

**Newsletter December 2020**

Dear all

**Thank you and well done!**

As this year of 2020 draws to a close, I would like to put on record my thanks to everyone for the tremendous hard work and dedication that you have shown to the family justice system in Leicestershire this year. It has been an extraordinarily difficult year. The global pandemic and the restrictions imposed by the government as a result, have meant adapting to new ways of working in a very short timescale. We have had to adjust to remote working and using technology many of us had not used before. The fact that there have been more sitting days in family cases this year than in any previous year is a testament to the dedication and hard work of everyone involved. This has all been achieved under pressure on every individual in the system including members of the judiciary and magistracy, legal advisers and court staff, lawyers, social workers, Cafcass Officers and many more. Thank you all very much for your efforts.

Fortunately, all this hard work means that in public law we have no great backlog of work. There is some backlog in private law cases but inroads have been made into this during recent weeks and it is hoped that, with the assistance of fee paid judiciary, the backlog can be reduced during the first few months of 2021. All of this has been achieved against a backdrop of a continuing rise in applications of all kinds to the court.

**Judicial appointments**

We are very pleased to welcome to the District Bench in Leicester, District Judge Dewinder Birk who took up her appointment on 23 November and will be able to sit in all jurisdictions (civil, private and public family law) by the end of March 2021. Many of you will know her already as she has practised as a barrister on the Midlands circuit for some years. She is most welcome and we are delighted that she has joined us.

We are also very pleased that District Judge McClure is now a nominated Judge of the Court of Protection and will be able to hear Court of Protection cases with immediate effect. This will be of great assistance as Leicester receives a high number of CoP cases.

**Well-being**

You will know already that the President continues to stress the importance of looking after everyone’s well-being. The Well-being Practice Protocol for Leicestershire which I issued in September 2019 needs revisiting in the light of the pandemic. If you are interested in assisting with the revision of that document please let me know as I should like to have a small group of people consider and reformulate the document early in the New Year. In the meantime, there is concern about the increased screen time people are exposed to by remote working. Please think about whether you should have an eye test! Please try to make sure you have breaks from looking at a screen throughout the working day. Posture is another concern because not everyone working from home may have a suitable chair so please consider whether you need to do something about that.

**FLP digital care programme**

The digital care platform was rolled out in Leicestershire at the end of September. Unfortunately, there have been a few issues with it and its use for new cases has been paused. The project is also on pause nationally while some technical issues are worked on. The situation will be reviewed in mid January. For those cases that have been issued on the platform, we have agreed to continue to use it for the time being at least, so that we can test the improvements and changes as they are made.

**Hearings**

There are a few things to note about hearings under the remote working regime we are currently operating. Please ensure the court has the list of, and contact details for, all participants in remote hearings no later than 48 hours before the hearing. This responsibility rests with the applicant. This means those representing parents and Guardians in public law cases must let the local authority lawyer know who is attending and who is representing in good time, so they can send the information into the court office. Court staff should not have to chase solicitors for this information.

The same goes for bundles. Please make sure these are sent to court at least 48 hours before the hearing so that the judge has time to read them. It may not be the only bundle they must read for that day! Legal advisors also need time to distribute the bundles to the relevant Magistrates in advance of the hearing.

If you have the facility to produce a paper bundle for the FINAL hearing, please ask the judge or legal advisor if they would like to have a paper bundle to work from as well as, or instead of, an electronic bundle. Many courts prefer a paper bundle to assist in the preparation of judgments so if you can offer this, it will be much appreciated.

**Public law cases**

Please remember that care cases can be allocated to the exceptional (non-standard) track where appropriate. This should be done at the CMH or FCMH. Suitable cases when this should be considered include those when it is known that 26 weeks is unlikely to be achievable e.g. in cases where international assessments will be required, nai cases where experts are to be instructed, cases for a large number of children who require individual and complex assessments.

**Private Law**

Cafcass are under considerable pressure because of the increase in the number of cases and because the delay in finalising some cases has necessitated updating s7 reports being prepared. Please bear this in mind when considering the need for a s7 report. Please also remember that if the court is considering the appointment of a r16.4 Guardian, the judge will need to let Cafcass know and seek its views if an appointment has not already been recommended in the safeguarding letter or s7 report.

In my summer Newsletter, I mentioned that we would be adopting the suggestions of the Private Law Working Group chaired by Cobb J, in respect of FHDRA’s. The scheme has been operating locally since September and involves a second gatekeeping meeting being held to divert cases away from a FHDRA where appropriate. I attach the Protocol document prepared by HHJ Clark in Lincoln and used across the cluster, including by the legal advisors in Leicestershire, and reproduced with her kind permission.



**Reports and guidance for 2021 and beyond**

Despite the pandemic, a lot of work has been going on in the family justice arena and I am including details of some of the reports and guidance that have been issued in case you have missed them. First, in June 2020 the Public Law Working Group chaired by Keehan J, published it report into Special Guardianship Orders and this includes best practice and guidance which took immediate effect. The whole report is worth reading but if you are short on time, you may find it helpful to look at Appendix E.

 

Next, the Working Group on Medical Experts chaired by Williams J, reported in October. The recommendations it made start at page 66 and are directed to the various interested parties. For those engaged in the court process, recommendations 9 and 10 are pertinent. Placing cases onto the non-standard track (referred to above) is mentioned; as is considering whether the expert needs to receive all the papers or whether he/she can be sent the most relevant and an index of the rest which can be called for if desired; requesting expert reports are focussed on answering the questions and that it is not necessary to set out the history in great detail nor to include verbatim reports of interviews, save as appendices; ensuring experts receive updating documents in good time not on the morning they give evidence and so on. For judges, there are some specific recommendations at paragraphs 12 to 15. There are also recommendations about training in the court process and in giving evidence and suggestions as to how practitioners should instruct and liaise with experts. Given the difficulty we currently experience in obtaining timely expert reports, I invite all of us to consider these recommendations and play our part in making the provision of expert evidence to the Family Court a joy rather than a burden! One of the things I should like to see in every expert report is an Executive Summary as these provide a very helpful overview when reading time is limited. Please will you ensure LOI to experts contain a request for an Executive Summary.

The third report I should like to draw your attention to is the Family Solutions Group report entitled, “What about me?” This report was prepared by a subgroup of the Private Law Working Group chaired by Cobb J and seeks to identify and tackle the reasons why so many parents who separate, resort to the court to sort out issues that arise between them about where their children will live and who they will spend time with. It is believed that as many as 40% of separating parents now apply to the Family Court to resolve their differences which is a frightening statistic. It used to be about 10%. The Family Court is simply not equipped to meet this demand and, the report suggests, it should not attempt to do so because what is required is wholesale cultural shift in how these kinds of disputes are resolved. The report speaks of “reframing” the context of dispute resolution and suggests that there needs to be a public health style educational campaign to help parents to separate well. They need to understand that the child’s welfare must be central to their decision making, that parental conflict harms children, that they have responsibilities not rights and have a duty to promote the child’s relationship with the other parent, barring safety issues.

The report is long but again, if time is short, see page 8 for the key recommendations. There is a section on the interface with the Family Court at chapter 6. The Annexes to the report are also worth a read. The report highlights the role solicitors and mediators play and suggests that local Family Justice Boards (FJB) may wish to consider creating an alliance of services and support for separating parents and the provision of clear, accessible information and signposting to services. There are some pilots underway looking at how this might be done but each local FJB will need to decide what is right for its constituents as there will be cultural, language and societal differences across the country. The sub-group of the Leicestershire FJB has agreed to start looking at this now. If you are interested in participating in that work and being part of a wider group looking at how we might implement some of these proposals locally, please let me know. It would be great to have the input of mediators, members of Resolution and other local practitioners as this will require a collective effort. Of course, much of what the report recommends will need to be actioned at a national level and it remains to be seen whether there will be the funds or political will to achieve a reframing of the culture. Nevertheless, there will still be a need to act locally and, it seems to me, there are some positive steps we could start to take now to help make a difference.



Next, and hot of the press, are the statement from the Family Justice Board and the final reports from the Private and Public Law Advisory Groups chaired by Keehan J and Cobb J respectively. These were sent out by the President’s office on 9 December. They are all attached. They contain a list of priorities and make both short and long term recommendations which we shall all need to consider and start to implement early in 2021.

  

As I write, we are still waiting to hear whether it’s a deal or no deal! Brexit will have an impact on those cases involving EU member states whether there is a deal or not. Brussels IIa will no longer apply with effect from 11pm UK time on 31 December 2020. However, Brussels IIa and the Maintenance Regulation will apply to proceedings “***instituted”*** before the end of transition period **and** to related proceedings “instituted” after that date. “Instituted” is likely to mean lodged with the court although this may be tested in the courts. The attached letter from ICACU explains how they will deal with requests from now on and may be of interest.



Finally, under this heading, there is a lot of concern about the lack of secure accommodation and registered children’s homes available for young people received into care. The Supreme Court has recently heard, and reserved judgment on, an appeal from the decision of the Court of Appeal in *Re T* [2018] EWCA Civ 2136. The principal question arising on the appeal is fundamental – whether, in circumstances where insufficient places are available in registered secure children’s homes, the exercise of the inherent jurisdiction to authorise a child’s placement in unregistered secure accommodation is lawful. The arguments advanced, however, traversed wider ground, including the interpretation of s.25 and s.100 of the Children Act.

For those of you who practice in this area, I draw your attention to the President’s Guidance of November 2019 and the recent addendum which can be found on the following internet link.

 

<https://www.judiciary.uk/announcements/addendum-to-practice-guidance-placements-in-unregistered-childrens-homes-in-england-or-unregistered-care-home-services-in-wales/>

You may also be interested in the second annual report of the Children’s Commissioner for England, Anne Longfield, which was published just a few day ago. This is entitled, “Who are they? Where are they?” and provides an overview of the placements available, the increase in DoL applications and some startling statistics.

**And finally**

This Newsletter is longer than I had intended, for which I apologise but I hope it may be helpful to have these various reports and documents in one place. Don’t read them all at once!

I hope that you and all your family and friends have remained well throughout this pandemic and will continue to do so.

I take this opportunity on behalf of all the judiciary and court staff to wish you a very happy Christmas however you may celebrate it this year. Please have a good rest………...turn off those emails……….and best wishes for a less stressful 2021!

HHJ Jane George

DFJ Leicestershire