

FAMILY LAW BRIEFING

by Arlene Small

In the ever-changing landscape of family law, you would have to have left the planet not to be aware of the raft of Court of Appeal cases dealing with the very sensitive issue of Placement Order applications. Child law professionals and practitioners alike have had to take very seriously the impact of cases such as the now infamous **Re B-S [2013] EWCA Civ 813**, in which the Court of Appeal expressed a real concern about “the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption, both in the materials put before the court by local authorities and guardians and also in too many judgments”. It was said “This is nothing new. But it is time to call a halt”.

One of the most recent of these cases is **Re W [2014] EWCA Civ 810** in which the Court of Appeal again considered the case for adoption being asserted by the local authority. Somewhat uniquely in this case, this was not a situation in which the application for a care order and placement order were being heard together, or at the very least within months of each other. Here the children had been placed at home on a final care order, and almost a month later after proceedings had been concluded one of the children had fallen from an upstairs window, which prompted the local authority to remove both children from their parents care. The parents in this case were learning challenged, and additionally by the time of the hearing were without legal aid and could not afford to fund legal representation.

This is an important judgment that not only considers the usual arguments as to whether all options other than adoption were considered, but also the role of the Judge and to some extent the other Advocates as to its responsibilities when you have vulnerable parents representing themselves in placement order proceedings. How are they to be assisted with the giving of evidence, the cross-examination of witnesses, and the all-important closing submissions.

It will of course be interesting to see where the Court of Appeal goes from here with the issue of how far and how wide analysis of the alternatives to adoption should be, but the greater challenge is also to ensure that the process itself is a fair one for all concerned.