

Legal Roundup – August 2022

Attendance at fact-findings

Practitioners should be aware that Cafcass does not have a policy about attending fact-finding hearings. A guardian's attendance at a fact-finding hearing should be considered on a case-by-case basis depending on how much of the hearing the guardian can attend. Any absence from all or part of the hearing should be agreed by the other parties and the court in advance. Where the child is represented, it is expected that the child's legal representative will be present throughout any hearing regardless of whether the guardian is able to attend or not. The children's guardian should be available to provide instructions on the evidence and in public law cases it should be clear whether they agree or disagree with the way in which the case is being put on behalf of the local authority. During the hearing the child's representative should develop areas of questioning that would assist the court and provide submissions at the conclusion of evidence, drawing the court's attention to legal and factual matters which are of relevance. The child's representative should play an active role in such hearings ensuring that the guardian's position is advanced on behalf of the subject child/ren.

Implementation of the Marriage and Civil Partnership (Minimum Age) Act 2022

The Act raises the age of marriage and civil partnership from 16 (previously permitted with parental consent) to 18. The change will come into effect on 27 February 2023 to help protect children from being entered into forced marriages.

This means that 16 and 17 –year olds will no longer be able to enter a marriage under any circumstances from February 2023.

The criminal offence of forced marriage will also be extended so that it will no longer be necessary to prove that a young person under 18 was coerced into a marriage, meaning that it will be an offence to do anything to cause a child to marry before they turn 18.

You may have missed... Interim Guidance from the Family Justice Council in cases where there are allegations of alienating behaviours and the use of expert witnesses. The full guidance will be issued in 2023. The [interim guidance](#) is now available.

This month's Legal alerts

1. [Possible approaches where delays to post-mortems in child homicide cases risk delay to proceedings](#)

1. [The Supreme Court's decision – proportionality and side by side analysis Re H-W \(children\) \(No 2\) \[2022\] UKSC 17](#)

Case law updates

[Warwickshire County Council v the Mother & ors \[2022\] EWHC 2146 \(Fam\).](#)

In considering a case of parental alienation the court returned a 12 –year old child to the care of her mother (the 10yr old sibling was living with the father). The child had been removed through the making of an ICO and findings having been made against the mother. The guardian and social worker had opposed the child's return home however the court considered that the plan for intervention and to reunite her with her father had failed.

Read the full case: [Warwickshire County Council v The Mother & Ors \[2022\] EWHC 2146 \(Fam\) \(08 August 2022\) \(bailii.org\)](#)

Barnsley Metropolitan District Council v VW and Others [2022] EWFC 83

The court determined that the threshold set out in pitiless detail why the mother could not care for her son and that the mother had made partial admissions while not accepting the opinion of the experts. The mother did dispute the parts of threshold which related to her older child where findings were made about her recklessly endangering that child's life. The local authority and the guardian were of the view the mother's concessions were insufficient and that the court should hold a five-day fact finding even though the mother was not opposing care and placement orders. Mostyn J determined a fact finding was not necessary.

Read the full case: [Family Law Week: Barnsley Metropolitan District Council v VW and Others \[2022\] EWFC 83](#)