



Association of **Lawyers for Children**  
Promoting justice for children and young people

# newsletter

March 2007

Issue 39

## “How much change for children?”

**The Speech of the Honourable Mr Justice Ryder to the Association of Lawyers for Children 17th Annual Conference held on 2nd – 4th November 2006 at the Queens Hotel, Leeds**

On Friday 13th October 2006 the Lord Chancellor announced that the proposals for Legal Aid Procurement in Family Proceedings were to be reconsidered. As many of you know, the Lord Chancellor received the Senior Judiciary's view about the proposals made by the Legal Services Commission. We do not yet know on what basis new proposals will be made or the timetable for their implementation. The intervention of the judiciary in a question such as this can only be appropriate as a response to public consultation or to seek to protect judicial independence. It is arguable that the proposals, if implemented, would have removed the ability of the Family Courts to prepare and case manage its proceedings in the interests of children and young people, i.e. the usual processes by which the court directs the parties, and in particular, children's representatives, to undertake necessary tasks for the court, would have been damaged. It needs no rehearsal before you that the primary reason for that possibility was that there is a finite limit to the good will and public service of skilled practitioners if they calculate they will be priced out of business: whether by the effect on business partners who must thereby subsidise their outgoings or families who bear the brunt of unpaid devotion to duty.

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# Editorial

## Dire times continue. The two substantive issues on legal aid as at March 2007 are the imposition of fixed fees for family work and the new unified civil contract.

Following successful lobbying, the Legal Service Commission proposals on fees (published at the same time as the Carter Report on which they were said to be based) were withdrawn, with a promise to reconsider them. But the Lord Chancellor quickly reneged on his promise made at the Law Society conference in September 2006. New scales have been reissued with some tinkering to the figures with a six week period for further consultation.

There are only two interpretations of the current thinking, given that no practitioner actually believes that the regime about to be imposed will halt the exodus from family practice. Either the civil servants are deceiving their political masters about the reality. Or the politicians, hating lawyers and their potential for opposing government, want to be rid of us. The total amount of money involved, although considerable to practitioners, is negligible in the global budget, and does not justify the political stance.

The funding proposals as presently set out will lead solicitors to find ways to manage cases which will act to the detriment of their clients, if they want to remain in business. For example they will necessarily use inexperienced, unqualified (and cheaper) staff to provide advice. This is peculiarly consistent with an observation made by Vera Baird, during her roadshows to sell the package, when she

said that little expertise was required to act in family cases. As with so much in this debate, we know better.

The detailed proposals state that the overall legal aid fund will not be reduced, i.e. figures for the year to April 2008 will be maintained at the level for 2005/6. But this must be seen in the context of only one minor increase in rates in the last 15 years. No profession or individual professional would put up with that, but we are told we must, without a fight and to the obvious outcome for the most vulnerable and needy of clients. The hypocrisy is breathtaking.

At the same time to twist the knife on 28 February 2007 the LSC issued a new contract, arriving on most desks around 9 March, that all solicitors providing publicly funded advice were required to sign by 1 April 2007. No extension, no exemptions – just sign and take the consequences, despite the fact we know the Law Society considers it to be onerous and one-sided. Advice from the Law Society about a suitable response has of necessity been guarded because of concern that to instigate coordinated action would be unlawful on competition grounds.

Lord Carter wrote in 'Legal Aid: a market-based approach to reform' (2006) that one of the aims had to be to secure the future of the legal profession for children. In spite of what Vera Baird says, (and she may believe it), it is difficult to believe that the exodus from children and family practice will not continue. There is a very strongly held view among solicitors that the Government agenda is to remove us from this field, and that their scheme is aimed at doing that while washing their hands of the consequences. Possibly its background agenda might be to place legal advice within a large national corporate conglomerate with access to the high street, but we have already seen what failure this

produces in the form of, for example, the Child Support Agency. The wider policy implications of work in child protection in relation to social exclusion, anti-social behaviour, drug abuse, to name but a few, appear to be lost on this Government.

Younger solicitors should remain with the work, not only because it is interesting and socially important, but also because the necessity of legal input will within a few years come to be recognised and respected by a more enlightened government. But it does now seem inevitable that there will be fewer solicitors doing the work, in inhospitable environments, with the inevitable consequential delays. At a recent meeting of the All Party Parliamentary Group on Adoption and Fostering up to date statistics on care proceedings were disclosed which showed delays have remained the same over 18 months. In the current climate there is no reason for thinking they can improve or that there is any real desire to improve them.

So, Tesco law looms, whilst the Government fiddles. Underpaid and battered practitioners are prevented from protecting their livelihoods, or defending the rights of children and families. Money, corporate rules and the free market dominate – the disadvantaged, underprivileged, and those under pressure must take second place? What price now Every Child Matters? What price the carefully structured balancing principles of the Children Act 1989? And what of those resounding principles reiterated (so ironically it transpires) about legal aid as a foundation stone of society?

**Richard White**  
**Liz Goldthorpe**

## “How much change for children” (cont.)

The argument put by the judiciary was one of some constitutional as well as practical significance and such an argument or position can neither be adopted lightly nor used in repetition without very good cause indeed. The intervention was the second by the Senior Judiciary since the passing of the Constitutional Reform Act 2005. For different reasons and on a different basis, the Senior Judiciary made proposals to the Child Care Proceedings Review to help to dissipate the spectre, whether justified or not, of administrative rather than judicial determinations affecting the interests of children and their status and just as importantly, to bring together into a professional and proper debate, those who felt excluded from or by the process.

In order to set the scene for what I wish to suggest to you today, it is necessary to identify the elephant in the room: what are these processes all about and why are they generating so much antagonism and distrust? The simple answer is that there is no more money available for the family justice system, for courts, judges, advocates, advisors, witnesses or representation. I do not seek to explain or justify that position: it is not for the family judiciary to re-order central or local Government spending priorities or to review fiscal policies or spending decisions provided that in the individual case human rights compliance is maintained. Any challenges to the cost neutral environment in which we are told we must work must be made in other places, including the political stage, and that is for you and others, not me. From the perspective of the judiciary, however, what is the practical effect: increasing and serious delay for families and in particular children and vulnerable adults in accessing the family

courts to resolve their problems. It is now three years since the Senior Judiciary started to implement case management changes to try to expedite family justice. Those involved in matrimonial finance work will recognise that the test-bed for these changes well predated the tentative moves made in Children Act proceedings in 2003. For a variety of reasons those reforms are achieving at best a standstill and at worst are proving an unequal match for the increasing pressure on resources. In just one part of my own Circuit, last month's statistics show a 7% increase in Public Law Children Act proceedings and a similar increase in rule 9.5 appointments and part 8 incapacitated adult claims. In some areas of the Circuit the increase is as great as 20% and this reflects national trends. Judicial sitting days are frozen as a consequence of Her Majesty's Court Service budget cuts and because there have been no sitting day increases since 2004 we have experienced a real decrease in any area where we had previously been allowed to over-sit our allocation: something we are no longer funded to do. The pressure on court staff, judges, practitioners and professionals alike is close to being overwhelming.

You probably didn't need me to tell you that or to inject an air of despondency into your otherwise positive day. So I won't. There is no purpose in identifying a problem unless you also suggest a solution. Before setting out the solution, which is necessarily a story in parts, I need to touch briefly on what was to have been the content of my talk today.

Thirty one years ago, during my college interview, the admissions tutor asked me just one question that had any relevance to justice and it was this: “is it possible

to have a national legal service?” Other than to reply in the negative I have to confess to little memory of the substantial discussion that ensued. And what, you may ask, is the relevance of that question to the problem I want to help to solve? I am going to suggest that it is only by the development of an understanding of the role of the State in our private and family lives that we can develop a family justice system that is fit for purpose, and in particular, that is capable of providing the effective facilitation of the individual's rights within its own processes. For example, it is necessary to understand the limit on the State's power to prescribe what are permissible interventions in private and family life, the ability and right of the State to define what common values should or do constitute family life and also how these rights inter-relate with other rights: perhaps most importantly, the individual person's right to freedom of expression (and I not only include but emphasise that right from the perspective of the child or young person concerned in proceedings). If we do not discuss and improve our understanding of these concepts, the courts as a public body will end up in conflict with other public bodies including central and local Government, who are necessary partners in a family justice system. I also seek to argue that whereas Lord Woolfe's civil justice reforms encapsulate a pragmatic, i.e. cost proportionate environment within which antagonistic parties are expected to resolve their issues adversarially, that despite the similarity of wording, there is no direct comparison between the overriding objective of that justice system and our own.

Both systems coin Lord Woolfe's express agenda that "a court hearing should be a system of dispute resolution of last resort" but for very different reasons. In children proceedings the welfare imperative takes the pre-eminent place and the power of the court to change a person's status for life remains the most serious intervention permissible in any justice system since the abolition of the death penalty. That provides its own tensions and problems relating to all enforcement issues, sanctions for non compliance and both practically and philosophically in relation to pre-proceedings protocols, agreements and plans. Not least because welfare has traditionally been viewed as a subjective concept.

Why then is it that a national legal service cannot adequately provide family justice? It is without a doubt a function of Government to decide its spending priorities and thereby to limit the public funding of family proceedings. What I argue that Government should not be permitted to do is thereby to prevent effective access to justice for its most needy and disadvantaged constituents: children and vulnerable adults. And I seek to persuade you that in a free society it is an obligation on the independent judiciary and a function of the liberal professions, that is you, to ensure that access to justice is provided.

Before describing how, may I describe the alternative which already exists – the 21st century version of the National Health Service. There have been 2 revolutions in our healthcare since the Second World War: the first is enfranchisement: i.e. free access at the point of delivery and the second is the State's management of the clinical market, for which read, its control over the way in which clinical judgments are put into effect, i.e. treatment rationing. If you want to work in the public healthcare system, you must limit your clinical choices in accordance with financially controlled priorities and targets. The executive managers of clinical departments are bound to a system of

resource based, i.e. treasury imposed targets. Exactly the same funding mechanism provides the budget for the DCA, HMCS and CAFCASS, but not the judiciary or to date the parties' legal representatives. No matter how much Government has to control the cost of what we provide by targets or otherwise, their ability to do so is properly curtailed by a court process, i.e. by the independence of the judiciary and lawyers.

In healthcare, the contract of employment imposes the substitution of corporate governance, internal audit and financial risk avoidance systems for the professional work ethic. Otherwise, it would be up to the individual to abide by professional codes of conduct, ethical practice and empirically justified and publicly recognised best practice. That is a freedom that family lawyers still possess but that state employed healthcare workers do not. There are aspects of the state system that are good: in particular, ethical corporate governance systems and peer review, but these are not exclusive benefits of State control. Although the State has a margin of appreciation in the procedures and processes i.e. the system it provides by primary legislation and rules and regulation for family justice, I would argue that it should not, and indeed, cannot go so far as to remove or fetter our independence by any Treasury imposed target or restraint on the judgment of the court or the management of cases by the judiciary.

In short, there should not be a national legal service. If the independence of the judiciary is one golden thread in the warp and weft of daily life, then for my part the availability of an independent body of lawyers whose advice is not constrained by their employment or by any other government influence is another. Lord Carter recognised that as does the Lord Chancellor. It was, after all, Lord Falconer who pursued the need for judicial independence into its legislative form in the Constitutional Reform Act.

I promised you a solution. That solution is a new family justice settlement. I believe and hope that we are entering an era in family law that will require far greater attention to the detail and effect of rights, including children's rights, by the judiciary. In the absence of any constituency in Parliament that is able to arbitrate or prioritise those rights so as to set the social norms from time to time, that may well be left to the judiciary alone. It is, of course, a Strasbourg concept that public agencies and that includes local and central government and the courts, should facilitate rights to ensure that they are effective. The traditional facilitators of article 6 and article 8 rights are what are quaintly known as 'the liberal professions'. Without a flourishing interdisciplinary environment free of State control, the representation and facilitation of the rights of the vulnerable, including their wishes and feelings, is reduced to no more than the achievement of targets by prioritising and rationing. With the greatest respect to central Government that is not my job and I do not believe it should be the entirety of yours.

The historical and theoretical description of a new settlement has already been set out in the eloquent and learned treatise of Munby J given at the National Liberal Club on the 1st July 2005 [2005] 17 CFLQ No 4 at 487. In summary it is this: the three pillars of Victorian divorce law: marriage as a religiously ordained institution, the unequal status of husband and wife, and the paternal control of a child are obsolete. Without dwelling upon what these have been replaced with in practice, the theory of children law is based upon nothing more substantial than the judicial view which is necessarily subjective of what is in a child's best interest, that is the view of the judicial reasonable parent as set out in the landmark judgment of Lord Upjohn in *J v C* [1970] AC 668 at 722. Perceptions of welfare change and have to accommodate a society that has no

accepted common view. Family life takes many forms, Strasbourg's concept is in itself a living instrument and the autonomy of children and their right to freedom of expression may on the facts of the individual case outweigh a paternalistic judgment on welfare no matter how reasonable the judicial parent may be. We therefore need strong and independent voices for our most disadvantaged to articulate these positions: e.g. the incapacitated adult's right to express rejection of a care regime or the child's right to express rejection of a care plan. We urgently need a family justice system that is fit for that purpose.

We are presently labouring under the strain of at least 22 major consultations, projects and working parties that have a direct bearing on the family justice system. Until now, and save in some notable respects, the judiciary have been reactive and have tried to work in partnership. I am sure that none of us intend to cease to work in partnership – far from it – if anything, we want more common understanding but the President has decided to take the lead by establishing a new Framework for a Family Court. He will announce the Framework later this month. When complete, the Framework will set out decisions in the following key areas:

- 1) proposals for the judicial management of a Family Court comprising Judges of the High Court, Circuit and District Judges and the volunteer judiciary in the Family Proceedings Court;
- 2) allocation criteria for the categorisation and distribution of family proceedings;
- 3) gatekeeper and listing guidance for the issue and allocation of and administrative support for family proceedings;
- 4) a new Public Law case management practice direction;
- 5) a new Private Law case management practice direction;
- 6) new Family Procedure Rules (which are the responsibility of the FPRC); and
- 7) a new model for a family court plan for each local justice area.

The coordination and planning of the many disparate initiatives will now fall to the President as the first Head of Family Justice responsible for the judicial management of all family judges and magistrates. There will be a judicial programme of:

- four initiatives in Liverpool, Portsmouth, London and Cardiff to test out new arrangements for allocation and case management;
- review of the initiatives undertaken so as to lead to the Framework which will be piloted in each region in England and Wales;
- pilots that will help to inform the completion of the new Family Procedure Rules and new Practice Directions by the 1st April 2008;
- a national Programme of implementation.

The success of the Programme will not only be determined by the management of the Framework but also by the ability of the court to effectively manage each case. The court needs effective case managers just as much as the vulnerable parties need effective representatives. Just as CAFCASS needs to develop further into an effective social welfare investigation and problem solving facility, so must children's lawyers develop into an independent cadre of problem solving case managers for the court.

That is your challenge for change for the immediate future and of course during the existing legal aid negotiations.

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**The Honourable Mr Justice Ryder**

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# Separate Representation of Children

## Response of the Association of Lawyers for Children to the DCA Consultation Paper

### Question 1.

**Is the requirement of a legal need sufficient to cover the criteria when a child should be given party status? If not, what other criteria or circumstances should the court apply?**

### Comments:

#### General Observations

- (1) This question cannot be answered without first making some general observations about the desirability of separate representation for children in private law proceedings and about the approach of the consultation paper (viewed particularly in light of the Cardiff research).
- (2) Having set out (what is contended) are the deficiencies of the approach proposed by the consultation paper, an alternative proposal is made, which (it is suggested) is more in keeping with the Parental Separation: Children's Needs and Parents' Responsibilities – Next Steps agenda and with the findings and recommendations of the Cardiff research.

#### Separate Representation and the Approach of the Consultation Paper

- (3) It would be hard to contend that the aim of Parliament, when inserting section 41(6A) into the Children Act 1989 (and thereby providing for section 8 proceedings to be specified proceedings), was to restrict and reduce rather than expand the separate representation of children within private law proceedings. The amendment after all sets up the default position that the court shall appoint a guardian for the child concerned *"unless satisfied that it is not necessary to do so in order to safeguard his interests"*.
- (4) The Cardiff research, it was always claimed, would inform the procedural rules governing the operation of the new section 41(6A).
- (5) The consultation paper does not, however, fully or indeed fairly summarise the findings and recommendations of that research.
- (6) First of 'a number of consistent messages' emerging from the researchers' interviews with the children and young people involved was: "Most of the children liked the idea of someone appointed by the court to help them have their say in proceedings". Set within the context of the UK's obligations under Article 12 of the United Nations Convention on the Rights of the Child 1989, that is a finding of the utmost importance. The positive views of the children about their separate representation were also echoed by the parents interviewed by the researchers.
- (7) Although the Cardiff research was not commissioned to answer the question of whether the child's separate representation is required or advisable in all private law proceedings, if the issue be whether to restrict or expand the use of party status within such cases, then its findings and recommendations can only be seen as supportive of expansion rather than restriction. For example, the recommendation for automatic separate representation of children in enforcement proceedings brought under the Children and Adoption Act 2006 (not mentioned within the consultation paper) can only be construed in that way.
- (8) Perhaps most importantly, the research calls for a change in usage – the option of child party status should cease to be one of last resort, with the cases where such representation is appropriate being identified early in proceedings.
- (9) Yet Parliament's intention and those research messages do not sound in the primary proposal made, which, if implemented in the manner clearly intended by its proponents, will lead to party status being ordered far less within section 8 proceedings.
- (10) The coherence of the argument for such a course of action needs to be examined on three levels – on child welfare grounds, as a matter of children's rights and having regard to cost/resources implications.

- (11) There is no child welfare rationale for reducing the representation of children within private law proceedings. In no way does the Cardiff research (or indeed any other identified) support such a step on child welfare grounds. The consultation paper (at para 12) appears to argue that, because research does not support children being represented within all private law proceedings, therefore the current level (forming a small proportion of the private law total) should be reduced further. As a leap of logic, it is absurd; as a purportedly serious justification for the course of action proposed, it is embarrassing.
- (12) Surprisingly absent from the main body of the consultation paper is any proper consideration of the UK's obligations under Article 12 of the United Nations Convention on the Rights of the Child 1989. The President's Practice Direction of April 2004 appeared to signal a greater appreciation of the UK's obligations in that respect, ditto the introduction into the Children Act 1989 of section 41(6A). So far as the rights of the child are concerned, and against that background, the approach of the consultation paper can only be seen as a retrograde step.
- (13) It is manifestly clear from the Partial Regulatory Impact Assessment that the rationale for such an approach is cost/resources-led. The conclusion is plainly not derived from the Cardiff research, which has unfortunately been distorted so as to produce the result desired. But, even if the issue is considered on a cost and resources level, the approach of the consultation paper does not bear close scrutiny:
- (a) There is an implicit assumption that the cost of party status ordered in the future should be assessed having regard to the costs of such hitherto. That would presuppose no change to the timing and nature of the party status itself and to the nature and the length of the proceedings themselves. At a time of considerable recent change within the private law field, that is a dangerous assumption to make.
- (b) The second implicit assumption is that CAFCASS should not be provided with extra resources. The family justice system speaks as one in decrying the under-resourcing of CAFCASS. The Children and Adoption Act 2006 imposes yet further burdens on the Service through the statutory requirement for risk assessments and through the provisions for the facilitation and enforcement of contact. Absent sufficient extra funding, CAFCASS will struggle to discharge its new obligations effectively and to realise the objectives of its *Every Day Matters* agenda (for further discussion, see *Contact: The New Deal* – P Pressdee, J Vater, F Judd QC & J Baker QC (Jordans, 2006), particularly at pp 122-3, 167-8, 180-1, 183-4, 196-8 and 225-6).
- (c) The upfront proper resourcing of CAFCASS now should be seen as an investment – in the Service and in the *Next Steps* strategy of early, effective and proportionate intervention. Quite apart from the benefits to individual families and society as a whole, the potential savings down the line to the public purse in keeping cases (wherever possible) out of court and in avoiding contested and protracted private law proceedings justify the necessary initial outlay that will give the reforms designed to achieve those ends the very best chance of success.
- An Alternative Proposal**
- (14) The following proposal is made for consideration:
- (a) That the issue of separate representation for the child should be first addressed at the First Hearing Dispute Resolution Appointment (FHDRA);
- (b) That, if party status is considered necessary, it should be ordered for a specified period of time – perhaps for 40 weeks, alternatively until first listed final hearing/the first review thereafter if such review is directed;
- (c) That an extension of representation for the child beyond the period specified should only be ordered in exceptional circumstances.
- (15) The advantages of such an approach are manifest:
- (a) As recognised by CAFCASS's own *Every Day Matters* agenda, by the *Private Law Programme* and by the *Next Steps* agenda as a whole, the biggest difference can be made early on in proceedings through effective and proportionate intervention – this proposal will give the representatives for the child the optimum chance of shaping a child-centred agenda rather than responding to polarised parental positions and trying to refocus the minds of adult litigants embittered further by the adversarial and protracted nature of proceedings.
- (b) Delay (and associated cost) is minimised. The 'option of last resort' route often means guardians and their representatives having to get up to speed with months, if not years, of litigation, with the inevitable volume of (often unnecessary) paper that such produces. Getting the level of intervention right at the outset should mean fewer contested and protracted proceedings, with inevitable savings in time and cost.
- (c) The FHDRA is the centrepiece of the *Private Law Programme*. If properly prepared for and managed, and with informed advice from the CAFCASS officer, the court should have the information needed at that

stage to assess whether or not the presenting case is one where the child's separate representation would entail a necessary and proportionate form of intervention.

- (d) Within existing rule 9.5 proceedings, guardians often find that they reach a point where they can do no more of real value. If, having been involved from the start, the child's representatives have not been able to make sufficient progress within the proceedings by the kind of time-limits suggested above, it is frankly unlikely that their continued involvement will reap the rewards sought and entail a proportionate use of CAFCASS time and public money.
- (e) Such an approach would be consistent with the policy thrust of other reforms and developments in the private law field and with the findings and recommendations of the Cardiff research.

### Answers to the Questions Posed

- (16) No – at least, not as intended. The concept of 'legal need' is far too vague, capable of broad or narrow construction. If construed broadly so as to cover the child's rights and interests, it would be sufficient. If construed narrowly, as its proponents plainly desire, it would mean that many cases where the child's separate representation is necessary would be denied such – in particular, cases where the child's interests are being lost within the adult dispute and where the children themselves would wish to have a greater say (albeit that their view may be the same as one of their parents).
- (17) The test for party status as a whole should be in harmony with that set out by Parliament in section 41(6A) – that an appointment should be made/party status ordered unless

the court is satisfied that such is not necessary in order to safeguard the interests of the child concerned. In determining the issue of necessity, the court should have regard to the principle of avoiding delay, the principle of proportionality and the matters set out within the President's Practice Direction of April 2004 (suitably updated to reflect the alternative means by which the views and interests of the child can now be put before the court).

### Question 2.

**Given the regional differences if this proposal is applied nationally do you think that a greater level of consistency will be achieved?**

Comments:  
No. On the contrary, the ambiguities inherent in the phrase 'legal need' are likely to lead to more regional variation.'

### Question 3.

**What are the possible reasons for the regional variations?**

Comments:  
In different areas, different judicial cultures can be built up. Some judges will be enthusiastic about the use of separate representation, having had positive experiences of their use. Others may not order party status, concerned about the ability of the local CAFCASS to resource appointments made.

### Question 4.

**What else can be done to address this inconsistency?**

Comments:  
There should be greater, more transparent and more accurate understanding about the cases which would benefit from the child being separately represented. CAFCASS should also be properly resourced so that decisions about party status are made on the right grounds.

### Question 5.

**Do you agree that CAFCASS should be the preferred choice of the court to act as the Children's Guardian?**

Comments:  
No. The answer would be yes, if the evidence was there that CAFCASS provided and could provide a better and cheaper service than NYAS. That would necessitate proper and fair costs comparator figures for one (with the cost of legal representation included in each case, rather than just in the case of NYAS); should be underpinned by research as to the quality of service provided respectively by each; but would also require a confidence that CAFCASS, overstretched by its existing and increasing obligations, will be able to deliver an appropriate and efficient level of service to the children concerned.

### Question 6.

**If your answer to question 5 is yes – how best can this be achieved?**

Comments:  
N/A.

### Question 7.

**Are there any circumstances when NYAS or other independent practitioners should be used instead of CAFCASS to act as the guardian?**

Comments:  
Where CAFCASS cannot deliver the nature and level of service envisaged by the court in making the appointment; where the child him/herself has lost confidence in CAFCASS; and where, for example, the actions and/or attitudes of an adult party towards CAFCASS are such as to make impossible the effective use of a CAFCASS appointment.

### Question 8.

**What would be the likely overall impact on your business?**

Comments:  
N/A.

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Question 9.

**What do you estimate would be the cost to your business (if any) of this proposal? It would be helpful if you could show how you reach that figure.**

Comments:  
N/A.

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Question 10.

**Should all levels of court and judiciary have authority to make the child a party to proceedings?**

Comments:  
Yes.

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Question 11.

**Do you agree that applications for leave made by children should be heard in all tiers of family court?**

Comments:  
Yes.

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Question 12.

**To what other family proceedings should the provisions in Rule 9.2A be applied and why?**

Comments:  
That course is not advocated.

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Question 13.

**Other than being written into court Rules, how else could the provision of Rule 9.2A Family Proceedings Rules 1991 be promoted to competent children?**

Comments:  
Through age-appropriate information being made available online (as well as in leaflets) by CAFCASS, NYAS and the DCA, and by encouraging providers of legal advice and assistance to raise the option when working with families.

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Question 14.

**Is it necessary for the solicitor to attend all hearings?**

Comments:  
Yes. The recognition within the consultation paper of the benefits of the tandem model is sound and welcome. Ensuring a legal presence on behalf of the child in the more bitter and difficult of private law proceedings is the surest way of ensuring that the child is kept centre-stage and not marginalized by the actions and tactics of the adult parties.

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Question 15.

**Would restricting the role of the solicitor to certain hearings where they must actively represent the child (rather than hear the evidence of other parties) be detrimental to the best interests of the child?**

Comments:  
Yes, and to the child's Article 6 *ECHR* rights too. There is a bogus assumption implicit in the question. The ability and opportunity to cross-examine the adult parties is part and parcel of the active representation of the child. The bracketed part of the question seems to suggest either that the child's representative should not be able to cross-examine the adult parties or could do so without having heard their evidence. In either scenario, the child's interests would be ill-served and his/her Article 6 rights infringed.

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Question 16.

**Might the requirement for the guardian at all hearings be relaxed in some way? What should the test be?**

Comments:  
Whatever the rules actually say, in practice a more relaxed approach is often taken, with the attendance of the guardian excused in appropriate circumstances. Given the desirability of in-court dispute resolution and the often highly charged and unpredictable nature of hearings in these proceedings, the

guardian's attendance should be the norm. Attendance, however, should be left to the good sense of the child's solicitor and guardian, with the attendance of the guardian excused if he/she is unable to attend or, in the opinion of the child's solicitor and guardian, the attendance of the guardian at a particular hearing is not necessary.

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Question 17.

**What sources of information for children are you aware of?**

Comments:  
Those provided by CAFCASS and by the DCA.

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Question 18.

**How good do you think the current information for children is?**

Comments:  
Reasonable.

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Question 19.

**How could it be improved?**

Comments:  
By asking the children/young people who have used such information for their views. Also perhaps by allowing for some interactive question and answer facility online.

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Question 20.

**In what other ways could information be made available for children?**

Comments:  
Through schools – particularly through the use of support and counselling to children/young people caught up in the maelstrom of parental separation, with the school able to direct them to where further information and services can be found.

Question 21.

**Do you feel that judges should speak to children as a matter of course?**

Comments:

No; but they should do so (at least to explain their decisions) where the child/young person wants this and where the judge is trained (as he/she should be) to speak to the child/young person concerned.

Question 22.

**Acknowledging that the judge cannot use children's views as evidence in making judgments and cannot uphold**

**confidentiality over the duty to safeguard the interests of children, what are the other considerations in relation to the judge hearing the child in person?**

Comments:

The extent to which the child/young person wants to speak to the judge and the considered value in the child/young person being told personally why a certain course/decision is being taken.

Question 23.

**How can the court environment be made friendlier to children?**

Comments:

Training staff to deal with/speak to children in these difficult situations. Ensuring too that the CAFCASS officer/child's representative prepares the child/young person appropriately in advance. This would involve making clear that the purpose of the court hearing is not punitive, and providing reassurance about the judge involved (eg 'worked with him/her before', 'he/she's a good listener') – maybe even showing the child/young person an unwigged photo of the judge to provide a human face to the office.

**Piers Pressdee  
Harcourt Chambers**



## Legal Experts

EveryChild is an international development charity working to improve the lives of vulnerable children who are, or risk being, separated from their family or community. We believe that every child has the right to grow up in a safe and secure family, free from poverty and exploitation.

In south east Europe and the former Soviet Union, EveryChild's focus is on working with local partners (primarily state structures) to reduce the numbers of children being placed in residential care. This involves supporting the development of community-based social services for children and families who are at risk and also piloting and strengthening alternatives to residential care including national foster care and adoption. EveryChild focuses its attention on reform both at community level (developing and piloting new services, training staff and carers) and at national/regional level (legislation and policy reform, supporting the development of new administrative structures and systems, training of senior managers).

EveryChild is looking for legal consultants, with specific expertise in children's law, who are available for long and short-term assignments. Examples of relevant skills and experience include:

- Experience of undertaking detailed analyses of primary and secondary legislation to identify gaps and make recommendations based on the best interests of children/children's rights.
- Ability to present and communicate findings and recommendations appropriately to a range of audiences.
- Experience of providing leadership, support and oversight to the drafting of detailed revised and new legislation at different levels.
- Extensive knowledge of contemporary social work/social care practice and legislation related to the care and protection of children.
- Experience of developing and delivering training to a range of professionals.

**Previous experience of working in countries of south east Europe and the former Soviet Union is a distinct advantage but not essential.**

**Please send CVs to [recruitment@everychild.org.uk](mailto:recruitment@everychild.org.uk). For further information contact Chris Rayment on 020 7749 2434 or [chris.rayment@everychild.org.uk](mailto:chris.rayment@everychild.org.uk)**

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# Royal Wansted Children's Foundation

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## Boarding Schools Provide 'New' Solutions For Challenges Of Child Welfare

## 'Royal' Charity Helps Transform Hundreds Of Young Lives

### Mission

The **Royal Wanstead Children's Foundation** helps to provide boarding education at schools throughout Britain, for children with either one or no parent, whose home circumstances are seriously prejudicial to their normal development.

In many cases, abnormal home and family conditions lead inexorably to children having to be taken into local authority care and Royal Wanstead's work can help prevent that situation arising. Literally hundreds of children (and their stressed and impoverished one-parent families) are being 'saved' with the help of boarding schools, supported by Royal Wanstead and other charities.

For this reason, the Foundation has also been campaigning for a reversal to the decades of sharp decline in the total number of boarding places in the UK. It believes that, at a time of erratic parenting and battered family units (with 1.4 million lone-parent children living in poverty), boarding school can play a key role in providing structure, stability and pastoral care - enabling such children to build normal happy lives.

### Brief History and Current Thinking

The Royal Wanstead Children's Foundation was founded by the Victorian philanthropist Dr Andrew Reed (with financial support from the young Queen Victoria and the Duke of Wellington) in 1827 as the Infant Orphan Asylum. From 1842, it was housed in the majestic buildings that many readers will now know as Snaresbrook Crown Court. The orphanage eventually became the Royal Wanstead School (with Sir Winston Churchill as a long-time governor).

Since the school's closure in 1971, the Foundation has helped to support more than 1,500 children at over 120 different independent and State boarding schools. In doing so, it has transformed many young lives. The 180 years of Royal patronage has continued under The Queen Mother and, since her death, under HRH The Princess Royal, who has been actively involved in the Royal Wanstead's activities in recent years.

Today, the Foundation and its sister charities support some 250 children each year at around 100 schools although, in recent years, it has supported as many as 400 children per year. Furthermore, Royal Wanstead believes that this 'Assisted Boarding' can help many more vulnerable children and prevent the disintegration of many troubled single-parent families, often enabling a single parent to get

back into employment and rebuild their own lives as well as those of their children. It has carried this message to Government which has helped lead to the establishment of a Pathfinder scheme to place some 'looked after' children in boarding schools, although this is expected to be very small-scale.

## Approach

Royal Wanstead seeks to provide support where no other suitable care is available, where it is established that boarding school would be the best solution for the child and where both the child and the parent/carer/guardian wholeheartedly support the application.

The charity seeks to be able to provide funding for the duration of a child's schooling, subject to any change in circumstances. By working with other charities, Royal Wanstead is able to leverage its funds: its own grant is usually for some £2,500 per year or 10-15% of the total boarding fees met by the 'package' of providers. This has proved to be a very efficient way of providing secure long-term funding for these vulnerable children, and the Foundation is actively seeking additional funds and other grant-making charities to participate in these 'syndicates'.

## Referral Procedure

Referrals for Assisted Boarding come from a variety of sources, including schools, other charities, parents/guardians, GPs, and occasionally from local authorities.

Royal Wanstead's decision to support a child follows the satisfactory completion of an initial appraisal, a home visit, and professional references. The Foundation works closely with a small group of

dedicated trusts and other charities, and with the boarding schools themselves, to create the package of funding. Sometimes a parent or guardian makes a nominal contribution depending on means.

## The Social Context

Speaking at the Royal Wanstead Annual Conference at Lambeth Palace in November 2006, Lord Adonis, Parliamentary Under Secretary of State for Schools (himself a beneficiary of Assisted Boarding in the 1970s) said: "Britain has changed in many ways since Royal Wanstead's founder, Andrew Reed, established the Infant Orphan Asylum in 1827. But though much changes, much abides. The social dislocation is still there, and so too the children with unstable or non-existent families, whose lives are as fragile as they ought to be valuable to our society at large. We all have duties in this matter and Royal Wanstead is one outstanding example of social responsibility extending across successive generations." The Princess Royal speaking at the same conference, said: *"While boarding school is not, of course, suitable for all children whether needy or not, we know for sure that the right boarding place for the right child at the right time can help transform a young life."*

Colin Morrison, Chairman of the Foundation added: *"We are more convinced than ever of the effectiveness of Assisted Boarding and its relevance to today's welfare challenges and we are gratified now not to be the only organisation publicly saying it. Politicians and others are waking up to the fact that boarding schools are a modernised solution for many victims of a depressingly modern problem: vulnerable children and 'broken' homes."*

## An Alternative To Care Proceedings?

The Royal Wanstead Children's Foundation wants to support many more of the children who could benefit from the protection and care of a boarding school education. We encourage solicitors dealing with vulnerable children to consider suggesting Assisted Boarding to single-parents or guardians as a possible opportunity for them.

[www.royalwanstead.org.uk](http://www.royalwanstead.org.uk)

# Not all Child's CRAE

## On the 28 November 2006 the Children's Rights Alliance for England held its annual conference titled "*Children's rights in England: changes and challenges*".

The conference was timely as the United Nations adopted the Convention on the Rights of the Child (UNCRC) in November 1989. The last occasion when the UN Committee on the Rights of the Child reported on the UK's implementation of the UNCRC was October 2002. Government will now be gearing up for its next report to the Committee due no later than July 2007. In 2002 the UK was on the receiving end of 78 recommendations from the Committee, however in CRAE's view "significant progress has been made on just 12 of these recommendations in the past year" (State of Children's Rights in England, Number 4, November 2006).

Delegates attended the conference from various organisations with the common focus of children's rights. Before delegates participated in their own discussion groups about changes that they would like to see emerge in the UK, speakers were introduced by the two young chairs (Joel Semakula and Sehreen Shafaat) from CRAE's Young People's Panel; after introducing, the chairs managed to keep speakers in check and to the timings of the day's programme.

## Thomas Hammarberg (Commissioner for Human Rights of the Council of Europe)

Mr Hammarberg described how the UNCRC was 10 years in the drafting and is a truly unique convention having 'changed realities' for some countries. When the UN first consulted on the convention it took in account the views of NGOs and therefore the voices of children would have been considered. There was no avoidance of political aspects and fortunately the UNCRC was ratified by Governments rapidly (owing to successful campaigning by UNICEF). Although many states saw acceptance of the UNCRC as some form of prestige, Mr Hammarberg noted that the real difference was made by the number of NGOs that supported it.

The effects of the UNCRC following ratification by countries varied across the globe. Whereas some countries, as a result of ratification, changed their laws to thereby be compliant with the articles of the UNCRC, others were far slower invoking change. An example of the former, Sweden incorporated a 'best interests' principle, which was built into various pieces of legislation.

It seemed that the UK had still a long way to go in Mr Hammarberg's view, a view that, as it quickly became apparent, was shared by all the other speakers.

## Specific points raised by Mr Hammarberg were:

- The need for the Children's Commissioner to be truly independent of government and so freely able to carry out his monitoring duties;
- That all those who come into contact with children in a professional capacity should have training on the UNCRC;
- That all government departments must not shy away from their responsibilities: just because the UK now has a Children's Commissioner, this should not mean that other departments should not have to bother with UNCRC considerations; and
- The rights and needs of children warrants prioritisation on the political debate.

Examples of progress surrounding the UNCRC could be seen too:

- There are now over 20 commissioners/ombudsman for children providing an independent monitoring function;
- 15 countries have adopted laws banning corporal punishment; and
- There was some progress regarding participation and listening to children's views e.g. states authorising children to be involved in decision-making in schools.

What is needed is a change in attitude and mentality over how, as a collective, we think about children's rights. He summed this up perfectly by saying that the UNCRC should be the norm and the right. Thus it should be for any person arguing against or in opposition to the movement of children's rights to have the burden of proof sitting firmly on his shoulders.

## Shami Chakrabarti (Director of Liberty)

Ms Chakrabarti starkly told the conference of the danger emerging in the UK of human rights being contested, how the very idea of human rights and the Human Rights Act 1998 is under threat and of those who want rid of the concepts. In the face of such adversity, she described how, for some, the initiative of human rights for a child was too radical to contemplate. Her poignant depiction of the portrayal of children in the UK is a sad one. Children are classed as either angels or 'hoodies' and there is no room left for the complexities which we all acknowledge are present in every child's life, not least because we remember the intricacies from our own. What we are then left with in the UK is a political cartoon of children that does not bear out reality.

Concerning points highlighted and discussed by Ms Chakrabarti:

- How in authoritarian cultures children can be seen as possessions; and
- Children being used as the experimental ground for privacy abuse before such measures are applied to the wider community.

In answer to her own question of how the HRA can be used to enhance children's rights, Ms Chakrabarti talked of litigation being an unhappy, although often necessary, action and where the judiciary is still careful in how it couched its judgements in children's rights cases; it still being too radical a notion. Education and empowerment around the HRA are key: that is both in the media, in our culture and on the street. She summed up by saying that to forward a discourse on children's rights we will best demonstrate what rights and freedoms are really all about.

## Carolyn Willow (National Co-ordinator of CRAE)

Ms Willow talked about the organisation's fourth report on the recommendations of the UN Committee to the UK. She opened her speech with the view of one young person who had said that "adults think that the world revolves around them" but then went on to say that the UNCRC was the real tool that will change such perceptions. Although CRAE has commented on many aspects, some are noted below:

- The lack of a human rights framework;
- The UK's 'reasonable chastisement' defence against affording children the same protections from abuse that adults are availed of;
- Article 12 UNCRC rights not being enshrined in law;
- Child poverty levels;
- Lack of progress with juvenile justice (similar views consistently being advocated by the Howard League for Penal Reform); and
- The UK's policy on asylum and immigration in relation to children in the UK.

## David Bull (Executive Director of UNICEF UK)

Mr Bull talked on the important of NGOs and children monitoring the implementation of the UNCRC. In particular participation of children allows them to be stakeholders in society, that there needs to be a move from considering 'rights' as being a problem when in fact they are the solution. In conclusion Mr Bull stated that the truism that rights are not views or wishes: they are entitlements with corresponding duties and obligations but there was a fear on the part of governments in using the 'rights' language in relation to children.

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**Noel Arnold  
Fisher Meredith Solicitors**

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# Domestic Violence and Abuse Forum

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I recently attended a course dealing with understanding domestic violence and abuse and how this can impact on children and young people. The course was attended by a wide range of professionals, all of whom may come into contact with adults, young people and children who may disclose that they are living with domestic violence or abuse.

**We were presented with the following statistics as to the extent of domestic abuse in the UK;**

Currently 2 women a week are killed by a current or former partner;

- 30% of domestic violence cases start during pregnancy;
- 52% of child protection cases involve domestic violence;
- 90% of domestic violence incidents have children in the same or next room.

Children are also used as a tool in domestic abuse with the abuser making comments such as "if I left you wouldn't be able to afford to feed the children", threatening to leave with the children so they would never be seen again, threats to abuse the children if a partner doesn't comply with their requests. Children may also be encouraged to join in the abuse and this could include physically abusing their parent.

The effects of domestic violence on a child will vary greatly from child to child and will depend on factors such as length of time exposed to violence, severity and nature of the violence, relationship with non-abusing parent and many others too. It may make a child defiant and truant from school or overly compliant where they excel in school, school being the only place offering stability.

Across the country there are many domestic violence forums where professionals who come into contact with people suffering from abuse, or abusers meet to discuss strategies to assist and offer training. This seems a good way to form links which could improve your ability to access support for your clients. It is important that as many professionals as possible are involved in such forums to ensure that any strategies they put in place properly protect children. This course was presented in Hampshire, where there are 13 such forums across the county.

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**Natasha Atkins**  
**Child Law Partnership**

# Chair's address

"Do not go gentle into that good night.  
Rage, rage against the dying of the light."

Dylan Thomas

## This Conference will not be the requiem Mass for our professions. That is categorically not what the ALC Conference will be.

This Conference is for specialist professionals who represent, in many ways, the interests of children and young people with quiet dedication and passion, for much less reward than they deserve. Professionals who constitute a unique and limited resource at the heart of the family justice system, without whom the system could not hope to survive. Professionals who not only address the needs of their clients in accordance with the rules of their professions but who help them navigate an emotionally demanding road during what can be the most difficult period in their lives, who can make sense of what seems to them senseless, who can engender trust when trust is often the hardest leap to take.

This Conference is for specialist professionals who work with parents: over forty percent of whom have mental health difficulties; with parents who care for children in conditions of great poverty and social deprivation, often living on the margins of society; with parents who are asked to effect change in environments least conducive to facilitating that change. This is a Conference for Professionals whose skills include effective advocacy from the Family Proceedings Court to the High Court, often in complex and sensitive

cases. For professionals who require an encyclopaedic knowledge not only of case law, protocol and practice direction, but of research on such diverse topics as social policy and subdural haematomas. For professionals who demonstrate expertise and understanding in the areas of social work practice, local authority regulation, risk assessment, child development and parenting skills, psychiatric, psychological and personality issues, learning difficulties and cognitive functioning.

This Conference is for specialist professionals who take all those skills and use them everyday, often outside what others consider normal working hours, to ensure that the interests of children are met, that the system does its job, that children and families participate fully in a process that can, that will, change their lives irrevocably. Professionals who thereby achieve cooperation where before there was no cooperation, increasing beyond measure the chances of securing the best outcome, who help achieve understanding of the complex, alien, and sometimes alienating legal process where before there was no understanding, ensuring that views are heard, that decisions are influenced and that outcomes are informed.

This is a Conference for professionals who seek to continue to advance their knowledge of child protection, safeguarding, assessment methodology, the latest research, domestic violence, professional skills, preparation, planning and good practice and each of the other fascinating and supremely relevant topics covered in our exciting Conference programme. This is a Conference for

professionals who wish to ensure that the representation they provide to children and families is informed, expert and up to date.

Those of you who arrived last night will have seen the presentation made by a remarkable group of children and young people from the Rights and Participation Project in Hull. A presentation which, after the events of the last months, brought us back to the fundamental reason why we do what we do, to the reason why we are the Association of Lawyers for Children. A presentation which demonstrated, if any demonstration were needed, why it is so dangerous to misjudge the importance of a specialist body of professionals whose job it is to make the system listen to children and young people.

This Conference will not be a requiem Mass for our professions. Those who would write our obituary are premature. Rumours of our death have been greatly exaggerated. This is a Conference for specialist professionals who will continue to represent the interests of children and young people, who will continue to give a voice to those children and young people in the family justice system and who will continue to make it peoples' job to listen. This is a Conference for professionals who will not only ask the question "*How much change for children?*" but will seek to provide the answer and we welcome you warmly to it.

**Alistair MacDonald**  
Co-Chair, Association of Lawyers for Children

# How Much Change for Children?

## The ALC's 17th Annual Conference

The ALC's 17th Annual Conference took place at the Queens Hotel in Leeds from the 2nd – 4th November 2006. The conference seems to keep growing each year and there were lots of new faces amongst the old.



*Charlotte Collier, Atkins Hope providing wonderful entertainment*



*The food and the conversation were thoroughly enjoyable*

DJ Nick Crichton chaired the conference with his natural humour and skill, making sure the conference ran smoothly and entertainingly and the conference was yet again a huge success. The programme, expertly put together by Paul Murray, included a wide range of thought provoking speakers and workshops.

The conference was opened by an amazing performance from the children and young people at the RAPP project. Their presentations were entertaining and inspiring, reminding everyone present of the reasons why we choose to do this work and in the current climate of legal aid this was invaluable. The money raised at the conference was donated to this very worthy cause.

All of the workshops and speakers were engaging and interesting and, despite it being at the forefront of everyone's mind, the legal aid review did not highjack the conference. The Honourable Mr Justice Ryder's speech and the Chair's address to the conference are both included in this edition of the ALC Newsletter and are recommended reading.

**Note from the Editor:**  
**The 18th Annual Conference will take place from the 15th – 17th November 2007 in Manchester.**



*DJ Nick Crichton chairing the conference*

# Transparency in Action

## The Current Approach of the Courts

Before looking at the practical issues highlighted by taking a ‘best interests’ perspective, it is useful to examine the current approach of the Courts to balancing the interests of children and young people against the wider public interest within the context of publicity.

### *The Legislation*

Prior to turning to the approach of the Courts to the relevant balancing exercise, it must be accepted that the current legislation governing the extent to which the media is entitled to report is piecemeal in both construction and consequence.

- By the Administration of Justice Act 1960 s.12(1), it is a contempt of Court to publish information, without leave, about Court proceedings, including information for use in criminal proceedings, but not information about a ward, his name, address and the fact that wardship proceedings are in existence. It is a defence to the charge of contempt to have no knowledge of the wardship proceedings.
- By the Administration of Justice Act 1960 s.11 a Court may allow a name or other matter to be withheld from the public in proceedings before the Court, and may give directions prohibiting publication of the name or matter in connection with the proceedings as appears necessary. Such an order will continue until varied or discharged.
- By the Children Act 1989 s.97(2), no person may publish to the public at large or any section of the public any material which is intended or likely to identify any child involved in proceedings under the Children Act 1989 or the Adoption and Children Act 2002 or any address or school of the child (recently the subject of consideration in the case of **Clayton v Clayton [2006] EWCA Civ 878**).
- By the Children and Young Persons Act 1933 s.39, a Court may direct that no newspaper report shall reveal the name, address or school or include particulars (or a photograph) calculated to lead to the identification of any child involved in proceedings.
- By the Family Proceedings Rules r.10.20A and the Family Proceedings Court (Children Act 1989) Rules 1991 r.23A the disclosure of certain documents without the leave of the Court is regulated.
- By the Magistrates’ Courts Act 1980 s.69(2) the press may attend cases involving children (other than adoption proceedings) unless excluded on the grounds that such exclusion is necessary in the interests of the administration of justice or public decency. The Magistrates Courts Act 1980 s.71 restricts what the press are able to report as a result of their attendance under s.69(2).
- By the Family Proceedings Rules 1991 r.2.28 contested proceedings for divorce, judicial separation and nullity are heard in open court.
- The Court of Appeal generally sits in open Court when hearing appeals in family cases.

It can be seen that the provisions are various and complex and lack a co-ordinated and consistent approach. The refining and clarification of that legislation into a cohesive whole is clearly required and would provide an ideal context for a programme to better educate the public on the manner in which the family courts determine the difficult and complex issues that come before them.

It is accepted within this context that at present the media are, subject to the Court’s discretion, entitled to attend at the Family Proceedings Court. It would be dangerous however to treat the existence of this historical entitlement as proof that press access to the family courts gives rise to no issues of concern for the simple reason that the press, through ignorance of the provisions or lack of interest or both, do not generally attend the family proceedings courts, the impact of such attendance therefore being, at the present time, largely an unknown quantity.

## The Approach of the Courts

Prior to the case of **Re S (Identification: Restrictions on Publication) [2004] UKHL 47, [2004] 3 WLR 1129** the case law on situations falling outside the application of the statutory restrictions on publication by the media of Court proceedings was legion, including such famous decisions as **Mrs R v Central Independent Television [1994] 2 FLR 151, Kelly v BBC [2001] 1 FLR 1997 and Venables v News Group Newspapers Ltd and Others; Thompson v News Group Newspapers Ltd and Others [2001] 1 FLR 791.**

In **Re S (Identification: Restrictions on Publication)** the House of Lords considered the contention that an injunction restraining the publication within criminal proceedings of the identity of a Mother who was accused of murdering the brother of the child in question was justified where that child was likely to suffer psychological harm if the Mother's identity were so published. In that case, there had already been extensive publicity of the matter, including the naming of the child and the child's school.

Their Lordships held that the approach to cases where it is sought to restrain publicity is now governed by the principles enshrined in the European Convention of Human Rights, and specifically the balancing of Article 8 of the Convention (the right to respect for private and family life) and Article 10 of the Convention (the right to freedom of expression). The House of Lords made clear that the previous case law is now of limited value, save in relation to the ultimate balancing exercise to be carried out in respect of the relevant articles of the Convention.

Within that context, the balancing exercise to be carried out between Article 8 and Article 10 when considering whether to restrict publicity was described by Lord Steyn as follows:

*"First, neither Article has as such precedence over the other. Secondly, where the values under the two Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience, I will call this the ultimate balancing test. This is how I will approach the present case."*

Applying this test, the House of Lords dismissed the appeal thereby allowing publicity in relation to the criminal proceedings.

In **A Local Authority v W, L, W, T and R (By the Children's Guardian) [2005] EWHC 1564** the President of the Family Division was required to consider whether the media should be restrained from publishing the identity of a Mother of two children (aged 3 years and 6 months respectively) who had knowingly infected a Father with HIV. The Mother was the subject of criminal proceedings and the children were subject to care proceedings. The basis on which the application to restrain publication was put was that the substantial level of ignorance in the area in which the older child went to nursery could give rise to an outcry at that nursery and, more generally, make it difficult to find alternative carers for the children. By contrast to **Re S**, this case had not received publicity at the time the Court considered the application to restrain publicity.

The President reiterated and expanded on the test set out by the House of Lords, holding:

*"There is express approval of the methodology in Campbell v MGN Ltd in which it was made clear that each Article propounds a fundamental right which there is a pressing social need to protect. Equally, each Article qualifies the right it propounds*

*so far as it may be lawful, necessary and proportionate to do so in order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or 'trumps' the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out."*

Whilst acknowledging the vital importance of the rights protected by Article 10 of the ECHR, the President granted an injunction restraining publication of the Mother's identity on the basis that:

- There would be serious short term and long term prejudice to the children if the injunction were not granted.
- Publicity would be likely to focus attention, pressure and harassment on the children and the families concerned and potentially concerned with their care.
- The care proceedings would be inhibited and, in particular, the chances of placement of the children with foster carers prejudiced.
- In the long term the children would be affected by the lasting stigma of AIDS and likely face teasing, bullying and ostracism at school and in the community as a result.

It can be seen that the legal balancing exercise has to be a painstakingly careful one. It is accepted that neither of these seminal cases directly considered publicity in relation to the family Courts. However, of significance nonetheless to the issue currently under debate, is the approach taken by the President of the Family Division to the interests of children within the context of the balancing exercise

which the House of Lords has stipulated is definitive. Namely, an acute focus on the practical consequences for children of publicity within the context of court proceedings concerning their family circumstances.

## POLICY VERSUS PRACTICALITY

### *The Central Assumption*

The policy proposals set out in the consultation paper for rebalancing the relationship between rights of the individual to a private and family life and the right to freedom of expression when it comes to the confidentiality of family proceedings (for such a rebalancing is, in essence, what the Consultation Paper seeks to achieve) proceed on the basis of a number of assumptions.

The first and key assumption underpinning the proposals set out in the Consultation Paper is that there is “a public perception and concern that family courts operate in an unjustifiably secret forum rather than a necessarily private one” (Page 9) and that such concerns are “expressed by broad sections of society” (Page 21).

### *Validity*

The difficulty with this central assumption, which forms the foundation of the proposals set out in the Consultation Paper, is that there is no research based evidence that there is in fact wide ranging public concern or general public dissatisfaction over the manner in which the family justice system administers family justice. There is for example, no large scale research on the extent to which those using the family courts to

address their problems are content with the manner in which those problems are dealt with by the system. In the circumstances, there is in fact no reliable evidential foundation upon which to assert that a ‘broad section of society’ lacks confidence in the operation of the family justice system (indeed the small scale studies which have considered this issue tend to indicate the opposite<sup>1</sup>).

What then, is the root of the assumption central to the proposals contained in the Consultation Paper? Whilst there has not, in fact been a general public outcry in relation to the operation of the family justice system, there has by contrast been a very effective series of campaigns run by special interests groups concerned with the operation of the family justice system (both those raising concerns regarding perceived gender bias in the courts within the context of private law applications and those who contend that the manner in which expert evidence is deployed leads to the unwarranted removal of children). These campaigns have included high profile acts of direct action which have captured the attention of the media and the public alike.

Arguably, the nature and extent of media coverage generated by such direct action and the tenacious approach of the groups deploying it has created a disproportionate image of the extent of overall public concern regarding the family justice system. What is clear is that the debate on the issue in its current form has been re-energised, reformulated and promoted primarily by special interest campaigns pursuing particular criticisms of the family courts, as opposed to a spontaneous eruption of public or political concern over lack of transparency in the system.

### *Effect*

There is no criticism levelled at those who campaign on issues of special interest as the means of addressing their particular grievances by applying political pressure to effect change. But we must, and indeed the DCA must, be honest about its effect on the debate surrounding transparency in terms of the dominant forces underscoring its construct.

An evidence based analysis of an issue of family law and policy can account for and give appropriate weight to all interested groups, including children, but campaigning by special interest groups and the media coverage which those groups tend to stimulate cannot and does not, by its nature, do so. The effect is to create a narrow genesis for the debate on the issue in question, which narrow genesis acts, in the context under discussion, to exclude consideration of the interests and views of children and young people.

The upshot of assumptions made in relation to public confidence in the family justice system, but in fact arising from narrow special interest campaigns has been, ironically, a failure to consider comprehensively the interests of those the system is designed to protect. In reacting to the narrow formulation of the debate to date, the proposals contained in the Consultation Paper proceed from the starting point of the need to increase the confidence of the public in the family courts rather than the need to ensure the welfare and interests of children continue to be protected by that system. In short, the Consultation perpetuates the narrow genesis of the debate by failing to adopt an acute focus on the practical consequences for children of publicity within the context of court proceedings concerning their family circumstances.

<sup>1</sup> Freeman P and Hunt J (1998) Parental Perspectives on Care Proceedings: Studies in evaluating the Children Act 1989; London The Stationery Office; Brophy J, Jhutti-Johal J and McDonald E (2005) Minority Ethnic Parents and their Solicitors. London DCA.

Support for this assertion is to be found at Page 39 of the Consultation Paper. Entitled 'Protecting the privacy of families, especially children', the sole reference to the need to protect the interests of children within the context of greater openness is limited to the title of the section itself. Further, whilst the online consultation for adults was open for three months, that for children and young people was open for one.

## TRANSPARENCY IN ACTION

What then happens to the character of the current debate when we place the interests and views of children and young people at its centre and deploy an acute focus on the practical consequences for children of publicity within the context of court proceedings concerning their family circumstances?

If we address the issues raised by the Consultation Paper from the perspective of the child's interests, we find a considerable and concerning range of issues touching on the practical impact of the proposals.

### Risk

Placing the interests of children and young people at the centre of the debate requires us immediately to consider the practical effects on a child's well being of increased publicity in relation to the proceedings concerning him or her.

In the case of *Scott v Scott* [1913] AC 417 Lord Shaw of Dunfermline observed in respect of family life that:

*"The affairs are truly private affairs; the transactions are transactions truly intra familiam and it has long been recognized that an appeal for the protection of the court in the case of such persons does not involve the consequence of placing in the light of publicity their truly domestic affairs."*

As pointed up by the European Court of Human Rights in the case of **Botta v Italy (Application No 1439/93 (1998) 26 EHRR 241**, the "domestic affairs of which Lord Shaw speaks are the foundation which:

*"ensure the development, without outside interference, of the personality of each individual in his relations with other human beings".*

In terms, such "domestic affairs" are the foundation upon which a child develops physical, emotional and educational integrity and formulates the character and personality by which they fulfil their potential as members of society.

When a family case comes to Court, be it a private law matter or a public law matter, it is certain that this foundation is already threatened, if not actively undermined, by the emotional turmoil of family dispute or dysfunction. For children, Court proceedings can make an insecure and threatening situation yet more insecure and more threatening. It is axiomatic that the presence of the press has, for children with a knowledge of that presence, the potential to threaten and destabilise further this already teetering foundation. Dr Claire Sturge has argued that it will not be possible to protect children from what she describes as the trauma of knowing that what they perceive as 'their details' will be out there (*Transparency in Family Proceedings* [2006] *Fam Law* 409).

It is of course arguable that safeguards can be effectively deployed that will successfully mitigate any negative impact on children and young people of increased publicity in respect of proceedings concerning them. The point however, is this: when we deploy an acute focus on the practical consequences for children of publicity within the context of court proceedings concerning their family circumstances we highlight two issues. First, which of the competing positions on this issue is the correct one can only be

definitively settled if the interests of children are properly evidenced in the debate. Second, there is at present no research based information to properly evidence the risk and impact of greater publicity on the interests of children.

In short, a proper focus on the interests of children within the context of the debate on transparency highlights that we currently have no reliable way of quantifying the negative (or positive) effect on children and young people of the radical step forward proposed.

### Representation

Article 12 of the United Nations Convention on the Rights of the Child enshrines the child's right to be heard and to express his or her views; Article 13 accords them the right to freedom of expression.

These principles must encompass a right to be heard on the issue of whether the press should attend proceedings in respect of which the child is the subject. To argue otherwise would be to contend that the person about whom the proceedings are concerned and in respect of whose family life the proceedings are seized is not entitled to a say in the manner or the extent to which those proceedings are or should be exposed to perusal by third parties, nor the manner or the extent to which details gained by that perusal should be communicated to the world at large. If we respect the views of a child of sufficient age and understanding as to where he or she should reside or the extent to which he or she should have contact with a non-resident parent, why should we not respect the views of a child of sufficient age and understanding who wishes to object to the press attending to hear details of serious failures of parenting or the breakdown of their family life? Indeed, it can be anticipated that there will be situations in which the parents object to the presence of the media but a child of sufficient age and understanding wishes the media to attend.

The corollary of this point is that there may well be cases where, even if the parents do not object to the presence of the media, there are on the face of the papers compelling reasons why the court must in any event consider whether the welfare of the child requires the press to be excluded, including cases where the child's particular needs *prima facie* militate against press coverage. For example, in **A Local Authority v W, L, W, T and R** the President gave weight to the fact that the one of children in question was *"already an emotionally disturbed little girl who has already had too many carers in her short life and has been emotionally damaged in her short life"*.

In both the foregoing situations, the views and/or needs of the child must be represented before the Court if the Court is going to determine fairly the issue of press attendance. This in turn raises further issues. For example, how do you give effect to a child's right to comment upon or object to the presence of the press without increasing the emotional pressure on the child by first discussing the fact of such attendance with them? Further, in private law proceedings, for example, the Children and Family Court Reporter may report to the Court characteristics in the child that militate against press attendance. But who in private law proceedings will advocate on behalf of the child where those needs conflict with the position of the parents? Who in that situation will advance on behalf of the child the complex arguments arising out the need in such a situation to balance Articles 8 and 10 of the ECHR? The DCA has recently published its Consultation on separate representation in private law proceedings. In circumstances where party status is given to the child only when there is a *legal* need to do so, would the Court countenance a r 9.5 guardian under the current rules on the issue of press attendance alone?

In short, a proper focus on the interests of children within the context of the debate on transparency illuminates the complexity of the issues of representation and the right to be heard that must be considered within the context of that debate. This level of practical complexity is not considered in the Consultation Paper.

### Attendance

The debate on the extent to which children should attend court in proceedings in respect of which they are the subjects is increasing in its intensity (see for example Crichton, *Listening to Children [2006] Family Law 849*). There are cogent arguments for involving children in the Court process and listening to their views (see **Mabon v Mabon [2005] EWCA Civ 634, [2005] FLR 1011**). The Government has acknowledged these arguments in Every Child Matters, CM 5860 (Department for Education and Skills, 2003).

The first thing that children's representatives tell a child wishing to attend court is that only those people directly involved with their lives will be present in the Courtroom. This reassurance is often the key to securing the child's attendance and the advantages that flow from it. The presence of the press is almost certain to change the opinions of parents, judges, lawyers, social workers and guardians on the issue whether children should be entitled to participate in proceedings if this promise can no longer be honoured.

More importantly, the presence of the press adds an additional issue for a child wishing to attend Court to consider and deal with. It is submitted that it would be grossly unfair for a child who is the subject of proceedings, and who wishes to attend those proceedings, to feel unable to do so by reason of the presence of an entirely unrelated third party present only for the purposes of reassuring the public. Should it not be those who are the subject of the

proceedings whose confidence in the system is bolstered first, before we turn to bolstering the perceived lack of confidence of the general public? Should we not deal first with the issue of whether the subjects of the proceedings themselves should be routinely entitled to attend court to hear and participate in proceedings that directly concern them before we consider the manner in which, and the extent to which, we admit third parties?

In short, a proper focus on the interests of children within the context of the debate on transparency highlights the fact that we currently appear more concerned with securing the attendance of third parties at proceedings concerning children than we are with securing the attendance of the children who are themselves subject of those proceedings.

### Effective Anonymity

In **A Local Authority v W, L, W, T and R** the President was concerned that information concerning the children in question, if publicised, would become local knowledge and that *"what is local knowledge on one estate soon spreads to the others"*. In his evidence to the House of Commons Select Committee, District Judge Crichton said that:

*"we have got to see it from the point of view of the children for whom we are making decisions. If we allow the general public in to listen to deeply personal issues relating to things that are happening within this child's family, then we run a serious risk that in the playground tomorrow somebody is going to be saying, "We know your dad is knocking your mum about. We know that your mummy is on drugs. We know how she earns the money to buy the drugs", and that is a risk that we cannot take. It is as simple as that."*

The Consultation Paper asserts confidently that *"We already know that it is possible to improve openness and*

accountability and also protect the anonymity of the family" (Page 39), citing the case of **Re X (Emergency Protection Orders) [2006] EWHC 510 (Fam)**. However, whilst the DCA do not now seek to secure the admission of the public into the family courts, the difficulties described to the Select Committee are not necessarily eliminated by limiting admission to the press and restricting what they are able to report to the issues rather than the facts, in the manner proposed in the consultation.

An anonymised account of the issues in a case may not be recognisable to the public in general, but to a next-door neighbour the identity of the family may be plain from the barest of details. In such cases it is not difficult to see how, notwithstanding measures aimed at preserving anonymity, children and families will be identified, potentially with the consequences outlined above. The difficulty is that the closer to home publicity comes, the less effective are measures intended to ensure anonymity.

As a result, the risk to children of greater openness is at its most acute where that risk will impact upon children most acutely, in their communities, schools and wider families. In the context under discussion, just as children do not invite the situations leading to press interest, they do not have the choice to walk away once the spotlight is upon them.

In short, a proper focus on the interests of children within the context of the debate on transparency highlights the fact that the issue of transparency requires consideration and remedy not from the perspective of increasing public confidence in the court system, but within the context of a considered evaluation of the likelihood of unwanted publicity within the environment children call home and the measures required to prevent it.

### *The Press – An Effective Appointment?*

The second major assumption made by the Consultation Paper is that the Press will, within the context of the proposals contained in the Consultation Paper *"help reassure people that the Courts are more open, and more transparent"* and will *"act as an important part of the necessary checks and balances to ensure the system is fair and effective"*. The Consultation Paper concludes that *"We believe that the ability for the media, acting as a proxy for the public and for the benefit of the public, to attend all family courts as of right, subject to the Court's power to exclude if appropriate, will mark a major step forward in helping to ensure public confidence in the family courts"*.

The validity of this assertion must be called into question when one examines first, the level of detail within press coverage that will be required to hook and retain readers and viewers, and second, the level of detail within press coverage that will be required to correct the alleged lack of confidence in the family justice system.

Consider first the level of detail within press coverage that will be required to hook and keep readers and viewers. Whilst a vital constituent of free speech within a society and important in ensuring accountability of public institutions to the public, it must not be forgotten that the 'press' comprises a group of commercial organisations who survive by selling news media for profit. To this end, newspapers and other media must capture the attention of their readers and viewers and hold that attention for as long as possible to ensure commercial viability. Accordingly, and within this context, if the press is to effectively fulfil the role of *"reassuring people that the Courts are more open, and more transparent"* and *"act as an important part of the necessary checks and balances to ensure the system is fair and effective"* the press will have to

condescend to particulars regarding the Court process sufficient to retain the interests of the consumer.

The difficulty is of course, that the detail required to retain the interests of the readers and viewers, and hence the interest of the press in its role as guardian of a fair and effective court system, is likely to be a level of detail which threatens the interests of children. Likewise, the level of detail that ensures the interests of children are protected is unlikely to be the level of detail that will retain the interests of readers and viewers and hence unlikely be attractive to the press.

Quoted in the consultation paper, Judge Peter Boshier, Principal Judge of the Family Courts of New Zealand, noted that, since the family courts in that jurisdiction have been opened to the press subject to the removal of all identifying details in any subsequently published reports:

*"the bother we continue to have with the media is in cases where they do not go to court at all, but rather just rely on the report of a litigant that they've been badly treated."*

There is no reason to believe that the situation will be any different here. If we are to effectively protect the interests of children from the adverse effects of publicity by regulating properly the extent of the information that can be reported, we may also have to accept that the press will not want to be appointed as the responsible proxy for the public in matters concerning the family justice system.

Dealing next with the level of detail within press coverage that will be required to correct the alleged lack of confidence in the family justice system, given the actual nature of the 'public' disquiet in relation to the family justice system (as opposed to the lack of confidence in a 'broad section of society' contended for by the Consultation Paper), it is also difficult to see how such disquiet can in fact be

remedied by anything but the level of detail that would threaten the anonymity and interests of the child concerned. In **Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam), [2004] 2 FLR 142** Munby J noted:

*“One of the disadvantages of the ‘curtain of privacy’ to which Balcombe LJ referred – what some campaigners would prefer to characterise as the cloak of secrecy surrounding the family courts – has become apparent. Those who without justification attack the family justice system can all too easily do so by feeding the media tendentious accounts of proceedings whilst hypocritically sheltering behind the very privacy of the proceedings which, although they affect to condemn, they in fact turn to their own advantage. It is all too easy to attack the system when the system itself prevents anyone correcting the misrepresentations being fed to the media.”*

How then is this situation to be remedied but by way of the reporting of detail? To take an example, if the press are to correct a misrepresentation by a party to care proceedings that the child was removed from the family by reason of an errant expert, how are they to do this without providing particulars of the concerns upon which the expert based his or her opinion and the nature of the opinion itself. To take another example, if the press are to correct a misrepresentation by a party to private law proceedings that residence was awarded to the Mother by reason of the gender bias of the Court, is the press to be permitted to publish the reasons for the change of residence in order to correct that misrepresentation?

Finally, we must accept that there will be vocal critics of the family courts system whatever steps are taken to address the perceived public concern in respect of the family justice system. In those cases where a judge properly exercises his or her discretion to exclude the media from court, such decisions will attract precisely the same ill informed and unjustified criticism as judicial decisions do now – from precisely the same quarters. Moreover, in such cases, the court will be left with precisely the same inability to explain publicly, the reasons for its decision. It would be dangerous to consider greater openness via the press a universal panacea for addressing the perceived public distrust of the family courts.

In short, a proper focus on the interests of children within the context of the debate on transparency highlights the fact that the press may not be willing or able to effect the level of openness required to address the perceived general public distrust, and the acknowledged distrust of special interest groups in the family courts.

## CONCLUSION

Vital to determining the correct balance between the twin concepts of confidence and confidentiality in the family courts is ensuring that the debate on openness keeps at its centre the interests of children and young people. In his response to the House of Commons Constitutional Affairs Select Committee, *Family Justice: The Operation of the Family Courts Revisited*, HC 1086 (TSO, 2006) the Lord Chancellor stated that:

*“The interests of the children involved in family proceedings are, and must remain, paramount. We will not take any steps to increase transparency in the family courts unless we are certain that children are protected.”*

The Lord Chancellor is entirely correct in his approach. However, unless the interests of children and young people are kept at the centre of the debate on transparency, we will not be asking the questions, and hence not acquiring the answers we need to ensure that any steps taken to increase transparency promote rather than subjugate those interests. It is the welfare of children and young people that the family justice system exists to prioritise and protect. We forget this at our peril.

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**Alistair MacDonald**  
**Co Chair, Association of Lawyers**  
**for Children**  
**Barrister, St Philips Chambers,**  
**Birmingham**

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# Correspondence

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## Dear Editor

### Re: Pre-hearing Conferences in Care Cases

I wonder if anyone would be able to assist me with a problem I am currently facing with the Legal Services Commission in relation to Care files. Since the increase in prescribed rates in April 2001, I have successfully recovered the rate of £71.50 for both pre-hearing conferences and hearing time, however, more recently the Legal Services Commission have reduced the conference time to £64.80.

I appealed the decision made on the basis that the majority of time spent at court is in fact in conference rather than in hearing, in most cases spending hours agreeing matters between the parties before seeking the Judge's approval to the agreement reached. I also argued the point that the prescribed rates in schedule 1A allows the rate of £71.50 for attendance at the hearing, not for advocacy at the hearing. I enclosed with the appeal a copy of the article published in the March 2006 issue of the Association of Lawyers for Children which detailed that Atkins Hope Solicitors had received written confirmation from the Legal Services Commission accepting that attendance at court should be claimed at the rate of £71.50 for the hearing and the conference time.

Regardless of the above the appeal was rejected by the Regional Director. Following discussions with the Regional office, an application was

made for a review of the decision. The decision was reviewed by the Independent Funding Adjudicator who again rejected the appeal, agreeing with the original decision made by the Regional Director. The decision made is based on the interpretation of the word 'hearing' being to involve 'advocacy before the Judge'. I am now in a position where the Legal Services Commission say the matter cannot be looked at again. This not only causes me a problem for this particular file but also for all future care cases.

Any assistance on how to take this matter further would be appreciated.

Yours sincerely

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**Miss K Anderson AALCD**  
**Banner Jones Middleton**

# Book Reviews

**Monro, E. (2007).**  
***Child Protection.***  
**London, Sage.**

189 pages  
 and Paperback  
 3-978-1-4129-1178-8 (hardback)  
 3-978-1-4129-1179-5 (paperback)

This is one of the Sage Course Companion books. They are designed to be concise. This book covers the core areas of the training curriculum of courses involved with child abuse and child protection. Although primarily aimed at social workers, the content of this book is very relevant for other professionals who work with and for children, including trainee lawyers as an introduction to social work practice and the principles of child care law and practice upon which it is based. The book also provides insight for lawyers into the standards to be expected of social workers, which is helpful in children law work.

Eileen Monro writes from the perspective of a depth of academic knowledge and many years of experience. I like the clarity of her style, and the ease with which she shares information in a palatable way.

She makes the point that rules, guidance and systems are aids to practice, but that they cannot replace the expertise of the worker, and no matter whether the procedural rules

specify what is to be done, it is the experience and expertise of the worker that determines the quality of the and result. I totally agree with her on this point. However, it seems that the government at the moment is making so many efforts to put in place more and more new procedural rules, guidance and systems, but at the same time generating proposed cuts in public funding which are likely to prevent those who have the expertise from continuing to keep up high standards of work. *The Green Paper Every Child Matters* (Treasury 2003; [www.everychildmatters.gov.uk/aims/background](http://www.everychildmatters.gov.uk/aims/background) accessed 27 Feb 07) stated an intention to ensure that 'people working with children are valued, rewarded and trained'. Where has this gone to in the context of the proposed Carter Reforms?

This book covers the history of child abuse, current policy, legal framework, dealing with uncertainty, using research, definitions of child abuse and neglect, and who abuses and why? It goes on to examine in more detail the categories of abuse, emotional, physical, sexual abuse and neglect. It then considers what can be done to make children safer?

The remainder of the book is on research, study and examination skills, useful for students and trainees.

***The Courts and Agency Directory, (12th edition)***  
**London, Legalease.**

412 pages  
 Paperback  
 ISBN 1-903927 78 1 (paperback)  
 For a copy contact Legalease on  
 020 7396 5684

This little book is one of those publications that is delivered to the door each year and I would guess that in many firms it then sits on the shelf in the reference library, waiting its turn to be consulted. It is worth considering how useful it can be. In this little book is a list of agents willing to act in County Courts, Crown Courts, the High Court, Magistrates' Courts, in other courts and in other jurisdictions. The criterion for entry in the agency lists is by way of advertising subscription, and does therefore does not examine nor guarantee the expertise of the agents listed, but the lists are very useful in providing helpful contacts in the geographical areas for which an agent may be urgently required. It also lists barristers' chambers, support services, and sources of CPD training.

**Allen, Nick (2007)**

***Making Sense of the New Adoption Law, (2nd edition)***

**Lyme Regis, Russell House Publishing.**

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150 pages

Paperback

ISBN 978-1-905541-08-9 (paperback)

Cost £18.95 plus postage/delivery £1.50

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This is the second edition of Nick Allen's successful book on Adoption. The updated version, written primarily for child care practitioners, now includes extended references to the guidance and regulations, and explains how they fit into the statutory framework.

It is a practical book, readable and clear. It takes a thematic approach, which I really like – for example, Openness in adoption, providing an adoption service, adoption agencies and support services, adoption of looked after children, eligibility to adopt, assessment of adopters, adoptions with a foreign element, and access to information after adoption.

There is an appendix dealing with special guardianship orders.

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**Pearce, Nasreen (2006)**

***Adoption Law Manual,***  
**London, Callow Publishing.**

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574 pages

Paperback

ISBN 1-898899-82-7 (paperback)

Cost £34.95 postage/delivery free

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The book price is currently reduced on a special offer, for a limited period, from the original at £49.50.

This authoritative and comprehensive book by HH Judge Nasreen Pearce is a real bargain at the moment- and is well worth the investment.

It is packed with information, details of which are clearly set out in the contents list and with an additional index to make it user friendly. The book is up to date as at December 2005, and the information in it about the content and implementation of the Adoption and Children Act 2002 (ACA 2002) is solidly backed by statutory instruments, case law, guidance, and regulations, which make the book suitable for use both in case preparation and for academic reference.

Chapters include: applicants, the child, special guardianship orders, placement orders, preconditions for an adoption application, conditions for making an adoption order, dispensing with consent, principles to be applied, effects of an adoption order, contact, amendments, the registers, disclosure of information, intermediary services, adoption agencies, adoption support services, restrictions and offences, adoptions with a foreign element, overseas adoptions, non-convention adoptions, and more.

In particular, I welcome the discussion of contact in the context of adoption, and the author's realistic appraisal of the courts' and social services departments' past and present attitudes to contact. The author points out that the ACA 2002 introduces more positive provisions on contact after adoption, and to preserve the rights of the child. The adoption agencies have a duty to consider the matter of contact in adoption, which is also dealt with elsewhere in the book. She discusses the provisions of Article 8 of the European

Convention on Human Rights (the right to family life) in the context of contact, and points out that both adults and children enjoy this right, and any interference with it must be justified and fall within the provisions of Article 8(2). In public law cases, contact falls within Schedule 2 paragraph 15, and section 34(1) of the Children Act 1989, the impact of which is that the local authority's care plan should set out the provisions for contact and the reasons for it. The court may regulate contact in the care proceedings, imposing suitable conditions, and any failure to comply with the care plan at a later date may provide grounds for the court to revisit the care plan and to make further orders. When a care order is made, in relevant cases, the permanency panel must consider whether the child should be placed for adoption, and the local authority's fostering and adoption team should consider contact when finding the prospective adoption placements. She points out that when the care plan is for adoption, the local authority may recommend that contact come to an end, even if the placement has not yet been identified. In such cases, the local authority may seek an order to terminate contact under s 34(4) CA 1989. If contact is left to the discretion of the local authority and no order is made, the local authority may vary or reduce the level of contact and if the parents do not reapply for contact to be considered by the court, by the time an adoption order is made, contact has become insignificant and the damage is done.

She urges that contact should be examined carefully by the court throughout care proceedings, and that contact is given attention if adoption is the care plan, to ascertain the likely effect on the child if contact were to cease.

**Lane, Mary (2006)**

***Adoption Law for Adopters,*  
Oxford, Adoption UK.**

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176 pages  
Paperback  
ISBN 978-0-9515-9502-4 (paperback)

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This book is written by Mary Lane, a highly experienced former social worker, then Children's Guardian and Reporting Officer, then local authority solicitor, and now a solicitor in private practice, lecturer and trainer, who really knows the adoption law and procedure inside out. Mary Lane is legal adviser to Adoption UK and also chair of the BAAF legal advisory group.

Mary Lane explains in very clear and straightforward language the essential elements of the new adoption law and practice, and although the book was primarily intended for adopters, it will be useful for social workers, children's guardians, reporting officers, independent reviewing officers, managers, adoption panel members, health and other professionals involved in adoption matters, children involved in adoption, and of course, lawyers and legal trainees. It is an affordable book that could be on the reference shelf for staff and also available for loan to clients.

The book covers all the elements of the new law and procedure that adopters need to know adoption services, becoming adopters, children and adoption, proposing planning and making adoptive placements, support for adoptive families, contact and adoptive placements, what happens during adoption placements and achieving the adoption order.

The fact that the book is written by a practitioner shows. Mary Lane has thought of the questions that adopters often ask her, and what they really want to know – for example, a chapter is devoted to 'what happens if things go wrong – legal obligations, rights and remedies', and 'access to information about adoptions and intermediary services'. What I particularly like about the book is the author's practicality, for example, in suggesting ways in which adoptive families can access the services and the support to which they are entitled.

She has also included appendices with legislation, the information which adoption agencies must obtain, the content of a child's permanence report, the report of the local authority, useful contact details, a list of County Court Adoption Centres, and recommended reading.

A great little (and affordable) book – this is a 'must have' in the offices of CAFCASS, Social Services, Agencies and Adoption Support Services Providers, and Children Panel lawyers.

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**Barbara Mitchels**





## Association of **Lawyers for Children**

Promoting justice for children and young people

### **Outstanding Newcomer in the Field of Child Law ALC Award 2007**

Now in its third year, the ALC's 'Outstanding Newcomer in the Field of Child Law Award' in memory of David Hershman QC is looking for its 2007 winner. The aim of the award is to recognise the contributions of newcomers to the field of child law and to encourage them to continue to play an active role in shaping the future. Last year's nominations included University Students, Barristers and Solicitors alike. Previous winners are Emma Meredith of North Yorkshire Legal Services, Deidre Fottrell of Coram Chambers and Charlotte Rhodes of John Bromfield & Co.

If you know someone who you think is an exceptional newcomer to the field of child law then please nominate them NOW. Maybe they have demonstrated an ability for supporting clients, have researched points of law, have helped with training, developed new ideas and initiatives or represented parties in a particularly noteworthy case.

The winner will be presented with the award at the Hershman/Levy Memorial Lecture on Thursday 28 June 2007 at London Southbank University.

#### **Eligibility:**

- Nominees must be solicitors, barristers, trainees, pupils or students.
- Nominees must have been working in the field of child law for 5 years or less.
- The proposer must feel that the nominee has made a contribution to good practice, facilitating children's voices or the development of the field of child law.

#### **How to nominate someone:**

- Entries must be in the form of 250 – 1000 words identifying relevant achievements and/or characteristics.
- Nominations must make it clear that the nominee has been working in the field of child law for 5 years of less.
- Nominations must include full contact details for both the nominee and their proposer.
- Entries must be received by close of business on Friday 15 June.
- Please send entries via email to [admin@alc.org.uk](mailto:admin@alc.org.uk)

For further details or if you have any queries please do not hesitate to contact Julia Higgins, ALC Administrator on 0208 224 7071 or by email [admin@alc.org.uk](mailto:admin@alc.org.uk)

# Dates for your Diary

## NAGALRO TRAINING 2006

### ADOPTION AND CHILDREN ACT: the new legislation for old hands

**London: Monday, 18 June 2007**

**London: Friday, 28 September 2007**

This course will look at recent legislation and the accompanying guidance and will introduce experienced practitioners to the new way of practising and the new legal framework. The course is an essential introduction to developments in adoption and permanency for all those who have already practised in the field.

**6 CPD credits**

### LIFE STORY WORK

**Where do I belong? Where did they go to? Could I have done something different? Was it my fault? What's going to happen next?**

**London: Tuesday, 17 April 2007, 09.30 – 4.30**

**London: Tuesday, 2 October 2007, 09.30 – 4.30**

An experiential day, which will explore the theory, skills and emotions involved in life story work. Participants should go away armed with ideas, resources and also an appreciation of how hard it is for a child to do this work.

**£95.00 - £145.00**

**6 CPD credits**

### COMMUNICATING WITH CHILDREN

**London - 12 June 2007**

Ascertaining children's wishes and feelings through a variety of techniques and exploration of recent theoretical developments.

**6 CPD credits**

### NAGALRO Spring Conference

#### The Future of Children's Representation: Tandem to Unicycle?

**12 March 2007, 10.00 am - 4.30 pm**

**St Catherine's College, Oxford**

The future of children's representation has been thrown into doubt by current proposals in the Carter report and DCA review of Legal Aid. This conference will consider legal, practice and research perspectives on the role of the CG and Child's solicitor and the impact of the Carter report and legal aid changes on the future of separate representation of children. Where do Children's Rights go from here?

**Conference Chair:**

**The Honorable Mr Justice Sir Roderick Wood**

**6 CPD credits**

FOR FURTHER INFORMATION ON ANY OF THE ABOVE COURSES PLEASE CONTACT NAGALRO ON  
TEL: 01372 818504 OR FAX: 01372 818505 EMAIL: NAGALRO@GLOBALNET.CO.UK

## BAAF LEGAL GROUP

### *Is blood still thicker than water?*

**Finding permanence solutions within or outside the family; special guardianship, adoption or permanent foster care**

**Venue:** St Anne's Cathedral, Cathedral House,  
Great George Street, Leeds LS2 8BE

**Date:** 1 May 2007 10.00am – 4.00pm

**Contact:** Conference Team  
Telephone 020 7421 2637  
Fax 020 7421 2601  
Email conferenceteam@baaf.org.uk

**Closing date for booking:** 16 April 2007

#### **SPEAKERS include**

Stephen Boorman, Legal Adviser, Leeds City Council  
Clive Heaton QC, Zenith Chambers, Leeds  
Joan Hunt, Senior Research Fellow, Oxford Centre for Family Law and Policy  
Anthony Kirk QC  
Paul Nixon, Assistant Director for Children's Social Care, North Yorkshire County Council  
Law Society CPD accredited, 4.25 hours  
Bar Council accredited, 4 hours

**ALC 18th Annual Conference Thursday 15th – Saturday 17th November 2007, Midland Hotel, Manchester**

# The Hershman/Levy Memorial Lecture 2007

Approved by the Law Society for CPD points and now also approved by the Bar Council and ILEX

**ADD THIS DATE TO YOUR DIARY NOW!**

This event will be CPD accredited



Association of **Lawyers for Children**

Promoting justice for children and young people

## **THE HERSHMAN/ LEVY MEMORIAL LECTURE 2007**

IN MEMORY OF DAVID HERSHMAN  
QC AND ALLAN LEVY QC

**TO BE HELD AT KEYWORTH CENTRE  
LONDON SOUTH BANK UNIVERSITY**

**ON THURSDAY 28 JUNE  
5.30PM TO 8.30PM**

**Keynote Speaker:  
Lord Justice Wilson**

**Presentation of the ALC award for  
*'Outstanding Newcomer in the Field of Child Law'***

There will be an opportunity for Delegates  
to put questions to a Panel of Experts

Cheques payable to the ALC (address below) for  
£40 – ALC members £50 – non-members  
to include drinks and canapés

Waverley House, Park Lane,  
MELTON MOWBRAY, LE13 0PT  
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admin@alc.org.uk  
tel: 020 8224 7071