



Lord Nash

Parliamentary Under Secretary of State for the School System
Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/help/contactus

Lord Warner
House of Lords
London
SW1A 0AA

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I am writing to follow up previous correspondence and our subsequent debate on 18 October during the first day of Report of the Children and Social Work Bill.

You expressed particular concern about the relationship between a local authority's statutory duties to safeguard children and the judgements which may be made by a court. I recognise that your concerns had arisen particularly in respect of the tragic case of Ellie Butler, and the outcomes following the High Court hearing in July 2012.

I understand you considered that there was another constitutional issue requiring consideration which was that "...judges should not be able to change the law" and felt that in the case of Ellie Butler "the judge changed the law and inhibited the local authority in discharging its statutory safeguarding duties." You asked me to check that our view in relation to this is consistent with the guidance (*Working Together to Safeguard Children*).

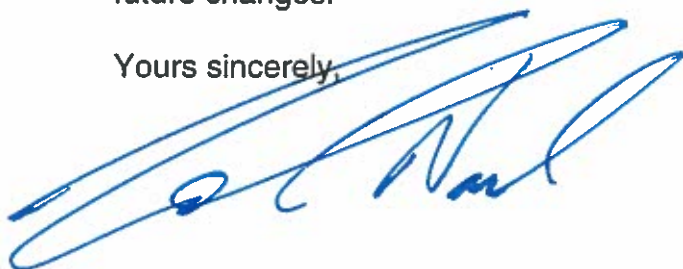
Courts are entitled to make decisions in the light of the evidence available to them. This is acknowledged, even in this case, with the serious case review (SCR) stating that the judgement in question "was based on extensive and complex medical evidence by expert witnesses". A judgement is based upon the application of law to a particular set of facts, with the way a judge interprets the law being able to change our understanding of that law. That legal reasoning can then be utilised in future decisions. However, if a party considers that there is an error of law, it may appeal the decision in question.

I appreciate that the SCR into this case states that the "impact of the court case gave a...disempowering message to professionals" and that the local authority felt unable to take further action, stating that "this made anything short of Section 47 [child protection] impossible". The SCR does however suggest several steps the local authority could nevertheless have taken in pursuance of its safeguarding responsibilities in this case. While the SCR does postulate reasons why these may not have occurred, those suggested steps include

convening a multi-agency meeting following the outcome of a Court case which is 'unexpected' by key agencies, so that information can be properly shared amongst agencies. This is one of several steps carried through to the report's overall recommendations section.

The Government keeps its statutory guidance to local authorities and others (*Working Together to Safeguard Children*) under regular review. We will of course consider what clarifications to that statutory guidance might be helpful in the light of this case, together with any further points raised by consultation on future changes.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'John Nash', written in a cursive style.

JOHN NASH