed with the Panel; she told the court 'My anxieties will rise because I mentally prepared myself for leaving. I've engaged with everything that was asked of me. There's nothing else X can do for me. …. I feel like I need to move on.'

E's guardian considered that a further period at X 'will do nothing other than contain her and keep her safe until a suitable placement is found.' E's behaviour should be managed in a lesser restrictive setting in a solo placement with deprivation of liberty measures.

Mr Justice McDonald was satisfied that the criteria for a secure accommodation order were no longer met with respect to E.

He found that it could no longer be said that E was likely to abscond from any other description of accommodation, thus s25(1)(a) no longer applied.

In respect of s25(1)(b), the learned judge found that the recent behavioural difficulties exhibited by E were explained by the anxiety and uncertainty that E was faced with in relation to her transition from secure accommodation to a less restrictive environment: 'In the experience of the court, whilst alarming on their face, the conduct of and statements made by E since 29 September 2021 are not unusual in the context of significant change and transition.' He concluded that in the wider context that he could not be satisfied that if E were kept in in any other description of accommodation she was likely to injure herself or others.

Mr Justice McDonald accepted that was there was a risk that the trust reposed in E by stepping her down from secure accommodation would not be repaid by her. He was however no longer satisfied that that a further secure accommodation order would safeguard and promote E's welfare. The unit X was no longer able to meet her needs, in particular an urgent requirement for an assessment with respect to autism that could not be achieved whilst E remained there. It is not open to a local authority or a court to keep a child in secure accommodation simply because there is a delay in procuring or implementing an alternative placement. The benefits of placement at X did not outweigh the infringement of E's rights constituted by the secure accommodation regime that applied there; secure accommodation was no longer proportionate.

Case summary by **Nicholas Horsley**, Barrister, **Coram Chambers**

H-W (Children: Proportionality) [2021] EWCA Civ 1451

Background and previous care proceedings

The mother (M) has six children: A (aged 21), B (aged 18), C (aged 13), D (aged 10), E (aged 8) and F (aged 1.5). C and D have the same father (F1). E's father is F2. M and F2 were in a relationship when M was a young teenager, and that relationship was sexually abusive. They resumed their relationship for 1 year in 2011/2012. F's father is F3, who was previously M's mother's partner. His son, G, had lived with the family from 2016-2018.

The local authority had been involved throughout M's life, and the main concerns were sexual abuse and neglectful home conditions. M was herself in care as a child, and A was born when M was 16. A had behavioural difficulties and was placed first in a boarding school and then in foster care. Both B and G alleged that A had sexually abused them. Concerns heightened when M and F2 resumed their relationship. M agreed that he would not have contact with the children, but he was found in the home in 2013. This lead to care proceedings. HHJ Wright refused to remove the children from the home, but in a fact-finding made a number of findings of sexual abuse, including findings about A's sexual behaviour. He found that F2 was a sexual risk to the children. Ultimately a care order was made in relation to A, and residence orders to M in relation to B, C, D and E, together with a supervision order. There was no LA involvement between 2015 and 2016, but the children became subject to child protection plans in 2018. By March 2019 this had stepped down to child in need plans, and the case closed again in October 2019.

There were care proceedings in relation to F3's children in 2016. In those proceedings an order was made that G would live with F3. In 2018 F moved into foster care. In a subsequent hearing M and F3 were not blamed for the breakdown of the placement.

Current proceedings

The current care proceedings related to M's youngest 4 children (C, D, E and F). Concerns re-emerged in November 2019 (very shortly after the case had been closed to social services). A had been allowed to stay in the home when his own accommodation became unavailable, and he had sexually assaulted E during a brief period in which he had been left alone. M did not report the event for 3 days and permitted A to remain in the home. The judge found that A had sexually assaulted E and that M and F3 had failed to protect the children from sexual abuse, and risk of sexual abuse, and had delayed in reporting the assault. The police became involved but took no action. An initial child protection conference occurred in January 2020, but proceedings were not issued until E suggested (to a student social worker and her head teacher) that the abuse from A had been more extensive. However, findings were only made in relation to the November assault, and not the more extensive allegations which led to proceedings being issued.

The Local Authority sought to remove the 4 younger children from M's care, and for a placement order in relation to F. In his judgment, the judge rejected M's evidence that she had not understood the 2013 judgment about A's sexual behaviour towards B and G. He found that F3 very much follows M in terms of decision-making, and so he did not take action when A returned to the home, despite his own knowledge that A had sexually assaulted G (his son). He concluded that all the children were placed at risk of significant sexual harm and that E had suffered significant sexual harm. He was not satisfied that the parents had learned sufficiently, nor that they had the capacity to learn and understand sufficiently. He agreed that a move to foster care was not without difficulties and risks. He accepted (on balance) that he would follow the

Guardian's recommendation that B should be assessed as a carer for F. Care orders were made in relation to C, D and E. An interim order was made in relation to F, with a care plan that either she would be placed with B after a period of assessment lasting 12 weeks, or in a foster-to-adopt placement. A stay was granted (extended by the Court of Appeal) and the children remained at home pending the appeal.

Grounds of appeal

There were 2 grounds of appeal:

> (1) That the expert was wrong to take into consideration factual matters which had not been proven, and the social work and Guardian's assessments were flawed as they relied upon the expert evidence;
>
> (2) The orders were disproportionate to the risks that the children would be exposed to if they remained at home.

The court rejected the first ground, noting that a psychiatric assessment may be based on many different pieces of information, not simply proven facts, and as long as the court makes it own assessment of that opinion, and is clear about which parts of that opinion may be based upon erroneous or contentious information, there is 'nothing unusual about that'.

Jackson LJ allowed the appeal on the second ground. He agreed that A represents a serious sexual risk, but found that the first instance judge did not address whether the continuation of a non-molestation order against A, plus a supervision order (the protective measures which had been in place throughout the proceedings) would provide sufficient protection for the children after proceedings, particularly when balanced against the significant impact on the children of removal from the only home they had known, and the impact on F, who was reported to be doing well in her parents' care.

However, Laing LJ and Lewison LJ did not agree that the first instance judge was wrong. He clearly had all aspects of the case in his mind, and whilst there are criticisms of the judgment which can be made, they could not say it was wrong. The first instance judge had made clear findings about M's parenting ability and her inability to learn sufficient skills to provide safely for the children. In cases which are marginal it is all the more important to trust the wisdom and discretion of an experienced family judge. Lewison LJ noted that he was in the 'uncomfortable position of reviewing a decision which I cannot say was right or wrong. In that situation Lord Neuberger [in Re B] considered that the appeal should be dismissed'.

Case summary by **Julia Belyavin**, Barrister, **St. John's Chambers**

TMB v PLB [2021] EWFC 66

The parties met in 2003 and began to live together in 2004. From 2005-2013 they lived in France. They then moved to Hong Kong and married in June 2014 in Hong Kong. They moved to the Philippines in November 2015 where W still resides on a tourist visa. When the marriage broke down H moved back to Hong Kong - China. On 21 January 2020 W issued a divorce petition in England founding jurisdiction on the only basis open to her, namely her domicile. Neither of the spouses had been habitually resident in England and Wales and only W was of British nationality. The proceedings took a conventional course. H accepted the ground of jurisdiction set out in the petition. A decree nisi was pronounced on 3 August 2020.

W served notice in Form A on 29 May 2020 setting out the various remedies that she sought including periodical payments. The court gave directions in the prescribed manner on 14 July 2020 listing the matter for the first appointment and requiring the parties to file financial statements by way of Form E. No point was taken by H as to the applicability of those parts of the Form which deal with income and income needs.

One week before the first appointment due in November 2020 H made it clear that it was his case that W's claim for maintenance was prohibited by Art. 3(c). W conceded the effect of Art. 3(c) [post Brexit] but argued that her claim was not so fettered by reason of the terms of Art. 7, 4 & 5.

The judge rejected the applicability of **Art. 7** (forum necessitas) as there was no expert evidence as to the non-availability of remedies in China or the Philippines. [para 15]. Furthermore Art. 7 only applies where no member state country has jurisdiction under Art. 3. Here England & Wales had jurisdiction to direct financial provision, albeit excluding maintenance. [Para 17]

Art. 4 would have required the choice of court to have been agreed in writing. This had not occurred.

Art. 5 (acceptance of jurisdiction). The judge held that H had not accepted jurisdiction in relation to maintenance. The main suit and acceptance of jurisdiction in respect of the other aspects of financial provision was insufficient. The fact that the objection was shortly before the hearing did not prevent it being successfully raised. **Baldwin v Baldwin [2014] EWHC**

4857 (Fam) was distinguished on the basis of the terms of correspondence between the parties and that H had only completed a court directed Form E without express or implied concession of the jurisdiction issue. (para 25).

Case summary by **Nicholas O'Brien**, Barrister, **Coram Chambers**