

Legal Roundup - February 2021

Clarification in relation to case recording

The information that is recorded in a case file has to be carefully assessed not only because it represents part of the child's experience, and the child may want to have access to it at some point but also because it represents the work undertaken by the FCA and is a way of being transparent with the parties about how conclusions and recommendations were reached. It should include the factual matters that lead to a recommendation.

The personal information that is included with Caf.I.S can only be processed by Cafcass if there is a lawful authority to do so and recordings should only be entered if they can be justified as relevant to the issues in the case, to the safeguarding of the child or to the enquires being undertaken (which themselves have to be relevant).

Because of the increased scrutiny of the way in which personal information is processed as well as the need to ensure that confidentiality of family proceedings is preserved, we need to be very clear about what is recorded on the system.

When information is provided to Cafcass by a third party this should be recorded as such rather than information which has not been verified. Occasionally information will be challenged, and we cannot assume what we are told is always accurate, so it is preferable to record what we are told rather than as fact until we have evidence. A report which contains evidence of a factual event which turns out not to be true can lead to difficulty.

Convictions in Safeguarding letters

To avoid claims for breach of the Data protection Act if an individual has no relevant convictions this should be reported as there are no relevant convictions rather than he has a conviction which is not relevant.

The latter raises queries which have already been deemed irrelevant and discloses a criminal record which may not be known about.

Relevance

The emphasis on relevance is important because if we include personal information about someone and it is not relevant, they can take action against Cafcass under the Data Protection Act and such claims are very expensive!

Case alert: The courts powers over disclosure of papers to parties in proceedings – Re R(children) (control of court documents) [2021] EWCA Civ 162

On 12 February 2021 the Court of Appeal handed down judgement in this case. Whilst the facts of the case are extreme it serves as a useful reminder of the courts powers to control the distribution of documents from proceedings.

The Facts: The court had made serious findings against 'R' including that he was a predatory paedophile. At the time of the proceedings R was a serving prisoner.

The Judge determined that R should not be allowed to retain case papers in prison and that R was to receive a redacted version of the court's judgment only. The reason for restrictions on R's access to the papers was to prevent the risk of sensitive case details being circulated amongst paedophiles in the prison. R requested a copy of the submissions made on his behalf together with a copy of the unredacted judgment. The Judge refused.

The Appeal: R argued that he had an absolute right to access the papers and that the court did not have the power to withhold physical copies of documents from a party once proceedings were over and that there was no power to keep him from his own possessions i.e his closing submissions. It was wrong to prohibit his solicitors from sharing the documents with him.

The Judge gave too much weight to the perceived risk of unlawful dissemination where there was no evidence to support this and that the Judge did not properly consider his right or future need to access the information.

The Decision:

The court does have the power to prohibit disclosure to a party to proceedings subject to Rule 29 of the Family Procedure Rules 2010. The Judge conducted a careful balancing exercise and material was being withheld with a legitimate aim. Information in a document produced for the court falls under the courts control. The courts power to control documents does not end at the conclusion of proceedings. In terms of the duty of solicitors to share information with their clients, the solicitor's duty to the court overrides any duty to the client and an order that a document is not to be disclosed or given to the client will bind the solicitor.