



Neutral Citation Number: [2015] EWFC 2

Case No: SN14C00004

IN THE FAMILY COURT
AT SWINDON

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 January 2015

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

In the Matter of D (A Child) (No 2)

Ms Deirdre Fottrell and Ms Marlene Cayoun (instructed by Withy King) for the father (a protected party acting by the Official Solicitor as his litigation friend)

Ms Sarah Morgan QC and Ms Lucy Sprinz (instructed by Goodman Ray) for the mother

Mr Leslie Samuels QC and Ms Hayley Griffiths (instructed by the local authority) for Swindon Borough Council

Mr Kambiz Moradifar (instructed by Stone King LLP) for the child D

Ms Martha Cover and Ms Sarah Tyler (instructed by T V Edwards) for the Association of Lawyers for Children (on 13 November 2014)

Hearing dates: 13 November, 2 December 2014

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court

Sir James Munby, President of the Family Division :

1. The underlying issue in this case, as I noted on an earlier occasion, can be stated in a single sentence. Should a little boy, D, live with his parents, or, if they cannot adequately look after him, with other members of his wider family, or should he, as the local authority, Swindon Borough Council (SBC), argues, be adopted outside the family. At present, however, I continue to be focused on a different issue: the availability or not of legal aid for parents who find themselves in a situation where, to repeat what I have said before, it is unthinkable that they should have to face the local authority's application without proper representation.
2. The matter first came before me on 8 October 2014, following which I handed down a judgment on 31 October 2014: *Re D (A Child)* [2014] EWFC 39. In a postscript to that judgment I recorded (para 41) that, after I had sent the judgment to the parties in draft, I was informed that "the situation in relation to legal aid has moved on since the last hearing but has not been resolved." I said that it needed to be, before the next hearing, which was listed before me on 13 November 2014. It was not.
3. I stated (para 33) that I was "willing to hear further submissions from any interested State party, or indeed any other interested party." I directed (para 36) that:

"... there be a further hearing at which, assuming that the parents still do not have legal aid, I shall decide whether or not their costs are to be funded by one, or some, or all of (listing them in no particular order) the local authority, as the public authority bringing the proceedings, the legal aid fund, on the basis that D's own interests require an end to the delay and a process which is just and Convention compliant, or Her Majesty's Courts and Tribunals Service, on the basis that the court is a public authority required to act in a Convention compliant manner."

I said (para 37):

"Copies of this judgment, and of the order I made following the hearing on 8 October 2014, will accordingly be sent to the Lord Chancellor, the Legal Aid Agency, Her Majesty's Courts and Tribunals Service and the Association of Directors of Children's Services, inviting each of them to intervene in the proceedings to make such submissions as they may think appropriate. If they choose not to intervene, I shall proceed on the basis of the conclusions expressed in this judgment".

4. Following the handing down of that judgment I received an application to intervene dated 10 November 2014 by the Association of Lawyers for Children (ALC) and letters, each dated 11 November 2014, from Andrew Webb, the Immediate Past President, on behalf of the Association of Directors of Children's Services (ADCS), and from Shailesh Vara MP, Parliamentary Under-Secretary of State for Justice in the Ministry of Justice.

5. In its application the ALC made a number of observations, to three of which I draw attention. The first is that:

“Even if pro bono representation is an option, it will rely on the parent who may lack capacity and suffer from learning disabilities or difficulties recognizing that there is some action that can be taken or application that can be made. The parent will then need to persuade a lawyer to represent him or her on a pro bono basis. This expects too much and is no safeguard against breaches of their Article 6 and 8 rights.”

The second is that:

“The father’s lack of capacity, and both parents’ learning disabilities, are not uncommon. This is not an isolated case. Research has indicated that of parents involved in care proceedings, a significant number suffer from mental health issues and learning disabilities ... Estimates of the number of “care parents” with learning disability vary but they are disproportionately represented compared to the population at large.”

A number of references to the academic literature in support of that proposition are cited. Finally, the ALC makes these two assertions:

“Section 10 of LASPO is not being implemented so as to provide the safety net for the most vulnerable.

Placement orders in particular should be included in those proceedings for which non-means-tested and non-merits-tested public funding is provided.”

6. I draw attention to two of the points made by the ADCS. The first is that:

“From the perspective of a child on a journey to a permanent placement, ADCS would argue that the impact of a care order and a placement order are effectively equivalent; the same is true of their impact on the child’s parents. ADCS would therefore argue that equivalent checks and balances are required before either order is made. There appears to be no logic to support treating the orders differently simply because they have become decoupled in complex proceedings

In this case it would appear to ADCS that the application of the current legal aid rules has led to an injustice and could create a detrimental impact on the child in question. We would agree with the court that the State has created a problem by introducing these rules and should therefore find a means of resolving the problem.”

The second relates to the likely impact on local authorities, were the funding burden in cases such as this to fall on them:

“ADCS would point to the fact that any shift of a financial burden from one arm of the State to another is likely to lead to a direct, further reduction in service.

It is the ADCS view, based on our knowledge of Local Government, that if a new burden were to be picked up by a Local Authority, it would almost certainly lead to a reduction in provision in a closely related area of expenditure. Local Authorities have, effectively, fixed cash limits within which to operate in any financial year and are required by law to balance their budgets. Whilst Local Authorities have a strong track record in the flexible management of very large budgets, the impact over time of the government spending decisions has been to decimate some services and to limit that traditional flexibility. The likely response of most Local Authorities, in the current financial circumstances, would be to pass a new burden in respect of children and families directly to the Director of Children’s Services to be managed within budget.”

7. The letter from the Minister said:

“I am grateful for the opportunity to intervene but the Ministry of Justice does not propose to do so in proceedings in this case.”

It continued:

“I understand that the position has moved on considerably from that at the time of the hearing on 8 October and following handing down of your judgment. It may assist if I set out briefly the current position based on information provided by the Legal Aid Agency (LAA):

- Following a request for further information by the Legal Aid Agency, D’s parents provided further details in respect of the case and of their financial position at the end of September. As a result, they were assessed as being financially eligible to receive civil legal aid subject to a contribution.
- On 8 October D’s parents were therefore offered funding for representation in respect of proceedings under section 39 of the Children Act 1989 on the basis that they each pay a monthly contribution of £96.38 and a one-off contribution of £133.77 from their capital. I understand that both D’s parents intend to accept this offer

- Subject to confirmation that these contributions have been received, substantive legal aid certificates will be issued by the LAA.
- On 28 October (just 3 days before your judgment was handed down on 31 October), the local authority applied for a placement order application under section 22 of the Adoption and Children Act 2002. At the time your judgment was handed down the LAA had no record of an application from D's parents for legal aid in relation to these proceedings although it is understood that since that time an application from one of the parents has been received and is under consideration by the LAA.
- Legal aid is available in relation to such proceedings, subject to means and merits. I understand that, provided these tests are satisfied, D's parents would not be required to pay any additional contribution to their legal aid costs beyond that already called for."

8. The Minister added:

"I acknowledge that in this case D's parents and their representatives have faced considerable uncertainty for some time over the legal aid position. However, it is a necessary feature of means and merits testing that legal aid cannot be made available until information has been provided which shows that the statutory tests have been met. The LAA will act promptly in assessing applications but is reliant on the accuracy and currency of the information received from clients and their legal aid providers."

9. I attach as an Annex to this judgment a composite chronology, prepared by Withy King (WK), the father's solicitors, and Goodman Ray (GR), the mother's solicitors, setting out their dealings with the LAA and with SBC from 20 March 2014 until 5 December 2014. It is largely self-explanatory but one matter requires explanation.
10. Because the father lacks capacity, any benefits payable to the family are, in accordance with a direction given by the Secretary of State for Work and Pensions, paid to an Appointee, in this case SBC. Appointeeship is a corporate responsibility, administered by the Appointee and Deputyship Team at SBC, which also handles the father's earnings. Some payments – for example, a one-off payment of more than £200, regular expenditure in excess of £200 per month, or payments for the benefit of another person – require the approval of senior management, colloquially referred to as a 'Panel'. In 2007 SBC entered into an agreement with Capita to provide various administrative support and financial management functions for the Appointee and Deputyship Team. With effect from 1 October 2014 this agreement was brought to an end and these functions were brought back 'in-house'.

11. In large measure, the Chronology set out in the Annex speaks for itself. I leave others to ponder its implications and to consider how the present system can and should be improved. For my own part I make only the following observations:
- i) It took from 20 March 2014 until 1 December 2014 for the parents' legal aid applications to proceed to the point where the necessary certificates were granted. Although the LAA had indicated by the letters dated 8 October 2014 that legal aid would be made available for the ongoing proceedings, it took the best part of another two months for all the formalities to be concluded.
 - ii) D was removed from his parents on 25 April 2014 (see *Re D*, para 6). Because of the ongoing delays in obtaining legal aid, the final hearing will not take place until 9 February 2015. Even allowing for the delay until 17 July 2014 resulting from the hearings before Baker J, Her Honour Judge Marshall and Black LJ (see *Re D*, para 7), the further delays since then are unconscionable. Whatever the administrative excuses, the human reality is that a little boy has been separated from his parents pending a final decision for far too long – and for a period which is manifestly excessive not least bearing in mind, if only by way of analogy, the 26-week period now mandated by section 32(1) of the Children Act 1989 as amended by the Children and Families Act 2014. The delay, as Ms Deirdre Fottrell and Ms Marlene Cayoun, acting for the father, pointed out at the hearing on 13 November 2014, and again on 2 December 2014, itself raises issues – and, I would add, not merely for their client, D's father, but also for D himself – in relation to both Article 6 and Article 8 of the Convention.
 - iii) The complexity of the process involved in obtaining legal aid for D's parents is, quite manifestly, beyond their capabilities. Given their limitations it is perfectly obvious that if they were to obtain the legal aid which was – eventually – granted, they would need professional assistance. It is no thanks to the system that they were able to avail themselves of that assistance; it was, as I have already had occasion to point out (see *Re D*, paras 20, 31) available to them only because of the goodwill, the charity, of the legal profession which, in the person of Ms Stevens of WK (and in singling her out I do not forget everyone else who has acted here *pro bono*), has shown devotion to the client far above and far beyond the call of duty. This state of affairs is, to repeat (*Re D*, para 31(vi)), both unprincipled and unconscionable. As Ms Fottrell aptly observed, for any parent who lacks capacity the application process itself functions as a barrier to access to public funding which, in the context of a placement application, involves a potential breach of Article 6. And if the ALC's observations are well-founded, there must be many parents with difficulties similar to those of D's parents.
 - iv) One of the aspects of the system which seems to have contributed significantly to the delays was that although, for good reason, both of D's parents required legal aid, the grant of legal aid to D's mother, who has no income or money of her own, was dependent on her making financial contributions that were assessed on her husband's income and necessarily had to be funded by him – something which he, as a person under disability, could not himself agree to. So, the mother's ability to avail herself of legal aid was entirely dependent on

the decisions of third parties – SBC and the Panel – over whom she had and has no control.

12. As I have said, the matter came back in front of me on 13 November 2014. In addition to the other unresolved issues in relation to legal aid (as to which see the Annex), the issue of the use of the *father's* monies to fund the *mother's* legal aid contribution was still at large, though a decision from the Panel was said to be imminent. The order I made recorded the court's view that:

“it appears to be palpably in the Father's interests that the decision of the panel should be in the affirmative for the following reasons: (a) unless the Mother is able to accept her offer of legal aid the Father will not be granted legal aid; (b) in terms of the matrimonial relationship and the family unit it is plainly in the Father's interests that the Mother is able to move forward on the same terms as the Father; and, (c) it must be in his interests as the father of the child that the Mother be granted legal aid.”

As appears from the Annex, the Panel's decision the same day was to approve payment of the mother's contributions out of the father's monies.

13. I was able to give various directions in relation to the substantive proceedings, which I provisionally fixed for hearing before me on 9 February 2015. However, given the overall state of play, I adjourned the matter for a further hearing which, in the event, took place on 2 December 2014. The order I made identified the matters to be considered at that hearing as including: all avenues of possible funding of the parents' legal representation; any application for permission to pursue a Judicial Review; any application by any interested party to be an intervenor in these proceedings; and any application for an intermediary to assist either parent and any funding issues arising. I adjourned the ALC's application for leave to intervene.
14. The next hearing took place on 2 December 2014. As can be seen from the Annex, the final piece of the legal aid jigsaw had fallen into place the day before. My order recited the position as follows:

“The Father has a substantive funding certificate to cover all work undertaken to date and up to a final hearing in both the s.39 CA 1989 and s.21 ACA 2002 applications. The Official Solicitor will, in the usual manner, conduct an ongoing review as to the merits of the case and this may effect whether the funding certificate will remain in place.

The Mother has a substantive certificate to cover the period up to the exchange of final evidence in respect of both the s.39 CA 1989 and s.21 ACA 2002 applications, whereupon it will be subject to a merits review and report to the LAA which will determine whether the certificate will be extended to cover the final hearing.”

15. I gave directions with a view to an Issues Resolution Hearing in January 2015 (subsequently fixed for 13 January 2015) and the final hearing on 5 February 2015. Both of D's parents had made applications for the assistance of an intermediary. In relation to that, my order provided that each was to file separately by 9 January 2015:

“the outcome of an expert assessment of whether they each require the assistance of an intermediary in relation to the final hearing ... ([to] encompass the need for assistance in all matters ancillary to the final hearing, rather than just the giving of their evidence). The costs of each of these assessments shall be respectively born by the Father and the Mother's public funding certificates. The court determines that this expense (in the amount of £492 excluding VAT and travel costs) is proportionate and necessary for the fair resolution of the issues in this case.”
16. The use of an intermediary is becoming increasingly frequent, as the court becomes ever more alert to the need for 'special measures' in appropriate cases. Ms Fottrell referred me to four cases where intermediaries have been used: *Re X (A Child)* [2011] EWHC 3401 (Fam), *Re M (A Child)* [2012] EWCA Civ 1905, *Re A (Vulnerable Witness)* [2013] EWHC 1694 (Fam), [2013] 2 FLR 1473, and *Re A (Vulnerable Witness: Fact Finding)* [2013] EWHC 2124 (Fam), [2014] 1 FLR 146. Two more examples are *Wiltshire Council v N* [2013] EWHC 3502 (Fam), [2014] Fam Law 418, and *In re C (A Child) (Care Proceedings: Deaf Parent)* [2014] EWCA Civ 128, [2014] 1 WLR 2495.
17. The cost of funding an intermediary *in court* properly falls on Her Majesty's Courts and Tribunals Service because, as the LAA has correctly pointed out, an intermediary is not a form of 'representation' but a mechanism to enable the litigant to communicate effectively with the court, and thus analogous to translation, so should therefore be funded by the court: see *Re X*, para 37, and *C v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin), [2010] 1 All ER 735, paras 26-27; see also *Q v Q*, *Re B (A Child)*, *Re C (A Child)* [2014] EWFC 31, para 52. But where the services of an intermediary are required otherwise than during a court hearing, the cost falls on the LAA: see *Re C*, para 27. And the cost of obtaining a report from an expert as to capacity and competence and/or as to the extent of any special measures required, as opposed to the cost of providing services from an intermediary, likewise falls on the LAA: *Wiltshire Council v N*, para 79.
18. It was therefore entirely appropriate for me to make an order in the terms set out in paragraph 15 above, and I have to say that I found the LAA's response on 5 December 2014, as noted in the Annex, both surprising and concerning. The response from Ms Stevens of WK was robust. An up-dating note from Ms Fottrell and Ms Cayoun dated 8 December 2014 informed me that Ms Stevens had requested the LAA to put its decision in writing. In the event the LAA seems to have had second thoughts, for on 11 December 2014 it emailed Ms Stevens to say that prior authority had been granted for an assessment as to whether an intermediary was required for the father. (I assume that the same decision has been arrived at in relation to the mother.)

19. The legal aid issues having seemingly been resolved, the wider issues canvassed in my previous judgment (*Re D*, paras 30-36) fall away and no longer require a decision. In the circumstances, and because there is no need for me to deal with them, it is better that I say nothing. Nor is there any justification at present for giving the ALC leave to intervene, so its application stands adjourned. There is, however, one matter to which I must refer.
20. I have set out the parents' legal aid position in paragraph 14 above. It will be noticed that there is, as yet, no assurance that legal aid will be in place for the final hearing. This causes me some disquiet. Whatever view may be taken as to their prospects of success at the final hearing, a matter on which I express no views whatever, though recognising, as I have earlier noted (*Re D*, para 9), that the report of the independent social worker is unfavourable to the parents, I would view with the very gravest concern any suggestion that they should be denied legal aid on 'merits' grounds. Given the extreme gravity of the issues at stake and their various problems and difficulties, it is, as I said before (*Re D*, paras 3, 31), unthinkable that the parents should have to face the local authority's application without proper representation. I repeat what I said in my earlier judgment:

“To require them to do so would be unconscionable; it would be unjust; it would involve a breach of their rights under Articles 6 and 8 of the Convention; it would be a denial of justice.”

A parent facing the permanent removal of their child must be entitled to put their case to the court, however seemingly forlorn, and that must surely be as much the right of a parent with learning disabilities (as in the case of the mother) or a parent who lacks capacity (as in the case of the father) as of any other parent. It is one of the oldest principles of our law – it goes back over 400 years to the earliest years of the seventeenth century – that no-one is to be condemned unheard. I trust that all involved will bear this in mind.

21. This is a case about three human beings. It is a case which raises the most profound issues for each of these three people. The outcome will affect each of them for the rest of their lives. Even those of us who spend our lives in the family courts can have but a dim awareness of the agony these parents must be going through as they wait, and wait, and wait, and wait, to learn whether or not their child is to be returned to them. Yet for much of the time since their son was taken from them – for far too much of that time – the focus of the proceedings has had to be on the issue of funding, which has indeed been the primary focus of the last three hearings. The parents can be forgiven for thinking that they are trapped in a system which is neither compassionate nor even humane.
22. I leave the last word to the mother, who, together with her husband, was present at the hearing on 2 December 2014 as at previous hearings. In an up-dating note dated 8 December 2014, her counsel, Ms Sarah Morgan QC and Ms Lucy Sprinz, said this:

“The mother was distressed following the last hearing that the child had not, as far as she had heard it, even been mentioned during the course of the submissions and discussions between

Counsel (including her own) and the Court. It doesn't, she remarked afterwards, seem right that so much time has to be taken up about the legal aid when it should be about D."

They added, "Clearly she is right about that." For my own part I merely pose this question: Is this really the best we can do?

Annex

20 March 2014

WK telephone call to Capita seeking information required to complete Legal Aid application.

15:53: WK email to Capita requesting information.

28 March 2014

WK telephone call to Capita to chase financial information.

2 April 2014

WK 2 x telephone calls to Capita chasing financial information.

3 April 2014

WK telephone call to Capita chasing financial information.

16:36 Email from Capita to WK with financial information requested.

4 April 2014

WK attending at Capita's office to collect documents needed to apply for Legal Aid.

WK telephone call to father's employer regarding L17 form in support of Legal Aid application.

13:31 WK email to employer attaching L17 form as discussed above.

WK 3 x telephone calls to Capita for further information.

7 April 2014

WK telephone call to Capita chasing housing benefit letter.

WK telephone call to Job Centre for further financial information required to complete Legal Aid application.

WK attending at financial appointee's office to collect further bank statements.

12:03: Email from father's employer to WK attaching completed L17.

12:04: Email from father's employer to WK confirming password for completed L17 form.

8 April 2014

WK telephone call to Capita chasing further information.

Telephone call from Capita to WK regarding further information.

Mother signs her original application for legal aid.

15 April 2014

Original Legal Aid Application submitted on behalf of father.

28 April 2014

WK contacted LAA for urgent confirmation of whether funding was granted. LAA refused to discuss matter until 20 working days past, as per their targets (13 May 2014).

WK email to LAA regarding timescales for exceptional funding.

LAA auto-response email to WK confirming timescales of 10 working days.

WK telephone LAA to enquire as to whether the application could be dealt with urgently as need to issue application to appeal decision of 24 April 2014.

2 May 2014

Letter from LAA to WK. Confirmed Emergency Certificate granted from 20/03/2014. To be represented on an application to discharge a Care Order. Costs Limitation: Emergency [£1,350.00]. Limited to all steps up to and including the hearing on 24/04/2014 (Received by WK 7 May 2014)

Further copy Emergency Certificate also sent under cover letter dated 2 May 2014. (Received by WK on 8 May 2014)

4 May 2014

WK send letter to LAA enclosing APP8 to increase the scope of father's certificate submitted.

7 May 2014

Letter from LAA to WK. Not eligible for Legal Aid as father's disposable income has been assessed as £9,211.68 (calculation attached). Upper Limit for disposable monthly income: £733.00. Client's disposable monthly income: £767.64. Discrepancy: £34.64 per month over upper limit. Capital: £3246.79 (fine as under £8000.00 max). Emergency certificate cancelled. Scope of certificate extended to include appeal against the decision of a District Judge effective 24 April 2014, (Received by WK on 14 May 2014).

Mother's former solicitors make an application to LAA to extend the scope of her emergency certificate to cover: (1) The application for appeal (2) An application for contact to a child in care (3) An application for assessment under section 38(6) Children Act 1989; and (4) To increase the costs limit to £5,000.00.

8 May 2014

WK send further APP8 to LAA on behalf of the father to include Injunction under the Human Rights Act. Request for costs limitation to be extended to £7,500.00.

Automatic response from LAA received.

14 May 2014

Telephone call from LAA. LAA have amended father's funding certificate to cover the appeal, but it is still revoked. This means that merits wise WK are covered if the appeal against the decision to revoke father's funding certificate is successful.

Letter from LAA to WK. Enclosing a public funding certificate extending the scope to cover appeal. Certificate status is still cancelled.

WK telephone call to LAA requesting the form to appeal the decision to revoke father's public funding certificate. LAA requested further financial information to update means assessment. Also need original L17 (which had been retained by Capita) and not a copy.

WK telephone call to Capita chasing further information requested by LAA.

15 May 2014

WK 3 x telephone call to Capita chasing up to date bank statement.

WK telephone call to father's employer requesting original L17 form.

WK attending SBC offices to collect L17 form.

12:06: Email from Capita to WK attaching bank statement.

12:36: Email from WK to LAA attaching further documentation as requested (updating bank statements, original L17, proof of rental payments).

WK send hard copy letter to LAA enclosing further documentation as requested (updating bank statements, original L17, proof of rental payments).

16 May 2014

14:21: Email from LAA to WK stating that due to father's circumstances changing after WK devolved powers and granted emergency funding the funding certificate remains revoked.

Telephone call from WK to LAA to clarify the change in circumstances. LAA advised this was due to the child having been removed from the parents' care after the initial funding application. Parents' financial circumstances would change in that they no longer received Child Benefit or a dependents allowance for having a child in their care. LAA advised to resubmit application, changing date of delegated functions.

24 May 2014

Mother's former solicitors receive notification from LAA (dated 23 May 2014) that an emergency certificate has been granted to the mother, limited to all steps up to and including the hearing on 24 April 2014.

27 May 2014

Further Legal Aid Application submitted on behalf of the father now client not receiving Child Benefit or Child Tax Credits.

11 June 2014

APP8 submitted on behalf of the father for a change in the scope of the certificate to include an appeal against the decision of 11 June 2014, refusing to make an interlocutory injunction under the Human Rights Act.

13:19: Email from LAA to WK requesting call to discuss application.

Telephone call from WK to the LAA as requested.

WK send letter to LAA enclosing further information as requested.

19:46: WK email to LAA attaching further information.

12 June 2014

12:40: Email from LAA to WK seeking clarification of delegated functions.

WK 3 x telephone calls to LAA.

15:59: WK email LAA clarifying delegated functions use.

13 June 2014

10:53: Email from LAA to WK confirming emergency certificate has been issued.

Letter sent from LAA to WK enclosing emergency funding certificate,

Emergency certificate granted to father from 16/05/2014. To be represented on an application to discharge a care order. Costs Limitation: £3,500-£5,000. Limited to representation as appellant on an appeal to the Judge against a decision of the District Judge or Master, up to and including the final hearing of the appeal. Limited to representation on an appeal to the Court of Appeal. Limited to making an application for permission to appeal on the papers, including preparation of an appellant's notice and skeleton argument.

14 June 2014

WK telephone LAA to ask for the oral hearing at the Court of Appeal to be included within the scope.

18 June 2014

WK receive a letter from the LAA dated 13 June 2014. Not eligible for Legal Aid as client's disposable income £9683.28 (calculation attached). Upper limit for disposable income: £733.00. Client's disposable monthly income: £806.94. Discrepancy: £73.94 per month over upper limit. Capital: £3267.54 (fine as under £8000.00 max). Emergency certificate cancelled.

Letter from LAA to WK enclosing a copy certificate showing status of certificate as cancelled.

24 June 2014

WK receive a letter from the LAA dated 18 June 2014. Not eligible for Legal Aid as father's disposable income assessed as £9683.28 (calculation enclosed). Upper limit for disposable income: £733.00. Client's disposable monthly income: £806.94. Discrepancy: £73.94 per month over upper limit. Capital: £3267.54 (fine as under £8000.00 max). Emergency certificate cancelled.

25 June 2014

09:39: Email from WK to LAA requesting that a recalculation of the means assessment as it appears incorrect.

10:54: Email from LAA to WK confirming above email has been forwarded to the means assessment team.

10:59: Email from WK to LAA acknowledging receipt of the above email.

11:32: Email from LAA to WK requesting further information. The discrepancy appears to be the amount of housing costs paid by father through Capita to his landlord.

26 June 2014

12:08 WK email LAA with further information.

13:43: LAA email WK requesting more information regarding the rental payments. WK are experiencing difficulties in obtaining any further information from Capita or father's landlord about the breakdown of payments made on father's behalf.

27 June 2014

12:55: WK email LAA confirming will endeavour to send further information. WK requested a breakdown of LAA's calculation based on father receiving housing benefit of £29.98 per week (as confirmed in writing from Capita).

1 July 2014

Email from LAA to WK with breakdown of means assessment calculation:

Income

Gross Wage	£1462.17
State Benefits - Working Tax Credit	£391.01
Total Income:	£1853.18

Outgoings:

Income Tax	£117.60
National Insurance	£84.09
Employment Expenses	£45.00
Dependants Allowance	£179.46
Net Rent	£620.09
Total Outgoings:	£1046.24

Income £1853.18 - Outgoings £1046.24= £806.94 (£73.94 per month over the means threshold).

9 July 2014

Mother's former solicitors receive notification from LAA that the mother's disposable income has been assessed as £12,670.32. This is over the threshold for legal aid and she is therefore not eligible for legal aid. No further applications are made by the mother to LAA as she is now no longer represented.

23 July 2014

Letter from LAA to WK with Notice to Show Cause. LAA state no further work can be undertaken and provide form to be completed and returned should we wish for legal aid to continue by 6 August 2014 (received by WK on 27 July 2014).

5 August 2014

Telephone call from WK to LAA to discuss the Notice to Show Cause given that we are not in receipt of a live certificate. Advised that an appeal could be made if father's financial circumstances have changed (they had not).

16:41: Email from LAA to WK requesting outstanding information.

28 August 2014

13:10: Email from WK to LAA requesting clarification of the further information required. Automatic response from LAA stating case worker is on annual leave and will return on 1 September 2014.

17:28: WK telephone call to parent's landlord, to request copies of the rental statements.

29 August 2014

10:39: WK telephone call to parent's landlord for rental statements. Advised that the person able to deal with the request is on holiday. WK advised to call back on Monday 1 September 2014.

30 August 2014

GR email to mother's former solicitors requesting a copy of the papers relating to her application for legal aid.

1 September 2014

10:22: WK email to Capita requesting outstanding rental statements. Automatic response received confirming the person dealing had left the employment of Capita. Alternative email address provided. Copy email sent to the alternative email address.

11:44: WK telephone call to parent's landlord for rental statements. Please email request with signed consent form.

3 September 2014

11:14: Email from WK to parent's landlord with signed consent form.

5 September 2014

14:38: Email received from parent's landlord with details of rental amounts paid from March 2014 (but no statements).

9 September 2014

GR telephone call to the Exceptional Case Funding (ECF) Team at LAA to see whether they will consider an application on behalf of the mother in these circumstances where she has been assessed as over the means threshold. Advised the ECF team could only consider an application which is out of scope of legal aid.

Email from Capita requesting rental statements

11 September 2014

Telephone call from WK to Capita asking for copies of the rental statements. Capita confirming they do not have copies of the rental statements but would endeavour to obtain them.

12:30: Email from WK to Capita requesting Working Tax Credit calculation letter as requested by LAA.

12 September 2014

14:53: Email from LAA to WK requesting clarification of housing payments as statements had not been provided. Evidence of the actual payments made on father's bank statements is not sufficient evidence. LAA will require rental statements.

GR telephone call to the LAA ECF Team seeking confirmation again as to whether they could consider an application on behalf of the mother in these circumstances. GR advised to set out the information of the case in writing.

14 September 2014

GR letter to ECF Team LAA.

16 September 2014

09:38: Email from Capita to WK attaching Working Tax Credit letter.

14:11: Email from WK to Capita chasing rental statements.

14:53: Email from LAA ECF team confirming that they can only consider matters which are no longer in scope of legal aid and told "as the query appears to relate to your client's income. You are therefore advised to contact Civil Certificated Enquiries on 0300 200 2020"

17 September 2014

09:25: Email from Capita to WK confirming they have not yet received the rental statements from the parents' landlord.

19 September 2014

15:36: Email WK to Capita requesting updating bank statements.

18:02: Email from GR to LAA attaching a copy of our Judicial Review Pre Action Protocol letter before action on behalf of the mother.

Chasing email from Capita for outstanding rental statements

20 September 2014

Telephone call from Capita to WK apologising for the delay in providing information. They have been too busy to get round to it. WK emphasised the urgency of the situation.

22 September 2014

14:39: Email from Capita to WK acknowledging request for bank statements.

17:58: Email from GR to LAA attaching a slightly amended Judicial Review Pre Action protocol letter before action on behalf of the mother.

25 September 2014

09:39: Email from LAA acknowledging GR's letter before action and advising they will take instructions in respect of it and revert back to us.

16:22: Email from LAA asking when GR's letter before action was sent in the post and requesting an extension to reply to the letter before action until 01.10.14.

26 September 2014

3 x telephone calls WK to Capita chasing updating financial information. Please put request in writing.

Urgent Letter WK to Capita

10:09: Email from GR to LAA confirming when the letter before action was sent in the post and agreeing to the extension for LAA to reply.

10:39: Email from LAA to GR acknowledging email.

16:00: Email WK to LAA in respect of housing costs.

16:53: Further email LAA to GR seeking clarification on the issue of whether there is a conflict of interest between the parents and if they require separate representation.

29 September 2014

15:18: Email Capita to WK stating that they will need an 'official legal document' that confirms we act for father before they can send bank statements.

30 September 2014

13:06: Email from LAA to GR seeking response to their question about whether the parents require separate representation.

14:57: Email from GR to LAA sending a letter agreed by WK confirming that there was no conflict of interest between the parents and setting out the reasons why they had to be separately represented.

15:56: Email from LAA to GR acknowledging letter.

1 October 2014

12:44: Email WK to Capita attaching form of authority signed by father. Automatic response received confirming email address is no longer in use. New email address provided. WK sending copy email to the new email address.

Functions previously undertaken by Capita revert to SBC.

2 October 2014

14:38: Email from SBC to WK attaching bank statements.

WK telephoning SBC to request password for opening the attachment containing the bank statements.

6 October 2014

15:19: Email from GR to LAA attaching a draft copy of the order dated 26.09.14.

8 October 2014

Letter from LAA confirming the status of father's legal aid certificate has been reviewed and the certificate can continue. A breakdown of the means assessment calculation was included.

Letter from LAA to father direct enclosing copy Emergency Legal Aid Certificate dated from 16.05.2014. Limitations: As Appellant on an appeal to the Judge against a decision of the District Judge or Master, up to and including the final hearing of the appeal. Limited to representation on an appeal to the Court of Appeal. Limited to making an application for permission to appeal on the papers, including preparation of an appellant's notice and skeleton argument.

Further letter from LAA – An offer of public funding has been made subject to contribution from capital of £267.54 and monthly payment of £192.77.

9 October 2014

Both parents receive letters from LAA direct, dated 9 October 2014, making an offer of public funding subject to paying a contribution. Each parent must pay a one off contribution of £133.77 from capital and £9638 per month,

Further letter sent to parents from LAA dated 9 October confirming mother and father's applications have now been linked.

13 October 2014

Letter from LAA to WK dated 9 October 2014 (received by WK on 13 October) advising that an offer of public funding has been made to father. LAA had not sent copies of the letters sent direct to the parents, dated 8 and 9 October 2014, to solicitors. Letter from LAA confirmed that the parents' applications had not been linked appropriately and father had been sent a letter asking for a financial contribution which was double to actual amount to be paid in error.

20 October 2014

11:10: Email from WK to LAA seeking clarification of calculation and the scope (only the appeals were included in scope) and when an APP8 should be sent to cover placement proceedings and extend costs limitation given that there is no substantive certificate.

22 October 2014

10:28: Email from WK to SBC, confirming offer of Legal Aid funding had been made and asking for confirmation this will be accepted.

Email from WK to LAA asking for urgent response to our email of 20 October 2014.

23 October 2014

WK telephone call to SBC asking if our email could please be dealt with as a matter of urgency. SBC asking for background to be set out in email for her to send to her manager for urgent consideration.

12:04: Email from WK to SBC as requested.

15:58: Email from SBC – they have accepted the offer of Legal Aid funding and prepared cheque.

WK attending at SBC's offices to collect cheque and signed acceptance form.

16:57: Email from SBC to WK asking for written confirmation that cheque has been collected from their offices.

17:14: Email WK to SBC acknowledging receipt of cheque and signed acceptance form.

24 October 2014

Cheque and signed acceptance form sent to the LAA on behalf of father.

27 October 2014

18:12: Email from LAA in response to WK's email of 20 October 2014, confirming assessment is correct and that an APP8 will need to be sent for these amendments to be made to the certificate.

30 October 2014

Telephone call from SBC to WK asking whether a direct debit should be set up with regards to future payments.

31 October 2014

Letter sent to GR from the Treasury Solicitor advising that they have received notification that the mother has been made an offer of legal aid.

4 November 2014

WK telephone call to LAA chasing father's substantive certificate. Advised that they need a contribution from mother before can issue funding certificates to either parent as they are now linked.

WK telephone call to SBC regarding whether they can also pay mother's legal aid contribution. Please put request in writing and will forward to team manager for urgent consideration.

10:59: Email to SBC as requested above.

Email to GR from mother's previous solicitor confirming that LAA had left a message with them about the mother's offer of legal aid.

5 November 2014

17:16: Email from LAA to WK stating need mother's contribution before can process father's application. Also requesting that any APP8 to be sent by email.

17:29: Email WK to LAA clarifying the APP8 application with regards to timing.

6 November 2014

09:43: Email from LAA to WK.

09:49: WK telephone call to LAA. Confirmed that the contribution from mother needs to be received before LAA can issue substantive certificates for either parent. LAA asked for any APP8s to be submitted for consideration now.

WK telephone call to SBC apologising as sent email to old email address. SBC confirming emails redirected to new email account. SBC confirming had passed email to manager to deal with urgently but could not guarantee it would be dealt with today. SBC requesting email to confirm urgency.

Email sent to GR from the mother's previous solicitor attaching a letter that they have received dated 3 November in respect of the mother's legal aid confirming that LAA had received a cheque in respect of the father's legal aid but that as the parents 'financial circumstances have been aggregated, we [LAA] can't issue substantive certificates until we have both payments'

11:17: Email from GR to LAA requesting that they correspond only with GR and not the mother's previous solicitors. Also confirming that the mother's contribution for her legal aid has to be agreed by the father's deputy.

12:02: Email from WK to SBC setting out the urgency of the situation as requested.

13:59: Email from WK to SBC stressing urgency of matter.

14:21 Email from SBC to WK confirming that they only have authority to act on behalf of father, not mother.

17:35: Email from LAA to GR advising that someone else was now dealing with this matter and that person will telephone on 07.11.14 to discuss the situation.

17:42: APP8 emailed to LAA requesting an extension of costs and extension of scope of certificate to include representation in placement proceedings, contact with a child and contact with child in care. Also to amend Certificate to include

representation in application under s39 and for application for an injunction under the Human Rights Act as not mentioned in certificate sent 9 October 2014. Email also updating on current position in respect of mother's Legal Aid funding.

7 November 2014

Signed paper copy of APP8 sent to LAA as requested.

WK telephone call to manager of Appointee's and Deputies Team. Social worker must approve payments of mother's contributions.

WK telephone call to Adult Social Services to request confirmation they will cover mother's legal aid contributions. Adult Social Services asking WK to put request in writing.

GR telephone call to Appointee's and Deputies Team to seek an update on whether the mother's contribution towards her legal aid has been agreed.

GR telephone call to LAA to provide an update regarding the mother's contribution. LAA request an APP8 on behalf of the mother.

11:24: GR email to LAA requesting a copy of the mother's emergency certificate as was referred to in the previous conversation. Seeking clarification about when the APP8 should be sent given that the parents do not currently have a legal aid certificate.

13:21: Email from WK to Adult Social Services requesting authorisation for the father's deputies to pay Legal Aid contributions on behalf of the mother.

14:19: Email from LAA to GR attaching the emergency certificate and confirming that if the funding position has still not been resolved, they will hold on to the APP8 and action it as soon as it/s resolved. The mother's emergency certificate received from LAA is dated 23 April 2014 and the limitation noted on the certificate covers: "All steps up to and including the hearing on 24 April 2014"

15:57: Email from LAA to WK acknowledging receipt of APP8 and update regarding the mother's funding position.

10 November 2014

WK telephone call to Social Worker chasing decision regarding the mother's funding. Left message with team member to call WK back as soon as possible.

Telephone call from social worker to WK. Social worker asking WK to email details regarding the Legal Aid situation.

12:54: Email from WK to social worker forwarding email sent at 13:21 on 7 November 2014.

13:03: Email from social worker to SBC confirming they approve payment of mother's legal aid contribution.

14:59: Email from WK to SBC requesting cheque for initial payment of legal aid funding.

15:04: WK email to LAA to provide update.

16:44: Email from LAA to WK confirming they will send cash office details for a direct debit to be set up.

17:18: Email from LAA to cash office (copying in WK). Requesting details to be sent to WK to set up direct debit for LAA contribution.

11 November 2014

09:43: Email from the Cash office of LAA to WK with bank details.

10:07: Email WK to SBC with details to set up standing orders for monthly contributions payable to LAA.

WK telephone call to SBC to ensure received form from social work – not yet received please chase.

14:11: Email from LAA to GR requesting an update on the submission of an APP8 for the mother.

15:46: WK email to social worker asking to send completed form to SBC.

16:28: Email from social worker to WK as unsure which form needs to be sent to SBC.

16:44: Email WK to SBC – please send form to social worker.

16:54: Email Capita to social worker attaching form.

18:11: Email social worker to SBC attaching completed form.

12 November 2014

Telephone call SBC to WK. They have now received form from social worker. Need to add to form that WK will collect the cheque to send to the LAA. Please email social worker to

confirm this. Capita will put the request before the panel urgently. The panel meet tomorrow so we should hopefully have a decision by Friday or Monday.

Telephone call between GR and LAA. LAA states that if the APP8 is to be processed prior to tomorrow's (13.11.14) hearing then it needs to be received that morning.

10:23: Email from WK to social worker confirming will collect cheque to send to LAA.

10:41: Email from LAA to WK confirming has extended costs limitation to £10,000.00. LAA stating the request to extend costs to £25,000 is premature particularly given only an emergency certificate is in place.

10:43: Email from WK to LAA explaining an application for contact has been issued and will revert to him once considered email fully.

10:58: Email SBC to WK attaching completed request form.

13:11: GR email APP8 on behalf of the mother

14:23: Email from LAA to GR confirming that the following amendments have been made to the mother's emergency certificate:

- *The certificate has been transferred into the name of GR.*
- *Scope increased to cover the Local Authority's application for a placement order.*
- *Scope limited to the hearing on 13.11.14.*
- *Cost limitation increased to £10,000, stating an increase to £25,000 was premature at this stage.*
- *Application for contact not granted as not an issue at this stage, will be considered in the future if required.*
- *HRA application treated as falling within the scope of the certificate.*

16:49: Email from GR to Appointee's and Deputies Team requesting confirmation as to whether a decision has been made in respect of the payment of the contribution for the mother's legal aid and seeking confirmation on whether this decision was dependent on the panel approving it.

17:24: Email from LAA to WK regarding extension of certificate.

Letter from LAA to WK enclosing emergency certificate with scope extended (to include s.39 and placement application) and costs limitation of £10,000.00 (received by WK on 19 November 2014).

17:51: Email sent from GR to LAA asking for clarification about grant of the mother's emergency legal aid certificate and whether this was a new emergency certificate or if the previous one dated 23.04.14 has been extended.

13 November 2014

10:51: Email from SBC to WK confirming that they had approved payment of mother's legal aid contributions and offering to bring cheque to court/offices.

17:09: WK email to SBC asking for the cheque to be delivered to our offices.

14 November 2014

Telephone call WK to SBC asking if can collect cheque for LAA contribution from their offices. Confirming that the cheque has been dropped into WK's office this morning.

Letter WK to GR sending cheque and signed LAA acceptance form for forwarding to LAA,

15:53: Email from LAA to GR confirming that the emergency certificate has been extended to cover representation at the hearing on the 13 November 2014 in relation to the application for the discharge of a care order and the local authority's application for a placement order, It, however, does not cover the period between 24 April 2014, when the last emergency certificate expired and 13 November 2014.

17 November 2014

Letter received from WK attaching the cheque from the appointee to cover the mother's contribution for legal aid, along with a copy of the terms and conditions signed by the mother and the appointee for the father.

16:34: Email from GR to LAA asking who the cheque should be made for the attention of at LAA.

16:53: Email from LAA to GR confirming who the cheque should be sent to.

17:56: Email from GR to LAA advising that the cheque has been sent to her in DX.

Letter sent from GR to LAA sending the mother's contribution and a copy of the terms and conditions signed by the mother and the appointee for the father.

18 November 2014

14:21: Email from LAA confirming receipt of the mother's contribution.

19 November 2014

GR receives a copy of the mother's amended emergency legal aid certificate from LAA. The emergency certificate covers the following:

- *Application for the discharge of a care order – Limited to all steps (including any adjournment thereof) up to and including the hearing on 24 April 2014 (effective from 13 April 2014) and the hearing on the 13 November 2014 (effective from 12 November 2014).*
- *Application for the recovery of a child – Limited to all steps (including any adjournment thereof) up to and including the hearing on 24 April 2014 (effective from 13 April 2014).*
- *Application for a placement order – Limited to all steps (including any adjournment thereof) up to and including the hearing on the 13 November 2014 (effective from 12 November 2014).*

WK telephone call to LAA chasing substantive certificate. Advised that substantive certificates have not been issued yet as LAA have not processed mother's contribution,

21 November 2014

Email from GR to the President of the Family Division updating him on the position regarding the mother's legal aid.

24 November 2014

GR receives a copy of the mother's substantive legal aid certificate. The certificate covers the following:

- *Application for the discharge of a care order – Limited to the exchange of evidence (including the Children's Guardians report) and directions appointments, but*

does not include a contested final hearing. The certificate is effective from 19 November 2014 and the costs limit is £5,000.00.

- *Application for the recovery of a child – Limited to the exchange of evidence (including the Children's Guardian 's report) and directions appointments, but does not include a contested final hearing. The certificate is effective from 19 November 2014 and the costs limit is £4,500.00.*

25 November 2014

WK receive copy of substantive funding certificate (dated 19 November 2014) covering the following from 19 November 2014:

- Application to discharge a care order – limited to all steps up to and including final hearing and any action necessary to implement (but not enforce the order).
- Application for a placement order. Limited up to and including final hearing and any action necessary to implement (but not enforce) the order.
- Costs Limitation £10,000.00.

26 November 2014

15:28 Email from WK to LAA asking for confirmation whether substantive certificate will be back dated to expiration of emergency certificate and whether the appeals will be included within the scope as they have been omitted from the substantive funding certificate.

27 November 2014

Email from GR to LAA about the mother's substantive legal aid certificate and seeking confirmation as to why the scope of the certificate does not cover the mother's representation in the application for the placement order proceedings and why the costs limitation has been set at £5,000.00 – which is less than the costs limitation on the emergency certificate.

Email from GR to the President of the Family Division confirming that the mother has now been granted a full legal aid certificate and confirming the current limitations.

Email from LAA to GR confirming that an error had been made in respect of the mother's substantive certificate and confirming that scope on the certificate has been amended to

cover the placement order proceedings and that the costs limitation has been increased to £10,000.00.

28 November 2014

12:51: WK sent chasing email to LAA in respect of back dating the substantive certificate.

14.33: GR email to LAA to seek confirmation as to the scope of the substantive certificate with regards to the placement order proceedings.

LAA email to GR to confirm that “all elements of the certificate are limited to all steps up to and including the exchange of evidence”

1 December 2014

14:20: Email from LAA to WK confirming substantive certificate had been back dated to expiration of emergency certificate and appeals will be included. LAA asking for a detailed breakdown of work undertaken in order to consider whether the costs scope should be extended as requested.

3 December 2014

12:22: WK email LAA with APP8A for prior authority for Intermediary assessment.

Letter from WK to LAA enclosing hard copy original application for prior authority.

5 December 2014

WK receive substantive funding certificate from LAA.

LAA telephone WK to advise our application for prior authority has been refused. LAA’s view is that the court should pay for the intermediary assessment.

GR send APP8 to LAA seeking prior authority for an intermediary assessment of the mother.