

LATE SPRING 2020 Edition of the AFA Cymru Legal Newsletter

Welcome to the late spring edition of the AFA Legal Newsletter. We are aiming to produce these newsletters on a more frequent basis than usual for the period of the Covid-19 crisis.

COVID-19

Practitioners may have seen on the CoramBAAF website and through other sources that in England the Department for Education has issued a new set of regulations: the Adoption and Children (Coronavirus) (Amendment) Regulations 2020. These regulations amend the English adoption and fostering regulations and the English Care Planning, Placement and Case Review (England) Regulations 2010, significantly relaxing the regulatory framework for assessing and approving adoptive parents and foster carers and the framework for visiting and reviewing looked after children.

These regulations do NOT apply to Wales – they are for England only. Apart from the concession to allow adoption agencies to run the new two stage process for assessing prospective adoptive parents concurrently, and the concession on fostering medicals (see below), the regulatory framework for adoption, fostering and looked after children remains unchanged.

FOSTERING MEDICALS (ADULTS)

Welsh Government has agreed to a temporary process, for the period of the Covid-19 pandemic, using the CoramBAAF 'Self Declaration of Health Form'. The process aims to ensure that as many fostering assessments can be concluded during the coming months in a safe and robust manner, whilst acknowledging that the availability of GP's to undertake medicals may be reduced. The letter from Welsh Government, explanation of the process and very helpful flowchart are available on the AFA website.

<https://www.afacymru.org.uk/supporting-effective-functioning-during-covid-19/>

<https://www.afacymru.org.uk/cy/cefnogi-gweithredu-effeithiol-yn-ystod-covid-19/>

AFA SPECIAL INTEREST GROUPS

We have now successfully held two of our special interest groups remotely. Both the legal group and the panel chairs group attracted a good number of attendees from across the country.

As we come out of the pandemic we shall ensure that we continue to hold meetings that allow for the groups to meet regardless of geographical distance.

If you are interested in joining any of the groups:

Legal (Lawyers only)

Medical (Medical practitioners only)

IRO (IRO's only)

Kinship (Practitioners)

Panel Chairs (Chairs & Vice Chairs only)

Please contact us 02920 761155 or rhyl-afacymru@stdavidscs.org

FOSTER CARE FORTNIGHT

Just a reminder that it is **Foster Care Fortnight** - again information can be found on our website.

<https://www.afacymru.org.uk/foster-care-fortnight-2020/>

<https://www.afacymru.org.uk/cy/pythefnos-maethu-2020/>

RECENT CASE LAW

VACCINATIONS AND CHILDREN WHO HAVE CARE ORDERS – CLARITY AT LAST

For a number of years there has been a question over the ability of a local authority to either consent to routine childhood vaccinations in the absence of a parent's consent or to override their refusal to vaccinations. This has left local authorities needing to seek the leave of the court in order to override parents' parental responsibility.

A recent case has clarified this. It was held in *Re T* [2020] EWHC 220 (Fam) that local authorities may use their parental responsibility, under s33(3) Children Act 1989, to override a parent's refusal for routine vaccinations. There is no need to apply to the court for permission to vaccinate.

The High Court had held that vaccinations were not 'complex questions of treatment' where it is appropriate to seek permission from the court, but that 'they lie at the least intrusive end of the scale of intervention', and are 'a facet of public preventative

healthcare'. It is a proper use of s33(3) to arrange vaccinations for a child subject to a care order, even if parents object.

The case has gone to the Court of Appeal and although we do not yet have the judgment, we know that the parents' appeal was dismissed and that it is clear the local authorities do not need to authorisation of the court to override parents' objections to vaccinations.

To refresh memories, s33(3) states:

'While a care order is in force with respect to a child, the local authority designated in the order shall –

- (a) have parental responsibility for the child; and
- (b) have the power (subject to the provisions of this section) to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him.'

These provisions do have restrictions. S33(4) states:

'The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.'

The Court of Appeal has, therefore, made it clear that vaccinations are a proper use of s33(3) and that the safeguard of s33(4) is met.

Note that this judgment only applies to children who are subject to care orders and interim care orders. So far as other arrangements are concerned, see below:

Children who are accommodated under s76 SSWB(W)A 2014

This is a purely voluntary arrangement and parents retain full parental responsibility. They will have signed an agreement as part of the placement plan at the beginning of the placement to cover consent / delegation of PR on issues such as vaccinations. In the absence of any written agreement consent should be obtained for vaccinations. Only one parent needs to consent to the vaccination (s2(7) CA).

Children who are subject to a placement order under s21 Adoption and Children Act 2002

Before placement: The AA/LA exercises its PR granted under s25 ACA. S25(4) states that the AA may determine that the parental responsibility of the parent may be restricted to the extent specified in the determination (i.e. the AA /LA chooses how the parent exercises their PR). The AA/LA is, therefore, lawfully exercising their PR in consenting to vaccinations.

Following placement: The AA /LA may decide how both parents and prospective adoptive parents exercise their PR (s24(4)). The new all Wales form for the allocation of parental responsibility to prospective adoptive parents gives them PR in respect of consenting to vaccinations.

Children who are subject to an adoption order under s46 ACA 2002

Adoptive parents acquire full PR following the making of the adoption order and can make decisions all decisions independently of the AA/LA or birth parents.

Children who are subject to special guardianship orders under 14A CA 1989

Under s14C(1) special guardians may exercise their PR to the exclusion of any other person with PR (apart from another special guardian). The small number of exceptions to this exercise of PR do not concern medical consent and so a special guardian can consent to vaccinations without recourse to parents.

We wish you all well in the coming weeks

AFA team

May 2020

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