2 KING'S BENCH WALK NEWS

Issue 1 – 11 April 2016

Chambers news and announcements

Welcome

Welcome to the first edition of the 2 King's Bench Walk Newsletter. The newsletter will be produced quarterly, in April, July, October and January. It will contain articles, updates and news from the length and breadth of chambers.

In this newsletter, the recent Supreme Court decision in *R. v. Jogee* is discussed; Philip Allman and Kaj Scarsbrook take a look at how the *Serious Crime Act* 2015 has impacted Confiscation Orders; Leah Pitt looks at s.20 of the *Children Act* 1989; David Fardy discusses the recent updates to the Judicial College Guidelines and Richard Carroll discusses the service of Reversioner's Notices.

If you have any comments or thoughts about the Newsletter you would like to share, or if you would like further information about the articles or authors, please email clerks@2kbw.com.

Western Circuit Butterfield Scholarship

2KBW is delighted to announce that we have been awarded the Western Circuit Butterfield Scholarship for 2016. This will allow an additional pupillage in Chambers to be funded which will commence in October 2016. For more details on the scholarship, see here, and for pupillage, here.

William Mousley Q.C. elected Leader of the Western Circuit

Chambers is very pleased to announce that head of chambers, William Mousley Q.C., has been elected the Leader of the Western Circuit for 2016.

In this issue

New members of chambers

Chambers is delighted to announce that Sally Howes Q.C., Robin Sellers, Nick Barnes, Caroline Kinloch-Jones, Daniel Wright, Kelly Brocklehurst, Philip Allman, Robert Ashworth and Katrina Thorne have recently joined 2 King's Bench Walk as tenants. Further details can be found on chambers' website.

Furthermore the beginning of September saw two new pupils start: Kaj Scarsbrook (London) and David Fardy (Portsmouth). Both are now available to accept instructions.

Chambers sponsored cycle ride for Horatio's Garden

2KBW is entering a team for the Chalke Valley Cycle Ride for Horatio's Garden. This is a great opportunity to raise money for a worthy cause. The road ride is on the 25 September 2016, and there are two routes of 25 and 50 miles. Please contact Tracey McCarthy if you'd like to join us.

Criminal update

Criminal team news

Elisabeth Bussey-Jones appointed Recorder

Chambers is delighted to announce that Elisabeth Bussey-Jones has been appointed a Crown Court Recorder. Elisabeth will sit on the Western Circuit. A full list of the recent appointments can be found on the JAC website.

Chambers case report: *R. v. Pearse and Evans*

Acquittal on charges of grievous bodily harm with intent for Royal Navy duo serving on HMS *Illustrious* secured by Matthew Farmer and Paul Fairley

26 February 2016: 5th day of a Court Martial at HMS Nelson

A five-strong board comprised of a Commander (RN), Lieutenant Commander (RN), Royal Marines Major and two Lieutenants (RN) unanimously acquitted ex-Able Seaman Mark Pearse and Able Seaman Aaron Evans of causing grievous bodily harm with intent on an off-duty aircraftman. Acquittals followed on four further charges, and the Prosecution only got home on one lesser count of witness intimidation against Pearse.

The alleged assault had been launched on two aircraftmen from the aircraft carrier HMS *Illustrious* whilst on shore leave in Palermo, Sicily. One of them was knocked unconscious and received numerous fractures to his jaw. The Crown asserted that their chief witness had no reason not to tell the truth when he stated that his shipmates had confessed to the attack on their fellow crew member. In his closing address, counsel for the Prosecution described the main witness as being "*a whistleblower who should be praised*", and as someone who had no reason to lie. Defence counsel, however, submitted that the Prosecution's main witness "*blew a number of different whistles, all playing different tunes*". The witness had earlier been robustly cross-examined and accused of inventing his allegations after becoming wrongly convinced by unreliable rumours of his shipmates' guilt.

2KBW News is aware that Chambers have had a number of significant successes in highly publicised Court Martial cases within the last few years. Due to his departure for the French Alps, Paul Fairley was unable to comment on this latest result. Matthew Farmer said:

"This was a great result for the two sailors, who have had this hanging over their heads for over two years. Paul and I were of course delighted with the result after a lot of hard work. On a lighter note I should add that appearing in Court Martial proceedings is a very rewarding experience, and not just for those with direct military experience.

One of the features of working in a case such as this is the understandably heightened security arrangements at the base. On the first day I appeared I was severely delayed at the security gate and then faced a long wait for authorised personnel to escort me to the Court Martial Centre. Happily, albeit in something of a bizarre role reversal, my pupil Kaj Scarsbrook found a new way to impress. As a serving officer in the London Scottish Regiment (Army Reserve), he possessed the necessary documentation to allow him to escort me to the Centre, and more importantly, to the NAAFI for refreshments at lunchtime."

Case note: 'the law took a wrong turn' - *R. v. Jogee* [2016] UKSC 8

Kaj Scarsbrook

Murder – 'joint enterprise' and parasitic accessory liablity

The appellants J and R appealed convictions of murder after directions to the jury where trial judges applied the principle from *Chang Wing-Siu v. The Queen* [1985] A.C. 168 and developed in later cases such as *R. v. Powell and R. v. English* [1999] 1 A.C. 1, so-called 'parasitic accessory liability'. The Court took the opportunity to extensively review the existing case law and correct the state of the law, effectively returning to the pre-*Chang Wing-Siu* situation: rather than foresight being used as a legal test to infer intent to encourage or assist the principle offender, it must instead be treated as factual evidence of said intent.

The court concluded that the principle from *Chan Wing-Siu* could not be supported, and its introduction was the result of an incomplete and partially erroneous reading of previous case law coupled with questionable policy arguments. It was correct to reverse such a principle, as (i) the court had a fuller analysis now than before; (ii) the law was not working in a satisfactory way; (iii) secondary liability is an important part of the common law lexicon; (iv) in the common law, foresight of what *might* happen is usually no more than evidence to infer intention and it should not have been adopted as a test for the mental element in murder; and (v) there was a lower mental test for a secondary party than for a principle.

In relation to (iv) *ante*, Parliament had provided that foresight was not sufficient *mens rea* for the offence of intentionally encouraging or assisting an offence (*c.f.* s.44 *Serious Crime Act* 2007). Under the logic of *Chan Wing-Siu*, it could be sufficient to find the secondary party guilty of the full offence, if the principle went on to commit it. It was proper to re-state the pre-*Chan Wing-Siu* principles.

The correct approach is to treat foresight as evidence of intent

The error since *Chan Wing-Siu* was to equate foresight with an intention to assist as a matter of law; instead, it should be treated as evidence of such an intent.

The court should approach secondary participation by examining two issues. Firstly, whether the defendant (D2) assisted or encouraged the commission of a crime. Secondly, whether D2 intended to encourage or assist D1 to commit the crime, acting with the same mental element required of D1. If the offence requires a particular intent, D2 must intend (it may be conditional) to assist D1 to act with that intent. Specific guidance was given in relation to the most common types of joint enterprise offending ([90] *et seq.*). In cases involving concerted physical attacks, the court said that there may be no practical distinction to draw between D2 intending to assist D1 in causing at least grievous bodily harm, and D2 having that intention himself. In these cases the jury can be safely directed that the Crown must prove D2 intended V to suffer at least GBH.

The court also said (at [98]):

> "What matters is whether D2 encouraged or assisted the crime … his intention to assist in a crime of violence is not determined only by whether he knows what kind of weapon D1 has in his possession. The tendency which has developed in [the wake of *Chan Wing-Siu*] to focus on what D2 knew of what weapon D1 was carrying can and should give way to an examination of whether D2 intended to assist in the crime charged."

The Court stated firmly (at [100]) that the effect of this judgment does not render invalid all convictions arrived at by the faithful application of the law as per *Chan Wing-Siu* and *Powell and English*. Such convictions, if arrived at properly via the law at the time, can only be set aside by seeking exceptional leave to appeal to the Court of Appeal. Substantial injustice must be demonstrated.

The appellant J's conviction for murder was quashed; the appellant R's appeal allowed.

This was a judgment which rightly dominated the legal and general press, and has clarified an area of law which was deeply unfair to the secondary party. It is surely right that all parties' intention is assessed properly, especially in such grave cases as murder. Presumably to the disappointment of tabloid headline-writers the judgment is unlikely to result in a mass exodus from prisons; however, out-of-time applications to the Court of Appeal on the basis of substantial injustice will surely increase. It is anticipated that in a number of scenarios where there is no evidence that the secondary parties could be inferred to have the correct intention, the Court of Appeal are likely to quash the convictions.

Civil update

What constitutes good service of a Reversioner's Notice under s.13 of the *Leasehold Reform, Housing and Urban Development Act* 1993?

Richard Carroll

I was recently involved in a case called *Cowthorpe Road1-1A Freehold Limited v. Ahmed Wahedally*, which is due to be published soon and is worth watching out for. This article merely provides a very short summary of some of the key points and a link to the full judgment will be added to Chambers website once available. It is a case decided by HHJ Dight in the Central London County Court and therefore is only persuasive and not binding, however it is another case dealing with the issue of what constitutes writing for the purposes of notice under the 1993 Act and whether a "copy" of the notice is sufficient. It also deals with the issue of agency and whether headed paper refusing service by email is sufficient to limit the Reversioner's ability to serve a notice in this manner.

This is an important case in relation to this issue as it is in direct conflict with the judgment of HHJ Coltart in *Achieving Perfection Limited v. Gray and Others* delivered in May 2005 at Brighton County Court. That judgment does not deal with the issue of copies, however it does deal with whether an email can be properly considered to be "in writing". In that case the learned judge concluded that an email does constitute in writing, however Judge Dight comes to the opposite conclusion and states it does not. This is a matter which will have to be decided by the Court of Appeal. As it stands there are two modern judgments in direct conflict with each other.

In *Achieving Perfection* the issue of whether a copy of a notice is sufficient is not dealt with. However that matter was looked at in a previous case of *Stoll Construction Ltd v. Kelly* and considered afresh by HHJ Dight. In both cases the same conclusion is reached that a copy of a notice is insufficient. It should be noted that *Cowthorpe* deals with email and *Stoll* deals with fax.

There now seems to be clear line of authority that a reversioner's notice can be rejected if there is not an original signature on it, even if served in hard copy form.

HHJ Dight also concluded that where service by fax would have been accepted, including on a firm's headed paper that they will not accept service by email, that is enough to limit the manner in which they may be served even in circumstances where their fax machine is not working. HHJ Dight rejected the contention that express permission for this had been given, but that the solicitors for the Claimant did not have authority in any event to accept service by such means. This is a far more rigid approach than is advocated by LJ Brooks in the case of *RC Residuals* [2002] EWCA Civ 911 and therefore is also worth noting.

Family update

Family team news

New team members

Chambers is delighted to announce that Nick Barnes, Caroline Kinloch-Jones and Katrina Thorne have recently joined the family team. More information can be found on their profiles on Chambers' website.

Case notes: costs in family proceedings

David Fardy

Litigants in care proceedings seldom concern themselves with the question of costs. Although Part 28 of the Family Procedure Rules 2010 effectively imports the civil costs regime into all family proceedings (with modifications for financial remedy proceedings), care proceedings under the *Children Act* 1989 almost always result in no order as to costs. The rationale for this is that it is unattractive to consider the parties to care proceedings 'winners and losers', and given that the focus of such proceedings is on what is in the child's best interests, such a decision should not be swayed by the potential for costs penalties.

However, in recent months there have been a number of notable reported cases whereby parents have made claims under s.7 of the *Human Rights Act* 1998, claiming damages for breaches of their Article 6 and 8 rights by a local authority as a result of ineffective use of section 20 agreements or excessively lengthy periods of section 20 accommodation. In 2015 four cases were reported in which parents were awarded such damages: £4,000 in *Northamptonshire County Council v. AS, KS and DS* [2015] EWHC 199 (Fam.), £3,000 in *Re AS* [2015] EWFC B150, £20,000 in *Medway Council v. M and T* [2015] EWFC B164 and £10,000 in *Williams & another v. London Borough of Hackney* [2015] EWHC 2629 (QB).

A recent judgment concerning costs – 'concerning' being the operative word for parties used to greater tolerance over non-compliance with disclosure obligations – also challenges the no order principle. In *Re L (Case Management: Wasted Costs)* [2016] EWFC B8, HHJ Bellamy found that there had been failures on the part of all four parties and made wasted costs orders against them all. In commenting that any failure to comply with the duties identified which leads directly to the adjournment of a hearing is likely to be considered negligent in the context of wasted costs, HHJ Bellamy may have given rise to increased costs litigation in the near future, as parties seek to capitalise on case management failures which previously went unpunished.

Please also see the article on Section 20 agreements overleaf.

Articles

A brief overview of the *Serious Crime Act* 2015 and the new provisions relating to Confiscation Orders

Philip Allman and Kaj Scarsbrook

The *Serious Crime Act* 2015 (*SCA*) has made a number of changes to the way in which the confiscation scheme in England & Wales operates. The Act came into force on 1 June 2015 and has amended the *Proceeds of Crime Act* 2002 (*POCA*) to create a number of additional powers.

1. A Compliance Order, under s.13A *POCA* 2002, as amended by s.7 *SCA* 2015, is any order believed to be appropriate for the purpose of ensuring that the confiscation order is effective. Conversely, s.6(5) *POCA* 2002 places a restriction on when an order can be made. It stipulates that an order can only be made if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.

2. Section 11 *POCA* 2002 has been amended, halving the payment time in respect of an order to three months. The three month period may be extended by a further three months on application. However, any extended period must start with the day on which the Confiscation Order is made and must not exceed six months.

3. Section 10A *POCA* 2002 has provided the court with power to determine third party claims to a defendant's assets. The new section permits someone with an equitable interest the right to make representations where there is property held by the defendant likely to be realised or used to satisfy the order, and, a person other than the defendant holds or may hold an interest in the party.

4. Section 2 of the Act amends section 16 of *POCA* 2002 to ensure that information about third party interests is set out in the prosecutor's statement.

5. Default sentences for failing to pay the sum subject to the order have been simplified; there are now only four which are as follows:

    a. An amount not exceeding £10,000 – 6 months

    b. An amount exceeding £10,000 but not exceeding £500,000 – 5 years

    c. An amount exceeding £500,000 but not exceeding £1,000,00 – 7 years

    d. An amount exceeding £1 million – 14 years.

The latest developments in the use of agreements under section 20 of the *Children Act* 1989

Leah Pitt

Section 20(1) of the *Children Act* 1989 provides:

> "(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
>
> (a) there being no person who has parental responsibility for him;
>
> (b) his being lost or having been abandoned; or

> (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from previding him with suitable accommodation or care."

Section 20(4) further allows a local authority to provide accommodation for a child – even though a person who has parental responsibility is able to provide him with accommodation – if the local authority considers that to do so would safeguard or promote the child's welfare. In practice this means that anyone with parental responsibility can voluntarily allow the local authority to accommodate their child under section 20.

Section 20 "voluntary accommodation" is a common and useful measure and can, if used correctly, work to the advantage of children, parents and local authorities. Problems arise, however, where "voluntary" seems to be less than "voluntary" or where it is perceived that the local authority is misusing the section to the detriment of the child and against the spirit of the Public Law Outline.

Childcare practitioners will often be asked to advise on section 20 arrangements. Perhaps there is a crisis in the home, the social worker considers that the children must be removed and the choice at that moment is between section 20 with the agreement of the parent or an emergency protection order. Alternatively the local authority may have issued proceedings under section 31, initially asking for an interim care order, but there is the possibility that it may agree to section 20 accommodation instead. Importantly, it is possible that the local authority is minded to issue but wishes to "frontload" its work with the family prior to the commencement of the 26-week timetable and therefore hopes to enlist the agreement of the parent to voluntary accommodation while it carries out assessments. The assessments could include not only full parenting assessments, but also, if the local authority is prepared to pay, psychological or even psychiatric assessments. In such cases the status quo under section 20 would need to be preserved for weeks, even months.

From a practitioner's point of view, when asked to advise a client whether to agree a section 20 arrangement, there are arguments in favour and against. By agreeing a section 20 arrangement, a parent can be seen to be demonstrating a willingness to cooperate with the local authority and putting the needs of the child first. The local authority does not acquire parental responsibility, which is attractive to many parents who feel they are still playing a significant role in the proceedings. Arguably, in some situations, a section 20 agreement can give the parent or parents a chance to work through any issues they might be facing and thus avoid proceedings entirely. Often the local authority might be persuaded that it is not necessary to have a contested ICO if, as an alternative, the parent agrees section 20 with a recital in the Order that the parent will not withdraw without first giving a suitable notice period. This potentially gives the local authority a reasonable amount of time to apply to the court for an ICO if the parent withdraws consent.

There are however situations when a practitioner is likely to advise a parent not to sign a section 20 agreement, for fear that the local authority will simply drag its heels. What begins as a short term agreement can, quite easily, end up spanning several months while the local authority continues its assessments at a pace of its own choosing.

Herein lies the problem.

It is worth reminding ourselves that section 20 – so often referred to as 'voluntary' – appears to many parents as anything but 'voluntary' and there can be few practitioners who have not had a conversation with a parent in which it is clear that the social worker presented the paperwork on the basis that if it was not signed they would go straight to court for an order to remove the children. It is often difficult to explain to a distraught client how this is really 'voluntary'. The case of *Re CA (A baby)* [2012] EWHC 2190 is a useful reminder not only to social workers but to all of us of the correct procedure. Although the parent's capacity to make the difficult decision under section 20 was very much an issue in the case the broader guidelines set out in the judgment

apply to all cases and have been recently cited in the local guidance on section 20 given by HHJ Wildblood QC (see below).

Assuming, however, that the practitioner is dealing with a parent who has capacity and who has agreed (even with a heavy heart) section 20 accommodation for a child, one must ask how long a local authority should be permitted to allow that situation to continue before it is obliged to issue proceedings under section 31 or, indeed, return the child to the family.

There has been growing concern amongst the judiciary – and no doubt many others – that local authorities are asking parents to sign section 20 agreements and then taking far too long to issue proceedings, leaving children languishing in local authority accommodation. There are also many circumstances where a child will be placed with relatives under a section 20 agreement, often leading to the longest delays because parents are perhaps not as motivated as those whose children are in foster care. As many judges have pointed out, this misuse of section 20 is inexcusable.

The 26-week timescale from issue to conclusion of a case has encouraged many local authorities to frontload their preparation by completing as much work as possible before proceedings are begun. The use of section 20 is a boon to social workers in this respect. Clearly, however, a line needs to be drawn. Whilst it is important to present the court at the first appointment with all the relevant evidence, parents cannot be placed in a situation where they have agreed to a section 20 and live in fear of withdrawing their consent. It is trite law that the welfare of the child comes first and no one would argue that a child being placed – effectively in limbo – whilst the local authority takes months to issue can be in the child' s best interests. The 26-week timescale was not implemented so that longer time could be taken to do the same work before the court clock starts ticking.

There have been a number of cases where judges have made clear their concerns regarding the overreliance of section 20 where cases have 'drifted'.

In the case of *P (A Child: Use of section 20)* [2014] EWFC 775, a section 20 arrangement had been in place for two years. HHJ Atkinson makes clear her concerns at paras 29 -31 of her judgment:

> "29. In this case, for example, the more difficult it is to discern whether the child in question has suffered harm as a result of the parenting given to him before separation rather than the events he has had to endure after. I wonder at how damaging the process of holding him in s.20 accommodation without any plan for his future will have been for him....
>
> 30. It goes without saying that it is totally inappropriate for a local authority to hold a child in s. 20 accommodation for 2 years without a plan. That is what happened here. The local authority has "disabled" these parents from being able to parent their child with every day of inactivity that has passed. The driver for the issue of proceedings was the parents' lawyers making clear that they did not give their consent...
>
> 31. In these situations it is the local authority that holds all of the power. I think it likely the mother was told that if she did not agree to P's accommodation then the LBR would issue proceedings. Parents are unlikely to want to drive the local authority to issue proceedings and so the vulnerable are left almost powerless to object. Meanwhile the child is "parked" and the local authority is under no pressure or scrutiny to ensure that it is dealing with the case in an appropriate and timely fashion."

Further judicial warning was given by the Designated Family Judge for Avon, North Somerset and Gloucestershire, HHJ Wildblood QC, on 26th November 2014:

> "1. There have been several instances in this area where it is quite apparent that accommodation of children under Section 20 of the *CA* 1989 has continued in an unstructured way for excessive periods of time and in circumstances where proceedings are either inevitable or otherwise highly likely to be issued. I regard such accommodation

in those circumstances to be unprincipled and wrong. Further, where this occurs, it leads to unjustifiable delays in the completion of arrangements for the child concerned.

2. I refer, in particular, to the decision of Hedley J in *Re CA (A baby)* [2012] EWHC 2190 in which guidance is given about the use of accommodation under that section. It includes guidance that the Local Authority should consider: 'Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement.' That question should be read as if the word 'fairer' were to be expanded so that the question reads: 'Would it be fairer and in the better interests of the child in this case for this matter to be the subject of a court order rather than an agreement?' It is not in the interests of a child for accommodation to be used in the unstructured way that I have described in paragraph one above.

3. Therefore, in any cases before District Judges or Magistrates in this area where there is any significant suggestion that accommodation under section 20 has been misused in the manner that I have described, the case should be listed before a Circuit Judge following the Case Management Hearing. Circuit Judges are encouraged to give judgments on any such issues that arise before them on referral or on a CMH listed before them. Where possible and appropriate, the judgments should be placed on BAILII in accordance with the transparency provisions. I consider it to be in the public interest that any such misuse of accommodation under that section should be made public."

This notice has been echoed throughout the courts in England and Wales. More recently Sir James Munby, President of the Family Division, made patent his own criticisms in *A (A Child)* [2015] EWFC 11. At para 99 he stated:

"99. Quite apart from all other serious failures, the delay in this case was shocking. A was born on 11 January 2014. There had – appropriately and commendably – been much pre-birth planning. Yet it was not until 16 September 2014 that the care proceedings were issued. The delay is, to all intents and purposes, unexplained. The gap was covered by the local authority's use of section 20 in a way which was a misuse, indeed, in my judgment, an abuse, of the provision.

100. There is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated. I draw attention to the extremely critical comments of the Court of Appeal in *Re W (Children)* [2014] EWCA Civ. 1065, as also to the recent decision of Keehan J in *Northamptonshire County Council v AS and Ors* [2015] EWHC 199 (Fam.)."

It seems that the judiciary are taking these warnings very seriously and cases are swiftly being reallocated to Circuit Judges for the purposes of investigating why proceedings were not issued in a timely fashion whilst section 20 was being exercised. In a guidance note issued by the Designated Family Judge for Dorset, (now former) HHJ Bond, sitting at Bournemouth Combined Court he made the following comments:

"The reason why this matter is before court today is because of general concerns amongst the senior judiciary that children are being left in state of limbo pursuant to section 20 placements and at a late stage proceedings are then issued. As a result of those concerned I issued a notice recently saying that in any case where a child has been in section 20 accommodation for 4 months or more before issue of proceedings the matter should be referred to me. I have been made aware from other information that there was a general concern within CAFCASS about children being in section 20 accommodation when proceedings should have been issued … Any case where a child is subject to section 20 does have to be kept under careful review and is it tempting when Local Authorities are under huge pressure – as I know many are – not to pay as much attention to section 20 children as they should, being distracted by other matters. It is important not to allow that temptation to cause the Local Authority to lose focus on these cases. In this particular case, and having heard more about the situation, there is nothing more I need to say save to make the general observation that s.20 needs to be used carefully with judgment and discretion."

So, what of the consequences when section 20 is misused despite the vast amount of judicial warning? Clearly it is a useful exercise – as well as a deterrent – that cases are referred to Circuit Judges for review in this way. However, of course, by the time it has reached the stage that such a review is necessary, this misuse or abuse has already occurred. The damage has been done. What then?

In *H (A Child - Breach of Convention Rights: Damages)* [2014] EWFC 38 it look the local authority almost a year to issue proceedings whilst the child remained under section 20 accommodation – what the local authority described to the parents as an 'informal placement'. HHJ Bellamy described the delay as 'unjustified and inexcusable' and damages of £6,000 were awarded to each parent for breach of their human rights. It should be pointed out that this was a case where there was not only delay but the local authority had failed to properly consider whether the parents understood what was happening.

It is unclear what the consequences might be outside the realms of monetary awards or sanctions. It would be very difficult to argue that legislation should be introduced to determine a maximum length of time for use of section 20 given how diverse the circumstances of each case may be. However wherever there is unreasonable or unjustifiable delay judicial criticism is to be expected. Certainly local authorities are under immense pressure to get cases to court in a timely fashion whist producing all the evidence the case requires at the right stage and many of them work tirelessly to do so. However for those local authorities that continue to allow children to drift under section 20, it remains to be seen what level of sanction courts may decide to impose.

This article originally appeared in Family Law Week.

The impact of the latest edition of the Judicial College Guidelines

David Fardy

The 13th edition of the Judicial College Guidelines was published on 17 September 2015. Along with the usual updating of figures in line with inflation, changes have been made to the wording of some brackets which may yet have a significant impact on the valuation of general damages.

Some changes are clearly visible and are relatively uncontroversial. A new Chapter at 1E accounts for recognition of 'mental anguish' arising from fear of death or curtailment of life, and a new Chapter 2C(c) recognises shorter periods of paraplegia. The increased remedial use of dark glasses for ocular injuries is recognised at 5A(f)-(g) and there are minor changes to the terminology relating to hearing loss. The most significant cases of double incontinence are recognised in new brackets 6I(a) and 6J(a) and new brackets are included at 6B(b) and (f) to account for ectopic pregnancy. Anxiety is also further reflected in the newly worded Chapter 6 brackets.

Arguably the most significant changes to the Guidelines—in terms of the volume of cases affected rather than financial—are to the valuation of orthopaedic injuries, particularly short-lasting whiplash injuries. Where the previous edition provided brackets for neck and back injuries persisting for up to "a few months" and for injuries lasting between "several months and a year," the new edition replaces these flexible concepts with fixed injury durations of "up to three months" and "between three months and a year". The bracket increase is also substantial; where a few months previously received up to £1,550, the new bracket extends to £1,860.

The impact of this minor change in wording is likely to be substantial, particularly in Stage 3 Hearings and particularly to the benefit of Claimants. Under the previous edition a Defendant could argue a four-month injury was of a 'few months' duration and therefore warranted a maximum of award of £1,550; the new wording under the 13th edition almost mandates a figure

in excess of £1,900 for a 4-month injury, subject of course to the factors mentioned within the bracket. More generous wording can also be found in relation to toe injuries (Chapter 7 Q (e)).

Defendants will, however, be able to take advantage of the addition of the phrase "permanent nuisance type symptoms referring from the neck" in Chapter 7 A (b) (iii). Claimants previously could have argued permanent nuisance symptoms necessitated a 5-figure award given that the first reference to permanent pain in relation to neck injuries was under (ii) which started at £10,100; the new wording enables Defendants to argue that general damages ought to be around £6,000. Similar phrasing in relation to hand (Chapter 7 I (g)) and leg injuries (Chapter 7 L (c) (iii)) allows Defendants to argue that permanent symptoms warrant much less than was previously indicated by the Guidelines.

Chambers cases

See http://2kbw.com/home/news for the most up to date news of chambers cases

Crime

Members of chambers co-defend in Court Martial

Matthew Farmer and Paul Fairley co-defended in a trial before a Court Martial instructed by Kaim Todner Solicitors and Biscoes Solicitors. Both represented service personnel who faced allegations of assault occasioning actual bodily harm and perverting the course of justice. More details are reported here.

Rebecca Austin prosecutes footballer for indecency offences

Rebecca Austin appeared for the Crown at Winchester Crown Court. The defendant, who has played football for a number of English clubs, was accused of sexual offences against a neighbour in Hampshire. Futher details can be found here.

William Mousley Q.C. successfully prosecutes joint defendants in high-profile murder trial

Head of chambers, William Mousley Q.C., prosecuted the defendants in the Becky Watts murder trial. Nathan Matthews and Shauna Hoare were found guilty of murder and manslaughter respectively after a high-profile trial. See here for further reporting.

Suki Dhadda appears for the Crown in postal fraud

Suki Dhadda successfully prosecuted a man charged with various offences of deception. He had collected parcels using false identification; lied about his name when disqualified from drivingl and taken part in credit card fraud. See here for further details.

Family

John Ward-Prowse appears in FGM case

John Ward-Prowse appeared before Mr Justice Mostyn in a widely reported female genital mutilation case. John was instructed by Biscoes Solicitors of Portsmouth and represented the mother. Further details can be found here.

Training and Events

Chambers offers a variety of training opportunites, both in the form of seminars and in-house training to address specific requirements. Please contact chambers for further details.

Recent events

Top Tips for Case Management, Preparation and Delivery; Multiple Incident Counts

Elisabeth Bussey-Jones recently delivered a seminar on *Top Tips for Case Management Preparation and Delivery*, and Barry McElduff delivered a seminar on *Multiple Incident Counts*. They spoke to a packed room of senior CPS lawyers and senior Police Officers from the Portsmouth area at our officers at 3 Guildhall Walk, Portsmouth. It is indended that the seminar will be delivered to other CPS units throughout the UK in 2016.

Brussels II

From the Family team, John Ward-Prowse delivered a seminar in Poole on *Brussels II* concerning the rise in the number of disputes between parents of different nationalities. Where access to their children is in issue, there are increasing instances of parents commencing proceedings in the country in which they are a national. This seminar looked at the principles which apply in instances such as this.

Stage III MOJ Hearings and Costs

Building on his article in this newsletter, David Fardy delivered a talk on *Stage 3 MoJ Hearings and Costs* in Portsmouth.

23 March 2016 – Advocacy in Litigation Training

Suki Dhadda and Darren Bartlett delivered in-house training for Wiltshire Council. The course examined, explained and discussed:

Criminal Litigation: *Preparing for a first hearing*; *Case Management in Magistrates' Courts*; *Attending Court when someone has been arrested on a warrant*; and *Sentencing hearings*.

Civil Litigation: *Debt recovery hearings to include settlement negotiations*; and *Presenting injunction applications at Court*.

Forthcoming events

12 April 2016 – Borough of Poole Training Day

John Ward-Prowse and Jeni Ross will deliver in-house training for Poole Borough Council. They will cover the following: *Court Orders and Pre-proceedings for Local Authorities*; *Use of Intermediaries and vulnerable witnesses*; *Intermediaries – who they are and how we employ them*; *Section 20*; *Statement writing*; and an *SGO overview*.

Other forthcoming seminars

Upcoming seminars include *Calling on Expert Evidence* and *Section 5 – causing or allowing the death of a child*, both by Sally Howes Q.C. Dates are to be confirmed.

Editorial

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