

1GC | Family Law

**WHAT IS REALISTIC & ACHIEVABLE WHEN
GRANDPARENTS WISH TO SECURE CONTACT?**

HOW ARE JUDGES REACTING?

White Paper Conference

Caroline Willbourne 30 November 2022

Introduction:

- Declare an interest!
- The differing roles of grandparents in care proceedings & private law proceedings.
- Grandparents have no automatic rights unless child has lived with them.

Care proceedings:

- Local authority role
- Application for leave
- ‘Last chance saloon’

Application for leave to apply

- Comprehensive review of the law in
- Re H (care and adoption – assessment of wider family) 2019 Cobb J
- Residence test

Private law proceedings:

- No automatic Legal Aid
- Role of the Guardian
- Application subject to extreme scrutiny: family flaws will be revealed.
- Timing of application

The Law:

- S 10(9) Children Act:
- Tripartite test:
 - Nature of the application;
 - Applicant's connection with child;
 - Risk of disruption to the child.

Special Guardianship orders?

- C Act section 14A
- Procedural requirements
- An SGO needs a LA report on suitability
- Court can make of its own motion
- Not confined to kinship cases
- ‘Greater permanence’ than a CAO
- New Best Practice on Special Guardians

The paramountcy principle: does it apply?

- Not at 'leave' stage;
- Revisit section 10(9);
- See Re A (A child: application for leave... [2015] HHJ Bellamy

Re B (A child) [2012] EWCA Black LJ

- Quoted with approval in Re A (A child: application for leave... [2015] by HHJ Bellamy.
- Does sec 10(9) impose a test?

Does the leave stage import a filter?

- If so, is this the right approach?
- Arguably saves money & heartache?
- Might refusal lead to more appeals?
- Quoted with approval in *Re A (A child: application for leave... [2015]* by HHJ Bellamy.

Does sec 10(9) impose a test?

- See Black LJ in Re B
- Is an arguable case for the proposed applicant enough?

Special Guardianship?

- Does this benefit the child &/or the carer?

1GC | Family Law

Thank you for listening!

For any queries, please either call the clerks on:
020 7797 7900 or email: clerks@1gc.com