

Publications

Events

Online CPD

➔ News & Comment

News

➔ Articles

Judgments

Legislation & Guidance

Court Forms

CFLQ

Podcasts

Authors

Sample Journals & Reports

Subscribe to News

Email Address

Submit

Not a Legal Professional?

See here for products and services suitable for non-legal professionals

[Learn More](#)

Fancy a luxury Paris day trip and lunch on the Eiffel Tower for two?



Just enter our short feedback survey to be in with a chance!

[Find out more](#)

Family Court Practice 2014

The Children and Families Act 2014 and the impact on recently refreshing authorities

 SHARE   



Kirsty Richards

22 MAY 2014

May Special Issue

Contains papers from the recent **Family Justice Council Interdisciplinary Conference - Family Justice Redefined?**



Five months on from my last opinion piece there have been massive changes to the family courts, law and legal aid relating to public law proceedings.

Many of those changes were brought into effect on 22 April 2014 such as the new Central Family Court (at First Avenue House), further reduction to fees for public law practitioners and the introduction of the Children and Families Act 2014 (the 2014 Act). There is much scope for discussion but I only intend to focus

here on the impact of the changes to the 2014 Act on the welcomed decisions in the cases of *Re B (Care Proceedings: Appeal)* [2013] UKSC 33, [2013] 2 FLR 1075; *Re G (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965, [2014] 1 FLR 670; *Re B-S (Adoption: Application of s 47(5))* [2013] EWCA Civ 1146, [2014] 1 FLR 1035 and *Re W (Care Proceedings: Functions of Court and Local Authority)* [2013] EWCA Civ 1227, [2014] 2 FLR (forthcoming and reported at April [2014] Fam Law 430). I have previously discussed how important it was to have received those judgments as they reminded practitioners and local authorities of the need for a sound evidential basis in public law proceedings.

Paragraph [77] of Lord Neuberger's judgment in *Re B* has been quoted many times but for ease of reference he clarified the Family Court 'must consider all options' before reaching its final decision as to the long term arrangements for a child(ren) subject to public law proceedings. Further, that such a decision 'carries with it the clear implication that the most extreme option (adoption) should only be adopted if others would not be in [the child's] best interests'.

Lord Neuberger reminded local authorities they need to properly consider what support could be provided to families to enable them to safely care for their child(ren). This then brought about the following decisions such as *Re G* which made it clear there must be a truly holistic approach to the evidence basis in public law proceedings; such evidence demonstrating that all care options have been fully considered. The message being that local authorities should not present a linear case for permanent placement of children away from their birth families.

Re B-S provided further guidance that once a court has made a decision on risk and has indicated what support could be put in place for a family to enable reunification, for example, the local authority can not insist on adoption just because it involves less cost and support for that particular family. That is a clear message that if it is safe for a child to be placed with his natural family, with support, that support should be provided and a lack of resource or funding is not an acceptable argument from the local authority. (It follows that if such support is indicated and proportionate but will take more time to implement outside of the ideal 26 weeks, adjournments must be granted to ensure justice is being achieved for the child[ren] subject to such proceedings.)



Pre-order your copy today and secure FREE online access in advance of publication

[Find out more](#)

These issues were considered again in the *Re W* case, Ryder LJ confirmed it is the court that is in control as to deciding the risk(s) to any child(ren) within the context of proceedings. It is not for the local authority to dispute the court's ruling of risk (see paras [79] and [80] of Ryder LJ's judgment).

However, s 15 of the 2014 Act amends ss 31(3A) and 31(A) of the Children Act 1989 (which had been introduced as a result of the Adoption and Children Act 2002). Section 15 of the 2014 Act states the court is *not* to consider the child(ren's) reg 5(b) needs which means the Judge is no longer to have any consideration of the child(ren's) health, educational, emotional and behavioural development or self care needs. This clearly presents a conflict with the case-law reviewed above, which demands the Family Court to insist upon a holistic approach - considering all options - as now s 15 is reducing the considerations a family judge can have heed to.

How can a judge properly make a decision as to the risk(s) to any child(ren) and proportionality of support required when he is now told not to consider all the needs of that child by virtue of the 2014 Act? It is surely going to lead to complex legal arguments in court and a renewed battle between the parties as to what support should be considered in light of specific needs of the child(ren). It will be interesting to see how this plays out in the court arena and how care plans are dealt with as a result of this new provision.

*For all the information regarding the ongoing **family law reforms**, visit our new, fully up-to-date Family Law Reform page with all the latest news, analysis, legislation and cases.*

Kirsty Richards is a Child Care Solicitor at Duncan Lewis Solicitors in London.

The views expressed by contributing authors are not necessarily those of Family Law or Jordan Publishing and should not be considered as legal advice.

Recommended Products



Family Court Practice 2014, The

"The reference work of choice for all practitioners dealing with cases in the single Family Court" ...

EBOOK AVAILABLE

from **£409.00**

[More Info](#)

Available in Family Law Online



Family Law

"the principal (monthly) periodical dealing with contemporary issues" Sir Mark Potter P...

EBOOK AVAILABLE

from **£49.00**

[More Info](#)

Available in Family Law Online

Related Articles

- [The Children and Families Act 2014 – essential update >](#)
- ['Once in a lifetime' reform of the family justice system comes into effect >](#)
- [Miranda Mourby: The family law reforms in practice - a view from the crystal ball >](#)
- [Moving the deckchairs around the Family Court >](#)

0 comments

livefyre

[Sign in](#)

2 people listening

[Empty comment box]

+ Follow Share Post comment as...

[Newest](#) | [Oldest](#) | [Top Comments](#)

Connect with us



We accept



We are



[Contact](#)
[Delivery](#)
[Help](#)

[Authors](#)
[About Family Law](#)
[Write or Speak for Us](#)

[Advertise](#)
[Sponsorship](#)
[Sitemap](#)

[Privacy Policy](#)
[Terms & Conditions](#)

Subscribe to our Newsletters

Jordan Publishing
Covering all areas of legal practice and regulations

© 2014 Family Law

[Web design](#) and [web development](#) by [Rawnet](#)