

Legal Roundup - June 2022

National Listing Protocol for applications for Deprivation of Liberty orders under the Inherent Jurisdiction (President of the Family Division, 21.06.22).

As from 4 July 2022 all applications seeking orders that deprive the liberty of a child shall be issued in the Royal Courts of Justice (RCJ)

The proceedings will be heard in the RCJ unless there is justification as to why the matter should remain at the local court such as

- The need for judicial continuity, e.g. multiple hearings given difficulties in identifying a suitable placement
- There are related public law proceedings in the local court
- The application is likely to require a local health or mental health Trust being joined, where the child is in hospital and there is dispute as to responsibility
- Significant historical difficulties in finding a placement for the child
- There is a significant issue as to responsibility for the placement between two local authorities.

During the proceedings active consideration will be given as to which court the case should be allocated.

In respect of hearings in the RCJ, the default position is that they are remote hearings, subject to any direction to the contrary.

Directions on issue will include the joinder of the child as a party to the proceedings allocated to a Children's Guardian in the local area where the child lives.

[National DoL court listing protocol 21.06.22.pdf](#)

Practice Note when there is a request to the Official Solicitor to act as a litigation friend of a child to bring a claim for damages against a local authority following public law proceedings

If at the end of a case a guardian considers or is advised by the child's solicitor that there may be a civil claim on behalf of the child, the solicitor for the child should contact the Official Solicitor as soon as possible if there is no other Litigation Friend, and the child is not competent to instruct their own solicitor.

If the Official Solicitor agrees to act as a litigation friend it is for them to choose a solicitor to act on the child's behalf. Crucially, this may not be the child's solicitor who acted in the public law proceedings.

The child's solicitor should make the referral to the Official Solicitor on the appropriate form with appropriate case papers after seeking permission in the proceedings

- To the child's solicitor to disclose the papers to the Official Solicitor and,
- To the Official Solicitor to disclose the case papers to any solicitor, counsel, expert or any other professional the Official Solicitor seeks to instruct for the purpose of bringing the claim on behalf of a child.

<https://www.gov.uk/government/publications/local-authority-damages-referral-form>

The Role of public law children's guardians in fact finding hearings.

A recent (as yet unreported) High Court Judgment emphasises the important role of the Guardian and legal representatives for the child in fact finding hearings. The need for intervention, and how much the guardian attends a fact-finding hearing will vary from case to case. There should be consideration as to whether the Threshold and or findings sought by the Local Authority covers all necessary matters and is proportionate. Submissions should be made if there is concern as to how the Local Authority is putting their case. During the fact finding hearing the child's legal representative should undertake questioning that they consider will assist the court and provide submissions at the conclusion of the evidence drawing attention to relevant legal or factual matters, whether the guardian is present in court or not. The court referred to the duty of the guardian under Rule 16.20 Family Procedure Rules 2010 to safeguard the interests of the child and to provide the court with the assistance it requests.

Legal Alert

Re H-W (children) (No2) [2022] - the Supreme Court emphasises the need for the court to analyse each of the options for the placement of a child before making final orders in care proceedings

[Legal Alerts \(sharepoint.com\)](#)

Did you know?

As a result of the changes brought in under the Domestic Abuse Act 2021 which introduced section 91A to the Children Act 1989, orders under s 91(14) preventing a person from making future applications without the court's permission can be recommended by a Family

Court Advisor and granted without an application being made by any party (Practice Direction 12Q of the Family Procedure Rules 2010). See [Legal monthly round up for May 2022](#) for further discussion on s 91(14).