



EXCHANGE
CHAMBERS



Family Law Reform Now Network: Supporting Families

September 1st, 2023, 9am-5:30pm

The Exchange, 3 Centenary Square, Birmingham B1 2DR

Abstracts

'Set up to fail: Women's experiences of psychiatric and psychological expert witness assessments during care proceedings.' - Omolade Adedapo and Anna Rickards (Pause)

Pause works with women who have experienced the removal of a child from their care more than once. Pause supports women to achieve positive outcomes, including in their mental health. Access to mental health services is a priority for women we work with. Through our work we know that psychiatric and psychological expert witness assessments that are carried out during care proceedings often don't lead to women getting the support they need. Despite assessments fulfilling their function of informing proceedings, they create a separate issue in that they offer no follow up or referral to mental health services for women. In addition, expert witness reports can be disconnected from mental health provision in the local area which leave women with no realistic option to access support recommended. We believe this further contributes to systemic failure to support women, and prevent further children being taken into care.

'Identities In-Flux: How Care-Experienced Children and Young People Understand Identity' - Dr Kusha Anand, Professor Sariya Cheruvallil-Contractor and Dr Alison Halford (The Centre for Trust, Peace and Social Relations, Coventry University)

For looked-after children and young people from minoritised backgrounds, having a home that offers security, stability and belonging can provide a space to negotiate the complexities of their circumstances and identities. Using an intersectional approach, we collected narratives that delve into the layered identities of Black, Asian

and mixed-heritage young people, aged 14 to 19. In this paper, we will describe our model as *Identities in-Flux*, which effectively integrates Crenshaw's Intersectionality and McGuire's Lived Religion theories. Within this model, the interplay of socio-ethnic-religious factors stemming from children's birth families and their interactions within care systems is considerably considered. It also accommodates the rich diversities inherent in minoritised ethnic communities. By synthesising these elements, this model offers nuanced understanding of the identities of young people, including layered intersectional identities, identities in a state of flux or change, and identities determined by the children themselves. This paper will be beneficial for academics, social workers, and the public, interested in effective approaches to address the dimensions of identities among looked-after children from minoritised ethnic backgrounds.

'Whose Responsibility? Support for Parents with Learning Disabilities in and before Childcare Proceedings' – Dr Mary Baginsky, Reader in Social Care (Policy Institute, King's College London)

Nearly 20 years ago it was estimated that between 40 and 60 per cent of parents with a learning disability had their children removed. This would suggest that if this proportion has been sustained these parents form a considerable proportion of cases in child-care proceedings. This project was originally designed to examine the support available from adult social care to these parents at the time of removal but, having found out how limited that was, it evolved into one examining support in place throughout parents' involvement with children's social care. The paper will report on a scoping stage of interviews with those working in social care, lawyers, health professionals and advocates and identified how inconsistent and diverse practice was around England, setting the scene for the nine case studies that are just concluding.

'Protection and Assistance to the Family: Interpreting and Applying Article 10 ICESCR from Learnt and Lived Experiences' - Dr Koldo Casla, Senior Lecturer in Law (University of Essex)

This paper conceptualises and operationalises the right to protection and assistance to the family (Article 10 ICESCR) in relation to child protection services in England and the removal of children from birth families that are deemed to pose a risk to them. With a combination of doctrinal analysis and socio-legal research, the paper sheds light over the differences between the social right to protection and assistance to the family and the more commonly known civil right to private and family life. The paper merges doctrinal analysis of international human rights law with a peer-led methodology reliant on observations from social workers, families in poverty – primarily mothers – and young people who have experience of the care system. The paper contributes to contextualise, localise and vernacularise human rights by adjusting an internationally recognised legal standard to the particular circumstances of families in poverty in England.

'Silenced by the System: The Impact of the Artist's Book on Birth Mothers, Post-Adoption' – Dr Samantha Davey, Lecturer in Law (University of Essex)

This presentation discusses the findings of a three-stage pilot study conducted by Dr Samantha Davey from the University of Essex and Dr Stella Bolaki from the University of Kent. The first stage of the study involved conducting artist's book workshops for birth mothers who had their children removed and placed for adoption without their consent. The aim of these workshops was to determine if artist's books could effectively promote the voices of these mothers and serve as a tool for reflection on complex emotions such as guilt and shame. The feedback received from the mothers was positive, prompting the researchers to further develop the project. A video showcasing the research was created and will be shared during the conference. In the second phase, the researchers consulted with professionals who have worked closely with birth mothers, including representatives from NGOs, a social worker, a barrister, a counsellor, and a psychologist. These professionals provided feedback on the use of the artist's book, which will inform the development of a toolkit by the researchers.

‘A Practitioner’s Perspective’ - Elizabeth Eigbefoh (Francis Solicitors)

The Family Court is facing huge challenges, with delays in care proceedings becoming more common with varying outcomes for children and parents in care proceedings. My presentation will consider the various challenges faced by parents, in particular immigrants with no recourse to public funds, ethnic minorities and single parents. It will discuss the approaches by different boroughs and look at the different outcomes for children and their parents. The presentation will encourage professionals to think about ways in which processes can be less arduous for parents which may lead to more positive outcomes for the children.

‘The Jurisdiction over Child’s Welfare and Excesses of the Local Authority in Child Proceedings: A Need for Parliamentary Action’ - Olugbenga Falade, PhD candidate (University of Hull)

Care proceedings are predicated on the child’s welfare when the parents are negligent or failed in their responsibilities or when a child is at risk of harm or has been harmed. The local authority has the power, vis-à-vis the Children Act 1989, to investigate and make applications to the court, while the Children and Family Court Advisory and Support Services (CAFCASS) represents the interests of the child in the Court. The Court in taking a decision considers the child’s wishes, feelings, age, sex, background, needs, and protection under the Children Act 1989 s1(3). This study critically examined the roles of parents and other bodies involved in care proceedings and found that the local authority has exceptional powers over others, even the court. It was also discovered that the local authority has excesses that are causing a lot of difficulties for the parents and the child. This even causes a loss of public funds. There are many cases on the excesses of the local authority in respect of care proceedings. Given these excesses, the court held that local authority is ‘the servant of those in need of its support and assistance, not their master.’¹ It is worrisome that the court lacks the jurisdiction to interfere with how a local authority exercises its parental responsibilities following final care orders. This is a lacuna within the Children Act 1989 which calls for Parliamentary redress.

‘The power of lived experience: changing hearts and minds’ - Angela Frazer-Wicks MBE

Giving HOPE is a project designed to ensure a trauma informed approach is taken when children's social care professionals remove newborn babies from mothers in a maternity setting. It came about because of the Born into Care study at Lancaster University. A group of women with lived experience of separation at birth wanted to do something practical to help other mothers in similar situations. Angela will talk about the journey she and the other mums went through designing the HOPE boxes, which are like bereavement boxes, and how they are used to help support mother and baby throughout this highly traumatic time.

“Keeping Families Together – is that possible in 26 weeks?” – Celeste Greenwood, Barrister at Law (Exchange Chambers)

Enabling families to remain together, and reuniting families, whenever it is safe to do so is a fundamental principle of the Children Act 1989. The Public Law Outline introduced in April 2008, revised in 2014, and relaunched on 16th January 2023, sets a 26-week timeframe for the completion of care and supervision proceedings brought under section 31 of the Children Act 1989 (public law proceedings). However, recent years have seen the average time for the completion of proceedings rise to a national average of around 45 weeks and the number of children in social care increase to an all-time high of over 80,000; hence the recent relaunch of the Public Law Outline and the 26-week timeframe. The aim of the research is to examine any common features amongst those cases that are completed within 26 weeks, and in respect of those that are not, explore whether any correlation(s) can properly be identified between the nature of a case or its relevant factors and the length of proceedings. If correlations can properly be asserted, the next step will be to develop a proposal

¹ A local Authority v A (2010) EWHC 978 (fam), (2010) 13 CCLR 404 at 98.

for the creation of distinct case tracks, with differing timescales and specific mechanisms to recognise those correlations, as well as to afford appropriate time and space for supportive intervention with the family. Data taken from my own cases between 2019 to 2022, demonstrates that only a small proportion of cases are completed in 26 weeks or less and that there are specific types of cases which routinely require much longer than 26 weeks to complete and, that there are certain factors that increase the probability of proceedings exceeding the 26-week statutory framework. In the next phase of work, these initial findings will be tested and reviewed by extending the scope of the research to include a much larger sample of cases from the same Family Court, and if possible, expanded to include data from cases heard in different family courts around the country.

'Care proceedings, the Court of Protection and Supporting Disabled Mothers' - Dr Jaime Lindsey, Associate Professor (University of Reading)

This paper looks at the relationship between care proceedings in the Family Court and Court of Protection proceedings, where the mother has a disability. While there is research into disabled parenting and the role of health vulnerabilities in family cases, there has been less focus on women whose mental disability means that care proceedings may not be the start of their involvement in litigation, with some also having been involved in Court of Protection proceedings in relation to their pregnancy, birth or subsequent parenting. This paper highlights the relationship between the two areas, which has been relatively underexplored, arguing that greater attention needs to be paid to the ways in which these two coercive legal frameworks can interact and undermine women's decision-making autonomy.

'Supporting parents when care orders end' - Dr Judith Masson, Emeritus Professor (University of Bristol)

The pre-proceedings process for care proceedings was introduced in 2008 with two principal (but potentially conflicting) aims: 1) to ensure applications for care proceedings were better prepared with all necessary assessments completed before issue; and 2) to divert families from care proceedings through improving their engagement with children's services and their care.

This paper presents the case for a pre-proceedings process to applications to discharge care orders. It presents the findings of the Nuffield-Funded *Discharge of Care Orders Study* ([Staines et al 2023](#)). The majority of applications for discharge are brought by local authorities to align the legal arrangements with the practical ones by ending the CO or making an SGO. Parents, carers and children play little active role in these proceedings; more could be done to recognise the changes they have made for their children's benefit. Around a third of applications are made by parents without current care of the children, most of these do not result in discharge. Introducing a pre-application process would allow these parents' concerns to be heard at an earlier stage avoiding damaging and wasteful legal proceedings. Clearly this is not simply a matter of process; families need support after care orders have been made. This requires a different approach from the current court process.