St Ives Chambers Family Law Group Update

Autumn 2018

A regular bulletin on important legal developments and points of interest from the Family Team at St Ives Chambers

Welcome to the autumn edition of the newsletter which focuses on the topics discussed at this year's Child Care Conference.

With over 120 delegates attending, the one-day conference included updates on the latest news and views within Family Law.

Chaired by Head of Chambers, Jeremy Weston QC, the day began with a keynote speech from The Honourable Mr Justice Keehan, details of which are due to be published on Family Law Week soon.

Dr Anand Saggar (Consultant in Clinical Genetics) provided an update 'Ehlers-Danlos Syndromes: The Modern Hydra'. This was followed by Tracy Lakin presenting on the implications of Re P-S (Children) [2018} during which she covered the strands of the appeal, the key issues agreed by all parties and the decision of the Court of Appeal. She concluded with the lessons to be learned from the case.

Kirstie Danton's presentation focused on fact finding hearings and parallel criminal proceedings. Within the 40 minute presentation, she covered the 2013 protocol and good practice model (including the local model for Birmingham). Matthew Maynard provided an insightful talk into technology within the Family Court, how he uses it within his practice and what he believes is needed for the future. The conference was drawn to a close by Timothy Bowe delivering the Case Law Update.

Comments and feedback from delegates included "*Particularly interesting keynote speaker – directly relevant to recent cases on which I've acted… all areas very interesting and helpful*", "*All of it really useful, informative and entertaining*" and '*…found the entire day useful*."

Legal 500 and Chambers & Partners

The Legal 500 and Chambers & Partners recommendations were published a week ago and we're delighted that members of our Family group were recognised as well as the group as a whole. We have included details of the recommendations within this newsletter; however, we are delighted with comments and recommendations including *"…In the words of one solicitor, St Ives Chambers is 'a superb family set', housing a team with expertise in children, care, financial remedy and surrogacy matters…"*

New members and pupils

In September, we offered tenancy to Eleanor Lake and, in October, welcomed new Pupils George Smith, Holly Hilbourne–Gollop and Harry Marriott.

Jeremy Weston QC and Elizabeth Isaacs QC

Chambers & Partners and Legal 500 Recommendations 2018/2019

We are delighted at the recommendations for our Family Group members from the Legal 500 and Chambers & Partners directories. A huge thank you to all of those involved in the research stage.

Jeremy Weston QC:

Legal 500 *"Highly recommended for complex public law children cases."* Ranked tier 1

Chambers & Partners *"He puts clients at ease and quickly builds up a rapport."*


Jeremy Weston QC

Elizabeth Isaacs QC:

Legal 500 *"Exceptionally clever; a strategic thinker who is willing to push the boundaries in her approach to cases."* Ranked: tier 1

Chambers & Partners *"She fights the client's corner in a firm and balanced manner. She is also extremely personable and a great team player." "She has an excellent grasp of the law and is also a brilliant strategist."*


Elizabeth Isaacs QC

Gregory Rogers:

Legal 500 *"Regularly acts in public law children cases."* Ranked: tier 1

Chambers & Partners *"Clever and measured." "A calm and confident advocate."*


Gregory Rogers

Tracy Lakin:

Chambers & Partners *"Her attention to detail is incredibly useful and her advocacy is excellent." "She has several strong points, including her advocacy, negotiation and client care. She is also very approachable."*


Tracy Lakin

Kirstie Danton:

Legal 500 *"A strident advocate and a fighter in court."* Ranked: tier 1


Kirstie Danton

Nina Bache:

Chambers & Partners *"...is known for taking on cases that concern particularly vulnerable parties. She is ideal for cases involving complex medical evidence."*


Nina Bache

Chambers & Partners and Legal 500 Recommendations 2018/2019

Timothy Bowe:

Legal 500 *"Recommended for cases involving non-accidental injuries and sexual abuse."* Ranked: tier 1

Matthew Maynard:

Legal 500 *"He has a reassuring client manner."* Ranked: tier 1

Chambers & Partners *"Always well prepared and able to make the most complicated of matters seem straightforward." "A true giant in terms of the stature and quality of his work. He is calm and confident in his approach to cases."*

David Payne:

Legal 500 *"A thoughtful and thorough advocate."* Ranked: tier 1

James Picken:

Chambers & Partners *"Renowned for his attention to detail in financial matters." "A reassuringly excellent barrister. You know that the case is immaculately prepared and his understated demeanour means that he engenders trust easily." "He grasps issues quickly and has fantastic drafting skills."*

Charmian Jackson:

Chambers & Partners *"A brilliant advocate and an expert in both children and financial matters. She is clear with her advice, great with clients and very attentive." "Knowledgeable and very good on her feet."*

Mark Cooper:

Chambers & Partners *"Calm and compelling, he grasps the issues in a case and wins the confidence of judges." "His cross-examination has a pinpoint accuracy which leaves the court in no doubt as to who is in control of the case."*

Section 20—Use and Abuse

1. Keehan J has highlighted, in a number of recent cases, the harm that has been caused to vulnerable children languishing in the system under section 20 without any proper planning for their welfare and without their therapeutic needs being properly assessed and addressed. In July, the Supreme Court has also considered these issues and given clear guidance in the case of ***Williams and Another (Appellants) v London Borough of Hackney (Respondent)*** **[2018] UKSC 37**.

2. There is no express requirement for "parental consent" (e.g. an abandoned child situation) BUT no local authority has the right to remove a child from a parent who wishes to care without a court order. Only the police can do this under an emergency protection order.

3. If a parent agrees to removal, she is simply delegating the exercise of parental responsibility for the time being to the local authority, BUT any delegation must be real and voluntary.

4. The best way of ensuring this is by fully informing the parent of her rights under section 20. BUT a delegation may be real and voluntary even when the parent is not fully informed.

5. Any person with parental responsibility may, at any time, remove the child from local authority accommodation.

6. Local authorities should give parents clear information about what it has done, including:
   a. the whereabouts of the child (per para 15 Schedule 2 Children Act 1989); and
   b. the local authority's duty to bring proceedings if it believes that there are reasonable grounds to believe the child is at risk of significant harm.

7. A local authority cannot accommodate a child if the parent with parental responsibility is willing and able to accommodate the child OR arrange for someone else to care. BUT section 20(7) says nothing about the suitability of the alternative accommodation, so if the local authority objects it must commence proceedings.

8. There is no legal requirement for a parent with parental responsibility to give notice to remove the child. The child must be returned to the parent on request unless child will be harmed, e.g. if parent is intoxicated.

'Section 20 – Use and Abuse' continues overleaf

'Section 20 – Use and Abuse' continued

9. If the parent requests that the child is returned and local authority does not agree, it must make an application for an emergency protection order.

10. If the local authority refuses to return a child, the parent can either physically remove the child or make an application for *habeus corpus*. However, cooperation with the local authority is likely to obtain a better result for the child, e.g. by working together to improve the home situation and allay the local authority's concerns, rather than pushing the local authority into issuing proceedings.

11. A parents' right to exercise parental responsibility may be affected by a a child arrangements order or special guardianship order.

12. If the child is over 16 the position is different:
    a. there is a duty on local authorities to provide accommodation for any child in need over 16;
    b. there is power to accommodate 16-21 year olds in a community home; and
    c. once an accommodated child reaches 16, a parent has no right to remove if the child is willing to be accommodated.

13. There is no time limit on section 20, BUT:
    d. the local authority has a duty to consult with the child's parents over all arrangements;
    e. the local authority should prepare a care plan for the child preferably in consultation with the parents; and
    f. long term section 20 accommodation might be in breach of child's or parent's Article 8 rights.

14. Section 20 gives the local authority no compulsory powers over the parents or their children and must not be used in such a way to give the impression that it does.

15. Good practice requires parents are given clear and accurate information orally and in writing.

16. Practically, local authorities may wish to formulate a clear and simple document to give to parents setting out the parents' rights and the local authority's responsibilities and duties.

For Tom's CV, click here

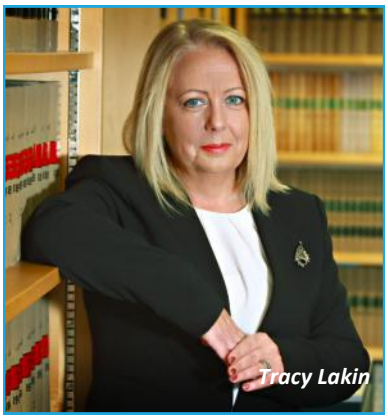
1. In June, the former President, Sir James Munby, gave further guidance on special guardianship orders (SGOs) in the case of ***Re P-S Children*** **[2018] EWCA Civ 1407** in the Court of Appeal. The case concerns two children, P aged 5 years and S aged 2 years. Both children had the same mother but different fathers. At short notice the local authority's proposed carers pulled out, but both sets of paternal grandparents were positively assessed to be special guardians. The local authority and the guardian supporting the making of SGOs but no applications for SGOs were before the court. Therefore, the judge was invited to make the SGOs of his own motion.

2. The Judge heard submissions only and declined to make SGOs and made care orders, referring to them as "short term care orders". He was concerned that the children had never lived with the proposed special guardians and, therefore, they were untested, particularly in respect of managing parental interference. Allowing the appeal, the former President gave the following guidance:
   a. If the 26-week statutory limit is likely to become an issue in a case then:
      i. the local authority should identify all realistic options for a child's care at pre-proceedings stage OR at the commencement of proceedings; and
      ii. the care plans should identify all realistic options as contingency to the local authority's preferred option.
   b. Although they were not parties, both sets of grandparents were present at court and the Judge should have heard oral evidence from them, the parents and the relevant professionals.
   c. In any case where a Judge was expressing an alternative view to professionals and/or parties in a case it was important to invite the Judge to hear oral evidence.
   d. Where a local authority is recommending a SGO, the local authority should be assisting the proposed special guardians to make the relevant application to the court (so that they became parties) with the likelihood of the local authority funding their applications.
   e. It is inappropriate to request that a Judge make a SGO of his own motion.
   f. The concept of a short term care order is flawed. If the local authority did not apply for discharge, it would have required the proposed special guardians to apply for leave to make the application for discharge without the benefit of legal aid.
   g. The Judge at first instance had referred to Keehan J's guidance on the making of SGOs, which will be familiar to those of us practising on the Midland Circuit. The Court of Appeal stated that this was informal guidance only but said that guidance in this area was needed.

'Special Guardianship Orders – More Judicial Guidance' continued

(h) The President proposed to invite the Family Justice Council to undertake an investigation as to what form any guidance should take.

(i) Given the number of breakdowns of SGOs and other serious problems, it appears that this guidance is urgently needed. By the time that the case was heard by the Court of Appeal, both children had been placed with their respective paternal grandparents, the placements were going well, the local authority had prepared the necessary financial plan and the Court of Appeal was able to make the SGOs.



For Tracy's CV, click here

Has the 26-week time limit eliminated purposeful delay?

1. The issue of purposeful delay was considered by the Court of Appeal in *Re* ***P (A Child)*** **2018 EWCA Civ 1483.** The salient facts were that the mother had a history of alcohol abuse and one child had died from SIDS one evening when the mother had been drinking. The other child was removed to kinship care. During those proceedings the mother was found to be dishonest. The mother then gave birth to L who was removed at birth by the local authority and care proceedings commenced.

2. At trial the evidence was that:
   a. the mother had independently engaged with AA;
   b. the mother had been sober for 13 months;
   c. the mother's contact with L was taking place 4 times per week;
   d. L's foster carer stated that, in her 30 years of fostering, the mother was one of the most impressive parents she had met in terms of her connection and relationship with L; and
   e. a psychiatrist reported that the mother had made all the progress that could be hoped for or expected and if she achieved another 6 months, there were grounds for optimism that she would achieve long-term sobriety.

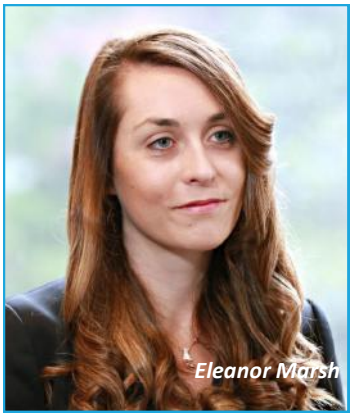
3. The local authority accepted that there had been an improvement but argued that there was a high risk of relapse based on her earlier history. By this time L was 7 months old, so the court was up against the 26 week limit. The mother applied for a 6-month adjournment in the light of the psychiatric assessment.

'Has the 26-week time limit eliminated purposeful delay? ' Continues overleaf

Has the 26-week time limit eliminated purposeful delay? Cont.

4. The trial judge refused the adjournment and made a placement order. He was concerned *inter alia* about the mother's history of dishonesty and that further delay would cause attachment difficulties for L.

5. The Court of Appeal allowed the mother's appeal on the basis that:
   a. the trial judge had placed too much reliance on the mother's history of dishonesty;
   b. that serious concern should have been set against the mother's genuine and significant progress;
   c. there was no evidence that a 6 month adjournment would cause attachment damage to L, particularly in light of frequent, good quality contact and the established relationship between the mother and the child;
   d. the purpose of the adjournment was to establish whether, within L's timescales, the mother could capitalise on her progress so that L could live with her mother permanently;
   e. it was therefore in L's best interests to grant the adjournment; and
   f. it could not be said that at the time of the hearing L's welfare required breaking off all ties to the mother and L's elder sister.



For Eleanor's CV, click here

Trimega Test Results – An Update

1. Recently I was instructed to provide an independent review of several public law children's cases where Trimega Laboratories Limited had been instructed to provide forensic toxicology test results, which were used as expert evidence between 2010 and 2014.

2. The police are currently investigating potential manipulation at this forensic toxicology company and these tests may now be unreliable, although it is not clear how many tests during that period may have been manipulated.

3. Accordingly, the Department for Education has asked all local authorities to review their files to ensure that the basis of decisions about children's safety and wellbeing is not now questioned.

4. The review process is unlikely to involve a need to re-test or to examine individual samples because, according to the Minister who explained situation to Parliament on 21 November 2017:

Trimega Test Results – An Update' continues overleaf

"The number of Trimega's customers affected (such as local authorities, individuals, legal representatives and employers) is unknown. It may never be possible to identify them all, due to poor record-keeping practices. Samples from Trimega cannot be retested, because of the extremely limited chain of custody records and the natural degradation over time of any remaining original samples."

5. It is unlikely that decisions about the welfare of children will have been taken solely on the basis of toxicology test results. Many cases are far more complicated than just drug use, and even those that principally concern drug misuse do not hinge solely on the result of one drug test, but depend upon a parent being able to establish and maintain abstinence from illicit substance misuse and to demonstrate a good prospect of maintaining this in the long term.

6. If you are acting for a parent, given the time lapse, it is unlikely that you would be able to succeed in setting an original order aside, but HMCTS has created a specific application form, Form C650, to apply to the court if a parent feels that a Trimega test has adversely affected the outcome of their case.

7. You can read more on the Government's website where the Ministry of Justice and HMCTS have published guidance for people concerned about the potential unreliability of these tests: https://www.gov.uk/guidance/forensic-toxicology-tests#family-cases-involving-decisions-about-children

For Rebecca's CV, click here