

Legal Roundup - March 2021

Relationships between guardians and their solicitors

One of the responsibilities of a children's guardian is to appoint a solicitor for the child you are representing. The solicitor's role is to represent the child "in accordance with instructions received from the children's guardian". The child's solicitor will provide legal advice to the guardian and representation at court hearings. The tandem model of providing welfare and legal representation for a child means that the child benefits from both areas of expertise. While both guardian and solicitor need to have professional respect for each other's role it is the guardian who gives instructions on what they consider to be in the child's best interests. If there is a professional disagreement about what should be reported to the court it is the guardian who must challenge legal advice that they do not feel confident about and must take responsibility for their social work analysis. It is, on occasion, a positive aspect of the relationship for the guardian to be able to challenge the advice given but the instructions come from the guardian and will be based on their expertise as a social worker.

However, the guardian should be able to rely on the child's solicitor to provide advice about case management and it is entirely appropriate to discuss the content of reports and potential oral evidence as the guardian needs to be advised about what is likely to be put to them in cross examination. The child's solicitor should be able to predict areas of dispute and challenge and it is important to discuss hearings in advance.

When a court order or judgment is sent out by the court it is sent to the child's solicitor. It is important to check the content of the orders or judgments to ensure that they reflect accurately what was said. It is reasonable to ask the child's solicitor to do this but also sensible to check to avoid difficulty later on.

Sharing Information with Parties

The sharing of information that is obtained in the course of family proceedings is a fundamental aspect of the fairness of proceedings. The process of the court receiving and then adjudicating upon that application is subject to Article 6 of the Human Rights Convention, which is the right to a fair hearing. There is an expectation that all parties in proceedings will be provided with any information that is relied upon by the court and the court will almost certainly make orders to disclose information which has not been served on other parties. If a party wishes to restrict the disclosure of information from the other parties to proceedings they would have to make an application to the court and the test for the court withholding information is a high one.

When an application is made to the court for a child arrangements order the procedure is dictated by the Child Arrangements Programme and Cafcass is obliged to provide the court with a report containing the outcome of safeguarding checks which include police and local authority checks and interviews with the parties. The Child Arrangements Programme confirms in paragraph 14.13 that the court "shall inform the parties of the content of the safeguarding letter/report provided by Cafcass/CAFCASS CYMRU where it has not already been sent by Cafcass/CAFCASSCYMRU". The accepted interpretation of this paragraph is that the safeguarding letter **will be** shared with the parties to the proceedings, whether it is provided by the court or Cafcass. If there is a risk in the letter being shared before the hearing, then the decision to disclose will rest with the court.

It is important to remind parties in the discussions we have with them that what they share will be disclosed to the court and, almost certainly, with the parties to the proceedings.

Newman v Southampton City Council and Other [2021] EWCA Civ 437

The matter concerned an appeal in relation to a decision to limit the documents provided to a journalist to view to orders from the proceedings and psychological and psychiatric assessments. The journalist sought access to the entire court file and documents held by the local authority. The court had to consider the interests of the child as a factor and in doing so concluded that that access to the entire case file was not appropriate. Despite the fact that the journalist could have attended the hearing she would not have had access to all of the information. In reaching this determination the court was mindful of the transparency drive across the family justice system, informed by Article 10 – freedom of expression (encompassing freedom of the press) but also had to balance this against the child and family's Article 8 right to respect for one's private and family life. The court did not accept the argument put forward in support of disclosure that the consent of a parent with PR should be sufficient to provide disclosure. Please see link below:

Applications for permission to apply to discharge an SGO

The Court of Appeal has handed down judgment in a case concerning the test for granting leave to apply to discharge a special guardianship order. The [case can be viewed online](#) and a full legal alert on the case will follow from Cafcass Legal in April.