

Title of report: High Court Judgement April 2021 relating to Children and Families

Meeting: Council

Meeting date: 27 April 2021

**Report by: Acting Joint Deputy Chief Executives and Interim Director
Children Services**

Classification

This report is open.

Decision type

This is not an executive decision

Wards affected

All Wards

Purpose

To receive a report on the Judgement of The Hon Mr Justice Keehan, following recent children's social care proceedings heard in the Family Division of the Royal Courts of Justice regarding a family known to Herefordshire Council since 2010. This Judgement was published at 14.00hrs on 16th April 2021.

In accordance with Part 4 paragraph 4.1.13 of the Council's constitution, the Acting Joint Deputy Chief Executives requested, on behalf of cabinet, the Monitoring Officer to a call an extraordinary meeting of the Council due to the public interest in these matters.

This report summarises the issues raised in the judgement and sets out a strategy for assuring the current social care service is safe in the immediate term and then improves in the future.

Recommendation(s)

That:

- a) Note the contents of this report;**
- b) Note the Judgement set out in appendix 1 of this report;**
- c) Note the Assurance and Improvement Strategy set out in appendix 2;**
- d) Agree the establishment of an Improvement Board**
- e) Approve the appointment of an Independent Chair for the Children and Families Improvement Board;**
- f) Note the Secretary of State will approve the appointment of a DFE advisor to act as the Independent Chair of the Children and Families Improvement Board;**
- g) Approve the commission of External Reviews as determined necessary by the head of paid service; and**
- h) Approve the Financial Provision to support the Review and Improvement Strategy, as set out in para 24 and appendix 3 of this report.**

Alternative options

1. Without the development of an independently chaired improvement board and improvement plan, together with undertaking external reviews where applicable, the Council cannot be confidently assured that there is evidence of sustainable and improved frontline practice across children's social care and that the safeguarding needs of children and young people are being appropriately met.
2. The council rightly needs to understand how we have failed these children and their families in order to make the required changes needed within the children's services directorate. Such changes need to be delivered at pace and to ensure that sustained improvements in practice and procedure, which, includes a co-ordinated multi agency working response, with our partners, to ensure we are fully and effectively together meeting the needs of children and young people in Herefordshire.

Key considerations

3. Complex and sensitive High Court proceedings were heard by His Hon Mr Justice Keehan at the Royal Courts of Justice Family Division between 22 February and 19 March 2021 and were held remotely. The proceedings concerned social care practice and procedure for 4 children, their birth mother and the children's foster carers between 2010 and 2020.
4. As these proceedings were heard in the family court then they were held in private. Mr Justice Keehan describes the circumstances this family encountered, whilst under the care of Herefordshire Council, as 'in the whole of my professional life I have rarely

encountered such egregious and long-standing failures by a local authority'. The judgment is distressing and of great concern.

5. Set out below, is a summary of the history of the relationship between the council and this family between 2010 to date and a summary of the key findings against the council and a summary of the key observations and conclusions of Mr Justice Keehan.
6. Summary of key dates and background (this is set out in more detail at paragraphs 12 - 81 of the Judgement);
 - a) The Court proceedings concern four children, aged 17, 13 and 11 and one child who in June 2019, sadly died aged 15 years.
 - b) The children have been the subject of full care orders since 27 January 2014 placing them in the care of Herefordshire Council. They were first known to the council from 2010 and as a result of care proceedings in 2012 they have been living with their current foster carers since September 2012.
 - c) In 2013, HHJ Rundell Worcester Family court directed that the local authority seek urgent professional support and/or counselling to understand why the children made allegations about inappropriate physical and sexual behaviour by the parents, extended family members and those whom the parents associated with. Whilst the Judge raised concerns about general sexual behaviour of the children's parents he made no findings in respect of direct sexual harm to the children.
 - d) Following the courts judgement a psychiatrist Dr Asen was instructed to provide an assessment of each of the children and to advise how they could best be informed of the outcome of the fact-finding hearing of HHJ Rundell.
 - e) In 2014, HHJ Rundell, approved a final care plan for these children so that the current foster carers became the long term foster carers for the children and that 'life story' work was to be undertaken by a social worker. Life story work is to help the children understand their experience and family background and to explain this is a fundamental part of them understanding who they are. In addition, he directed that contact arrangements should be considered with the family members of the children.
 - f) Following the conclusion of care proceedings in 2014 the local authority had a continuing responsibility to engage with the children's mother within the Looked after Children process which included the provision of updating information about the children's welfare, ascertaining her views and sending her minutes of LAC meetings
 - g) In 2015 the children's maternal grandmother made an application for contact with the children. The maternal grandmother raised concerns that Herefordshire Council had not done enough to promote contact between the children and their family.
 - h) During these proceedings, the foster carers complained that they had not been made aware of the judgement from the initial care proceedings (2013) until a day before they had a meeting with a psychiatrist in September 2016 and they also

contended that they had sought information from the local authority but this had not been forthcoming.

- i) In April 2016, HHJ Plunkett made further orders regarding a plan of future contact between the children and family members, disclosure of information to the foster carers including the 2013 judgement of HHJ Rundell and therapy and life story work to be prepared by the local authority.
- j) Within these proceedings, the mother of the children confirmed that she was willing to wait until the children wanted to see her and was willing to participate in indirect contact until that point.
- k) In April 2017, because no life story work or therapy had been undertaken, HHJ Plunkett (Worcester), approved a detailed amended care plan to include future contact, therapy and life story work for the children.
- l) Between 2014–2017, various matters were raised with the council. The children sought the progress of their permanency plans including the change of their surname, complaints were received by the local authority in relation to its handling of the LAC process and the maternal family sought contact with the children. This latter matter was considered by the court in the 2015 proceedings
- m) During 2018, as part of the Looked after Children process, the council considered the discharge of the current care orders and undertook an assessment for special guardianship orders in favour of foster carers.
- n) And in early 2019 the foster carers were assessed by the council to become special guardians for the 4 children. However, the outcome of the assessment was delayed due to the sad death of the second eldest child in June 2019.
- o) Tragically on 6 June 2019 aged 15 years, the second eldest child died.
- p) This child had been experiencing varying degrees of ill health from approximately March 2019 for which she was seen by her General Practitioner, CAMHS, and an admission to Hereford Hospital from where she was transferred to Birmingham Paediatric intensive care unit.
- q) On 27 May 2019, the Head of Service gave consent for heart surgery to take place if necessary. Unfortunately her condition deteriorated and she was placed on a ventilator under an induced coma. Eventually the hospital sought consent to redirect her treatment to one of palliative care. The Director of Children Services provided consent on 6th June 2019 to her life support machine being turned off. The local authority was advised at 08.39 am on 6th June 2019, that the hospital was seeking consent to remove life support; an hour later the mother was advised of this. The mother arrived at the hospital after her daughter had died.
- r) In September 2019 an application was made by the mother of the children for contact with her children.
- s) The local authority progressed its Special Guardianship Assessment in respect of the foster carers by making an application to discharge those care orders already in place.

- t) At the first court hearing heard at Worcester County Court in November 2019 the children's mother confirmed that she opposed the making of a Special Guardianship Order (SGO) in favour of the foster carers. Directions were made by HHJ Plunkett, for the local authority to file and serve documents held in relation to the death of the eldest child.
- u) The local authority made an application on 3 December 2019 for the children's surname to be changed to that of the foster carers' surname. The children's mother raised concerns about the foster carers referring to the children by their own surname and that the local authority had failed to act to deter this.
- v) On 8 January 2020 the council's application for the discharge of care order was heard again by HHJ Plunkett at Worcester County Court. Due to the seriousness of the allegations being made by the children's mother against the foster carers, Herefordshire Council made an application for the carers to become 'interveners' in proceedings held in December 2019. This was to enable the foster carers to respond directly against the allegations being levelled against them. The local authority agreed to fund the foster carers' legal representation on the basis that the court was considering the council's application for a special guardianship in their favour and the foster carers of the children are the council's approved foster carers.
- w) At that hearing, HHJ Plunkett also determined that the nature and seriousness of the case was such that the matter should be re-allocated to the Royal Courts of Justice to be heard by his Lordship Mr Justice Keehan.
- x) Herefordshire Council have been represented by Queen's Counsel, and Junior counsel since proceedings commenced in the Royal Courts of Justice in February 2020 and through to the conclusion of the current proceedings and the judgement.
- y) A senior solicitor previously employed by Herefordshire Council provided incorrect legal advice regarding the authority of the council, as corporate parent to consent to turning off of life support. It was important that at no time during the care proceedings was any conflict issue likely to arise, because of this erroneous legal advice and because Herefordshire Legal Services continued to have conduct of these proceedings. Therefore, Wolverhampton City Council Legal Services were asked to take responsibility for primary day to day conduct of the proceedings, along with support from a locum solicitor in Herefordshire Council Legal Services.

Summary of Key Findings

7. These findings are based on findings of fact agreed by all the parties including Mr Justice Keehan, and those findings of fact which Mr Justice Keehan found proved, having heard evidence from a number of council witnesses:
 - a) Herefordshire Council failed to use HHJ Rundell's 2013 fact-finding judgment (Worcester Court) as a basis for challenging and changing the children's distorted perceptions of their family.
 - b) Herefordshire Council failed to promote contact between the children and their mother.

- c) Herefordshire Council acted in breach of its duty under section 34(1) Children Act 1989 to refuse contact between the children and the mother
- d) For the period 2013 - 2019, Herefordshire Council failed to use life story work and therapy effectively in order to dispel the children's misconceptions about their birth family.
- e) Herefordshire Council did not properly engage with the mother within the Looked after Children (LAC) process.
- f) Herefordshire Council failed to manage the foster-placement properly and to ensure the children's emotional needs were met.
- g) Herefordshire Council failed to take any or any sufficient steps to preserve the children's sense of identity with and connection to their family.
- h) Whilst the second eldest child was hospitalised, Herefordshire Council marginalised the mother and failed to accord her parental responsibility the weight and respect it deserved
- i) Herefordshire Council provided incorrect legal advice regarding the authority of the council, as corporate parent to consent to turning off of life support.
- j) Herefordshire Council did not have any policy in place defining its procedures where issues of consent arose in respect of medical treatment, and palliative care for looked after children
- k) Herefordshire Council did not refer the matter of turning off the life support machine to the Court, for a best interest decision.
- l) Herefordshire Council failed to undertake a sufficiently robust assessment as part of the LAC Review in 2017.
- m) Herefordshire Council failed in timely steps in its approach to permanency planning for the children.
- n) Herefordshire Council demonstrated indecision, poor planning, and complicity and was breach of its statutory duty in allowing the children to use the foster carers surname; it took 5 years before the matter was considered by the court.
- o) Herefordshire Council failed to undertake a robust and evidence based reliable special guardianship assessment of the children's carer when recommending special guardianship orders (SGO's).
- p) Herefordshire Council failed to ensure that there was a proper management and/or supervision structure so that failures in the SGO assessment process were recognised or remedied before they were relied on for permanency planning.
- q) Herefordshire Council does not have proper recording mechanisms of social care records and the late and incomplete disclosure of relevant documentation in the proceedings made the case more complex and challenging for all parties.

8. The key observations of Mr Justice Keehan (judgement paragraph 220- 238) are summarised as follows:

- a) *The children have been utterly failed by this local authority. By its actions, failures and omissions over the course of the last eight years it has compounded the emotional and psychological harm the children have suffered. The local authority has ignored, indeed, challenged the advice of a hugely experienced child psychiatrist for reasons which I do not begin to understand. It has treated with contempt the clarion call of a senior family judge for the local authority to re-evaluate its approach to these children, to the family and to the carers (para 220).*
- b) *I can only hope there is now the time and the opportunity to repair this damage and to give the children a positive sense of their identity, of their family and to enable them to have meaningful, positive and beneficial contact with their mother and their wider family (para 221).*
- c) *My strongest criticism must be directed at this local authority. In the whole of my professional life I have rarely encountered such egregious and long-standing failures by a local authority. The worst of it is, I cannot after the closest possible enquiry, understand why or what motivated the local authority to fail these children, this mother and the interveners as appallingly and for as extended a period of time. The whole history of the role of this local authority in the lives of these children is highly inexplicable. The only matter which is clear to me is that it did not have the welfare best interests of the children at the heart of its decision-making, such as it was (para 226).*
- d) *This must call into question whether this local authority's children's services department is fit for purpose. That is a question which is not for me to answer. I can say that they had failed these children in an extraordinary manner over a prolonged period of time (para 227).*
- e) *The local authority's actions, omissions and failures in this case have been spread over a period in excess of eight years. Mr Baird readily accepted and described the conduct of the children's services department in the lives of these children as appalling. He was plainly right to do so (para 234).*
- f) *I am told and accept that the mother and the interveners have been shocked by the evidence they have heard over the course of this hearing and I well understand why this is the case.*
- g) *I concluded the hearing by thanking the mother, her husband and the foster carers for the great dignity and composure they had each demonstrated throughout this hearing but most especially at times when particular distressing episodes were being dealt with, most obviously the death of their daughter. I repeat my sincere*

gratitude to each of them. On any level these proceedings have been immensely stressful for all four of them.

Correspondence with Council and Mr Justice Keehan

11. On 17 March 2021, the Acting Joint Chief Executives, wrote to Mr Justice Keehan apologising unreservedly for the failures of the council, and the distress this had caused the mother, children and foster carers. The letter recognised the need for the Council to commission without delay, an external review of the service with an Improvement Board, led by an Independent Chair and the Chief Executive to drive and deliver improvements needed in the Children and Families directorate. A copy of the letter is attached at Appendix 4.

Private Judgement

12. Following the conclusion of the proceedings on 19 March 2021, a Private, judgement which was embargoed to the both the Press and Public was 'handed down' by Mr Justice Keehan on 30 March 2021. The only persons who were able to see this private judgement were the main parties to the proceedings including certain council officers, including the incoming chief executive Paul Walker and the Leader Councillor David Hitchiner and the Cabinet Member for Children and Families Councillor Felicity Norman. The court also ordered that the council should forward a copy of this judgement to the following:
 - i. Secretary of State Education, Mr Gavin Williamson
 - ii. Chief Social Worker
 - iii. Children's Commissioner for England and Wales
 - iv. Chief Inspector Ofsted.

Corporate Response

- a) This judgement is not at all what children and families in Herefordshire deserve. Whilst it raises significant legacy issues, it is recognised and accepted that we need to know now what is the cause, why did it happen, could the same failings be present in other cases and capable of happening again. Significant improvements in practice must be achieved now and at pace.
- b) The attitudes, culture and professional social work practice in this judgment is shocking and well below the standards we expect. Appropriate action will be taken on the conclusion of our investigations, in accordance with the council's HR procedures, any relevant professional body requirements, and the law. The outcome of these investigations is a matter for the Head of Paid Service or the employment panel (as set out in the council's employment rules) to determine.
- c) In the meantime, there are social workers who continue to do their best, often in very difficult circumstances, to support families and protect vulnerable children in our community. We will ensure our staff have the support they need and the

confidence and commitment to report any concerns as we make significant and lasting improvements to Herefordshire Children's Services.

- d) Anecdotal evidence from members, strongly suggests that evidence which focuses on the quality of services provided and the outcomes being achieved have not been correct or are in complete at the time of reporting to them, particularly at Performance Challenge Meetings and/or Scrutiny meetings. We absolutely recognise the need to rebuild member trust and confidence in the service and how members can rely on the performance and delivery data for children in care. And so the strategy below sets out below how both members can get involved in the improvement journey including challenging and relying on robust objective data.

Recommended Assurance and Improvement Strategy

- a) The objective of this Strategy is to provide assurance that service risks are being effectively managed and mitigated, that children and families are at the centre of all identified actions which have a positive impact on outcomes for children and for an Improvement Board to oversee and monitor the implementation of a Children's Services Improvement Plan.
- b) This improvement strategy is different to previous promises of improvement following the 2018 judgements as early engagement with the regulators has already taken place advising them of the issues and risks in this judgement and how the council proposes to respond. The commission of an external review, as discussed earlier is now required. The improvement required is a corporate priority and will be led by the incoming Chief Executive and not by the Directorate. It will require an independent chair of an Improvement Board to lead and monitor the required improvement journey with an update report to full council in September/October 2021. The membership of the Improvement Board will include external partners to provide objective challenge to the intended deliverables and achieved outcomes
- c) During February and March 2021, statutory officers including the incoming Chief Executive along with Assistant Director People have monitored the issues arising from the proceedings, including monitoring new and emerging other high risk 'looked after care' issues and engaged early with the Local Government Association (LGA) and the statutory regulators and the chair of the joint safeguarding partnership board.
- d) Appendix 2 sets out the recommended Review and Improvement Strategy.
- e) The recommended Strategy is in four parts, the here and now, once we were aware of the issues emerging in the case, what to do Pre and Post publication of the judgement, and Post May 2021 when Paul Walker the new chief executive starts.

Stage 1 - Here and Now - assurance that service risks are being effectively managed and mitigated

- i. All proposed SGOs since March 2021 have been monitored by way of Quality Assurance which has been subject to legal advice and a Panel

approval system is currently being established with Service leads and Legal Services to ensure that they are fit for purpose and designed to achieve positive outcomes for children. A new assurance process of SGOs ready to be presented to the court, is set out at Appendix 5 .While we seek to understand the full extent of past decisions made within Children's Services, we regret that, during this current assurance phase we may find further instances that do not meet the required practice standards

- ii. During February and March 2021, regular engagement with the Childrens Social Care leads for the LGA, DFE, Ofsted and Safeguarding Partnership and the Joint Deputy Chief Executives and incoming chief executive.
- iii. An interim statutory Director of Children Services has been appointed to lead the assurance process and the required improvement work.

Stage 2 - Pre Publication - of Judgement

- iv. 6–9 April 2021, DFE commissioned Essex Children Social Care to undertake an immediate helicopter review of looked after care service to identify issues/risks. Essex reviewed 19 cases, which they selected independently from a full case list and reported that there were no red flags in these 19 cases. The outcome of their visit is set out in more detail at Appendix 6 & 7
- v. Terms of Reference for Improvement Board will be agreed with the DFE.
- vi. Agreed with DFE the appointment of an advisor who will also chair the Improvement Board and we are awaiting approval by the Secretary of State as to who will be appointed.
- vii. Commission a third party provider to undertake a review of leadership and management in the Children Social Care service. The Council has commissioned an independent forensic deep dive of the services including the leadership and management within children's social care to be undertaken by two former HMI inspectors as part of our on-going assurance and to inform the improvement plan. This review will report their findings to the current Interim DCS and the Improvement Board in May 2020.

Stage 3 + 4 - Post Publication of Judgment

- viii. Extraordinary Full Council meeting to approve the recommendations.
- ix. New chief executive in post as from 3 May 2021 who will be leading this strategy and jointly leading the Improvement Board with the Independent Chair.
- x. Continue to work with Ofsted through fortnightly meetings and the annual statutory conversation.
- xi. Consider commission of further external reviews as identified by the improvement board and/or through on going assurance work.

- xii. Establish the Improvement Board and any supporting working groups, including member representation/involvement.
- xiii. Explore with LGA, Children Scrutiny Peer Review / External LA Peer to rebuild and reframe member confidence in effective Children Social Care Scrutiny challenge.
- xiv. Findings of external review/deep dive/next steps will be reported back to both to the Improvement Board and another Full Council meeting September/October 2021.

Regulators

- 13. The LGA, DFE and Ofsted have welcomed the council's early engagement and approach. The 4 stage strategy has been shared with them and they are supportive of the approach taken.
- 14. The annual conversation with Ofsted is due on 11 June, Ofsted will be reviewing their risk assessment of our service based upon the judgement findings and we have agreed fortnightly meetings with Ofsted as part of the on-going assurance work.
- 15. The DFE are currently considering what action they are required to take to ensure children receive the services they deserve. The type of intervention is dependent on the severity of the situation, how long the authority has been underperforming, and the perceived capacity for improvement. We recognise that the DFE have a difficult decision to make.

Nomination for Chair of Improvement Board

- 16. Once approved by the Secretary of State Department of Education, the DFE will procure and commission an advisor for Herefordshire. The detail of that appointment is yet to be determined but a sample Role Descriptor is attached Appendix 8.

Community impact

- 17. The recommended decisions within this report will have both a direct or indirect effect on the lives of both current and future children in care in Herefordshire.
- 18. When a child comes into care, the council becomes the Corporate Parent.
- 19. The term 'corporate parent' means the collective responsibility of the council, elected members, employees, and partner agencies, for providing the best possible care and safeguarding for children who are looked after by the council. Being a good corporate parent means we should; accept responsibility for children in the council's care; make their needs a priority; and seek for them the same outcomes any good parent would want for their own children.
- 20. Corporate parenting responsibilities are both the responsibility of elected members and council officers. All officers share the responsibility to promote the needs of looked after children. Key responsibilities of all officers are: to promote the life chances of

looked after children and care leavers in their area of responsibility; and to consider the impact of decision making on looked after children and care leavers.

Environmental Impact

21. There is no environmental impacts as a result of the recommendations or issues discussed in this report.

Equality duty

22. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

23. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes

Resource implications

24. There are significant revenue resource implications of the recommendations included in this report. There are no expected capital resource implications.
25. The council's base revenue budget includes suitable budgets to cover the agreed staffing establishment, and other recurring and one off costs to deliver children's social care, this report recommends the development and implementing of an assurance and improvement strategy. The resource implications are not included in the base budget. As detailed below the anticipated additional resource requirement for the next two years is £5.222m.
26. Included in the estimates are appropriate amounts to support training, retention and recruitment of staff to deliver the assurance and improvement strategy as well as additional staffing resource to provide additional capacity to the service.
27. Subject to confirmation of council's decision in relation to this report, cabinet will exercise its authority to allocate ear-marked reserves required to fund the implementation of the

assurance and improvement strategy. The improvement board will receive monthly reports monitoring spend incurred in delivering the assurance and improvement strategy.

28. The council holds a range of ear marked reserves at the end of March 2021 the council held ear marked reserves in excess of £60m
29. It may be that additional resources are required, both interim and recurring may be required in future years, these requirements will be considered as part of the council's normal budget setting process.

Revenue cost	2021/22	2022/23	Future Years	Total
	£000	£000	£000	£000
Improvement board	130	130	-	260
Support for family's	100	100	-	200
Legal	551	551	-	1102
External legal fees	525	325	-	850
Human resources support	364	289	-	653
Assurance and transformation	292	85	-	377
interim Staffing	890	890	-	1,780
TOTAL	2,852	2,370		5,222

Funding streams	2021/22	2022/23	Future Years	Total
	£000	£000	£000	£000
Ear marked reserves	2,852	2,370		5,222
TOTAL	2,852	2,370		5,222

Legal implications

30. The judgement was delivered in private on 30 March 2021. The public version was published on 16 April 2021 at 14.00pm on www.bailli.gov.uk
31. This public version preserves the confidentiality of and privacy of the mother, the children and the foster carers. All persons including representatives of the media must ensure that this condition is adhered to. Any disclosure of this confidential and private information may amount to contempt of court which could result in a fine or imprisonment.
32. Both previous and current council employees who provided evidence, by way of a witness statement and/or oral evidence at the high court hearing have by direction of Mr Justice Keehan been named in this judgement. All persons must ensure that any

comments, discussion or reporting of this judgement is not of a vexatious, defamatory, libellous or discriminatory nature towards these named individuals.

33. S18 Children Act 2004 requires every upper tier local authority to appoint a Director of Children's Services.

Incorrect Legal Advice

34. The judgment also identified incorrect legal advice being given to management. This advice was plainly wrong. There have been significant changes made to the management and staff within the Children's Legal Team and also new protocols and training to ensure processes are observed and advice is sound.

Special Guardianship Orders

35. Special Guardianship Orders were introduced in 2005 as an amendment to the overarching legislation Children Act 1989 and its purpose is another permanency option. They are a means of providing permanency for the children who cannot live with their parents and for whom adoption would not be appropriate. Unlike adoption the order retains the basic legal link with the parents. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited.
- a) The Children Act 1989 at sections 14A-F set out the following -
 - Who may apply for a special guardianship order
 - The circumstances in which a special guardianship order may be made
 - The nature and effect of special guardianship orders
 - Support services for those affected by special guardians
 - b) The order enables the current holder of a care order to exercise parental responsibility to the exclusion of others with parental responsibility. At the same time as making a special guardianship order, the court may also give leave for the child to be known by a new surname.
 - c) The court should also consider whether a contact order should be made at the same time as the special guardianship order. A contact order may be made, for example, to require continued contact with the child's parents.
 - d) Since the implementation in December 2005 of SGOs a review was undertaken in 2015 by the DFE. The review focussed on growing concerns of rushed or poor-quality assessments, risky placements and inadequate support for SG's. The matters that a local authority must address in a special guardianship report are set out in the Special Guardianship Regulations, reg 21. The Schedule to the 2005 Regulations (as amended by the 2016 Regulation).

- e) This legal framework fundamentally requires an evidence-based assessment that results from the child have been cared for by the applicant 24/7 for at least a year. This evidence will focus on a range of core components such as the integration of the child into the new family, the way the child's needs have been met across the range of typical issues that parenting and family life addresses.
- f) In June 2020, the Public Law Working Group Family Justice published its recommended best practice for SGO's, introduced by Mr Justice Keehan.

Next Hearing

- 34. The judgement considers the manner in which the care plans of the children have been handled by the local authority and furthermore the legal position on ending life sustaining treatment of a child in care. The Judge has adjourned the welfare aspect of proceeding. A further hearing has been listed following the filing of a report by Dr Williams who is undertaking an agreed assessment of the children, the mother and the foster carers. The next hearing shall be held in private.

Misuse of s.33 (3) Children Act 1989 / Ending Life Sustaining Treatment for a LAC Child

- 35. Section 33(3) Children Act 1989 provides that while a care order is in force with respect to a child, the local authority designated by the order shall –
 - a) have parental responsibility for the child; and
 - b) have the power (subject to the following provisions of this section) to determine the extent to which
 - c) a parent.....may meet his parental responsibility for him
- 36. The above power given to the local authority is subject to Section 33(4) CA 1989 which states that " The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare."
- 37. The issue of the exercise of parental responsibility by a local authority which had a care order in respect of a child was considered by the Court of Appeal in *Re C (Children)* [2016] EWCA 374. The court in requiring a local authority to invoke the jurisdiction of the court in relation to a serious medical issue stated it was not conferring power upon a local authority, rather that the High Court was using its inherent jurisdiction to limit, circumscribe or sanction the use of the power which the local authority already has by virtue of s.33(3)(b) of the 1989 act. The judge concluded in paragraphs 98 and 104 as follows:

"In the medical treatment cases the decisions to be made may well be a matter of life and death. In the present case, the limitation on the exercise of parental responsibility proposed by the local authority, whilst not life threatening, is life affecting. Further such a decision potentially involves such a serious invasion of the Article 8 rights of the mother that I am satisfied that the court should invoke its inherent jurisdiction in order that it may

either sanction the local authority's proposed course of action as in the interests of the children or, alternatively, to refuse to sanction it as for example being in breach of Article 8." "I have reached the conclusion that there is a small category of cases where, notwithstanding the local authority's powers under section 33(3)(b) CA 1989, the consequences of the exercise of a particular act of parental responsibility are so profound and have such an impact on either the child his or herself, and/or the Article 8 rights of those other parties who share parental responsibility with a local authority, that the matter must come before the court for its consideration and determination."

- 38. So the profound life and death decision to consent to the withdrawal of life support should be the subject of an application to the High Court.
- 39. The legal advice given in June 2019 was wrong and an inappropriate use of the local authority's power under s.33 of the 1989 Act.

Changing Surname of a Looked After Child

- 40. The law is governed by s.33(7) Children Act 1989. The legislation states that while a care order is in force with respect to a child no person may –
 - i. Cause the child to be known by a new surname or
 - ii. Remove him from the United Kingdom
- 41. Without either the written consent of every person who has parental responsibility for the child or the leave of the court (court granted application).
- 42. It would therefore be contrary to the above legislation to allow children to be known by their foster carers surname without the consent of parents or a court order. This would also represent poor social work practice.
- 43. A single joint improvement plan between the CWB Assurance team, led by Dr Andy Gill Assistant Director and Legal Services is being devised with the overall aim of raising standards and changing culture within CWB. The overall aim being to improve the lives of children in the County of Herefordshire. There will be an in-depth review and auditing exercise arising from matters raised in the previous 3 judgements in 2018 and this judgement from Mr Justice Keehan. The plan will include a review and change exercise across all areas in the service identified which requiring strengthening. The plan will also include an analysis of the impact to social work practice in Herefordshire following a greater amount of remote working due to Covid-19.
- 44. The outcomes from this plan will be reported to the Improvement Board for monitoring performance and delivery.

Risk management

- 45. Increased financial risks arising from increased potential human rights claims; current known risks have been reflected in the legal and corporate performance risk register and any new risks to the council as a result of the historic practice identified in this judgment will be monitored and reported through the corporate performance reporting arrangements.

46. If the DFE decide to intervene in the authority this is likely to be a non statutory notice for improvement this will include the provision of external consultancy, advisory or peer support, the establishment of improvement boards, enhanced monitoring and challenge. Statutory improvement notices can also be issued and more critical or enduring underperformance may necessitate the use of Statutory Directions compelling the council to take certain actions. In extreme cases the DFE can direct partial or complete outsourcing of children services to a third party or the establishment of a children's trust.

Consultees

47. The Leader, Councillor David Hitchiner and all Cabinet members have been advised of the contents of this judgement by direction of Mr Justice Keehan. The Chair and Vice Chair of the Children and Young People Scrutiny committee have been kept informed of the case as it progressed through the court. All members were provided with briefings upon publication of the judgement.

Appendices

1. Public Judgement: Re YY (Children: Conduct of the Local Authority)
2. Review and Improvement Strategy
3. Resources Plan
4. Letter from Herefordshire Council to Mr Justice Keehan dated 17 March 2021
5. New SGO Assurance Process
6. Essex Review (6–9 April 2021) Key Lines of Enquiry
7. Essex Review (6–9 April 2021) Summary of Findings
8. Example Job Description Chair Improvement Board

Background papers

None identified'.

Please include a glossary of terms, abbreviations and acronyms used in this report.

