



**HM Courts
& Tribunals
Service**

HER MAJESTY'S COURT SERVICE

Stoke on Trent
Combined Court Centre
Bethesda Street
Hanley
Stoke-on-Trent
Staffordshire
ST1 3BP


Telephone 01782 854000
DX 703360 Hanley 3

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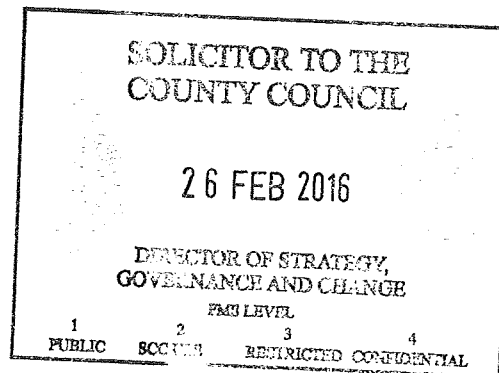
To All Family Court Users

Dear Sirs

The attached guidance has been prepared by His Honour Judge Lopez and is circulated with the approval of His Honour Judge Perry.


HHJ Perry

Designated Family Judge
For Staffordshire



GUIDANCE IN FREESTANDING CLAIMS BY CHILDREN FOR ALLEGED BREACHES and DAMAGES AGAINST LOCAL AUTHORITIES PURSUANT TO THE HUMAN RIGHTS ACT 1998 (February 2016)

1. All those practising in the field of child public law will be aware that there are a significant number of claims by children against Local Authorities for alleged breaches of their human rights under the Human Rights in which declarations and damages are sought for the alleged breaches. In addition to the claims already issued there are a significant number of cases in which such a claim is being considered by those representing the children.
2. You may also be aware in one such claim the Official Solicitor acting as a litigation friend for the child sought guidance from the Legal Aid Agency as to its policy and approach to the application of the statutory charge in such cases in the event that damages were awarded to the child.
3. The initial response appears to have been ambiguous as to whether the Legal Aid Agency would (i) seek to recover only the costs of the claim under the Human Rights Act in the event of a successful outcome to those proceedings; or (ii) would seek to recoup the entire costs incurred on the child's legal aid certificate, including the costs of the care proceedings.
4. However, it appears that the Legal aid Agency's response is that it would seek to recoup the entire costs from any damages received.
5. If that were to be the case, then unless the award of damages exceeds the combined costs of the care case and the Human Rights Act case – usually a figure in the region of £10,000, the child would recover nothing as the damages awarded would be eroded by the recovered costs.
6. As a consequence those acting for the children in such cases may consider the utility in making claims that are likely to attract damages at the lower end of the bracket.
7. It is understood that given the apparent stance of the Legal Aid Agency, the Official Solicitor has indicated an intention to seek a judicial review of the Legal Aid Agency's apparent policy and

approach. I am unclear what stage that consideration has reached and when, therefore, the issue is likely to be resolved.

8. Given the uncertainty those who represent the children and Local Authorities in such **freestanding** actions are likely to seek a stay of the claim pending further information about the position in respect of the view of the Legal Aid Agency and any challenge to the same by the Official Solicitor by way of judicial review. Ironically the interests of both the Claimants and Defendants in **freestanding** applications being sought appear to coincide.
9. Those involved in such cases are likely to be contemplating seeking a directions hearing in each case to explain the current situation to the Court and seek case management of the actions.
10. Guidance would assist those involved in such cases and avoid the parties incurring further and unnecessary costs. It would, of course, also avoid the court lists becoming filled with directions appointments to resolve the current difficulty. There would also be the thorny problem of who is to bear the costs of such applications and hearings.

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- 11. Therefore, I propose that there be (i) a 3 month stay on all such freestanding actions; and (ii) a directions that the solicitor for the Claimant child advises the court in writing of the position 2 weeks before the end of the stay.**
- 12. In any case in which the Claimant and or Defendant does not wish their action to be stayed they must inform the Court in writing within 2 weeks of the date of this Guidance and seek a directions hearing forthwith.**
13. It may be that the Legal Aid Agency will adopt a different policy- or the matter will be the subject of the judicial review, such that the costs of the Human Right Act claim will be “costs in the case”.