

ADOPTION AND HUMAN RIGHTS LSA SEMINAR 25 FEBRUARY 2008

How well has adoption stood up to the challenge posed by the European Convention for the Protection of Human Rights and Fundamental Freedoms? Can adoption survive in the brave new world of human rights? Does the law require to change its approach to unmarried birth fathers, to adopters, to dispensation with parental agreement, to procedure or to post-adoption contact? How effective are the new provisions of the Adoption and Children (Scotland) Act 2007 in meeting the challenges of human rights. Time alone will answer some of these questions, but in the meantime we can make a start.

Adoption and the Convention

Article 8 of the European Convention on Human Rights provides:

1. Everyone has the right to respect for his private and family life ...
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 6 enshrines the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal.

The Human Rights Act 1998 (in force since 2 October 2000) has provided the opportunity to test Scottish adoption law against the standard of the European Convention on Human Rights. The 1998 Act was designed to give effect to the Convention in domestic law. The result is that the law itself may be tested against the standard of the Convention. It requires to be interpreted, so far as possible, in a way that is compatible with Convention rights (section 3). If it is not compatible with Convention rights, then the Court of Session, or the House of Lords, may make a declaration to this effect (section 4). A declaration of incompatibility will not affect the validity, operation or enforcement of the existing law, but acts as a clear marker to the relevant Parliament that action is required. Further the law must be applied in a manner that complies with the Convention. It is unlawful for public authorities to act in a way that is incompatible with Convention rights (section 6). Public authorities include courts and persons with functions of a public nature. Local authorities and registered adoption services are also public authorities.

Adoption in the European Court of Human Rights

At first sight the European Court of Human Rights took a restrictive approach to adoption. This is perhaps best exemplified in the case of *Johansen v Norway* (1996) 23 EHRR 33. In *Johansen* a mother had a long history of difficulties. She had been involved with a violent and drug abusing partner. Her first child had special needs and mental health problems. He was placed in a children's home. The mother's lifestyle was chaotic. She rejected help. She did not attend to her own health needs. When a second baby was born the authorities decided that the child would be at risk if not taken into care immediately. The mother had access twice a week. Her situation

improved. Her son returned to live with her. Nevertheless when the younger child was six months old the authorities decided that she should be placed permanently with another family and the mother's access was terminated.

The European Court of Human Rights analysed the case in the way that has become standard. They looked first of all at the scope of article 8 and then went on to consider:

Was there interference with the applicant's right to respect for family life? The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and measures that hinder such enjoyment amount to an interference with the right protected by article 8. Interference is not however the sole determining factor. There are three further matters to consider.

Was the interference in accordance with the law? The mother argued that the relevant law was too vague and therefore arbitrary. This was disputed on the basis that precise legal rules could not be formulated and that scrutiny by the court represented a safeguard against the law being arbitrary. The mother dropped this aspect of her argument.

Did the interference pursue a legitimate aim? The Court was satisfied that the measures taken were aimed at protecting the "health" and the "rights and freedoms" of the child, and that these were, of course, legitimate aims.

Were the measures taken necessary in a democratic society? The answer to this question turned on whether the reasons for action taken were relevant and sufficient. The Court drew a distinction between taking a child into care where they were prepared to give domestic authorities a wide margin of appreciation, and restrictions on parental rights and access where a stricter scrutiny was required. The original taking into care was not considered a violation of article 8, but this should have been a temporary measure, to be discontinued as soon as circumstances permitted. Deprivation of parental rights with a view to adoption could only be justified in exceptional circumstances, and if motivated by an overriding requirement pertaining to the child's best interests. The mother had been exercising access in a manner that was not open to criticism and her lifestyle was improving. Concern about a possible failure to co-operate and a risk that the mother might disturb the foster placement did not justify the authorities in failing to take any steps to reunite the mother and child. At this point the domestic authorities had overstepped their margin of appreciation. There was a violation of article 8.

A similar approach was taken in the unreported case of *EP v Italy* (Application no. 31127/96) November 16 1999). There the mother appears to have been suffering from a condition very similar to Munchausen's Syndrome by Proxy. The child was removed from her care within days of the pair travelling from Greece to Italy. She was kept in care. No steps were taken to reunite her with her mother. Seven years later she was finally adopted by her foster parents. The court had no difficulty in concluding that proceedings lasting seven years constituted a breach of article 6. Six of the seven judges held that there was a breach of article 8. There was a powerful dissenting judgment to the effect that, "The conclusion that the majority underwrote was, in substance, that since the applicant's daughter could not have the best (the

mother had manifestly failed to provide that), she was not entitled to the next best either.” For the majority however a total ban on contact, right from the outset was too severe, and definitively compromised any potential for reuniting parent and child, resulting in a violation of article 8.

These early decisions of the European Court of Human Rights looked set, on one view, to undermine the law on adoption, in the name of human rights. Such a view would however be facile. The Convention proscribes over-zealous permanent separation, in circumstances where this cannot be demonstrated to be justified. It does not prevent adoption, nor does it require promotion of parental rights at the expense of the welfare of the child.

Convention approach to unmarried fathers

There have been a variety of approaches to unmarried fathers. Scotland found itself in difficulties in *McMichael v UK* (1995) 20 EHRR 205 when it did not afford an unmarried father access to documents before the children’s hearing. This was not a breach of article 6, but it did breach article 8 because it did not allow him to be involved in the decision-making process to a degree sufficient to protect his interest.

The general rule is that where a family tie exists between parent and child, then the state must act in a manner that allows that tie to be developed. Failure to do so will amount to a breach of article 8. There are a number of cases that illustrate the point in relation to unmarried fathers and adoption. In *Keegan v Ireland* (1994) 18 EHRR 342 an unmarried couple living together planned to have a child. Shortly after the child was conceived the relationship broke down. The father saw his baby once. The child was placed for adoption without his knowledge or consent. He applied to be appointed the child’s guardian, but by the time his application came to be decided the child had formed bonds with the prospective adopters and could not be moved without damage to her welfare. The European Court of Human Rights considered that the relationship between the parents, and hence between the father and child had the hallmark of family life. The state was required to act in a manner calculated to enable the tie between parent and child to be developed. Legal safeguards were required to render possible the child’s integration with her family. The Court held that secret placement of a child for adoption amounted to an interference with the father’s right to respect for family life. No reasons relevant to the welfare of the child had been advanced to justify such a departure from the principles that governed respect for family ties.

Görgülü v Germany [2004] 1 FamLR 894 was a similar case, occurring ten years later. There the child was collected from hospital by prospective adopters when just four days old. The father heard of the birth three months later. He applied for and was given some contact, but plans for adoption continued. The father finally applied for, and secured custody, but the custody order was reversed by the appeal court. By then the child was attached to his foster family. The Court was prepared to make a decision on the basis that there was a family tie between the applicant and his son. The court noted that future relations should not be determined by “the mere passage of time”. The domestic court had focused on the effect on the child of separation from his foster family, and not on the potential effect of permanent separation from his father. It had not considered the possibility of gradually increased contact. Severing ties with a parent could only be justified in exceptional circumstances. There had been a violation of article 8.

These two cases may be contrasted with *Yousef v Netherlands* (2003) 36 EHRR 20. There a mother would not permit an unmarried father to recognise their child, in accordance with Dutch law. When the mother died one of her brothers was granted guardianship. The father had contact once every three weeks. The Dutch Supreme Court pointed out that recognition of the father's article 8 rights could damage the child's article 8 rights, because it would affect her residence with her mother's family and her use of their surname. The Court held that if there was a clash of article 8 rights between a child and a parent, the interests of the child should prevail.

How does Scotland measure up to these cases? At one time it was regarded as unthinkable to consult an unmarried father about adoption (*A and B v C* 1987 SCLR 514). There has been no substantive change in the primary legislation in relation to adoption itself. In freeing proceedings the court cannot make an order unless satisfied that a person claiming to be the father has no intention of applying for parental responsibilities and rights, or if he did apply that it is likely his application would be refused (1978 Act, section 18(7)). This gives an unmarried father a locus in freeing proceedings (*G v City of Edinburgh Council* 2002 SLT 828). Unmarried fathers registering the child's birth after 4 May 2006 will have full parental responsibilities and rights. There are still a considerable group who do not and will not have responsibilities and rights. The court does have a discretion to intimate adoption proceedings to them (*A v G*, 2004 FamLR 51). The legal structure relating to adoption allows compliance with article 8 in adoption cases. It is left to the general duties of the court as a public authority to ensure compliance in the individual case.

There is little Scottish case law on whether an unmarried father should be told of the existence of his child, but there is a run of English cases indicating that the court has steered a course between instances where there is a family tie between the father and the child, and those where there is no tie (*Re R (Adoption: Father's Involvement)*, [2001] 1 FLR 302; *Re H*; *Re G (Adoption: Consultation of Unmarried Fathers)*, [2001] 1 FLR 646; and *In re C (A Child) (Adoption: Local authority duty)* [2007] EWCA Civ 1206, [2007] 3 FCR 659, Times Law Reports, 5 December 2007). In the latest of these cases, for example, a child had been born as a result of a one-night stand. The mother wished the child to be placed for adoption without contacting the father. The Court of Appeal held that there was no family tie with the father. Article 8 did not apply. The father was not to be informed.

The Adoption and Children (Scotland) Act 2007 does not advance matters. It contains no general definition of "parent". When it comes to questions of consent to adoption "parent" is defined in section 31(15) as a parent who has parental responsibilities and rights, or a parent who has lost these by virtue of a permanence order that does not include authority for the child to be adopted.

By way of footnote, a father may not have article 8 rights in the absence of a family tie, but the child has a separate interest in knowing about his or her family of origin as part of article 8 rights to respect for private life. The European Court has not, to date, held that there is a violation where children are placed anonymously. This can occur under French law, where it is seen as necessary to deter abortion and abandonment of children (*Odièvre v France* 2003 1 FCR 621). On the other hand a Swiss decision refusing permission for a man born in 1939 to exhume the remains of his deceased

putative father for the purpose of DNA tests in order to establish paternity was a violation. There was no sufficient reason to refuse the request (*Jäggi v Switzerland*, Application no 58757/00, judgment 13 July 2006). At some point these two strands may converge.

Scots law does, of course, have a very good record of giving information to adopted persons. In Scotland adopted persons are able to recover birth records, have access to the process relating to their own adoption and see adoption agency records.

Convention approval for adoption

Söderbäck v Sweden (2000) 29 EHRR 95 concerned a stepparent adoption. The child had been living with the mother and her new husband for more than six years. She had little contact with her birth father. The Court refused to follow *Johansen* and held that adoption consolidated and formalised the *de facto* family ties in the family in which the child was living.

In *Kuijper v Netherlands* (2005) 41 E.H.R.R. SE 16 a 17 year old wished to be adopted by her stepmother. Her birth mother had a right of veto, which could only be overridden if its use amounted to “misfeasance”. The birth mother complained that adoption was not “in accordance with the law” because the discretionary power to override her veto was too wide, was unclear and was therefore arbitrary. The Court disagreed. It pointed out that it was necessary to avoid excessive rigidity and to keep pace with changing circumstances. Judicial interpretation and assessment of fact was inevitable and did not make the application of the law unforeseeable. Adoption in this case pursued a legitimate aim. Furthermore it satisfied the test of being necessary in a democratic society. Article 8 required authorities to strike a fair balance between the interests involved. Particular importance had to be attached to the best interests of the child, which depending on their nature and seriousness could override the interests of the parent.

Support for adoption to formalise *de facto* ties is not a foregone conclusion. In the recent case of *Eski v Austria* [2007] 1 F.C.R. 453 the Court were not unanimous in supporting an adoption order. The child’s birth father had been violent to her mother and had upset the child by insulting the mother to her. The child had a close relationship with her stepfather, who adopted her. Five of the seven judges were prepared to follow *Söderbäck* and *Kuijper*. Two dissented.

The House of Lords considered whether adoption was, in principle, Convention compliant, in *Re B (A Minor) (Adoption: Natural parent)* [2002] 1 WLR 258. A father had applied for an adoption order, the effect of which would have been to sever the child’s relationship with the mother. The mother did not oppose the application. The judge granted it. The Official Solicitor appealed. A strong Court of Appeal (Dame Elizabeth Butler-Sloss P, LJs Hale and Potter) were influenced by article 8 of the Convention and reversed the judge’s decision. The House of Lords reinstated the judge’s decision. Provided an adoption order meets “a pressing social need” and is “a proportionate response to that need” there will be no breach of article 8. The existing law is sufficient to preclude an undesirable result.

Domestic conditions for adoption and dispensation with parental agreement

The effect of *Re B* is to indicate that a proper application of UK adoption law by a Court mindful of its Convention obligations, will be Convention compliant.

Before a child can be adopted under the current law (Adoption (Scotland) Act 1978):

- Each parent (with parental rights) must consent or consent must be dispensed with, on the basis of specified conditions (s. 16);
- The court should regard the welfare of the child throughout life as the paramount consideration (s. 6(1)(a));
- the court should have regard, so far as practicable to the views of the child and the child's religious persuasion etc. (s. 6(1)(b)); and
- There should be no order unless better for the child (s. 24(3)).

When the Adoption and Children (Scotland) Act 2007 comes into force, then

- Each parent (with parental rights) must consent or consent must be dispensed with, on the basis of specified conditions (s. 31);
- The court should regard the welfare of the child throughout life as the paramount consideration (s. 14(3));
- the court should have regard so far as reasonably practicable to
 - (a) the value of a stable family unit in the child's development,
 - (b) the child's ascertainable views (taking account of the child's age and maturity),
 - (c) the child's religious persuasion etc.,
 - (d) the likely effect on the child, throughout the child's life, of the making of an adoption order (s. 14(4));
- There should be no order unless better for the child (s. 28(2)).

The 2007 Act is more prescriptive than the 1978 Act. There is a greater emphasis on certainty, at the expense of flexibility. This is particularly apparent in section 31. The Adoption Policy Review Group recommended a simplified test for dispensation with parental consent, that echoed the test in the Adoption and Children Act 2002. In England there can be dispensation with consent if: either:

- (a) the parent or guardian cannot be found or is incapable of giving consent;
- or
- (b) the child's welfare requires consent to be dispensed with.

The Review Group report states that this test should be qualified by a provision that any court applying the test should have regard to article 8 of the Convention. It is debatable whether this required to be stated expressly, given the terms of section 6 of the Human Rights Act 1998. In its first incarnation the Scottish Adoption and Children Bill did simply replicate the 2002 Act. Anxiety was then expressed as to whether the section would be Convention compliant. It was amended and then amended again. The result in the 2007 Act is a complex checklist. Taking it at its simplest (and paraphrasing slightly in order to do so), the consent of a parent may be dispensed with if:

- (a) the parent is dead;
- (b) the parent cannot be found or is incapable of giving consent;
- (c) - the parent has parental responsibilities or rights (other than contact), but is unable satisfactorily to discharge those responsibilities or exercise those rights and is likely to continue to be unable to do so; or

- the parent has no responsibilities and rights as a result of a permanence order (other than one granting authority for adoption), and it is unlikely that the responsibilities or rights will be restored to the parent; .
- (d) where neither of the conditions in (c) applies, the welfare of the child otherwise requires consent to be dispensed with.

The section presents a problem. The final condition (d) was introduced at the third stage of the passage of the Bill to cover cases like *Söderbäck* where an adoption order is required to formalise *de facto* family ties. There is doubt whether it achieves this objective. Where, for example, a parent is able to discharge parental responsibilities, or is likely to be able to do so in the future and there is no permanence order, then consent cannot be dispensed with in terms of (c), but (c) has been ‘applied’. On one view it is difficult to see how (d) will ever be reached. On the other hand, if (d) trumps the conditions in (c), then there was no point in including (c) at all.

It was not necessary to have such a complex set of conditions in order to satisfy the Convention. The European Court of Human Rights has indicated that a general flexible condition is acceptable, provided it is applied by the courts with reasonable consistency and regard for article 8 rights.

The best publicised aspect of the 2007 Act was the provision in section 29 which allowed unmarried couples, including same-sex couples to adopt. There was no Convention imperative to take this step. The Inner House considered the matter in *T Petitioner* 1997 SLT 724, and decided that the Convention was not determinative of whether a gay man could adopt a child. The European Court of Human Rights considered a complaint by a homosexual man who was not considered a suitable adopter in *Fretté v France* (2004) 38 EHRR 21. They held that there was no Convention right to adopt and no family tie to protect in this case. On the other hand the right not to be discriminated against in terms of article 14, applied in conjunction with article 8, was invoked, but the difference in treatment of homosexuals fell within a state’s margin of appreciation. Scotland decided on a change in the law for policy reasons unconnected with the Convention. It does remain to amend the fostering regulations to bring them into line with the general policy in this area. At present the regulations probably preclude a child being placed with a homosexual couple pursuant to a fostering arrangement.

Procedure in adoption applications

Procedure can invoke both article 6 (right to a fair trial) and article 8 (respect for family life). Article 8 may be violated if the parent is not sufficiently involved in the decision-making process.

The European Court of Human Rights considered matters of procedure in *Scott v UK* 2000 FamLR 102. The mother in that case had a long history of alcoholism. Her child was placed in local authority care in England. Rehabilitation was attempted, but failed when the mother had a relapse. The authority decided to place the child for adoption. They applied for, and secured, a freeing order. The mother complained that the change of plan was agreed at a meeting at which she had not been present. This was a complaint under article 8, rather than article 6, as the meeting did not determine civil rights and obligations. The court considered the decision-making process as a whole, and came to the view that the mother had been given a proper opportunity to

make her views known to the local authority, and to change the course of events. It was not necessary to invite her to administrative meetings at which the local authority formulated its strategy.

Given the decision of the Court in *Scott, Dundee City Council v M* 2004 SLT 640 comes as something of a surprise. In that case a freeing was proceeding in Dundee Sheriff Court. Nine days into the case the sheriff discovered that the birth parents had not attended adoption panel meetings. These are meetings held in terms of the Adoption Agencies (Scotland) Regulations 1996, to take decisions about whether children should be placed for adoption, to approve potential adopters and to match children with prospective adoptive parents. The parents had, of course, been at children's hearings, and were represented in the freeing proceedings. The sheriff decided that the parents rights in terms of articles 6 and 8 had been breached by the failure to invite them to adoption panels. He dismissed the application. The Inner House held he had erred. The adoption panel had not determined the parents' civil rights within the meaning of article 6. The parents had been given the opportunity of making their views known and had been involved in the decision-making process as a whole. There was no breach of article 8. There was however substantial delay, as the matter had to be remitted to the sheriff court for a fresh hearing before a different sheriff.

Matters went from bad to worse. The second sheriff to hear the case made a freeing order. This time the parent appealed (*Dundee City Council v K* 2006 SC 326). One of his points was that the delay was such as to infringe his article 6 rights. The Lord Justice-Clerk was unimpressed. He pointed out that the court required to consider not only delay *per se*, but also whether the party responsible for the delay was blameworthy, and whether the person complaining had been prejudiced. Here the local authority had appealed the first sheriff's decision but were wholly entitled to do so. The parent was responsible for part of the period of delay. Even if there had been an infringement of article 6, it did not follow that the petition should be refused. The sheriff had applied the law and found that adoption would best secure the child's welfare. Refusal of adoption would thwart the remedy that was in the child's best interests.

Again the law is capable of working in a manner that is consistent with the Convention. Article 8 stands as a requirement to involve the parent, but the parents' article 8 rights should not defeat the rights of the child.

Contact with child in permanent placement

The cases in the European Court of Human Rights link adoption with the permanent cessation of contact. Cessation of contact goes hand in hand with deprivation of parental rights. In modern practice however adoption does not necessarily mean the child will have no further contact with the birth parent. Even where children are adopted, they may benefit from contact with their birth family. Post adoption contact of some kind is becoming the norm. That contact may take the form of an exchange of written communication between the adopters and birth parents (see *eg East Lothian Council v A* 2002 SC 106). It may take the form of face-to-face meetings between the child and a member, or members, of his original family. For the most part this is dealt with by consent. Article 8 raises the issue of whether, in order to respect the right to family life, orders should be available to enforce contact.

Occasionally, and in exceptional cases, there may be a condition of contact in an adoption order (1978 Act, section 12(6); *B v C*, 1996 SLT 1370). This does not restore any parental right to the parent. It simply imposes a requirement to serve the welfare of the child. Conditions of contact in orders for adoption are problematic. They are not easily varied, and are seen by adopters as undermining and unhelpful. Contact works best if it is consensual. Orders should only be required in exceptional cases, such as where adopters have reneged on assurances given to the birth family or the court (see English case of *In re T (Minors) (Adopted Children: Contact)*, [1996] Fam 34). When a child is declared free for adoption under section 18 of the Adoption (Scotland) Act parental responsibilities and rights are transferred to the local authority. There is no possibility of any condition attaching to the order. Once an adoption order, or freeing order is made, the parent cannot make an application for contact, or any other order, under section 11 of the Children (Scotland) Act 1995 (section 11(3)(a)(iii) and (4)(a) and (b)).

This state of affairs was challenged in Scotland in a case where a father who suffered from mental illness had very regular contact with his child (*West Lothian Council v McG* 2002 SC 411). The child's foster parents wished to adopt and were quite prepared to support continued contact. The sheriff made a freeing order in respect of the child and his half brother. The fathers challenged this on the basis that they were not withholding agreement to adoption unreasonably, nor would it serve the welfare of the children to make an order, when contact was then unsecured by any legal remedy. The Second Division held that the sheriff had been entitled to reach the view he did, having regard to the need for permanence and security. The decision predated the coming into force of the Human Rights Act 1998, but the Lord Justice-Clerk referred to the House of Lords decision in *Re B* and indicated that the sheriff was likely to have reached the same decision in any event. Lord Reed was more troubled by the "all or nothing" choice for courts in cases such as this. Either the case justified the cessation of rights of contact, or there could be no freeing order. He raised the question of whether a framework which allowed for greater flexibility might not assist in striking a fair balance between the interests of the child and those of the parent, as article 8 requires.

The opportunity for a full challenge to freeing came in *Dundee City Council v K* 2006 SC 326. This was a root and branch attack on both the structure of the law and the decision (finally) to grant a freeing order. A strong bench, including both the Lord President and the Lord Justice-Clerk, rejected all the arguments for the appellant. Looking first of all at the legislation, it contemplated depriving parents of all parental rights and to preventing them making any further application in pursuance of a legitimate aim, namely the welfare of children. In some cases this was necessary. The legislation was in itself Convention compliant. Even if the legislation was not Convention compliant, this did not mean the appeal would be allowed. The Court may grant a declaration of incompatibility under section 4, but this does not affect the continued application of the law as it stands (*cf Midlothian Council v W*, 2005 SLT (Sh Ct) 146).

Turning to the facts of *Dundee City Council v K*, the sheriff had made a finding that direct contact with the birth parent would adversely affect the child's interests. His decision to grant freeing, within the structure of the existing legislation, was

warranted. There was no violation of article 8. The Lord Justice-Clerk did however refer to the proposed changes to the legislation.

The 2007 Act will give some of the flexibility called for by Lord Reed in *West Lothian Council v McG*. The replacement for freeing is a permanence order (under section 80) with authority to adopt (under section 83). Such an order does not mean that all parental contact will cease. A permanence order with authority to adopt may still have ancillary provisions specifying contact arrangements (section 82(1)(e)). If a permanence order contains ancillary provisions, it can be varied (section 92). A person other than the local authority will require the leave of the court to make an application for variation (section 94(4)). There is a snag. The court can only vary ancillary provisions under section 92. The section does not, in terms, allow a contact provision to be introduced for the first time after the order is made. It is not clear that there is a justification for such a restriction, and one can foresee situations where a variation to make provision for contact would be appropriate. No application can be made under the Children (Scotland) Act 1995, section 11 while a permanence order is in force (2007 Act section 103, introducing section 11A to 1995 Act). On the other hand, if the child is actually adopted, the permanence order will fly off and a parent can apply for contact under section 11, if he or she is given leave by the court (2007 Act, section 107, amending section 11). One of the features of the new Act is to structure legal provision on an individual basis, appropriate to each child and family situation, in a manner entirely consistent with article 8.

Conclusion

The Convention has not brought adoption applications to a halt. There have been challenges that were, for the most part, unfounded. The structure of Scots law is Convention compliant. It is capable of being applied in a Convention compliant manner. The Convention is however a sharp reminder that permanent removal from a family of birth is only appropriate in exceptional circumstances. Public authorities should take all reasonable steps to reunite separated parents and children. This includes unmarried fathers who have a family tie with mothers or children. Parents should be involved in the decision-making process. The changes in the 2007 Act are (for the most part) helpful in so far as they give greater flexibility, allowing the court to strike a fair balance between the interests of the child and those of the parent.

Janys M Scott QC

[murray stable](#)

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