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**What could this latest adoption judgment mean for social workers?**

**Will Re W change practice the way Re B and Re B-S did? Or will the adoption landscape stay the same?**

By [Luke Stevenson](http://www.communitycare.co.uk/author/lukestevenson1/) on August 18, 2016 in [Children](http://www.communitycare.co.uk/children/), [Workforce](http://www.communitycare.co.uk/workforce/)

The adoption landscape has been volatile since a pair of landmark judgments, Re B and Re B-S, shook the system in 2013.

The rulings introduced the concept that adoption orders should only be made when – to quote one of the judges in the Re B case – “nothing else will do”. In the year following, [adoption decisions dropped 40% and placement orders fell 45%](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456193/ALB_Business_Intelligence_Quarter_4_2014_to_2015.pdf).

The trends were widely attributed to a perception among practitioners that the judgments had raised the ‘benchmark’ for local authorities recommending adoption. The government, restating its “pro-adoption” stance, rejected this and insisted the legal test for adoption remained unchanged.

Stuck in the middle were social workers trying to grapple with the practice implications. They did so in a pressurised arena where judges continued to criticise poor practice and attempted to clarify what was expected of social work evidence.

The latest figures have shown the numbers of adoption and placement orders have been beginning to level out. It seemed like the chaos might be calming down.

That was until Re W, [a Court of Appeal judgment](http://www.bailii.org/ew/cases/EWCA/Civ/2016/793.html) handed down last month that casts more questions about the way Re B and Re B-S should be interpreted on the frontline. In the [words of legal blogger Suesspicious Minds](https://suesspiciousminds.com/2016/07/29/re-w-no-presumption-for-a-child-to-be-brought-up-by-a-member-of-the-natural-family/) the court effectively “grabbed hold of a can opener and opened about a dozen cans that were labelled ‘Worms, do not open’”.

Has the adoption landscape just become even murkier?

**The judgment**

Re W was an appeal case against a judge’s decision to reject an adoption application in favour of a special guardianship order. The Court of Appeal said the judge had failed to identify “significant errors” in social work evidence, and a “fatally flawed” welfare analysis, in reaching his decision.

The social workers, the appeal judges found, had misunderstood the ‘nothing else will do’ benchmark.

They had mistakenly jumped to the conclusion that just because a family placement had become available it was the right option (the child’s maternal grandparents came forward as potential carers, having not known about the child before). In doing so they had failed to consider the impact on the child’s welfare, given she had lived with the adopters for two years and was attached with them.

“The phrase [‘nothing else will do’] is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child’s welfare,” the appeal judges said.

“Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase ‘nothing else will do’ can properly be deployed.”

**What could this mean for social workers?**

John Simmonds, director of policy, research and development at CoramBAAF, said the case should improve focus on the law, which requires a balanced analysis of each child’s circumstances, and warned the sector “urgently” needs to re-evaluate current practice.

“Unfortunately [‘nothing else will do’], has come to be constructed as the highest of hurdles only capable of being surmounted by a world-class Olympian, rather than ‘a useful distillation of the proportionality and necessity test as embodied in the ECHR’”.

He said the issue of focusing on a child’s welfare throughout their life was laid out “explicitly” in this case.

“The absence of this from the professionals resulted in strong criticism from the judges and a timely reminder of what social workers and the courts must be concerned with,” he said.

“The sector needs to fully digest the powerful child development and child welfare issues raised. Every case will need to be decided on its own merits and the circumstances but the focus must be on the child,” Simmonds said.

**Helpful steer**

Hugh Thornbery, chief executive of Adoption UK, agreed, and said the ruling would re-emphasise the importance of assessing current needs.

“It also provides local authorities with a helpful steer on applying learning from Re B and Re B-S when making significant decisions about permanence.”

Sir Martin Narey, the government’s former adoption tsar, welcomed the judgment, which he feels will help address the situation of “local authorities and courts favouring any disposal other than adoption”.

“Recent judgments including Re B – intentionally or otherwise – have thwarted the will of Parliament by introducing a test which suggests that adoption can only be appropriate when ‘Nothing Else Will Do’,” Narey said.

“I desperately hope this judgement will remind child professionals and the courts that the best interests of the child must dominate when such decisions are being made.”

**Little impact?**

Andy Elvin, chief executive of TACT Fostering & Adoption, says the ruling is unlikely to have the same ramifications as the Re B and Re B-S rulings.

“It’s not going to do to [special guardianship order] numbers what Re B and Re B-S did to adoption numbers, because I think that struck a far more resonant chord across local authorities, so far as relatives were really not being given a fair shake of the stick, and that became obvious,” he says.

For Elvin, the case in Re W was an example of going the other way and being “far too accommodating for them”.

The fact the grandparents came into the frame as potential carers after the placement order had been made and the child had been settled with adopters also makes the case unusual, he said.

“I think Re B and Re B-S were used as exemplars of things that were happening a lot, or at least reasonably frequently.

“They were misunderstood to start with, which didn’t help because they weren’t saying that adoption was a bad option or that social workers at local authorities shouldn’t be following it, they were saying the case in front of them was terrible.”

Suesspicious Minds welcomed the judgment’s focus on how cases should be about children, not process, in a [blog post on his website](https://suesspiciousminds.com/2016/07/29/re-w-no-presumption-for-a-child-to-be-brought-up-by-a-member-of-the-natural-family/).

“They are about timescales, and capacity to change, and resources, and whether professionals can be criticised, and whether parents can be blamed, and about 26 weeks and statistics, and about getting all of the case law window-dressing in place. But they’re not about the children very much.”

**Important**

He expressed disquiet though over the criticism of the social workers, saying “this is exactly the way that I think almost every social worker, Guardian and lawyer in the country would have approached matters”.

He also acknowledged another possible knock-on effect on the judgment’s commentary on thresholds. The judge outlined how once a section 31 threshold is crossed “the evaluation of a child’s welfare in public law proceedings is determined on the basis of proportionality rather than by the application of presumptions”.

This was something he called “extraordinarily important”.

“Once threshold is crossed, the court does not have a presumption that the child ought to be placed within the natural family – it is a straight welfare test,” he explains. “My forecast is that disputes about threshold will probably increase once practitioners grasp the full import of that.”

While nothing about how cases are interpreted is certain, the months following this latest addition to care proceedings case law and guidance will be watched closely as practitioners grapple with the latest judgement put in front of them