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Tea Time Training – 12 May 2021

**IROs – Who put the independent in Independent Reviewing Officers,
and how independent are they?**

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1. **History:** How and why the role of the IRO was established.

Re S & Others: Re W & Others, sub nom Re W & B (Children: W (A Child) (Care Plan) [2001] EWCA Civ 757.

“Starred” Care Plans **come**.

Re S & Others: Re W & Others, sub nom Re W & B (Children: W (A Child) (Care Plan) [2002] UKHL10.

“Starred” Care Plans **go**.

At para 106 of the HL judgment, Lord Nicholls said this:

“I must finally make an observation of a general character. In this speech I have sought to explain my reasons for rejecting the Court of Appeal’s initiatives over starred milestones. I cannot stress too strongly that the rejection of this innovation on legal grounds must not obscure the pressing need for the government to attend to the serious practical and legal problems identified by the Court of Appeal or mentioned by me. One of the questions needing urgent consideration is whether some degree of court supervision of local authorities’ discharge of their parental responsibilities would bring about an overall improvement in the quality of child care provided by local authorities. Answering this question calls for a wider examination than can be undertaken by a court. The judgments of the Court of Appeal in the present case have performed a valuable service in highlighting the need for such an examination to be conducted without delay”.

2. The Government responded with **S118 of the Adoption and Children Act 2002** which amended **S26 of Children Act 1989** and created the role of the Independent Reviewing Officer.

S26 of CA 1989 is the requirement to consider the discharge of a Care Order.

The new section **25 of CA89** provided for mandatory appointment, by a Local Authority who is looking after a child, of an individual as the IRO for that child’s case.

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3. So, the Answer to the 1st question posed – who put the independent in IROs? is - the Government, through legislation, prompted by the House of Lords (now Supreme Court) who, in turn, had been prompted by concerns raised in the Court of Appeal.

4. Role and Function of the IRO

S25B of the **Children Act 1989** sets out the functions of the IRO.

(1) The independent reviewing officer must –

- (a) Monitor the performance by the local authority of their functions in relation to the child's case;
- (b) Participate, in accordance with regulations made by the Secretary of State, in any review of the child's case;
- (c) Ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the local authority;

...

(3) If the independent reviewing officer considers it appropriate to do so, the child's case may be referred by that officer to –

- (a) An officer of the Children and Family Court Advisory and Support Service.

5. **S45** of the **Care Planning, Placement and Case Review (England) Regulations 2010/959** provides for **additional** functions. These include:

- A duty to ensure that the child has been informed of the right to apply, with leave, for a S8 Order eg for contact – or to apply for discharge of the C.O.
- IRO should ensure that a child has access to legal advice if they wish to make an application under CA89.
- IRO must consider whether to request a review of the case and whether to refer to Cafcass (Reg 45/4).

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6. IROs are qualified Social Workers who are independent of the line management of the case – but still employees of the local authority.

Hence the doubts about the reality of their independence.

7. For an understanding as to how well the functions are performed, it is illuminating to consider the research on IROs and case law.

8. **Research**

2014 Research from National Children's Bureau - Report on the role of IROs in England carried out by the Centre for Child and Family Research at Loughborough University.

9. Peter Jackson J (as he was then) commented in the foreword to the Research:

"It is 10 years since IROs were created in response to widespread concern about children in care being lost to sight. Yet the key conclusion of this study is that the IRO role in ensuring high quality care planning is still to be fully realised. The report is full of examples of what can be achieved by a well organised service, but it also uncovers the widespread problems that still exist".

10. Here is how one child describes a review meeting:

"It's like you're sitting there like a ghost and there was like normal people in the room just speaking about you and you can't say anything because you're just like this ghost person".

11. Conclusions of the research were that there was a mixed picture. Making sure that a child's care plan is reviewed in a timely fashion was seen as the area where IROs had the greatest impact. However, the research also suggested that **more** could be done to make sure the IRO was fulfilling his or her crucial role of ensuring good planning for the child.

12. In **2018** – research from the University of East Anglia. This report – **Care Planning and the role of the IRO** looked at how 122 children's cases had been managed.

This research concluded that for the most part care planning had gone well but that there was no room for complacency as problems and challenges continued to arise.

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13. **NB** This study noted that IROs are not line managers and cannot make decisions about resources.
14. As to the rate of referrals from IROs to Cafcass, this is quite low and is one of the reasons it is sometimes queried whether IROs are really independent and whether they offer an effective challenge to local authorities. However, it could be said that as those cases that are referred to Cafcass are resolved without going to court, this shows that the system prefers to operate via negotiation and agreement.
15. **Case Law** - When things go wrong as regards the role of the IRO, they seem to go spectacularly wrong!
16. **A and S v Lancashire County Council [2012] EWHC 1689 (Fam) [2013], 2 FLR 803.** Judgment of Jackson J (as he was then) described the “utter ineffectiveness” of the independent reviewing system in protecting A and S’s interests.
17. **X (Discharge of Care Order) [2014] EWFC B217**
Circuit Judge decision. LAC Reviews described as paying “lip service” to the need to achieve permanence. IRO criticised for failing in duty to be a robust mechanism designed to hold a local authority to account.
18. **A and B (Care Orders and Placement orders – failures) [2018] EWFC 72**
Keehan J described “woeful” care planning by the local authority and “stark” and “grave” failures by the IROs to exercise their statutory function to safeguard the welfare and future care of the girls.
19. Keehan J said that the IROs had failed the children on a “serious and serial” basis. *“Whatever opposition or obstruction the IRO or Head of Service faced from a Local Authority, the IROs and their managers must remember that their first and foremost duty is to the children and young people that they serve. If this is ignored or obstructed, it is only the children or young people, who are our future, who will be harmed”* (para 58).

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20. The clear message must go out, he added, that IROs serve a vital and essential function to ensure that a child's or young person's interests are met post the making of a Care Order or other order. *"If those functions and roles are not exercised in a clear, robust and untrammelled fashion, the children or young people will suffer"* (para 59).
21. **Re BT and GT [2018] EWFC 76.**
Another judgment of Keehan J
Case with a catalogue of poor practice by the local authority, with IROs failing to take any steps to uncover what had occurred. HRA breaches with damages to each child of £20,000 and £5,000 to prospective adopters.
22. A very recent judgment (21 March 2021) of Keehan J again.
A long and depressing judgment outlining numerous serious failures of the local authority, including that when one of the children fell very ill, the birth parents were not consulted about turning off life support - and there was no application to the High Court.
23. The Local Authority had "utterly failed" the children. "I have rarely encountered such egregious and longstanding failure" by a Local Authority said Keehan J, and he questioned whether its children's services department was fit for purpose.

Where was the IRO in this case?

24. As to the second question (How independent are they?) – this will be for individuals to answer.
25. **Lessons for us?/ What can we do?**
26. i) IROs chair LAC Reviews and the minutes should contain their views.
Therefore, always request minutes of LAC Reviews.
27. ii) the updated version of the 2017 **Cafcass and the work of the Independent Reviewing Officer**, Practice Note, provides that the Children's Guardian will:
 - 2.1
 - d) consult with the IRO as part of the ongoing analysis and ascertain whether the IRO has any concerns about the care

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planning process in the case. For example, where a concern exists but cannot be resolved, have any stages of the local dispute resolution process been triggered, or have any complaints or representations been received about the child's case?

- e) ensure they are informed of review meetings and be aware of any planning meetings that take place and liaise with the IRO following such meetings to discuss any decisions that are made. The IRO will alert the children's guardian to any issues that rise in planning and review meetings.
- f) liaise with the IRO if appropriate on the wishes of the child, the care plan, and issues which may have been raised at court and ensure that there is an independent assessment of the child's best interests.

Therefore, ask about these consultations. How often do we see reference to them in the CG's analysis?

28. iii) (Practice Note)

In all cases where the child is expected to remain looked after following proceedings, the children's guardian should confirm that all of the relevant documents have been forwarded to the IRO.

Therefore, confirm with the CG in latter stages of proceedings or during the Final Hearing (if there is one) that they will be doing this.

29. iv) It is a little uncertain what documents the IRO receives/sees **during** the proceedings.

Therefore, maybe ask this question.

30. (v) 2.3 (Practice Note)

In all cases where the child remains looked after following proceedings, the Children's Guardian should have a final discussion with the IRO about the case with a view to identifying any outstanding issues on particular matters that should be kept under review. It will be important that this is part of the closing

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of the case by the Children's Guardian and not a drift into extended involvement.

Therefore, maybe ask the Children's Guardian if they will be doing this and ask which issues they will be asking the IRO to keep under review.

31. After all, this is what the IRO should be focussed on; **this is why the role was created.**

32. **Some worthwhile articles**

1. University of East Anglia 2012-2014 Care Planning and the Role of the Independent Reviewing Officer (free).
2. Cafcass and the role of IROs Practice Note 2017 (provided).
3. IRO handbook (March 2010).
4. Young People's Guide to the Independent Reviewing Officer's Handbook.
5. The Care Planning, Placement and Case Review (England) Regulations 2010/959 (Re: IRO responsibilities).
6. The Good Practice Protocol for public law work (re: the statutory roles of Cafcass and IROs and how they work together) (provided).