Impact of Court Judgments on Adoption:

The truth about what the judgments do and do not say

A myth has grown up that the legal test for adoption changed after the Re B-S judgment. This is absolutely not the case, and Lord Justice Munby, the President of the Family Division, has made this very clear in a new Court of Appeal judgment (Re R 2014).

This is a short version of "*Impact of Court Judgments on Adoption: What the judgments do and do not say*". In December we also issued an addendum to that document, which highlights the key messages from the new Court of Appeal judgment. (Click here)

> "There appears to be an impression in some quarters that an adoption application now has to surmount 'a much higher hurdle' … (Such concerns) plainly need to be addressed, for they are all founded on myths and misconceptions which need to be run to ground and laid to rest."

Myth 1 – the legal test for adoption has changed

Neither Re B nor Re B-S alter the legal test for adoption. It is exactly the same law under which we have seen a significant increase in numbers of adoptions over recent years. It is right that a court needs to be satisfied that no other realistic course will be in the interests of the child, whose welfare throughout his or her life is paramount. In Re R, the President states that "I wish to emphasise, with as much force as possible, that Re B-S was not intended to change and has not changed the law. Where adoption is in the child's best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders".

This could not be clearer. The law has not changed, and where adoption is in the child's best interests, it must be pursued.

> "I wish to emphasise, with as much force as possible, that Re B-S was not intended to change and has not changed the law."

Myth 2 – to satisfy the courts, all alternative options must be considered

Courts must be provided with expert, high quality, evidence-based analysis of all realistic options for a child and the arguments for and against each of these options. This does not mean an in-depth analysis of every possible option. In Re R, the President states that:

> *"Re B-S does not require the further forensic pursuit of options which, having been properly evaluated, typically at an early stage in the proceedings, can legitimately be discarded as not being realistic … Full consideration is required only with respect to those options which are "realistically possible"."*

Again, this could not be clearer. The court does **not** need to see in-depth analysis of options which are not realistic for the child concerned, nor an assessment of every option that is put forward by a family.

> "Full consideration is required only with respect to those options which are "realistically possible"

Myth 3 – if adoption is only appropriate where "nothing else will do", foster care or special guardianship should be pursued instead

"Nothing else will do" does **not** mean settling for an option which will not meet the child's physical and emotional needs. Nor does it mean that adoption should be dismissed because a child might otherwise be brought up in foster or residential care. The fundamental principle that is re-stated in *Re R* is that the child's welfare throughout his or her life is paramount.

> "Where adoption is in the child's best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders."

Myth 4 – because it is a "last resort" planning for adoption must wait

Local authorities must plan at the earliest stage for the possibility of adoption, to avoid delay for children. That does not mean pre-empting any decision. But planning ahead is necessary to avoid delay.

Myth 5 – the 26 week rule applies to placement orders

The 26 week statutory timescale applies only to care and supervision orders. However, if the care plan is for adoption, and it is possible to complete the placement order within 26 weeks, then it is likely to be in the interests of the child for the placement application to be determined alongside the care order application, as we know that delay damages children. Local authorities have told us that 26 weeks is difficult to meet particularly when they feel multiple assessments of friends and family placements are necessary to comply with Re B-S. Re R helps to alleviate this pressure, by emphasising that Re B-S does not require the forensic pursuit of options which can legitimately be ruled out at an early stage.

Adoption is, of course, not right for every child but where it is, we owe it to them to pursue this option relentlessly. Our most vulnerable children deserve nothing less.

The principal messages are:

- The judgements do not alter the legal test for adoption.
- Courts must be provided with expert, high quality, evidence-based analysis of all options which are realistically possible.
- Where the local authority has carried out such analysis it should be confident in presenting the case to court.

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