

Friday Family Law Roundup

Sometimes it can be incredibly difficult to keep up to speed on all of the news, case law and other updates in family law, so I've decided to compile a weekly roundup of all of the important bits you might have missed! Here's your weekly summary of important new legal developments in the world of family law this week.

It's been a really interesting week this week! I enjoyed writing this summary and hope you enjoy reading it.

Case Law

Re J & Ors (Children: Interim Removal) [2023] EWCA Civ 1266 (Fam)

- <https://www.bailii.org/ew/cases/EWCA/Civ/2023/1266.html>

- This was a successful appeal by a Father against an Interim Care Order.
- Not only was the appeal itself successful with the Court finding that the Judge at first instance had not correctly applied the law identified in *Re H-W (Children)* [2022] UKSC 17, but the Judge had also not referenced the positive evidence of the children in the Father's care and had not conducted an analysis of the risks of harm faced by the children.
- The Court of Appeal further found that "*There was a further point where the judge fell into error. His refusal to allow even a short stay of the order to enable the father to apply to this Court was contrary to authority and wrong in principle: see Re N (Children: Interim Order/Stay)* [2020] EWCA Civ 1070 per Peter Jackson LJ at paragraphs 36 to 38. Even if the judge's view as to the risks to the children remaining at home was correct (which in my judgment it was not), they could never be described as so acute as to justify denying the father a short stay to apply to this Court. By the time the application for permission to appeal was considered by Moylan LJ, the children had been in foster care for several weeks and it would clearly have been wrong at that stage to return them to their father pending determination of the appeal. The consequence is that, by the date of the appeal hearing, the children had been away from their father for over ten weeks" [33]

Re C (Change of Forename) [2023] EWHC 2813 (Fam)

- <https://caselaw.nationalarchives.gov.uk/ewhc/fam/2023/2813>

- The Local Authority applied to change the forename of an 8-month old boy under an Interim Care Order.
- The boy's registered name was 'Mia', which the Local Authority said was a name predominantly considered to be a female name, when the child was male. As such, it was argued that the child would suffer significant emotional harm if the name remained as the child may be teased and ridiculed by virtue of that name as he grew up. The Children's Guardian did not agree with this contention, however supported the application due to the child's prospective carers having a strong opposition to the name, which the Children's Guardian considered could be contrary to the child's welfare needs.
- Interestingly, the Mother had already prior to the child's registration called him by 2 other usually male-associated names. It was the second of these that the Local Authority applied to change Mia's name to. The Mother opposed the application.
- The High Court considered that the same route to judicial intervention should be followed as that set out by King LJ in *Re C* [2016] EWCA Civ 374, although that case involved the court's intervention before the child was registered.
- It is noted that the inherent jurisdiction will only be invoked in the most extreme cases to change the name of a child in care, and, of course, it is a decision which must consider the welfare checklist at s.1(3) Children Act 1989.
- All in all a very interesting case! The Court inevitably had to discuss the 'gender' issue where the Local Authority relied on this for the reason why the name should be changed:

- *Societal views on gender are evolving at some pace. There is not the same fixed notion of binary female / male in society as there was even a decade ago; there is much greater awareness of the indefiniteness of gender, and many people in our society today will not indeed classify others within that binary (male or female; masculine or feminine). In reflecting the society it serves, the courts should apply a broad perspective to the understanding of gender identity and/or gender expression (in this context through the assessment of choice of forename for a child), and to question what may be thought of as 'traditional' views of gender and identity [39(vi)]*
- The Court gave the Local Authority leave to make the application under s.100(3) Children Act 1989, however made the change of forename decision contingent upon the child's final placement – if within the paternal family, who were so opposed to the name 'Mia', then the second forename could be registered by the Local Authority.

News

Government response, Domestic abuse and the Family Court: Achieving cultural change

– <https://www.gov.uk/government/publications/government-response-domestic-abuse-and-the-family-court-achieving-cultural-change>

- The Government has provided a response to the 10 recommendations for the Family Court as set out in the Domestic Abuse Commissioner's report from July 2023.
- The Government confirms that HMCTS will consolidate existing expertise into new Domestic Abuse Champions for each regional court area to act as a mechanism for feedback on the implementation of policy and guidance.
- Pilots trialling a stronger voice of the child in Dorset and North Wales have been in place since February 2022 and early results appear positive, according to this response.

The Law Commission have announced that they are going to be assessing the reform options for financial remedy laws - <https://todaysfamilylawyer.co.uk/law-commission-financial-remedies-reform-options/>

- The Law Commission will carry out a thorough analysis of the current laws on financial remedies. Their aim is to determine whether there are problems with the current framework which require law reform, and what subsequent reform might look like.
- The current laws governing this are close to 50 years old.
- The Law Commission aim to publish a scoping report in September 2024.

Advocate (the Bar Pro Bono Charity) launch target to place 50 family cases in November - <https://weareadvocate.org.uk/news/50-family-cases.html>

- Please consider signing up if you can!

Rules, Procedure and Protocols

Extension of Pilot Practice Directions for online applications

- <https://www.justice.gov.uk/courts/procedure-rules/family#updates>

- PD36P concerns the use of online applications for Placement Orders, which was first piloted in March 2020. The pilot has now been extended to 31st March 2024.
- PD36ZC has also been extended to allow online applications for divorce and dissolution of civil partnership proceedings until 31st May 2024.

Chambers News

Don't forget to sign up to our seminars! You can see the list of upcoming events here on our website - <https://www.4bc.co.uk/news-events/events/>

Sarah Barber