

# **Legal roundup - May 2021**

## **Importance of attendance at court to give evidence**

When a court directs that the FCA who wrote a report attend court to give evidence, it is essential for that FCA to attend and that Cafcass does not unilaterally decide to send another member of staff in their place. This is because the report is the evidence and professional opinion of the FCA who wrote it – another member of staff will not usually be able to speak to every detail of that report even if they know a lot about the case. If difficulties arise so that it is not possible for a report author to attend court when directed to do so (for instance if the author is on leave, is unwell or has left Cafcass and is no longer able to attend to give evidence), it is essential that we raise the issue in correspondence to the court copied to the parties at the earliest opportunity. It will not usually be appropriate to send a practice supervisor or other colleague to attend court instead. If we fail to inform the court of difficulties in attendance of an FCA directed to attend court and a hearing is ineffective as a result, we stand at real risk of having to pay substantial wasted costs associated with the hearing.

## **Does the making of a care order automatically discharge a SGO?**

### **F(Children)(Discharge of Special Guardianship Order) [2021] EWCA Civ 622**

K, partner to the mother of two children, was granted a SGO in respect of those children at final hearing in care proceedings. A final care order was made at the same time as the SGO, in recognition of the fact that while positively assessed as a prospective special guardian, K would require significant support to look after the children. The children's placement with K soon broke down and the LA sought to remove the children from K and to place them into foster care. The LA then applied to discharge the SGO. By the time of the final hearing of that application the children remained in foster care but the LA and guardian supported the SGO remaining in place. The children's mother still sought discharge of the SGO. This application was refused at first instance with the SGO and care order remaining in place and the children remaining in foster care. The mother appealed, and one issue that had to be considered by the court was whether the making of a care order automatically discharges a SGO. Allowing the appeal for other reasons, the Court of Appeal confirmed that care orders CAN coexist with special guardianship orders, and that the making of a care order does not automatically discharge a SGO.

## **Legal alerts:**

["Can two people, who are no longer in a relationship be classed as a 'couple' under the ACA 2002 so that one of them is permitted to apply to adopt as a step parent?"](#)