4 PAPER BUILDINGS

Family Fortune

The Trials and Tribulations of an International Family in Breakdown

3 CPD – BTM/CHLS

12th June 2014

CHAIR

David Williams QC

TOPICS & SPEAKERS:

Divorce Jurisdiction
Teertha Gupta QC, Charles Hale QC & David Williams QC

Hague Abduction
Henry Setright QC, Hassan Khan, Alistair G Perkins, Sarah Vivian & John Mellor

Relocation
Catherine Wood QC, Andrew Powell & Rachel Chisholm

Reciprocal Enforcement
Marcus Scott-Manderson QC, Mark Jarman & Jacqueline Renton

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Section 1

4 Paper Buildings: About Us

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About Us

4PB has a distinguished history as a leading set of specialist family law barristers providing practical, expert legal advice, and including effective and assured advocacy, in all practice areas of family law. Our size, practice range, reputation and expertise are unrivalled and mark us out as unique amongst our competitors.

What the market says:

Chambers has won a large number of prestigious awards, including leading legal publisher, Jordan's 'Family Law Chambers of the Year Award' in 2013 & 2011. Our work has been recognised by leading legal directories like the Legal 500 and Chambers & Partners as representing excellence, with 29 members recommended in all areas of family law.

Chambers & Partners 2014 "This set houses a wealth of talent and has firmly established itself as a leading set for family law." Solicitors say of the barristers that they are "very inovative in their approach and very holistic in their advice"

What we do:

We specialise in family law, and any relevant area of law that relates to family matters. Our barristers deal with all aspects of the law connected with relationship breakdown, including separation, divorce, civil partnerships, and their financial consequences, such as matrimonial finance, ancillary relief, family financial settlements, such as money and property.

We are also known for our work in child law, such as Children Act proceedings, and in children-related conflicts and disputes, such as child care, residence and contact issues, the international movement of children, and visitation rights to/for children living abroad.

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Causes we support

A kidspace provides a child centred support service for children who are experiencing family breakdown. They run workshops specifically designed for children aged 7 – 16 and use creative and innovative activities in their workshops to encourage children to express their feelings.

akidspace
Supporting children through family breakdown

The London Legal Support Trust
Each year a team of walkers from chambers enters the London Legal Walk to raise money for the London Legal Support Trust, the Free Representation Unit and the Bar Pro Bono Unit.

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This year the 4PB team raised just over £2000.

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We were one of the first sets in the country to receive the Bar Council’s quality assurance mark, BarMark, as a seal of excellence, which we continue to demonstrate in both administration and advocacy in our work as specialist family lawyers.

Memberships

Our barristers play a leading role in the development of our profession, and family law generally, through their membership of various specialist associations, including both the Family Law Bar Association and the Association of Lawyers for Children.

Members are also active in the Employment Law Bar Association and the Employment Lawyers' Association.

They are also active in the Commonwealth Legal Association, International Bar Association, and the International Academy of Matrimonial Lawyers.

Several members are also actively involved in the Bar Council either as elected members or as co-opted specialist advisers.

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Standard Contractual Terms

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Section 2

Seminar Timetable

Timetable

1.30-2pm: Registration

2pm – 2.15: Chair's Introduction: David Williams QC

2.15 – 2.50: Divorce jurisdiction (Teertha Gupta QC, Charles Hale QC, David Williams QC)

2.50-3.30: Hague Abduction (Henry Setright QC, Hassan Khan, Alistair Perkins, Sarah Vivian & John Mellor)

3.30 -4pm: Tea –break

4 – 4.40pm: Relocation (Catherine Wood QC, Rachel Chisholm, Andrew Powell)

4.40-5.15: Reciprocal Enforcement (Marcus Scott Manderson QC, Mark Jarman, Jacqueline Renton)

5.15-5.30: Panel Discussion led by DWQC and final questions from the floor

5.30: Close of seminar.

5.30 onwards: Drinks reception.

Section 3

Meet the Fortune Family

Meet the Fortune Family

Father/Husband: Costa

Mother/Wife: May

Mr Fortune is a self-employed journalist and writer. He earns modest sums which pay for little more than his hobby of collecting stuffed animals. He is a UK citizen. Mrs Fortune-DeKlein is in-house counsel to a US based insurance company. She earns £200,000 pa basic plus bonuses and share options. She has dual US-German nationality. They married in Fiji in 2000 and they have two children. Joanna was born in South Africa and is aged 13 and Frank was born in Germany and is now 7. From 2008 – 2013 the family was based in New York and they own a home there. In January 2013 the family came to England when Mrs Fortune-DeKlein accepted the post of in-house counsel in the London office. Her contract was for an initial period of 2 years with options to extend thereafter. Mr Fortune has remained self-employed but has been writing regularly for a London newspaper. The family employ a nanny (Hute) although Mr Fortune works from home much of the time and looks after the children. He would say he is their main carer. The family home in New York has been rented out since they came to England. Initially they rented a property in Balham but last year they purchased a house, using an inheritance Mr Fortune had received. The children attend local schools, Frank attending the local state primary (Henry Cavendish) and Joanna attending Alleyns.

In June 2014, 18 months into her 2 year contract, Mrs Fortune-DeKlein discovers that Mr Fortune and Hute (the nanny) are having an affair. She demands that the family return immediately to the USA; he refuses and says that he intends to remain in England with the children come what may.

Costa immediately consults solicitors who advise him to issue divorce, financial remedy and Children Act proceedings.

May also consults lawyers but in the USA who advise her to issue proceedings there and to seek the immediate return of the children to the USA. She lodges an application under the 1980 Hague Convention.

Section 4

Divorce Jurisdiction

Teertha Gupta QC, Charles Hale QC & David Williams QC

Divorce

Mrs Fortune-Deklein seeks to challenge the divorce petition issued by Mr Fortune. She says that none of the jurisdictional grounds apply and that even if they do it should be stayed on the basis of forum non conveniens.

Mr Fortune maintains that their habitual residence is in England, that the English court cannot decline jurisdiction and that it any event England is a more convenient forum.

Issues

Habitual residence of adults

Mittal and stays

Forum conveniens

JURISDICTION ON DIVORCE

1) This paper addresses the issue of jurisdiction on divorce and the question of staying divorce petitions on the basis of forum conveniens. Issues such as recognition of decrees, 'Hemain' injunctions to restrain proceedings in another jurisdiction, jurisdiction in relation to maintenance and jurisdiction to grant financial remedies after a foreign divorce are outside the scope of this paper. Watch the 4pb news feed for further seminars which might cover these!

The jurisdictional framework

2) Council Regulation 2201/2003 sets out the jurisdictional framework applicable to divorces. It supercedes

   i) Council Regulation (EC) No 1347/2000 which itself took over from

   ii) the Convention of 28 May 1998 on the same subject matter.

3) Since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, it was considered more appropriate to have a single instrument for matters of divorce and parental responsibility. In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.

4) As regards judgments on divorce, legal separation or marriage annulment, the Regulation applies only to the dissolution of matrimonial ties and does not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.

5) As an EU Regulation it takes direct effect and did not need to be incorporated by legislation but it has been incorporated into domestic law (as has Chapter III in relation to children in s.2 Family Law Act 1986) by inclusion on the jurisdictional provisions of the Domicile and Matrimonial Proceedings Act 1973.

6) The English courts have jurisdiction in relation to divorce if there are grounds under BIIR or if one of the parties is domiciled England.

5 Jurisdiction of High Court and county courts

(1) Subsections (2) to (5) below shall have effect, subject to section 6(3) and (4) of this Act, with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a man and a woman –

(a) proceedings for divorce, judicial separation or nullity of marriage; and
(b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 19 of the

Matrimonial Causes Act 1973.

(1A) In this Part of this Act –

"the Council Regulation" means Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

"Contracting State" means –

(a) a party to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom, and
(b) a party which has subsequently adopted the Council Regulation; and

"the court" means the High Court and the family court.

(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) –

(a) the court has jurisdiction under the Council Regulation; or
(b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in England and Wales on the date when the proceedings are begun.

7) The relevant part of BIIR is Chapter II, Jurisdiction where Article 3 provides as follows.

General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

— *the spouses are habitually resident, or*

— *the spouses were last habitually resident, insofar as one of them still resides there, or*

— *the respondent is habitually resident, or*

— *in the event of a joint application, either of the spouses is habitually resident, or*

— *the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or*

— *the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there;*

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses.

2. For the purpose of this Regulation, 'domicile' shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

8) Articles 4 – 6 permit a 'counterclaim' to be brought, for separation to be converted into divorce, stipulate that those habitually resident in a MS or nationals (domiciles) can only be sued in a MS in accordance with Articles 3-5.

9) Article 7 provides the residual jurisdiction. If no MS has jurisdiction under BIIR you revert to national law – hence domicile of one person will suffice.

> ***Article 7***
>
> *Residual jurisdiction*
>
> *1. Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.*
>
> *2. As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his 'domicile' within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.*

10) Jurisdiction may be pleaded on more than one Ground – including Grounds within and outside BIIR. Due to the framework of BIIR and DMPA BIIR grounds have to be considered and ruled in or out before you can get onto national grounds outwith the BIIR framework.

Habitual Residence

11) Habitual residence features as a component in 6 of the indents in Article 3.

12) Apart from the meaning of habitual residence itself the meaning of indents 5 and 6 has been the subject of judicial and academic discussion in recent years. The question of whether the Petitioner has to be 'habitually resident' in the 12 or 6 month period referred to or merely 'resident' is the area of controversy. Attempts have been made on several occasions to get the issue referred to the ECJ or the CJEU but so far without success. The issue is referred to again in Chai-v-Peng [2014] EWHC 1519 (Fam) on 1st May 2014.

13) Although the habitual residence of children has received intense scrutiny over the last 3 years that of adults has not. The CJEU has considered habitual residence in 2 cases and the Supreme Court in 3.

   a) *Re A (Areas of Freedom, Security and Justice) (Case C – 523/07)* [2009] 2 FLR 1

   b) *Mercredi v Chaffe (Case C – 497/10)* [2011] 2 FLR 515,

   c) *A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and others intervening)* [2013] 3 WLR 761;

d) *In re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] 3 WLR 1597

e) *In re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] 2 WLR 124)

14) This may be because habitual residence of adults has not been devilled by the legal overlays relating to abduction that have created problems in children's habitual residence cases.

15) The issue of the habitual residence of adults has been considered recently in

a) *V-v-V (Divorce: Jurisdiction)* [2011] 2 FLR 778, (Peter Jackson J)

b) *Tan-v-Choy [2014] EWCA Civ 251.* (Macur and Aikens LJJ and the President of the QBD)

16) Most considerations refer back to *Marinos-v-Marinos [2007] EWHC 2047 (Fam)*.

17) The principles which can be drawn from these cases can be summarised thus,

a) Habitual residence is a question of fact. (Tan, §6 & 15). Much will depend on the credibility of the witnesses who the judge will see and assess.

b) Habitual residence means, *"the place where the person had established, on a fixed basis, his permanent or habitual centre of interests, with all the relevant facts being taken into account for the purpose of determining such residence"* (Marinos, §33, V-v-V, §35, Tan, §10 &11.

c) A person can be habitually resident only in 1 country at a time for the purposes of EU law. (Marinos, §38-43, V-v-V, §36, Tan, §10.

d) The assessment of habitual residence involves a consideration of all sorts of facts. The context of the presence is relevant (Marinos §36) as are the intentions of the parties in respect of their presence (V-v-V, §38). In the light of the decisions of the UKSC in the 'Trilogy' the intentions of the adults are clearly relevant and the 'state of mind' in terms of 'habitual centre of interests' is likely to be relevant.

e) Habitual residence and residence are different. (Marinos §46, V-v-V, para 47). Residence is different from habitual residence. You can be resident in 2 countries simultaneously albeit habitually resident in only 1. Residence is a less permanent condition and can apply where a person has 2 main homes. Indents 5 and 6 of Article 3 therefore require habitual residence at the time of issue and residence for the period before. (Marinos §46 V-v-V, §52).

f) The Court of Appeal acknowledged in Tan-v-Choy (Macur LJ at §18, Aikens at §29-30) that there is a dispute as to the true meaning of indents 5 & 6. They refused to refer to the CJEU as it was not necessary within Art 267 TFEU because of the factual matrix in that case. In a case with the Petitioner having returned to England within 13 or 7 months before the presentation of the Petition a Reference might arise.

Legal Framework: Domicile

18) Domicile become relevant under the 7th indent or if the case falls outside the BIIR scheme, for instance when the parties have been living abroad and are plainly not habitually resident in England.

19) Domicile is a relevant status for other purposes – tax for one- and so many of the authorities are not family ones.

20) The High Court and Court of Appeal have considered the issue recently in Sekhri-v-Ray [2014] 1 FLR 612 (Holman J) and Sekhri-v-Ray [2014] EWCA Civ 119 (Rimer, McFarlane and Vos LJJ). Both adopted (Holman §18, CA §10) a summary of the law given by Arden LJ in *Barlow Clowes International Limited-v-*Henwood [2008] EWCA Civ 577.

21) That paragraph is as follows,

> ***[8] Relevant principles of the law of domicile****General principles*
>
> *The following principles of law, which are derived from Dicey, Morris and Collins on The Conflict of Laws (2006) are not in issue:*
>
> *(i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it (Dicey, pages 122 to126).*
>
> *(ii) No person can be without a domicile (Dicey, page 126).*
>
> *(iii) No person can at the same time for the same purpose have more than one domicile (Dicey, pages 126 to128).*
>
> *(iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired (Dicey, pages 128 to 129).*
>
> *(v) Every person receives at birth a domicile of origin (Dicey, pages 130 to 133).*
>
> *(vi) Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise (Dicey, pages 133 to138).*
>
> *(vii) Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice (Dicey, pages 138 to143).*

(viii) In determining whether a person intends to reside permanently or indefinitely, the court may have regard to the motive for which residence was taken up, the fact that residence was not freely chosen, and the fact that residence was precarious (Dicey, pages 144 to151).

(ix) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, or indefinitely, and not otherwise (Dicey, pages 151 to153).

(x) When a domicile of choice is abandoned, a new domicile of choice may be acquired, but, if it is not acquired, the domicile of origin revives (Dicey, pages 151 to 153).

22) So it is well settled law that a person has a domicile of origin which remains with them throughout life and which save in exceptional circumstances cannot be extinguished. It can be put in abeyance by the adoption of a domicile of choice but will revive as and when the domicile of choice comes to an end. [See Udny-v-Udny 1869 [L.R.] 1 Sc & Div. HL]

23) A domicile of origin is capable of being put in abeyance by the acquisition of a domicile of choice. The onus of proving the acquisition of a domicile of choice lies on the party asserting the change and must be proved by cogent evidence to a high standard. The requisite components to proof of a domicile of choice are;

a) residence in another country combined with,

b) A settled intention to make his home permanently or indefinitely in that country.

Mark-v-Mark [2006] 1 AC 98 at para 39.

24) In Agulian & Another-v-Cyganik [2006] EWCA Civ 129 the Court of Appeal considered the current state of the law in relation to domicile in the context of a case involving the asserted change from a domicile or origin to a domicile of choice. The following extract from the judgment sets out their Lordships summary.

*[5] In **Re Fuld** [1968] P 675 Scarman J explained that the legal relationship between a person and the legal system of the territory which invokes his personal law is based on a combination of residence and intention. Everybody has a domicile of origin, which may be supplanted by a domicile of choice. He noted two particularly important features of domicile (page 682D-E) which are relevant to this case:*

> *"First, that the domicile of origin prevails in the absence of a domicile of choice, i.e., if a domicile of choice has never been acquired or, if once acquired, has been abandoned. Secondly, that a domicile of choice is acquired when a man fixes voluntarily his sole or chief residence in a particular place with an intention of continuing to reside there for an unlimited time." [As pointed out by Buckley LJ in **IRC v. Bullock** [1976] 1 WLR 1178 at 1184H Scarman*

J's formulation "for an unlimited time" requires some further definition]

[6] After reviewing the more important authorities and noting the need in each particular case for "a detailed analysis and assessment of facts" in relation to the subjective state of mind of the individual in question, Scarman J stated the law in terms which this court should expressly approve (page 684F-685D)

> *"(1) The domicile of origin adheres-unless displaced by satisfactory evidence of the acquisition and continuance of a domicile of choice; (2) a domicile of choice is acquired only if it is affirmatively shown that the propositus is resident in a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely. If a man intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g., the end of his job, the intention required by law is lacking; but, if he has in mind only a vague possibility, such as making a fortune (a modern example might be winning a football pool), or some sentiment about dying in the land of his fathers, such a state of mind is consistent with the intention required by law. But no clear line can be drawn; the ultimate decision in each case is one of fact-of the weight to be attached to the various factors and future contingencies in the contemplation of the propositus, their importance to him, and the probability, in his assessment, of the contingencies he has in contemplation being transformed into actualities. (3) It follows that, though a man has left the territory of his domicile of origin with the intention of never returning, though he be resident in a new territory, yet if his mind be not made up or evidence be lacking or unsatisfactory as to what is his state of mind, his domicile of origin adheres…."*

[7]Scarman J discussed another point relevant to this case-the standard of proof. He cited authorities stating that the "necessary intention must be clearly and unequivocally proved" and that the domicile of origin is more enduring than the domicile of choice and said (page 685D):

> *"…It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the person asserting the change… What has to be proved is no mere inclination arising from a passing fancy or thrust upon a man by an external but temporary pressure, but an intention freely formed to reside in a certain territory indefinitely. All the elements of the intention must be shown to exist if the change is to be established: if any one element is not proved, the case for a change fails. The court must be satisfied as to the proof of the whole; but I see no reason to infer from these salutary warnings the necessity for formulating in a probate case a standard of proof in language appropriate to criminal proceedings.*
>
> *The formula of proof beyond reasonable doubt is not frequently used in probate cases, and I do not propose to give it currency. It is enough that the authorities emphasise that the conscience of*

the court (to borrow a phrase from a different context, the judgment of Parke B in ***Barry v. Butlin [1838] 2 Moo P.C.C. 480)*** *must be satisfied by the evidence. The weight to be attached to evidence, the inferences to be drawn, the facts justifying the exclusion of doubt and the expression of satisfaction, will vary according to the nature of the case. Two things are clear-first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists: and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words."*

25) The following points can be derived from the cases referred to above.

a) A domicile of choice is acquired when a person fixes his sole or chief residence in a place with a voluntary and freely formed intention independent of external pressures (i.e. financial, detention etc) to reside there permanently or for an unlimited time.

b) The decision on this issue will involve a detailed analysis and assessment of the facts over the whole of the individuals life not just the period since the move to a new country occurred.

c) If a person intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency (i.e. the termination of work) the necessary intention will be lacking.

d) The burden of proving abandonment of a domicile of origin and acquisition of a domicile of choice is upon the person asserting the change. Abandonment of the domicile of origin is a very serious issue and the standard of proof is correspondingly high. The court must be clearly satisfied of the change to a high standard with cogent and convincing evidence. Proving a change from one domicile of choice to another domicile of choice will be easier than proving a change from a domicile of origin to one of choice.

e) Whilst comparison with the facts of other domicile cases can be a sterile exercise it is worthy of passing comment that in the Bullock case there was residence in the UK of 40 years but no change of domicile, in R-v-R residence in France of 10 years with no change of domicile and in Agulian residence primarily in England for about 43 years with no change in domicile.

f) The cases all demonstrate the need for a detailed examination and analysis of the detail of the asserted case encompassing all aspects of the individuals life and his subjective state of mind as demonstrated by his actions or inaction.

Staying proceedings: 'Owusu'

26) Section 5(6) and Schedule 1 of the Domicile and Matrimonial Proceeedings Act 1973 permit the court to stay a petition issued in England if,

a) There are proceedings in another jurisdiction in respect of the marriage (it does not matter whether they were started before or after the English petition)

b) The balance of fairness (including convenience) has to be such that it is appropriate for the proceedings in the foreign jurisdiction to be first disposed of .

27) Since the ECJ decided *Owusu-v-Jackson C281/02* [2005] QB 801 there had been a debate as to whether an English court could stay proceedings where it had jurisdiction under the Regulation.

28) Lucy Theis QC (as she then was) decided the issue in JKN v JCN (Divorce: Forum) [2011] 1 FLR 826 and concluded that there was a power to stay under DPMA.

29) More recently in *Mittal-v-Mittal* [2013] EWCA Civ 1255 the Court of Appeal has concluded that the jurisdiction to stay exists. Bodey J had decided the same way at first instance. This was referred to in the *Tan* case (§37) and unless and until there is an opportunity either to get to the Supreme Court or the CJEU it can be regarded as settled law. The amendments to Brussels I (EC Reg 44/2001) to be effected by EC Reg 1215/2012 will permit a stay even in civil matters. There is probably little mileage left in it.

Stay and Forum Non Conveniens

30) If the 2 competing jurisdictions are EU Member States the power to stay proceedings does not arise: s.5 and para 9 of Sch 1 DPMA 1973. If they are governed by BIIR the provisions of Article 16 and 19 will apply: *Mittal* (supra) at § 48 and *Jefferson-v-O'Connor* [2014] EWCA Civ 38. So a purely intra EU case will be governed by BIIR. For proceedings in another jurisdiction s.5 and para 9 of Sch 1 DPMA can apply (or s.49(2) SCA 1981 if necessary §48 in *Mittal*). Whether any further grounds for stay (i.e. abuse or estoppel) can be taken account of is unclear. Mittal (§36) suggests they could. Jefferson avoids the point (§34). BIIR provides a comprehensive and prescriptive scheme of 'lis alibi pendens'.

31) Lucy Theis QC summarised the approach to stay on the basis of forum conveniens in *JKN v JCN (Divorce: Forum)* [2011] 1 FLR 826. She said,

> **[*63]** *The leading cases are* Spiliada Maritime Corp v Cansulex Ltd The Spiliada *[1987] AC 460, [1986] 3 WLR 972 and* de Dampierre v de Dampierre *[1988] 1 AC 92, [1987] 2 WLR 1006, [1987] 2 FLR 300. In the latter case the House of Lords held the test under para 9 Sch 1 to the 1973 Act was to be approached on the same basis as the common law test in* Spiliada. *Lord Goff of Chieveley set out the considerations for the court in* Spiliada *at 476–478 and 985–987 respectively:*
>
> *(i)* *a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum having competent jurisdiction, which is the appropriate forum for the trial of the action i.e. where the case may be tried more suitably in the interests of all the parties and the ends of justice;*
>
> *(ii)* *if the court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country;*
>
> *(iii)* *the court will have regard (inter alia) to whether jurisdiction has been founded as of right; is the connection with England a fragile one?*
>
> *(iv)* *If 'substantial justice' can be done in the available, more appropriate forum, or in both forums, the court should not have regard to a particular juridical advantage for one party in one forum rather than the other;*
>
> *(v)* *if there is no other available forum which is clearly more appropriate for the trial of the action, the court should ordinarily refuse the stay;*
>
> *(vi)* *if there is some other available forum which is prima facie more appropriate, the court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted;*
>
> *(vii)* *the court must consider all the circumstances of the case including those which go beyond those taken into account when considering connecting factors with other jurisdictions eg will the plaintiff obtain justice in the foreign jurisdiction?*

32) The Court of Appeal has confirmed the continuing relevance of the De Dampierre and Spiliada cases in *Tan-v-Choy* (supra) . The language used is 'prima facie clearly more appropriate'.

33) Expert evidence of the approach in that jurisdiction might be required but not as to whether they actually have jurisdiction: *Bentinck-v-Bentinck* [2007] 2 FLR 1 and *T-v-P (Jurisdiction)* [2013] 1 FLR 478.

34) The Lugano Convention may apply to some other countries, i.e. Switzerland. See T-v-P (above).

35) On a practical level in considering a stay the court may look at ,

a) Where the parties live and where they have recently lived

b) Language

c) Cultural familiarity

d) Access to funds to pursue proceedings

e) Presence of witnesses

f) Stage of proceedings/length of proceedings (probably not whether they have jurisdiction though if needs expert evidence to determine)

g) If there is any obvious asset base.

h) The nature of the legal system….

i) Is the English jurisdiction a technical one or where there is a real connection,

David Williams QC

4 Paper Buildings

9th June 2014.

Section 5

Hague Abduction

Henry Setright QC, Hassan Khan, Alistair G Perkins

Sarah Vivian & John Mellor (Cafcass)

Hague Convention

Mrs Fortune-DeKlein says that the plan was always for the children to return to the USA and that they retained their habitual residence there. She says Mr Fortune is wrongfully retaining the children having expressed the intention not to return them at the conclusion of the 2 year period. She says she suspects the affair with Hute has been going on for some time and that it may be that Mr Fortune had formed an intention much earlier to retain the children.

Mr Fortune says the children view England as their home and are habitually resident here and that they object to returning to the USA.

Joanna is interviewed and says she never viewed the US as her home and she has integrated in England and doesn't want to return. Frank says he much preferred the US and would like to live there again.

Issues

Habitual residence of children

Child's objections

Separation of siblings/1/2 siblings

Joinder of children

Neutral Citation Number: [2014] EWHC (TBA) (Fam)

Case No: FD14PO0786

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 June 2014

Before :

MR HENRY SETRIGHT QC

- -

Between :

MF-dK — **Applicant**

- and -

CF-dK — **Respondent**

- -

- -

Mr Hassan Khan of Counsel (instructed by **Camberwell Dyson, Solicitors, London W1**)

for the **Applicant**

Mr Alistair Perkins of Counsel (instructed by **Free For All Law Solicitors, London SE21**)

for the **First Respondent**

Hearing dates: 12 June 2014

- -

Judgment not yet approved by the court for handing down (and subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

THE DEPUTY HIGH COURT JUDGE:

Introduction

1. These are Hague Convention proceedings brought by the Mother, MF-dK, by which she seeks the return of the parties' children, J, a girl aged 13, and F, a boy aged 7, to the United States, and in particular to the State of New York. The application is resisted by the children's Father, CF-dK.

2. The history of international movement is undisputed in terms of the sequence of events, and can be shortly summarised. From 2008 to 2013 the family was living in New York, and was habitually resident in that State. In January 2013 they all travelled to England, in furtherance of a plan by which the Mother, who is a relatively highly paid professional person, would take up employment in this country on, initially, a two-year contract. The home owned by the parties in New York was rented out, and the family moved into accommodation in Balham, South London, which was rented for that purpose. The Mother duly took up her employment, and entirely appropriately both children were placed in local English schools. In 2013, the Father, who describes himself in his evidence as a 'house husband' and whose business activities are on a very much smaller scale in every respect than are those of his wife, received a substantial inheritance payment, and with it the parties purchased a house, also in the South London area. The family moved into it, the children remaining at their existing schools.

3. Sadly, in the early summer of this year, the parents' relationship fractured. The Mother alleges that she discovered that the father was having an affair with the live-in nanny, Ms HF. She gave the Father an ultimatum, requiring him to return with her and the children – but without the nanny – to New York. At this stage, there was still almost 6 months of the original 2 year contract to run.

4. The Father refused, and told the Mother that he would be staying in England with the children. Both parents consulted lawyers, and each issued divorce and custody proceedings – the Father in England, the Mother in New York. Issues of jurisdiction have arisen, but these are not currently before me. However, the Mother, alleging that by his refusal to return the children to New York, the Father was wrongfully retaining them, last week commenced Hague Convention proceedings, which, remarkably, are before me today for determination. I should say that the Court is grateful to both Counsel, Mr Khan for the Mother, and Mr Perkins for the Father, and to their experienced Solicitors, for ensuring that this case was brought on strikingly swiftly, and heard this afternoon with commensurate economy of time. I am also grateful to CAFCASS, and to Mr Mellor and Ms Vivian, who saw the children at very short notice, prepared a report within hours, and who have come to Court to give oral evidence today.

The issues

5. In their commendably concise skeleton arguments Counsel have isolated the issues as follows. First, Mr Perkins disputes the assertion, made by Mr Khan, that the family has continued to be habitually resident in New York throughout its stay, and so remained as at the date of alleged retention. He says that habitual residence had moved, and that, notwithstanding the intitial 2 year contract, the factual reality is that the family was integrated in, and had become habitually resident in, England and Wales. Both Counsel agree that I must evaluate habitual residence from a child-centric perspective, and that there is at least the technical possibility that each of the children may each have a different habitual residence.

6. In the event that Mr Perkins is unsuccessful on habitual residence, he raises a defence of child's objections under Article 13 – and the report of Mr Mellor, containing as it does ostensible indications by J that she is opposed to returning to New York, and by F that he ostensibly wants to go back, means that this issue is also joined.

7. Finally, in the event that it is found that J does object, but F does not, how is the discretion to be exercised – Mr Perkins' case, opposed by Mr Khan, is that, pursuant to Article 13(b) of the Hague Convention, to separate the children, by returning F but not J, would place F in an intolerable situation, as would returning J contrary to her objections.

The Law

8. The approach to making findings on habitual residence, and therefore the determination of whether or not a case under Article 3 of the Hague Convention is established, has unsurprisingly been the main focus of argument. The trilogy of cases determined last year and early this year in the United Kingdom Supreme Court, building on two decisions of the Court of Justice of the European Union, namely Proceedings brought by A (Case C-523/07) [2010] Fam 42 and Mercredi v Chaffe (Case C-497/10PPU) [2012] Fam 22, disposed of the 'traditional English' test for habitual residence in Ex-parte Shah, and replaced it with "the place which reflects some degree of integration by the child in a social and family environment". Counsel have rightly distilled the essential guidance as that contained first in the majority judgment of Lord Wilson in the case of Re: LC (Children) [2014] UKSC 1, at paragraphs 35 to 37, at which he said:

'35 At all events what our courts are now required to do is to search for some integration on the part of the child in a social and family environment in the suggested state of habitual residence.

In the Mercredi case, cited above, the CJEU said:

"53 The social and family environment of the child, which is fundamental in determining the place where the child is habitually resident, comprises various factors which vary according to the age of the child. The factors to be taken into account in the case of a child of school age are thus not the same as those to be considered in the case of a child who has left school and are again not the same as those relevant to an infant.

54 As a general rule, the environment of a young child is essentially a family environment determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of.

55 That is even more true where the child concerned is an infant. An infant necessarily shares the social and family environment of the circle of people on whom he or she is dependent..."

In A v A, cited above, this court adopted the propositions in the two latter paragraphs. Lady Hale said, at para 54:

"(vi) The social and family environment of an infant or young child is shared with those (whether parents or others) on whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned."

36 These propositions, which are carefully expressed to apply only to infants and young children, have an echo in observations made by the High Court of Australia in LK v Director-General, Department of Community Services (2009) 237 CLR 582, as follows:

"27 When speaking of the habitual residence of a child it will usually be very important to examine where the person or persons who are caring for the child live – where those persons have their habitual residence. The younger the child, the less sensible it is to speak of the place of habitual residence of the child as distinct from the place of habitual residence of the person or persons upon whom the child is immediately dependent for care and housing. But if, as the writings about the Abduction Convention and like instruments repeatedly urge, the question of habitual residence of a child is one of fact, it is important not to elevate the observation that a child looks to others for care and housing to some principle of law like the (former) law of dependent domicile of a married woman."

'37 Where a child of any age goes lawfully to reside with a parent in a state in which that parent is habitually resident, it will no doubt be highly unusual for that child not to acquire habitual residence there too. The same may be said of a situation in which, perhaps after living with a member of the wider family, a child goes to reside there with both parents. But in highly unusual cases there must be room for a different conclusion; and the requirement of some integration creates room for it perfectly. No different conclusion will be reached in the case of a young child. But, where the child is older, in particular one who is an adolescent or who should be treated as an adolescent because she (or he) has the maturity of an adolescent, and perhaps also where (to take the facts of this case) the older child's residence with the parent proves to be of short duration, the inquiry into her integration in the new environment must encompass more than the surface features of her life there. I see no justification for a refusal even to consider evidence of her own state of mind during the period of her residence there. Her mind may – possibly – have been in a state of rebellious turmoil about the home chosen for her which would be inconsistent with any significant degree of integration on her part. In the debate in this court about the occasional relevance of this dimension, references have been made to the "wishes" "views" "intentions" and "decisions" of the child. But, in my opinion, none of those words is apt. What can occasionally be relevant to whether an older child shares her parent's habitual residence is her state of mind during the period of her residence with that parent. In the Nilish Shah case, cited above, in which he propounded the test recently abandoned, Lord Scarman observed, at p 344, that proof of ordinary (or habitual) residence was "ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind". Nowadays some might not accept that evidence of state of mind was not susceptible of objective proof; but, insofar as Lord Scarman's observation might be taken to exclude the relevance of a person's state of mind to her habitual residence, I suggest that this court should consign it to legal history, along with the test which he propounded.

9. In her minority judgment, the Deputy President, Lady Hale, said, at paragraphs 57 to 64:

'57 Lord Wilson has identified the principal question raised by these appeals in relation to an adolescent child: is her state of mind relevant to whether or not she has acquired a habitual residence in the place where she is living? He has answered that question "yes" and I entirely agree with that answer. However the question cannot be restricted to adolescent children. It also arises in relation to the two younger children, L and A. They are themselves

parties to this appeal and are represented by their guardian. That guardian is the same Cafcass officer, Ms Vivian, who has interviewed the children twice in the proceedings. Before this court she has argued that they were not habitually resident in Spain on the relevant date.

58 In my view, the answer to the question of principle has to be the same for all three children: their state of mind is relevant to whether or not they have acquired a habitual residence in the place where they are living. The logic which makes an adolescent's state of mind relevant applies equally to the younger children, although of course the answer to the factual question may be different in their case. The logic flows from the principles adopted by the Court of Justice of the European Union in Proceedings brought by A (Case C-523/07) and Mercredi v Chaffe (Case C-497/10PPU) and now adopted by this Court in the recent cases of A v A [2013] UKSC 60, [2013] 3 WLR 761 and In re L (A Child) (Habitual Residence) [2013] UKSC 75; [2013] 3 WLR 1597.

59 The first principle is that habitual residence is a question of fact: has the residence of a particular person in a particular place acquired the necessary degree of stability (permanent is the word used in the English versions of the two CJEU judgments) to become habitual? It is not a matter of intention: one does not acquire a habitual residence merely by intending to do so; nor does one fail to acquire one merely by not intending to do so. An illegal immigrant may desperately want to become habitually resident in this country, but that does not mean that he does so. A tax exile may desperately want to lose his habitual residence here, but that does not mean that he does so. Hence, although much was made of it in argument, the question of whether or not a child is "Gillick-competent" is not the point.

60 In the case of these three children, as of others, the question is the quality of their residence, in which all sorts of factors may be relevant. Some of these are objective: how long were they there, what were their living conditions while there, were they at school or at work, and so on? But subjective factors are also relevant: what was the reason for their being there, and what were their perceptions about being there? I agree with Lord Wilson (para 37) that "wishes", "views", "intentions" and "decisions" are not the right words, whether we are considering the habitual

residence of a child or indeed an adult. It is better to think in terms of the reasons why a person is in a particular place and his or her perception of the situation while there – their state of mind. All of these factors feed into the essential question, which is whether the child has achieved a sufficient degree of integration into a social and family environment in the country in question for his or her residence there to be termed "habitual".

61 It would be wrong to overlay these essentially factual questions with a rule that the perceptions of younger children are irrelevant, just as it was to overlay them with a rule (rejected in A v A) that a child automatically shares the habitual residence of the parent with whom he is living. The age of the child is of course relevant to the factual question being asked. As the CJEU pointed out in Mercredi v Chaffe, at para 53:

"The social and family environment of the child, which is fundamental in determining the place where the child is habitually resident, comprises various factors which vary according to the age of the child. The factors to be taken into account in the case of a child of school age are thus not the same as those to be considered in the case of a child who has left school and are again not the same as those relevant to an infant."

62 Clearly, therefore, this is a child-centred approach. It is the child's habitual residence which is in question. It is the child's integration which is under consideration. Each child is an individual with his own experiences and his own perceptions. These are not necessarily determined by the decisions of his parents, although sometimes these will leave him with no choice but to buckle down and get on with it. The tiny baby whose mother took him back to her home country in Mercredi v Chaffe was in a very different situation from any of the three children with whom we are concerned. The environment of an infant or very young child is (one hopes) a family environment and so determined by reference to the person with whom he lives. But once a child leaves the family environment and goes to school, his social world widens and there are more factors to be taken into account. Furthermore, where parents are separated, there may well be two possible homes in which the children can live and the children will be well aware of this. This may well affect the degree of their integration in a new environment.

63 The quality of a child's stay in a new environment, in which he has only recently arrived, cannot be assessed without reference to the past. Some habitual residences may be harder to lose than others and others may be harder to gain. If a person leaves his home country with the intention of emigrating and having made all the necessary plans to do so, he may lose one habitual residence immediately and acquire a new one very quickly. If a person leaves his home country for a temporary purpose or in ambiguous circumstances, he may not lose his habitual residence there for some time, if at all, and correspondingly he will not acquire a new habitual residence until then or even later. Of course there are many permutations in between, where a person may lose one habitual residence without gaining another.

64 I agree with Lord Wilson that Cobb J did not approach the question in the way in which he no doubt would have done had he had the benefit of this Court's decisions in A v A and In re L. He approached it very much from the point of view of parental rights. Under English law, the mother alone has parental responsibility for the two older children (only because the change in the law giving parental responsibility to all fathers named on the birth certificate only came into force later; we have no evidence as to what the position is under Spanish law). She could therefore change their habitual residence. The father does have parental responsibility for the two younger children, but Cobb J held that he had (albeit reluctantly) consented to their change in habitual residence. But it is not a question of the parents' determining the habitual residence of their children. It is a question of the impact of the parental decisions about where they and the children will live upon the factual question of where the children habitually reside.'

10. The arguments of the parties against this background of authority have included reference in the submissions of Mr Khan on behalf of the Mother to the extent to which a 'temporary' period – in this case, that of the two-year contract – can form the basis of a change of habitual residence – and the meaning in this context of '*permanence*' and '*stabilité*' – with reference made to the judgment of the UK Supreme Court in the case of Re: KL (a Child) [2013] UKSC 75, to the right approach to the essentially factual test of 'integration', and, again from Mr Khan, to the extent to which the intention of the parties, and an alleged deception by one of them, or an act

undermining the original purpose of the stay, can influence the Court's findings. Both Counsel made energetic submissions as to the impact, if any, of the states of mind of each of the children on the attribution of habitual residence, and of any disparity in this regard between the parents.

11. I will shortly turn to the resolution of these issues. However, I should first record that there was agreement between the parties on the applicable law with regard to children's objections and Article 13(b) – here the revolutionary (or Euro-evo-lutionary) developments in recent authority are not reflected in any radical changes in the law applicable to these 'defences' and to any exercise of the discretion. However, I remind myself that, unlike the case of LC (*ibid*) and notwithstanding the observations of the Court in the case of Re: I (a Child) [2009] UKSC 10, this is not an intra-EU case, and therefore, ostensibly, the reversionary arrangements under Article 11.6 to 11.8 do not apply.

The hearing

12. I have read the commendably slim bundle, which includes a statement from the Mother's Solicitor, and then one from each of the parents, together of course with the parties skeleton arguments. I have also read a report by two very experienced CAFCASS practitioners, Mr John Mellor and Ms Sarah Vivian, prepared, as I have said, with considerable despatch, and unusually disclosed to the parties (because of the speed with which this case came on for hearing) in draft form.

13. In their report Mr Mellor and Ms Vivian recorded (in summary) as follows:

In respect of J -

'*J strongly objected to returning to the USA. She considers England to be her home now, having lived here for 18 months. She said 'this is our home – this is our family's home' She said that she has made friends here, likes her school and would be devastated if she had to return. She said that if the court ordered her return 'her life would not be worth living' and that she would 'run away'*

When asked why she came to England in the first place she said that she knew it was for her mother's new job which would be for 2 years at an insurance company. When asked what would happen at the end of the 2 years she hesitated and responded by saying that she really loves her mother and has been trying to persuade her to stay here.

J said that when she was in the USA she did not have as many friends and she did not like all the Skyscrapers in New York. She said she did not think it was a good place for her or 'F' to grow up.

J's maturity is commensurate with her chronological age.'

And in respect of F he said:

'*F told me that he wants to go back to the USA with his mother and sister. He said he likes eating New York pretzels which he said are 'just not the same in London' He described New York as 'awesome' and wanted to go back to their penthouse which overlooks Central Park and play with his X box.*

When I asked F about his school in England, he paused, and I asked him 'why'? He said – 'I can't remember what to say'. A little later he said that 'Yeh, school can be sort of fun with my mates, but I don't want to upset anyone. I want to go back'.

I got the sense that F was confused, but did not get the sense that F had been deliberately influenced when speaking to me although I appreciate that he is very attached to his mother and sister.

When I suggested delicately to F how he would feel if J remained in England and he was allowed to go back to the USA with his mother, he became silent, put his head down and became tearful.

I found F to be immature for his years and unable to comprehend the medium or long term implications of remaining here or moving back to the USA.

<u>*Recommendations*</u>

I have struggled with making a recommendation in this case as if the court finds that J objects to returning to the USA and F does not, the impact of a separation of these closely bonded siblings would cause me concern.

I am mindful that both children are acutely aware of the recent demise of their parents' marriage and their father's affair with their nanny.'

14. Mr Mellor and Ms Vivian did not – and I emphatically make no criticism of them for that – it was not part of their remit – make any express observations about habitual residence, but as will be apparent, the content of the report, and subsequently of the oral evidence, was of importance in that it provided information feeding into the factual picture of integration – or the lack of it – in this family.

15. I heard oral evidence, first from Mr Mellor and Ms Vivian, and then on a time and issue limited basis, from each of the parents.

Findings and discussion

16. I turn first to the question of integration, the determination of which I find falls into three parts – first, was there a factual integration at the material date in New York – or in England. The extrinsic circumstances – homes, possessions, schools, registration with professionals such as doctors, friends, and so on, all fall to be considered in this regard. Second, was the sojourn in England one which had the requisite degree of 'permanence' or stabilité'? Third, reminding myself that I must look at integration in a child-centric, not parent-centric way, what if any was the impact of the 'state of mind' of either of the children, and can I in any event discern with any reliability what that 'state of mind' authentically was in a case in which, I find, both children have been subjected, understandably, to a certain amount of exposure to the strong parental feelings which have arisen out of the breakdown of their relationship, and the onset of these proceedings.

17. I make the following findings:

    (a) that it is beyond peradventure established that

[Transcriber's note: From this point the tape is blank]

IN THE HIGH COURT OF JUSTICE **Case No: FD14PO0786**

FAMILY DIVISION

BETWEEN

May Fortune DeKlein **Applicant**

-and-

Costa Fortune **Respondent**

Skeleton Submissions on behalf of the Applicant mother

Habitual residence

1. Following the landmark judgment of the Supreme Court in Re A (Jurisdiction: Return of Child) [2013] UKSC 60 it is now well established that the test is the European one.

2. That test is contained within Re A (Area of Freedom, Security and Justice) [2009] 2 FLR 1 at paragraph 44
"*the place which reflects some degree of integration by the child in a social and family environment*"

3. In assessing this question the court will look to the following matters:
   (a) All the circumstances specific to the individual case – Re A §37/44
   (b) Duration, regularity, conditions and reasons for stay on the territory of a Member State and the family's move to that State
   (c) The child's nationality
   (d) The place and conditions of attendance at school
   (e) Linguistic knowledge
   (f) The family and social relationships of the child in that State
   (g) It is for the national court to determine habitual residence
   As per Re A, supra §44

4. This test has been further interpreted by the Supreme Court In the matter of LC (Children) [2014] UKSC 1 – see Lord Wilson at paragraphs 35-37 and Baroness Hale at paragraphs 59-60. This case established that the court may look at the state of mind of an adolescent child during the period of residence in the requested state, in determining the issue of his/her integration.

5. This refined test is applied to the facts of this case as follows:
   (a) It is accepted that the various *objective factors*, which cannot be seen as unusual are the duration of the stay here (18 months) and the children being happy in their school and home life in England. These issues are all predictable given the planned purpose and duration of the stay. For all intents and purposes the move was temporary and did not possess the requisite level of stability required for integration in England - *as per* KL (Abduction: Habitual Residence: Inherent Jurisdiction) [2013] UKSC 75
   (b) As for *subjective factors*, Joanna's own state of mind as to her integration in a family and social environment cannot be determinative if the court carefully examines why she is expressing the views as she does:

- She has not always thought of England as being hers or her family home – she lived in New York for 5 years previously between 2008-2013.
- She hesitated when asked by Mr Mellor as to what was to happen at the end of the 2 year period of her mother's employment
- It is more likely than not that she was aware that their stay in England was for an initial period of 2 years and the formation of her current views clearly coincided with the demise of her parent's marriage in June 2014.
- The court should ask itself: Are her views a true reflection of her feelings and state of mind? Has she been recruited to one side of the parental dispute? Is the turmoil that she is experiencing less about her wish to remain in England or return to the USA, and more about a general manifestation of her confusion about her current predicament; valuing and loving both parents as she does.

Child's objections

6. The issue of child's objections continues to be determined with reference to the gateway findings set out by Baroness Hale in Re M (Children) (Abduction: Zimbabwe) [2008] 1 FLR 251 §46 namely (a) does the child herself object to being returned and (b) has the child attained an age and degree of maturity at which it is appropriate to take account of her views.

7. It is beyond argument that Frank does not object in Convention terms nor has he reached a level of maturity commensurate with his age – the mandatory obligation to return under Article 12 therefore applies to him.

8. It is conceded that Joanna's position is more complicated. Joanna is said to strongly object and that her maturity is commensurate with her age.
   In Re W (Abduction: Child's Objections) [2010] EWCA Civ 520, [2010] 2 FLR 1165 Wilson LJ stated that:
   'Earlier confusion in our jurisprudence about the meaning of the phrase "to take account" in Article 13 (exemplified, for example, in Re T …) has in my view now been eliminated. The phrase means no more than what it says so, albeit bounded by considerations of age and degree of maturity, ***it represents a fairly low threshold requirement****. In particular, it does not follow that the court should "take account" of a child's objections only if they are so solidly based that they are likely to be determinative of the discretionary exercise which is to follow.'*

9. Given the relatively 'low threshold' for establishing the gateway findings it is conceded that Joanna objects to a return to the USA.

10. Once the gateway is open, the question of discretion is often looked at through the prism of the test formulated in *Re T (Abduction: Child's Objections to Return)* [2000] 2 FLR 192, Ward LJ (at 204B) stated that the question whether it is appropriate to take account of the child's views:
    'requires an ascertainment of the strength and validity of those views which will call for an examination of the following matters, among others.

    (a) What is the child's own perspective of what is in her interests, short, medium and long-term? Self perception is important because it is *her* views that have to be judged appropriate.
    (b) To what extent, if at all, are the reasons for objection rooted in reality or might reasonably appear to the child to be so grounded?
    (c) To what extent have those views been shaped or even coloured by undue

influence and pressure, directly or indirectly exerted by the abducting parent?

(d) To what extent will the objections be mollified on return and where it is the case, on the removal from any pernicious influence from the abducting parent?'

11. Further, Baroness Hale in Re M, *supra* encapsulated her observations as to the discretion stage as follows:
[46] …. *Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances*.

12. Even if the gateway is open and discretion is engaged the courts should exercise it in favour of a return:
    (i) Joanna's expressed wishes are suggestive of a vulnerable teenager reacting to a highly emotional and acute period of family breakdown;
    (ii) It is probable that Joanna's views have either been directly or indirectly influenced or coloured by her father;
    (iii) The reactive views of Joanna must be treated with caution as she is unlikely to act upon them;

Article 13b – Will a sibling split create an intolerable situation?

13. The father is likely to argue that the Article 13(b) threshold is crossed if the court orders a return of Frank and not Joanna resulting in a sibling split.

14. There are a range of cases which have considered these issues: Re C (Abduction: Grave Risk of Psychological Harm) [1999] 1 FLR 1145; Re C (Abduction: Grave Risk of Physical and Psychological Harm) [1999] 2 FLR 478; Re T (Abduction: Child's Objection to Return) *)* [2000] 2 FLR 192 and Re H (Abduction) [2009] EWHC 1735 (Fam), [2009] 2 FLR 1513.

15. Three submissions are made on behalf of the mother:
    (a) Not all cases that involve sibling separation give rise to an Article 13(b) defence. Each case must be decided on its own facts
    (b) There is no clear evidence of harm, over and above that which one might expect in any case where a separation of siblings is contemplated
    (c) To accede to an Article 13b defence in the circumstances of this case would drive a 'coach and fore' through the Convention.

Hassan Khan

Counsel for the Applicant mother

12th June 2014

AUTHORITIES

IN THE MATTER OF LC (CHILDREN) [2014] UKSC 1

LORD WILSON OF CULWORTH

[30] It was a singular misfortune for Cobb J to be required to make his determination of the issue of habitual residence (and for the Court of Appeal to be required to review it) so shortly prior to this court's issue, on 9 September 2013, of its judgments in *A v A and Another (Children*: *Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening)* [2013] UKSC 60, [2014] AC 1, sub nom *Re A (Jurisdiction: Return of Child)* [2014] 1 FLR 111, [2014] 1 All ER 827. The court there held that:

(i) the test for the determination of habitual residence under the Convention, under BIIR and under domestic legislation should be the same (para [35], Baroness Hale);

(ii) the test set out in the *Nilish Shah* case, cited above, should be abandoned (para [54](v), Baroness Hale); and

(iii) the test should be the one adopted by the CJEU in *A, Proceedings brought by* [2009] ECR I-2805, [2010] Fam 42, [2010] 2 WLR 527, sub nom *Re A (Area of Freedom, Security and Justice)* [2009] 2 FLR 1, and affirmed by it in the *Mercredi* case, cited above, namely 'the place which reflects some degree of integration by the child in a social and family environment' (para [54](iii) and (v), Baroness Hale).

[34] At all events what our courts are now required to do is to search for some integration on the part of the child in a social and family environment in the suggested state of habitual residence.

[35] In *Mercredi v Chaffe* [2012] Fam 22, [2011] 1 FLR 1293, the CJEU said:

> '53 The social and family environment of the child, which is fundamental in determining the place where the child is habitually resident, comprises various factors which vary according to the age of the child. The factors to be taken into account in the case of a child of school age are thus not the same as those to be considered in the case of a child who has left school and are again not the same as those relevant to an infant.
>
> 54 As a general rule, the environment of a young child is essentially a family environment determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of.
>
> 55 That is even more true where the child concerned is an infant. An infant necessarily shares the social and family environment of the circle of people on whom he or she is dependent …'

In *A v Aand Another (Children: Habitual Residence) (Reunite International Abduction Centre and Others Intervening)* [2013] UKSC 60, [2014] AC 1, this court adopted the propositions in the two

latter paragraphs. Baroness Hale said, at para [54]:

‘(vi) The social and family environment of an infant or young child is shared with those (whether parents or others) on whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned.'

[37] Where a child of any age goes lawfully to reside with a parent in a state in which that parent is habitually resident, it will no doubt be highly unusual for that child not to acquire habitual residence there too. The same may be said of a situation in which, perhaps after living with a member of the wider family, a child goes to reside there with both parents. But in highly unusual cases there must be room for a different conclusion; and the requirement of some integration creates room for it perfectly. No different conclusion will be reached in the case of a young child. But, where the child is older, in particular one who is an adolescent or who should be treated as an adolescent because she (or he) has the maturity of an adolescent, and perhaps also where (to take the facts of this case) the older child's residence with the parent proves to be of short duration, the inquiry into her integration in the new environment must encompass more than the surface features of her life there. I see no justification for a refusal even to consider evidence of her own state of mind during the period of her residence there. Her mind may – possibly – have been in a state of rebellious turmoil about the home chosen for her which would be inconsistent with any significant degree of integration on her part. In the debate in this court about the occasional relevance of this dimension, references have been made to the ‘wishes' ‘views' ‘intentions' and ‘decisions' of the child. But, in my opinion, none of those words is apt. What can occasionally be relevant to whether an older child shares her parent's habitual residence is her *state of mind* during the period of her residence with that parent. In *Akbarali v Brent London Borough Council; Abdullah v Shropshire County Council; Shabpar v Barnet London Borough Council; Jitendra Shah v Barnet London Borough Council; Barnet London Borough Council v Nilish Shah* [1983] 2 AC 309, in which he propounded the test recently abandoned, Lord Scarman observed, at 344, that proof of ordinary (or habitual) residence was ‘ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind'. Nowadays some might not accept that evidence of state of mind was not susceptible of objective proof; but, insofar as Lord Scarman's observation might be taken to exclude the relevance of a person's state of mind to her habitual residence, I suggest that this court should consign it to legal history, along with the test which he propounded.

Abstract / Summary of the unapproved joint Report of Mr Mellor and Ms Vivian (restricted, PROTECT)

Joanna – aged 13

Joanna strongly objected to returning to the USA. She considers England to be her home now, having lived here for 18 months. She said 'this is our home – this is our family's home' She said that she has made friends here, likes her school and would be devastated if she had to return. She said that if the court ordered her return 'her life would not be worth living' and that she would 'run away'

When asked why she came to England in the first place she said that she knew it was for her mother's new job which would be for 2 years at an insurance company. When asked what would happen at the end of the 2 years she hesitated and responded by saying that she really loves her mother and has been trying to persuade her to stay here.

Joanna said that when she was in the USA she did not have as many friends and she did not like all the Skyscrapers in New York. She said she did not think it was a good place for her or 'Frankie' to grow up.

Joanna's maturity is commensurate with her chronological age.

Frank – aged 7

Frank told me that he wants to go back to the USA with his mother and sister. He said he likes eating New York pretzels which he said are 'just not the same in London' He described New York as 'awesome' and wanted to go back to their penthouse which overlooks Central Park and play with his X box.

When I asked Frank about his school in England, he paused, and I asked him 'why'? He said – 'I can't remember what to say'. A little later he said that 'Yeh, school can be sort of fun with my mates, but I don't want to upset anyone. I want to go back'.

I got the sense that Frank was confused, but did not get the sense that Frank had been deliberately influenced when speaking to me although I appreciate that he is very attached to his mother and sister.

When I suggested delicately to Frank how he would feel if Joanna remained in England and he was allowed to go back to the USA with his mother, he became silent, put his head down and became tearful.

I found Frank to be immature for his years and unable to comprehend the medium or long term implications of remaining here or moving back to the USA.

Recommendations

I have struggled with making a recommendation in this case as if the court finds that Joanna objects to returning to the USA and Frank does not, the impact of a separation of these closely bonded siblings would cause me concern.

I am mindful that both children are acutely aware of the recent demise of their parents' marriage and their father's affair with their nanny.

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Case No: FD14PO0786

BETWEEN

May Fortune DeKlein

Applicant

-and-

Costa Fortune

Respondent

SKELETON ARGUMENT ON BEHALF OF THE RESPONDENT/FATHER FOR HEARING BEFORE MR HENRY SETRIGHT QC SITTING AS A DEPUTY HIGH COURT JUDGE

Prepared by Alistair G. Perkins counsel for Costa Fortune on Tuesday 10.6.14 for hearing on 12.6.14

Background to the hearing:-

1. These proceedings relate to the parties' 2 children Joanne now aged 13 and Frank aged 7.
2. The mother's application dated 2.6.14[1] seeks a summary return of both children to the United States of America pursuant to the 1980 Hague Convention.
3. This afternoon's hearing is as a consequence of paragraph 6 Mr Justice Desmond Barking's, order made on 4.6.14 listing a final hearing with a time estimate of 40 minutes.[2]

Issues between the parties:-

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[1] A1

[2] a 20

4. The father's application for both children to be made respondents to these proceedings was rejected at the hearing last week [3] . The father instructs the writer to proceed at this afternoon's final hearing as an alternative to prosecuting the draft grounds of appeal prepared by the writer's colleague Mr Geoffrey Need-Work.

5. The father's defence dated 3.6.14[4] asserts:-

   a. *Article 3* that the mother has failed to engage the 1980 Hague Convention pursuant to article 3 on the basis that, at the time she alleges the children were wrongfully retained in this jurisdiction they were not, as she asserts, in fact habitually resident immediately before the retention , in the United States of America. The father asserts that they were at the material time habitually resident in England and Wales.

   b. *Article 13* If which is not admitted the convention is engaged the father seeks to rely upon article 13 and if successful, thereafter seeks to engage the court's discretion to rebut the presumption of a return on the following basis:-

      a. That Joanne objects to being returned and has attained an age and degree of maturity at which it is appropriate for this court to take account of her views, and

      b. that given Joanne's strongly expressed objection to a return to the USA, that this would significantly impact adversely upon her , and/or

      c. to return Joanne and/or Frank together to the USA would place them in an intolerable situation and/or

      d. to separate the siblings would place them in an intolerable situation

The law:-

6. Pursuant to paragraph 19 of Mr Justice Barking's order both counsel have now lodged an agreed summary of the relevant law.

Habitual residence:-

7. The father asserts that the mother's case that as of June 2013 the children were habitually resident in United States of America is simply hopeless.

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[3] see transcript a 22
[4] B6

8. It is submitted that upon undertakings a factual enquiry of the circumstances of this family they had overwhelmingly integrated and established the requisite stabilité within this jurisdiction well before last summer.

9. The family relocated to this jurisdiction at a point when Joanne was at a tipping point in relation to her education. The father's assertion that it was agreed that the English education system would serve her long-term interest interests is consistent with the chronology. The mother's suggestion that it was always agreed that her daughter was to be extracted at such a crucial point in her education and parachuted back into the American education system lacks credibility.

10. Whilst it is accepted that the mother's contract document cites a two-year period, the father's assertion that this was a "standard" term and the expectation was the mother's contract would be renewed thereafter on a rolling basis has a resonance of truth.

11. The parties purchasing of a family home in Balham resonates with the family cementing themselves in this jurisdiction.

12. The retention of the family apartment in New York is not of itself definitive particularly having regard to the regular and consistent income that has been generated through the rental payments.

Article 13:-

13. The writer would wish to reserve his final submissions on this point until he has had an opportunity to consider the CAFCASS report (due to be filed tomorrow).

14. The father anticipates that Joanne will repeat her often expressed view that she objects to going back to America. In the past this has been strongly articulated employing rational and considered reasoning.

15. The father is anxious that Frank has been influenced by his mother's promises of the material advantages to him if they return to New York. The father's experience is that his son's views are very dependent upon who is making the enquiry and he is easily susceptible to persuasion.

16. The father submits that given Joanne deeply held conviction not to return to America to separate the children who have always been and now as a consequence of their parents disquiet are even more so, very close and emotionally supportive of each other, would have a catastrophic impact .

READING:-

17. The order of Mr Justice Barking, the transcript of his judgement, the parties statements and the agreed schedule of the law

Orders sought;

18. The father seeks a dismissal of the mother's application for summary return to the United States of America.

Tuesday, 10 June 2014

Alistair G Perkins

4 Paper Buildings,

DEVELOPMENTS IN THE APPLICATION OF HAGUE CONVENTION AND BRUSSELS II REVISED AND THE PUBLIC LAW OUTLINE

1. Following the ECJ decision in **Re C (Case C-435/06)** [2008] 1 FLR 490 it is well settled law that Brussels II Revised applies to public law children proceedings brought under Part IV of the Children Act 1989. Whilst the law in relation to private law cases concerning Brussels II Revised has become refined through it being considered by the courts on a number of occasions, the same cannot be said of public law cases where often different considerations fall to be considered. The law in such cases is in the relatively early stages of its development. The need for jurisdictional issues to be considered at an early stage in public law cases (especially before the issue of any proceedings) is now plainly part of the landscape following the judgment of the President in the case of **Re E (A Child)** [2014] EWHC 6 (Fam) and subsequent Court of Appeal judgments.

2. As will be well known to practitioners the steps a local authority is required to take when it has child protection concerns in relation to a child or children are governed by Part 12 of the Family Proceedings Rules 2010 and the Public Law Outline (PLO).

3. Many local authorities do not have a formal internal protocol in respect of international cases and therefore consider international aspects of a particular case as part of their PLO enquiries. In the initial stages under the PLO a local authority will be carrying out a multi-disciplinary assessment (maximum 45 days) as well as identifying and assessing alternative carers with the possibility of a FGC (if appropriate) in accordance with the pre-proceedings part of the procedures set out in the Practice Direction PD12A and the PLO. As a result of this assessment work the social workers will be expected to be approaching their legal departments in anticipation of a Legal Planning Meeting when the local authority's legal representative could be expected to identify a potential international case.

4. Paragraph 1.3 of the Practice Direction (PD12A) which relates to public law proceedings pursuant to Part IV of the Children Act 1989 requires (amongst other provisions) that in applying the provisions of FPR Part 12 and the PLO the court *and the parties* (emphasis added) must also have regard to a number of parts of the FPR and in particular:

> (5) to the provisions of international instruments such as Brussels II R and the Hague Convention.
>
> (Note also the provisions of FPR Part 24 (witnesses, depositions generally and taking of evidence in the Member States of the EU.)

Thus a responsibility is cast upon those representing the parents (and especially on those representing the children) to have regard to these jurisdictional issues at the earliest stage of their involvement.

5. The President has stated in clear terms the importance of identifying any jurisdictional issues in the case of **Re E (A Child)** [2014] EWHC 6 (Fam). In **Re E** the President said (at paragraph [13]):

> *"Leaving on one side altogether the circumstances of this particular case, there is a wider context that cannot be ignored. It is one of frequently voiced complaints that the courts of England and Wales are exorbitant in their exercise of the care jurisdiction over children from other European countries. There are specific complains that the courts of England and Wales do not pay adequate heed to BIIR and that public authorities do not pay adequate heed to the Vienna Convention."*

He added later at paragraph [20]:

> *"It is so deeply ingrained in us that the child's welfare is paramount, and that we have a personal responsibility for the child, that we sometimes find it hard to accept that we must demit that responsibility to another judge, sitting perhaps in a far away country with a very different legal system. But we must, and we do. International comity, international judicial comity, is not some empty phrase; it is the daily reality of our courts. And be in no doubt: it is immensely to the benefit of children generally that it should be."*

It is acknowledged that English law relating to children is fundamentally modified by BIIR. As the President put it at paragraph [24]:

> *"The key point is that, where BIIR applies, the courts of England and Wales do not have jurisdiction merely because the child is present within England and Wales. The basic principle, set out in Article 8(1), is that jurisdiction under BIIR is dependent upon habitual residence. It is well established by both European and domestic case law that BIIR applies to care proceedings. It follows that the courts England and Wales do not have jurisdiction to make a care order merely because the child is present within England and Wales. The starting point in every such case where there is a European dimension is, therefore, an inquiry as to where the child is habitually resident."*[5]

6. These principles were re-emphasised in the recent cases of **Nottingham City Council v LM and SD** [2014] EWCA Civ 152 and **Re B (A Child)(Hague Convention)** [2014] EWCA Civ 375. The observations of the Court of Appeal in **Re B** are of general interest. In that case the subject child was aged 10. Her father was French and the parties had been married and the child had lived in France up to the time of her departure. The child was wrongfully removed by her English mother from France in June 2012. In July 2013, an English local authority commenced

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5 In paragraph [25] the President made clear that the courts would apply the principles relating to habitual residence enunciated in **A v A and another (Habitual Residence)(Reunite International Child Abduction Centre & others intervening)** [2013] UKSC 60.

care proceedings in respect of the child, who was placed by the local authority in the care of her maternal uncle under an interim care order as a result of concerns about the mother's mental health. The father, who remained in France, had been given no notice of the proceedings. In September 2013 the father commenced Hague Convention proceedings which the mother sought to defend on the basis of Article 13(b) and on the basis that the child objected to a return. At the return date the maternal uncle, the local authority and the child were joined as parties and a Guardian appointed.The final hearing took place in November 2013. The local authority's attendance had previously been excused, although the judge had available the papers from the care proceedings and a statement from the social worker for the purpose of the Hague proceedings. The maternal uncle appeared in person. The court declined to uphold the 13(b) defence, but found that the child objected within the definition of the Convention. Nevertheless, the judge exercised her discretion to order a return. The mother and the maternal uncle sought to appeal on the basis that the judge had exercised her discretion wrongly in ordering a return. The mother also sought to argue that the judge should have upheld the Art 13(b) defence, and the uncle additionally argued that the court should have considered the question of jurisdiction (further to Article 10 of Brussels IIR) and the settlement defence. The Local Authority, acknowledging that it was unwise not to have participated in the final hearing, joined the appeal and supported mother and the uncle. The appeal was dismissed. However in giving judgment, Black LJ observed in paragraph [11] that there did not appear to have been any consideration of the question of jurisdiction and then said at paragraph [54]:

> ***"A general point: the local authority's role where there are concurrent care and Hague proceedings***
>
> *54. LA regretted their decision not to participate in the final Hague hearing apart from filing a position statement, which they considered to be an error. They submitted that, whenever a child who is subject to care proceedings becomes subject to Hague proceedings, the relevant local authority should participate actively in the Hague proceedings because they will have important evidence concerning the child's wishes/objections, settlement and welfare. I would not like to lay down any hard and fast rule about this because it is not possible to foresee with certainty what the circumstances may be but it does seem to me likely that input from the relevant local authority will be extremely valuable in many such cases and indispensible in some."*

Black LJ also made the point at paragraph [14] that whilst the local authority had approached Children and Families Across Borders for assistance, it would have been appropriate for the local authority to have approached ICACU.

7. Likewise in **Nottingham City Council v LM and SD** the Court of Appeal reiterated what the President had said in **Re E** with regards to the use of Article 15. He had said in paragraphs [35] – [36]:

> *"It is highly desirable, and from now on good practice will require, that in any care or other public law case with a European dimension the court should set out quite explicitly, both in its judgment and in its order:*

(i) The basis upon which, in accordance with the relevant provisions of BIIR, it is, as the case may be, either accepting or rejecting jurisdiction;

(ii) The basis upon which, in accordance with Article 15, it either has or, as the case may be, has not decided to exercise its powers under Article 15.

This will both demonstrate that the court has actually addressed issues which, one fears, in the past may sometimes have gone unnoticed, and also identify, so there is no room for argument, the precise basis upon which the court has proceeded. Both points, as it seems to me, are vital."

8. The PLO provides a Pre-Proceedings Checklist. Whilst this does not specifically mention international cases, it demonstrates clearly that the whole process is 'front-loaded' in that many of the essential issues which are likely to arise during the course of any child-protection measures should become apparent.

9. Speed is of the essence. The proceedings must be completed within 26 weeks unless there are exceptional reasons why the case cannot be completed within that time. Thus it will be important that international issues are recognised and planned for in a timely fashion. (Note that the day when the public law proceedings are commenced is regarded as Day 1 and that in between the issue and the conclusion of Day 2 the court must consider the issue of jurisdiction in relation to a case with an international element.)

10. What would one expect a local authority and its legal department to consider when first a case arises which may have an international aspect to it?

- Obtaining information about the nationality of the parents and the children and information from which the habitual residence of the child in question can be initially determined in order that if there is a jurisdictional issue preparations can be made early on to provide the required information for the court to determine the issue as a preliminary point.

- Obtaining the contact details of the relevant child-protection authorities in the country in question so that liaison can take place to ascertain what child protection measures have been taken or were contemplated. (Interestingly at least one London Borough has already built up a small contact network of child protection agencies in order to facilitate the decision-making processes.)

- Obtaining information about the family, including the extended family/connected persons in general terms and their ties to the country in question, as well as information about any legal proceedings which have been taken in that country.

- Obtaining information regarding the attitude of the other relevant state in respect of jurisdiction. (A possible request pursuant to Article 15 Brussels IIR)

11. Thus by the time the proceedings have been issued the jurisdictional issues should have been identified and a position developed about the manner in which any proceedings are to be case managed. This may involve the acceptance of jurisdiction in England and Wales or acceptance that as the child may be habitually resident in another country that country has jurisdiction and thus any involvement will be pursuant to Article 20 (the exercise of provisional protective measures). There may also be a need to invoking the provisions of Article 15. These matters are not just for the local authority alone, all parties bear a responsibility to consider these issues.

Brian Jubb
4 Paper Buildings
10th June 2014

Section 6

Relocation

Catherine Wood QC, Andrew Powell & Rachel Chisholm

Relocation:

The Hague Convention application fails. Mrs Fortune-DeKlein succeeds on her application to stay the UK divorce though.

She subsequently applies for

(a) permission to take the children to Dubai on a holiday, and

(b) residence and permission to relocate permanently to USA

Mr Fortune applies for residence and permission to relocate to Germany with Hute,

Issues

Level of court, evidence

Approach to temporary relocations (Re R)

Approach to permanent relocation

RELOCATION: PERMANENT AND TEMPORARY

INTRODUCTION

1. The scenario that the Fortune family find themselves in is no longer uncommon. In global cities like London, it is an all too familiar picture of the modern transatlantic family that are economically and geographically mobile.

2. These lecture notes are intended to be a précis of the current law, rather than a guide to the presentation.

3. The well-trodden path laid out by the Court of Appeal in *Payne v Payne* [2001] 1 FLR 1052 in respect of leave to remove applications will be familiar to all family law practitioners. The debate as to how this has evolved in the jurisprudence that has emerged from the appellate courts has become much clearer with the advent of *K-v-K (Relocation: Shared Care Arrangement Children)* [2012] 2 FLR 880 and *Re F* **(Relocation*)* [2013] 1 FLR 64.**

RECENT RESEARCH

4. Many of you will be familiar with the research undertaken by Dr Rob George at the University of Oxford regarding relocation cases (both international and domestic).

5. Of the 34 parents who participated in the study, 28 concerned international disputes. All of the cases were resolved post *K-v-K (Relocation: Shared Care Arrangement Children)* [2012] 2 FLR 880. The preliminary findings are particularly interesting, but in some respects, not that surprising:

    - All applicants in the study seeking to relocate were mothers;
    - All respondents seeking to stop the relocation were fathers;
    - The average age of the child in international cases was 7 years;
    - Parents were typically in their 40s;
    - The majority of international cases involved relocations within Europe (11 cases), to North America (7 cases) or to Australasia (5 cases);
    - Only two cases involved other regions (1 to South Africa and 1 to India);

- Majority of the cases went to a final hearing to be determined by a judge whilst a few settled though dispute resolution
- Parents generally (regardless of the outcome of the case) found the court process "emotionally distressing".

6. In two cases where mothers were refused permission, they moved in any event with the child(ren) remaining with their father full time. However in the majority of cases where the application was refused, arrangements for the child continued as before.

7. Overall, the narrative that emerged from the interviews with parents was one of 'devastation' for the unsuccessful parent. As the authors of the study have observed recently, it will be interesting to assess what impact (if any) s11of the Children and Families Act 2014 will have on such cases if 'parental involvement' is to play a greater part in family court proceedings.

THE SINGLE FAMILY COURT

8. April 2014 heralded significant reform in the Family Justice System with the creation of the Single Family Court on 22 April 2014. No doubt, the burning question for practitioners is how the unified court will approach relocation applications.

9. The allocation and gatekeeping guidance issued on 22 April 2014 categorised relocation cases into 3 categories:
   i. Cases involving proposed moves to countries which are **not** signatories to the 1980 Hague Convention on child abduction: to be heard by a High Court Judge

   ii. Cases involving proposed moves to countries which are signatories to the 1980 Hague Convention: to be heard by a district judge

   iii. Cases involving proposed moves to countries which are signatories to the 1980 Hague Convention but which are unusually complex in legal or factual terms: to be heard by a district judge or, exceptionally, circuit judge.

10. The allocation applies whether the relocation is permanent or temporary. The allocation and gate keeping guidance marks a departure from the days in the early 1990s when it was thought that *all* international relocation cases should be reserved to High Court Judges (see *Re L (Removal from Jurisdiction)* [1993] Fam Law 280. The research undertaken by Dr George revealed that 20% of cases were being heard by district judges. The new guidance therefore does not envisage any relocation cases to Hague Convention countries cases being heard by High Court Judges, and that more district judges will be hearing relocation cases.

PERMANENT RELOCATION

11. The key decision is that of the Court of Appeal in *Re F* **(Relocation*)* [2013] 1 FLR 645 endorsing the approach taken in** *K-v-K (Relocation: Shared Care Arrangement Children)* [2012] 2 FLR 880.

12. **Re F makes clear that the only principle to be applied when determining a relocation application is that the child's welfare is paramount. The guidance that has been set out in previous case law can be considered as part of the factors which should be weighed amongst the welfare checklist in the search for the welfare decision.**

13. Mostyn J in *Re TC and JC (Children: Relocation)* [2013] 2 FLR 484 highlights the crucial question that the court should ask itself: **<u>What is in best interests of these children?</u>**

14. The evaluation of where a child's best interests truly lies is determined having regard to the 'welfare checklist' in s 1(3) of the Children Act 1989.

***Re F (Relocation)* [2013] 1 FLR 645**

15. **The key aspects of Munby LJ's (as he then was) judgement can be summarised as follows:**

    a. *K v K (Relocation: Shared Care Arrangement Children)* [2012] 2 FLR 880 is now the starting point in the court's consideration of any relocation application. Munby LJ reiterates the following paragraph from *K v K*:

"that the only principle to be applied when determining an application to remove a child permanently from the jurisdiction was that the welfare of the child was paramount and overbore all other considerations however powerful and reasonable they might be; that guidance given by the Court of Appeal as to factors to be weighed in search of the welfare paramountcy and which directed the exercise of the welfare discretion was valuable in so far as it helped judges to identify which factors were likely to be the most important and the weight which should generally be attached to them and promoted consistency in decision-making; but that (per Moore-Bick and Black LJJ), since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted".

b. The guidance at paragraph 40 of *Payne* is not confined to cases in which the applicant is the primary carer. Munby LJ did not consider there to be a large difference in the approach as set out in *Payne* and *K v K*. In support of this presumption Munby LJ highlighted Thorpe LJ's comments in *K v K* as to the application of *Payne*:

'… the only principle to be extracted from Payne v Payne is the paramountcy principle. All the rest, whether in paras [40] and [41] of my judgment or in paras [85] and [86] of the President's judgment is guidance as to factors to be weighed in search of the welfare paramountcy [39].'

c. There is no presumption in favour of a primary carer:

There can be no presumptions in a case governed by s 1 of the Children Act 1989. From beginning to end the child's welfare is paramount, and the evaluation of where the child's best interests truly lie is to be determined having regard to the 'welfare checklist' in s 1(3) [37].

d. Munby LJ endorsed and stated his express approval of Black LJ's warning that cases should not be bogged down in preliminary skirmishes as to whether it is a 'primary' or a 'shared' care case.

But so too advocates and judges must resist the temptation to try and force the facts of the particular case with which they are concerned within some forensic straightjacket. Asking whether a case was a 'Payne type case', or a 'K v K (Relocation: Shared Care Arrangement) type case' or a 'Re Y (Leave to Remove from Jurisdiction) type case', when in truth it may be none of them, was simply a recipe for unnecessary and inappropriate forensic dispute or worse and was to be avoided [60].

Where does that leave the guidance set out in *Payne v Payne* now?

16. The guidance in *Payne v Payne* [2001] 1 FLR 1052 will most likely integrate within the application of the welfare checklist. Aspects of the guidance will form part of the analysis argued and considered under the headings of s1(3) CA 1989 alongside other relevant fact-specific aspects of the case. The factors will be applied or distinguished depending on the circumstances of the case.

17. Re F has not undermined the recognition that *Payne* gave to the right of both the primary carer and the non-resident parent to freedom of movement. Nor has it removed the courts' consideration of the impact of a refusal of the application upon a primary carer's ability to care for the child, although the weight placed upon this factor will depend very much upon the circumstances:

'..the welfare of young children was best met by bringing them up in a happy, secure family atmosphere. …. Even if there is not a new relationship, the effect upon the parent with the residence order of the frustration of plans for the future might have an equally bad effect upon the children. If the arrangements are sensible and the proposals are genuinely important to the applicant parent and the effect of refusal of the application would be seriously adverse to the new family, eg mother and child, or the mother, stepfather and child, then this would be, as Griffiths LJ said, a factor that had to be given great weight when weighing up the various factors in the balancing exercise. [Payne, para 83]

18. Munby LJ does not dismiss or overlook Thorpe LJ's statement in paragraph 41 of *Payne*:

'In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well-being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this factor.'

19. The guidance in *Payne* will undoubtedly form factors that can be drawn upon if they are relevant to that particular case and therefore fall into the court's application of the welfare checklist.

Recent decisions

20. The following recent decisions highlight the approaches currently taken to relocation applications:

    a. In *Re TC and JC (Children: Relocation)* [2013] 2 FLR 484 Mostyn J made the following observations:
        i. The only authentic principle to be applied when determining an application to relocate a child permanently overseas was that the welfare of the child is paramount and overbears all other considerations, however powerful and reasonable they might be [11].
        ii. The determination of the application had to involve a factual evaluation and a value judgment. The guidance formulated in the Court of Appeal was not determinative or even necessarily tendentious. It was merely an aid to the determination of the ultimate single question, which was: what was in the best interests of these children? Which proposal is most in the children's interests?

    b. *In C (Children)* [2014] EWCA Civ 705 the mother sought permission to relocate with the parties' three children to Brazil, which was her home country. The father, who was Portuguese, opposed this application. The parties separated in November 2012 and from April 2013 onwards the children stayed with their father for five nights in every 14.

    - Interestingly the CAFCASS officer's evidence was that the parties were unable to communicate with each other. The written report recommended that the application be refused but in oral evidence the reporter accepted that it was for the court to decide because it was such a finely balanced decision.

    - The court granted the mother leave to remove. The father appealed and the

appeal was dismissed on basis that it was open to the court to place greater weight on the mother's need to return home and the impact on her ability to meet the children's needs particularly in light of the CAFCASS officer's stance in the witness box.

- McFarlane LJ was concerned however that the first instance order left the parents to agree the conditions upon which the children went to Brazil, including matters of finance and contact. In circumstances where the parents could not communicate with each other and were at loggerheads it was not reasonable for the judge to step aside from determining those issues himself. It was ordered that the conditions and other details of the order providing for the children's departure were to be settled at a further hearing before HHJ O'Brien.

c. In *Re N (Leave to remove from the jurisdiction) (2)* [2014] EWHC B16 (FAM) the court considered a mother's application to relocate to her home country, Tanzania, with the maternal family. The court granted the mother's application. An interesting aspect of the court's decision was the response to the issue of whether the child would be disadvantaged by living in Tanzania. The court held that:

I do not accept the underlying theme of some of the father's evidence that C is "clearly better off in England," than in a relatively poor and underdeveloped African state. I cannot approach this case on the basis of some Eurocentric assumption of inherent superiority over other countries.

d. *In Re O (Residence)* **[2014] 1 FLR 89 the Court of Appeal upheld a decision to allow the mother to relocate to Ireland. A crucial part of the lower court's determination had been that the mother would be closer to her work and therefore able to spend more time with the child. During the course of the appeal the mother took early retirement. The Court of Appeal held that this was not a matter of fresh evidence. Her retirement actually strengthened the first instance court's decision.**

e. *In S v T (Permission to Relocate to Russia)* **[2013] 2 FLR 457 FD Hedley J set out the following:**

i. the court should not categorise cases in accordance with the concepts of primary or shared care, but should use the facts of the case and the answers arrived at in consideration of the checklist to describe the arrangements for care on the ground as they had been, as they were at date of the hearing and as the parties intended them to remain had it not been for the question of relocation.

ii. The court also had to consider issues specific to an application to relocate permanently, namely:

- the proposals of the applicant, bearing in mind that in a going home case it may be a less arduous undertaking than if it were an entirely new venture;
- the motives of the applicant, in particular, whether or not a significant motivation was to exclude the other parent from the life of the child;
- the motives of the left behind parent, in particular to check that the reasons for objection were truly child centred and not simply part of an adult battle about rights;
- the impact of relocation on the left behind parent and his or her extended family, while recognising that relocation could bring benefits in terms of widening the network of extended family;
- the impact on the applicant of the order being refused or on the respondent of the order being granted, but only insofar as it impacted on the child.

f. In *DH v (1) CL (2) A LOCAL AUTHORITY (3) ML (4) ET (5) LL (BY HIS CHILDRENS GUARDIAN)* (2014) EWHC 1836 (Fam). The father applied for permission to relocate to Kurdistan with his son. There had been previous care proceedings in which the mother made allegations of domestic violence against the father. The allegations were dismissed and findings were made against the mother of neglect and emotional harm. The court directed that the child live with his father. In 2011 the father returned to Kurdistan where he married. The father's wife was refused entry to the United Kingdom under a spousal visa. The

father sought permission to remove the child to Kurdistan to be with his wife and extended family. His evidence indicated that he planned to return to Kurdistan in the near future irrespective of the outcome of the litigation, namely with or without the child. The mother, being unable to look after the child, did not put herself forward as an alternative potential carer nor did she actively oppose the application.

The court found that the move was in the child's best interests. The court held that the child had suffered considerable disruption in his life and faced further disruption whatever the outcome of the current proceedings. A move meant greater upheaval than remaining in the UK. However, the short-term disruption of a move was balanced by the stability it would bring for the child. The move meant that the child would remain in the father's full-time care, and also that the father himself would be more settled in his own life, with his wife and family.

g. In *Re P (CHILDREN) (2014)* the mother appealed against a decision refusing her application to relocate to Germany. The first instance judge had refused the application on the basis that the mother's motivation was to control and interfere with the father's relationship with the children. The Court of Appeal allowed the appeal and held that the judge's conclusions were not borne out on the evidence. They held that the mother's evidence appeared to be consistent. Her accusation of emotional abuse was genuinely her perception, even if it might not be objectively justified. She had complied with the agreed orders and there was no evidence that she had tried to limit contact. The decision had to be set aside and the case remitted for the welfare issues to be re-explored before another judge.

INTERNATIONAL TEMPORARY RELOCATIONS

21. The approach taken by the courts in respect of temporary relocations differs to the one adopted in permanent relocations. Nevertheless, the individual factual matrix of the case and whether or not the country is a signatory to the Hague Convention will play heavily in the court's determination. Of course, the child's best interests remains the court's paramount consideration.

Non-Hague Countries

22. In *Re R (A Child)* **[2013] EWCA Civ 11**15, Patten LJ giving the lead judgment observed:

> *"The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the Court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. Although, in common with Black LJ in Re M, we do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue. If in doubt the Court should err on the side of caution and refuse to make the order. If the judge decides to proceed in the absence of expert evidence, then very clear reasons are required to justify such a course."*(Emphasis added)

23. In *Re R* the applicant mother sought temporary leave to remove the parties' child to Kenya for a holiday. The parents had married in Kenya in 2001. The father was British and the mother was Kenyan, though she subsequently acquired British citizenship. The circuit judge (sitting as a High Court judge) heard oral evidence over 3 days. Before the court was written evidence from a solicitor in Kenya in respect of remedies available in Kenya to secure the return of the child to this jurisdiction in the event of a wrongful retention.

24. Whilst the expert Kenyan evidence detailed steps that could be taken to secure the child's return, there was a lack of detail of the approach he court would adopt. Acceding to the mother's application, the circuit judge found that the risk of the mother not returning was low. However the judge held that there needed to be safeguards in place to reassure the court and the father that the mother was going to return.

25. The mother was granted permission in principle to remove the child from the jurisdiction. However it was a requirement that the mother lodge a notarised agreement with the court as well as obtaining from the Kenyan High Commission in London, their willingness to accept the agreement and confirmation from the British High Commission in Kenya that it would hold the mother and child's passport. The High Commission in Kenya indicated that it would be obliged to return the passport to the mother in the event that the mother sought its return. Thus, the only available security was the notarised agreement. The court therefore had to determine whether in the circumstances, the mother should be permitted to travel to Kenya for the holiday. The judge allowed the mother to travel to Kenya, relying on his earlier finding that she presented a low risk of not returning.

26. Allowing the father's appeal, Patten LJ opined:

25. As the quotation from Thorpe LJ's judgment in Re K (see paragraph 19 above) confirms, applications for temporary removal to a non-Convention country will inevitably involve consideration of three related elements:

a) the magnitude of the risk of breach of the order if permission is given;

b) the magnitude of the consequence of breach if it occurs; and

c) the level of security that may be achieved by building in to the arrangements all of the available safeguards.

It is necessary for the judge considering such an application to ensure that all three elements are in focus at all times when making the ultimate welfare determination of whether or not to grant leave. In the present case, HHJ Oliver, having rightly concluded (at paragraphs 39 and 40) that the magnitude of the consequences of a breach were 'great' or 'huge', did not return to that crucial element in his subsequent analysis on 18 April (from paragraph 69 onwards) where the safeguards are evaluated in the context only of ameliorating the risk of a breach occurring ('not that great') but not in the context of the consequences (described by Ms Okine as catastrophic) that would flow for the child if a breach were to occur. Most notably, however, the magnitude of the consequences of a breach was not referred to at all when the judge considered the matter 'afresh' on 1 August.

27. More recently, in *Re R (Children: Temporary Leave to Remove from Jurisdiction)* [2014] EWHC 643 (Fam) the High Court has further endorsed *Re R*.

28. The case highlights a number of on-going issues relating to temporary leave to remove applications involving non-Hague countries, in particular:

    a. that expert evidence will almost always be 'necessary';
    b. that such cases should almost always be dealt with at High Court level;
    c. that LASPO having removed legal aid for such cases will potentially have a profound effect on the outcome of such applications. The inability to obtain expert evidence considered by the court as necessary might form the basis of an application for 'exceptional' funding
    d. whether judicial review of the LAA approach might be possible when there is a clear judicial decision on the need for and reasonableness of the costs.

29. In this *Re R*, the court was concerned with the mother's application to remove the children to India for the purposes of a family holiday. The four children were aged 7, 6, 4 & 3 years old.

30. There had been long running private law litigation between the parents. At an earlier fact finding hearing, findings were made that there had been domestic abuse occasioned by the father and the paternal family "at the lower end of the spectrum"

31. Applying the test established in *Re K (Removal from jurisdiction: Practice)* [1999] and as applied by Patten LJ in *Re R*, HHJ Bellamy, sitting as a High Court judge, considered the three elements that *Re K* highlighted:

    i. the magnitude of the risk of breach of the order if permission is given;
    ii. the magnitude of the consequence of breach if it occurs; and
    iii. the level of security that may be achieved by building in to the arrangements all of the available safeguards.

32. In so doing, the court concluded that if would not grant the mother permission to go to India on holiday with any of the children. Addressing each of the elements in turn, HHJ Bellamy observed:

> *69. Having made that point, I turn to consider the three elements set out by the Court of Appeal in Re R (A Child). Firstly, I must consider the magnitude of the risk of breach of the order if permission is given. For the father, Mr Verdan concedes that the risk is low. I accept that that is so. However, it is important to make the point that 'low' does not equate with 'non-existent'. There is a risk in this case which, though low, is nonetheless real. I accept that the mother appears to be intent on making a new life for herself with HB in London, though I am concerned that so little is known about him, not least about his immigration status. I accept that the mother wants her children to know about their wider family and culture, though I am concerned that she is very close to her father and susceptible to persuasion by him. The risk of wrongful retention is low but is nonetheless a risk which cannot be ignored.*
>
> *70. Secondly I must consider the magnitude of the consequence of breach if it occurs. It is on this issue that Mr Tyler concedes he is in the greatest difficulty. There is very clear evidence from the guardian, which I accept, that all four of these children have a close and loving relationship with both of their parents. They are equally comfortable in either home. They are settled in school. Although they may have a curiosity about their wider family and about life in India, they were born in England, they have spent their entire lives living in England, their social relationships are all in England. They are habitually resident in England. Although Mr Tyler eschewed the use of the word 'catastrophic' to describe the consequences for the children were they not to be returned to England following the proposed trip to India, he accepts that the consequences for them would be profound. They would be life-changing. They would not be life-enhancing. Wrongful retention would have a profoundly damaging impact on their relationship with their father and wider paternal family. The damage could not adequately be compensated for by use of modern technology such as Skype.*
>
> *71. Thirdly, I must have regard to the level of security that may be achieved by building in to the arrangements all of the available safeguards. What are the safeguards that could be built in? Mr Tyler does not advocate any particular safeguards. Rather, he points to the various safeguarding measures adopted by Wall J (as he then was) and Hogg J in the first instance decisions in Re A (Security for return to jurisdiction) [1999] 2 FLR 1 and Re S (Leave to*

remove from the jurisdiction: securing return from holiday) [2001] 2 FLR 507 and effectively says to the court, 'take your pick'. That is simply not good enough. It is the responsibility of an applicant wishing temporarily to remove her children from the jurisdiction to set out precisely the safeguarding measures being proposed together with a reasoned analysis of why the court should accept that those proposed safeguards are (a) the best that can be achieved and (b) likely to be effective. It is in this area in particular that the court would have been assisted by expert evidence.

72. In considering the security that can be achieved by building in all the available safeguards, it is in my judgment appropriate that the court should also have regard to the difficulty of the task likely to be faced by the left behind parent in the event that the safeguards fail. In this case the evidence from the FCO makes it clear that the task of recovering the children were they to be wrongfully retained would likely be lengthy, complex, costly and uncertain. To that mix must be added the father's concern (and in the absence of expert evidence, the uncertainty) about the consequences were the mother to invoke Section 498A. (Emphasis added)

33. The court reminded itself that the consideration of those three elements must be brought within the welfare analysis required by s.1 Children Act 1989. The consequences of a wrongful retention were so great and the safeguarding measures so uncertain that it would not have been in the children's best welfare interests for permission to be granted. The corollary of the judge applying the 3 elements rendered the mother's application untenable and it was therefore refused.

Safeguards

34. Parties may wish to consider the following by way of assurances when making their application for temporary leave to remove:

i) **Financial bonds**: a fairly substantial sum of money is paid into the court by the parent wishing to take a child abroad. The bond is returned once the child has returned to the jurisdiction. The money can be used, at the court's discretion, by the left behind parent to cover subsequent legal fees or other expenses incurred in order to secure the return of the child to their place of habitual residence [*Re: S (Removal from Jurisdiction)* [1999] 1 FLR 850.

ii) **Undertakings: the disadvantage is that most countries do not recognise undertakings and so may not enforce them.**

iii) **Agreements to obtain mirror orders or register the order in the foreign court**.

iv) **Agreements that the tickets and passports will be lodged with High Commission in the destination.**

v) **An order that there will be no application made to obtain or seek a passport in the holiday destination**

vi) **A declaration can be made as to the children's country of habitual residence: In** *Re S and O (Temporary Removal From Jurisdiction)* the court gave a short judgment as to habitual residence because there was insufficient time for mirror orders to be made.

vii) **A solemn oath can be made by the parent taking the child abroad and their other family members**: in *Re A (Security For Return To Jurisdiction)* (Note) the family members made an oath on the Quran.

viii) In *DS v RS* [2010] 1 FLR 576 the maternal family offered to lodge the title deeds to their Indian property with the court as evidence of their good faith.

Hague Countries

35. Unsurprisingly the case law concerning Hague Countries and temporary relocations are limited. In such cases the court is less concerned about the implementation of safeguards as the Convention *is* the primary safeguard in the event of a wrongful retention.

36. However, in cases where a party is opposing an application for temporary relocation to a Hague country, it would be prudent to seek declaratory orders confirming rights of custody and habitual residence to ensure an expedited return; as well as a recording on the face of the order of when the parent and child(ren) are due to return to this jurisdiction. Similarly, an applicant wishing to demonstrate their firm intention to return to this jurisdiction may also consider offering such declarations.

PREPARATION: PRACTICAL HINTS AND TIPS

Statements for permanent leave to remove

37. The presentation of the case on paper and advocacy in the court room plays a crucial role in the court's consideration of the application. When drafting statements, a helpful structure could be to use the welfare checklist to structure the *Payne* guidance and any other relevant factors:

    a. **the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding**),

    i. What do the children want?

    ii. Do the children understand the options?

    iii. Do the children understand the impact of the various options?

    iv.What weight should be given to those views, having regard to their age and understanding?

    b. **their physical, emotional and educational needs,**

    i.Do the children have any particular emotional needs?

    ii.Are there material differences in how their physical, educational and emotional needs will be met as between England and Country X?

    iii.Will the mother's plan for Country X meet their physical, emotional and educational needs?

    iv.Is the plan realistic? Can it be implemented and achieved?

    c. **the likely effect on the children of any changes in their circumstances**.

    i.Will there be positive effects in respect of their mother's ability to provide care for them?

    ii.What are the other positives and negatives about Country X in terms of environment, education, maternal family?

    iii.What changes to housing, schooling and relationships are likely (if any) if they remain in England?

    iv.What will be the impact on them of moving permanently to Country X in respect of their relationship with their father and other extended family?

    v.To what extent may that be offset by ongoing contact and the extension to

other relationships?

d. **his age, sex, background and any characteristics of his which the court considers relevant,**

i.What relevance are their ages?

ii.Are there any particular characteristics which impact on the application?

e. **any harm which he has suffered or is at risk of suffering**

i.What will be the impact on the mother of having to remain in England?

ii.Will the ability of her mother to provide care for the children be adversely effected by the refusal of her application and if so to what extent?

iii.What harm, if any, will arise from the change to their relationships with their fathers.

iv.How realistic are the mother's proposals for maintaining contact? To what extent will loss of contact with the father and their extended families be made up for by extension of contact with the maternal family.

f. **how capable each of his parents and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs?**

i.Is the mother's application to relocate wholly or in part motivated by a desire to exclude or limit the father's role. Is the mother able to promote a relationship with them?

ii.Is the father's opposition to the move genuine or is it motivated by a desire to control the mother or some other malign motive?

iii.Will the mother be better able to care for the children in Country X than in England?

iv.What role is the father likely to play in future?

g. **the range of powers available to the court under this Act in the proceedings in question.**

i.Can conditions of contact in terms of provision of funds/frequency of visits be used?

ii.Can court orders be made in Country X (mirror or reciprocal enforcement) to support contact.

iii.Can jurisdiction be retained?

Other evidence

38. **Obtaining expert evidence is often vital to the court's determination of a relocation or temporary leave to remove application. The following experts should be considered:**
    a. **An independent social work assessment;**
    b. **Child and adolescent psychiatrists: to consider the impact of the relocation on the child;**
    c. **Adult psychologists/ psychiatrists: to consider impact of relocation/refusal of the application on the adults where there are issues as to mental health;**
    d. **Cultural experts: to consider the safety of a child in a particular country or to consider the ease of integration of the child in that country;**
    e. **Legal experts: particularly for non-Hague countries when there are issues of enforcement and questions surrounding the methods of obtaining a return of the child.**

CONCLUSION

39. Unfortunately the impact of *K v K* and *Re F* is that it is harder to advise a client on the likely outcome of an application. The decisions will be fact specific and dependent upon the interpretation of the welfare checklist. However, to some degree the emphasis placed upon the welfare principle creates a more even playing field between the parent seeking to relocate and the parent who would be left behind.

40. Applications for temporary leave to remove are complex given the inherent risks and the serious consequences for the children and the left behind parent should the child not return. It is clear that any application seeking to go on holiday to a non-Hague country must put forward the proposed safeguards and assurances that they are willing to offer. It is not enough simply to ask the court to make that decision for the parties.

Catherine Wood QC
Andrew Powell
Rachel Chisholm

Section 7

Reciprocal Enforcement

Marcus Scott-Manderson QC,
Mark Jarman & Jacqueline Renton

Reciprocal Enforcement, mirror orders and retention of jurisdiction

The court decides that Frank should reside with the mother and she should be given permission to relocate back to the USA.

The court decides that Joanna should reside with the father and he should be given permission to relocate to Germany.

Contact orders are made in respect of each of the children.

Issues:

Can jurisdiction be retained in England?

Making orders enforceable in the USA?

Enforcing orders in Germany?

RECOGNITION AND ENFORCEMENT – BIIR AND NON-BIIR

ENFORCEMENT UNDER BIIR

- BIIR is Council Regulation (EC) No 2201/2003 (Brussels II Revised Regulation 2003). All EC states except for Denmark are signatories to BIIR
- Brussels II Revised Regulation 2003 takes priority over Hague Convention 1996 (and Hague Convention 1980 – child abduction cases)
- An **Annex II** certificate is preferable if you want to enforce a judgment on Parental Responsibility,
- BIIR allows a contact order made in state A (signatory to BIIR) to be **automatically enforced** in state B (signatory to BIIR) as long as an **Annex III BIIR** certificate is attached to the order, pursuant to article 41 of BIIR. Without an Annex III certificate, you have to go through the longer route of recognition and enforcement, pursuant to articles 21 – 39 of BIIR.
- Enforcement procedure is governed by law of member state (**article 47(1) BIIR**)
- Any judgement made in state A shall be enforced in state B in the same conditions as if had been delivered in state B (**article 47(2) BIIR)**
- A judgment cannot be enforced if it is irreconcilable with a subsequent enforceable judgment (**article 47(2) BIIR**)
- An annex certificate can be rectified - you have to apply to courts of the state that issued the certificate for rectification (**article 43(1) BIIR**). The issuing of an Annex II certificate cannot be appealed in the courts of the state that issued the certificate (**article 43(2) BIIR)**.

Enforcing Access orders under BIIR

- **Articles 40 – 41 BIIR** provide the exequatur process (recognition + enforcement) as long as contact order has a valid Annex III certificate
- **Article 41(2) BIIR** sets out the conditions for obtaining an Annex III certificate:

- Where judgment was given in default, person defaulting was served with proceedings in sufficient time to make representations to the court, or person not served in sufficient time but can establish that they have accepted the decision unequivocally
- All parties concerned were given an opportunity to be heard
- Child given an opportunity to be heard, unless inappropriate given child's age and degree of maturity

Article 41

Rights of access

1. The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.

2. The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:

(a) where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;

(b) all parties concerned were given an opportunity to be heard;

and

(c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

3. Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued ex officio when the judgment becomes enforceable, even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the

parties.

Enforcement of a judgment on Parental Responsibility

- This applies to an array of orders, including orders for Custody and orders made in wardship for the return of the child. In order to enforce these orders, you have to go through a process of recognition and enforcement, pursuant to articles 21 – 39 of BIIR.
- In England and Wales order has to be registered under domestic law – see rule 31 of FPR 2010.
- The order is the recognised and enforced unless a ground of non-recognition is established pursuant to article 23.
- If a ground of non-recognition is not established, then the order is enforced.
- It is advisable to have an Annex II certificate when making an application for recognition and enforcement, but in exceptional cases the absence of a certificate does not necessarily stop the application from proceeding. The court has the ability to dispense with the necessity of the certificate (**article 38 BIIR**).

CHAPTER III
RECOGNITION AND ENFORCEMENT
SECTION 1
Recognition
Article 21

Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Article 22

Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;

(c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 23

Grounds of non-recognition for judgments relating to parental responsibility

A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

(b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

(c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;

(d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

(e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

(f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

or

(g) if the procedure laid down in Article 56 has not been complied with.

Article 24

Prohibition of review of jurisdiction of the court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 22(a) and 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.

Article 25

Differences in applicable law

The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Article 26

Non-review as to substance

Under no circumstances may a judgment be reviewed as to its substance.

Article 27

Stay of proceedings

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

SECTION 2

Application for a declaration of enforceability

Article 28

Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the

application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland only when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 29

Jurisdiction of local courts

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

2. The local jurisdiction shall be determined by reference to the place of habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates. Where neither of the places referred to in the first subparagraph can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

Article 30

Procedure

1. The procedure for making the application shall be governed by the law of the Member State of enforcement.

2. The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.

3. The documents referred to in Articles 37 and 39 shall be attached to the application.

Article 31

Decision of the court

1. The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.

2. The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.

3. Under no circumstances may a judgment be reviewed as to its substance.

Article 32

Notice of the decision

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

Article 33

Appeal against the decision

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.

5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

Article 34

Courts of appeal and means of contest

The judgment given on appeal may be contested only by the proceedings referred to in the list notified by each Member State to the Commission pursuant to Article 68.

Article 35

Stay of proceedings

1. The court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

Article 36

Partial enforcement

1. Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

2. An applicant may request partial enforcement of a judgment.

SECTION 3

Provisions common to Sections 1 and 2

Article 37

Documents

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) the certificate referred to in Article 39.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:

(a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document;

or

(b) any document indicating that the defendant has accepted the judgment unequivocally.

Article 38

Absence of documents

1. If the documents specified in Article 37(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

2. If the court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 39

Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).

BIIR case law

Re S (Brussels II Revised: Enforcement of Contact Order) [2008] 2 FLR 1358 (Roderic Wood J)

Facts:

- Polish parents and child. Polish court awarded contact to F (every other weekend, alternate Christmas and Easter, 2 weeks each summer). Child was just under 7 when contact order was made.
- After 1 contact visit, M removed child to England without F's consent and didn't permit further contact (save few telephone calls shortly after her arrival in England.)
- Polish court fined M for breaches of contact order, but dismissed M's application for leave to remain abroad with child (retrospective relocation) and F's PR application on basis that it had not jurisdiction as child was habitually resident in England.
- F applied to court for enforcement of contact order under BIIR.
- F had some contact in England, but claimed M's husband threatened him immediately afterwards
- English court recognised Polish order and ordered its registration. Telephone contact was then ordered by consent but M refused to allow contact
- Child – nearly 9 – told Cafcass that she wanted to see F but didn't think staying contact in Poland at present was practical.
- M opposed all contact – challenged certificate on basis that child had not been heard

Held:

- Recognition of order stands
- Strict enforcement is not always appropriate – the court cannot be in a 'straightjacket' when considering foreign contact orders
- In many cases, it would be right to simply enforce the order but in this case it is not right to do so as:
    - M made clear she never consented to Polish order
    - M's hostility to contact, if anything, has increased, and it would therefore be wholly inadvisable to regard Polish contact order as template – need to give more careful thought to the future of contact

- Child is now 10 and in different circumstances – need complete fresh approach and assessment of what is in child's best interests – may be that similar regime to that is embodied in Polish order is appropriate in time, but that cannot be forecast at this point

- English court had jurisdiction under **article 8 BIIR** – child was habitually resident in England, and 3 months had elapsed since removal of child (so Polish court and no jurisdiction to modify contact order under **article 9 BIIR**).

- Different scheme of contact was ordered – visiting contact only for now. Telephone contact was not appropriate given it had not worked to date, but cards / gifts could be sent to child.

LAB v KB (Abduction: Brussels II Revised) [2010] 2 FLR 1664 (Roderic Wood J)

- In this case, the court was dealing with an application for the recognition and enforcement of a residence under **articles 21 – 39 of BIIR**, but Wood J observed that his comments about non-enforcement in **Re S [2007]** were not clear enough:

"*I fear that in that case it seems to me, on re-reading my judgment, it was not made sufficiently clear by me that the course I adopted, namely recognising the Polish order but declining to enforce it, was a* ***wholly exceptional course*** *to take in proceedings under the Regulation and was, in that instance, entirely specific to its facts. It also seems to me, and perhaps I was in error in one of the passages I have read out in not emphasising that because it was so wholly exceptional a case it had fallen into the category of one of the grounds in Article 23 leading to non-enforcement on public policy grounds."*

Re S-R (Jurisdiction: Contact) [2008] 2 FLR 17

Facts:

- F sought enforcement of Spanish contact order – contact order was agreed between the parties approximately 2 years before enforcement application.

Held:

- Spanish courts remained seised of substantive welfare jurisdiction in relation to the child, pursuant to **article 12 of BIIR** – there had never been any final orders in Spain

- However, it was appropriate to transfer the proceedings to England from Spain, pursuant to article **15 of BIIR**

- F's application was stayed for 4 months, the court anticipating the transfer process would take 4 months.

- **Pending transfer, the court refused to simply enforce the Spanish order and instead made provisions of contact in England. The court did not have jurisdiction to vary the order (only the Spanish court had that jurisdiction at the present time), but the court had the ability to amend the practical arrangement of contact (staying true to the essential element s of the Spanish order) under article 48 of BIIR.**

ET v TZ [2013] EWHC 2621 (Fam)

Facts:

- The parties were Polish. The child lived with M after the parties' separated and F had contact. One day in April 2010, F removed the child from nursery by force and hid the child within Poland. F then abducted the child to England.

- M spent years tracing the child and eventually was able to commence Hague Convention 1980 proceedings in England. M also applied for the recognition and enforcement of an interim Polish custody order made in September 2010. The interim Polish custody order had been made in welfare proceedings that commenced prior to the child being abducted to England and continued (as both M and F continued to engage in those proceedings) subsequent to the abduction.

Held:

- Although the Polish custody order was nearly 3 years by the time of the final hearing, Wood J recognised and enforced the order. Wood J did not accept any of the grounds of non-recognition could be established by F. In particular, Wood J made clear how high the threshold was within article 23(a) (public policy exception), placing reliance on the earlier decisions in this jurisdiction of **Re S (Brussels II: Recognition: Best Interests of eth**

Child) (No 1) [2004] 1 FLR 571; **W v W (Residence) (Enforcement of Order) [2005] EWHC 1881**; **Re D (Brussels II Revised: Contact) [2007] EWHC 822**; **Re L (Brussels II Revised) (Appeal) [2013] 1 FLR 430** and the decision of CJEU in **Krombach v Bamberski (KC-7/98) [2000] ECR 1 1935**.

- As a consequence of the enforcement application being successful, Wood J ordered a swift return of the child to Poland, in the care of M. The Hague Convention 1980 application (in which F had raised defences under article 12 / settlement, article 13(b) / objections and article 13(b) harm) did not need to be determined as a result.)

ENFORCEMENT OUTSIDE BIIR

- An application for a mirror order is a way of enforcing a residence / contact order made in state A in state B in circumstances where either: (a) state A and state B, or (b) state A or state B are not signatories to BIIR.

SW v CW (mirror orders jurisdiction) [2011] EWCA Civ 703

Facts:

- F had an order for custody / care and control of the child from a Malaysian court. M had a contact order but contact had not taken place for 3 years as a result of her ill health and thus inability to travel to Malaysia (from England) for contact.

- In 2009, F applied to the PRFD for a 'mirror order' and Moylan J granted a 'mirror order'. M than applied for residence / variation of contact. F stated that the English court had no jurisdiction, but failed to attend the hearing. The court accepted jurisdiction, pursuant to **article 12(3) of BIIR**.

- F appealed arguing that the 'mirror order' application did not engage **article 12(3) of BIIR** as he had not expressly and unequivocally accepted the English jurisdiction, and that in any event it would not be in the child's interests for there to be a competing Malaysian and English jurisdiction.

Held:

- A mirror order application did not vest jurisdiction in the English court on a substantive basis; it cannot supplement the primary jurisdiction. M's substantive application should be made before Malaysian court.
- Mirror order was therefore to reflect the protection ordered in the primary jurisdiction
- jurisdictional conflict is to be avoided for the sake of the child – prevent increased hostility between parents, as well as preventing wasted costs and effort and safeguarding comity
- No clear jurisdiction to make a mirror order (International Family Law Committee has repeatedly drawn attention to this issue).
- Jurisdictional rules under BIIR have "changed the landscape"
- When considering a mirror order application, the judge should consider: (a) whether there is any practical benefit to the child and (b) whether the order will be practically enforceable.
- No comment was made on Singer J's decision in **Re P (A Child: Mirror Order) [2000] 1 FLR 435** - jurisdiction to make mirror order was based on 'prospective presence jurisdiction' not inherent jurisdiction' – decision was born out of common sense and comity save to state that problems encountered in this case will largely be overcome by **Hague Convention 1996**. *(The initial mirror order in this case was not challenged so it was unnecessary to consider the issue of jurisdiction regarding mirror orders)*

THE 1996 HAGUE CONVENTION

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

- **In force on 1st November 2012 in UK**
- **40 Countries contracting States**
- **USA signatory but not ratified.**
- http://www.hcch.net/

EU Member State (BIIR) and 1996 HC ratified	EU Member State (BIIR) and 1996 HC not ratified	EU Non BIIR 1996 HC ratified	Non EU and 1996 HC ratified
Austria Bulgaria Cyprus Czech Republic Estonia Finland France Germany Greece Hungary Ireland Latvia Lithuania Luxembourg Malta Netherlands Poland Portugal Romania Slovakia Slovenia Spain Sweden UK	Belgium Italy	Denmark	Albania Armenia Australia Croatia Dominican Republic Ecuador Lesotho Monaco Montenegro Morocco Russian Federation Switzerland Ukraine Uruguay

- **Relationship with BIIR**

Article 61 BIIR

Relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

As concerns the relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, ***this Regulation shall apply****:*

(a) where the child concerned has his or her habitual residence on the territory of a Member State;

(b) as concerns the recognition and enforcement of a judgment given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention.

Overview

- "*The function of the 1996 Hague Convention is avoid legal and administrative conflicts and to build the structure for effective international co-operation in child protection matters between the different systems".*
- Parental disputes over custody and contact
- Reinforcement of the 1980 Child Abduction Convention
- Unaccompanied minors
- Cross-frontier placements of children

Article 1

(1) The objects of the present Convention are –

a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

b) to determine which law is to be applied by such authorities in exercising their jurisdiction;

c) to determine the law applicable to parental responsibility;

d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;

e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Protective Measures

Article 11

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Parental responsibility

Article 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Recognition and enforcement

Article 23

(1*) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.*

(2) Recognition may however be refused -

a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;
b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;
d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;
e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;
f) if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

Family Procedure Rules 2010

PART 31

Registration Of Orders Under The Council Regulation, The Civil Partnership (Jurisdiction And Recognition Of Judgments) Regulations 2005, The Marriage (Same Sex Couples) (Jurisdiction And Recognition Of Judgments) Regulations 2014 And Under The Hague Convention 1996

Practice Direction 31A

Registration of Orders under the Council Regulation, the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005, the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014 and under the 1996 Hague Convention

Advance Recognition

- Article 24 provides for advance recognition – this overcomes the absence of jurisdiction to make mirror orders as exposed in **Re P [2000].** Grounds of refusal of recognition are set out under article 23(2) of Hague Convention 1996.
- Main advantage of advance recognition is that it helps stop parent moving from state A to state B (a relocation case) and then seising new jurisdiction (state B) to try and modify orders made in state A , ie: to take advantage of the new jurisdiction (state B).
- Advance recognition allows guarantees of contact for left-behind parent in state A from time that child arrives in state B.
- Advance recognition also allows left-behind parent to know where they stand in the new jurisdiction before relocation takes place. If recognition cannot be assured before relocation, then left-behind parent is able to try and modify proposed relocation order before relocation takes place.

Case Law

Re Y (Abduction: Undertakings Given for Return of Child) [2013] EWCA Civ 129 [2013] 2 FLR 649

- The Court of Appeal decision as to the use of undertakings in Cypriot Abduction case.

  "the whole purpose of the Hague Child Protection Convention was to support and supplement the effective operation of its parent the Hague Convention" per Thorpe LJ.

NB: Judgment is due to be handed down in a public law case which may consider the extent to which extent the Vienna Convention on Treaties requires us to act or not act in a way which does not obstruct the purpose of the Hague Convention 1996..

M. Scott-Manderson QC

Mark Jarman

Jacqueline Renton

June 2014

Section 8

Speakers Profiles

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Henry Setright QC

Henry Setright QC continues to be regarded by market sources as pre-eminent in international children matters, especially child abduction cases. "Superb and very good with clients" "He is excellent in cases requiring technical aspects of the law" Chambers & Partners 2014

Experience

Year of Call: 1979
Year of Silk: 2001

Appointments

Recorder
Deputy High Court Judge (Family Division)

Profile

Henry Setright QC was called to the English Bar in 1979 and was appointed Queen's Counsel in 2001. He has for many years specialised in international children's and family work at the highest level, including cases in the UK Supreme Court, the Court of Justice of the European Union, the European Court of Human Rights, the House of Lords, the Court of Appeal, and the High Court, and as lead English counsel in two cases on Amicus briefs in the United States Supreme Court.

He has (so far) appeared in more than 130 leading cases reported in the English Family Law Reports, a total not to date equalled by any other member of the Bar. His work to date has included (for example) consideration of issues relating to acquiescence, adoption, asylum, attempted assassination, care proceedings, children's representation, children's views, conflict and transfer of jurisdiction in public and private law cases, custody rights, diplomatic privilege, forced marriage, habitual residence, domestic violence, human rights, immigration, marriage, relocation, risk of harm, Sharia law, settlement, international and domestic surrogacy, and welfare in the context of international family litigation.

International work at the highest domestic level has since 2005 included 5 cases in the House of Lords and 8 cases in the UKSC, four of which - A v A [2013] UKSC 60, KL [2013] UKSC 75, LC [2014] UKSC 1, and K [2014] UKSC 29 - have been heard in the last 12 months.

In October 2009 he appeared in Re: I UKSC 10 [2010], on jurisdiction and the interface in a non EU (Anglo-Pakistan) case with the Brussels II revised regulation – it was the first Family case in the UK Supreme Court.

He led an English team presenting a brief in the landmark rights of custody appeal of Abbott v Abbott, the first 1980 Hague Convention case to be heard in the United States Supreme Court (judgment in USSC 17th May 2010), and in the subsequent Hague Settlement case of Lozano v Alvarez, also in the USSC, judgment 5th March 2014 .

He has also appeared in Hague Convention cases in the ECtHR, notably Ignaccola-Zenide v Romania, Carlsson v Switzerland, and, leading an English team, in the landmark Grand Chamber case of X v Latvia, judgment 26th November 2013.

He appeared in the first family case referred by the English Court of Appeal to the Court of Justice of the European Union (Mercredi v Chaffe Case C 497/10 PPU judgment 23rd December 2010) on habitual residence in children's cases. He appeared in May 2014 in a second CJEU case referred by the English Court of Appeal, E v B, judgment currently awaited.

The 2014 Family Law Reports (as of early June 2014) feature nine of his recent cases.

Other cases include Chief Constable and Another v YK and others [2010] EWCA Fam 2438) in relation to disclosure and the conduct of forced marriage hearings, on marriage/immigration policy R (Bibi) v Secretary of State for the Home Department) [2011] UKSC 45 EWCA Civ 1482, and In addition to his court appearances, he lectures regularly in England and internationally at conferences and seminars. He is the author of numerous articles on international family law, and is co-author of International Parental Child Abduction (Jordans/Family Law).

He is one of the originators of, and sits on the steering group of, the Reunite/Nuffield Foundation pilot scheme for mediation in child abduction cases, and assisted in the drafting of the Forced Marriages Bill introduced by Lord Lester of Herne Hill in late 2006, and now passed into law.

Directories

Henry Setright QC continues to be regarded by market sources as pre-eminent in international children matters, especially child abudction cases.
Expertise: "Superb and very good with clients." "He is excellent in cases requiring technical aspects of the law."
Recent work: Appeared in Qulia Bibi and Aguila v SSHD, a watershed case in the Supreme Court concerning forced marrigae and restrictions on marriage for under-21s. The case has been instrumental in changing English law, causing the abandonment of UK immigration policy regarding restrictions on entry for that class.
Recommended as a Leading Silk in Chambers and Partners 2014
(Star Individual)

Henry Setright QC is 'the best advocate around'.
Recommended as a Leading Family Silk in the area of Children Law
Legal 500 2013 Top Tier

Henry Setright QC is "undoubtedly amongst the best there is" on international children's cases and child abduction, relates one admiring source. Recent cases have included Quila Bibi and Aguila v the Secretary of State for the Home Department in the Court of Appeal and the Supreme Court, a landmark case on forced marriages and restrictions on marriages for under-21s. His record in cases of such importance led one interviewee to remark that "he is a very long way ahead of the second best barrister in international children's disputes."
Recommended as a Leading Silk in Chambers and Partners 2013
(Star Individual)

Henry Setright QC is ‘among the best practitioners in child abduction and other international cases’.
Recommended as a Leading Family Silk in the Legal 500 2012 (First Tier for Children Law)

When it comes to cross-jurisdictional children disputes, Henry Setright QC “is amongst the best advocates in the market.” He was recently involved in Mercredi v Chaffe, the first family case referred by the English Court of Appeal to the Court of Justice of the European Union. Sources say that “he is tactically astute and has excellent cross-examination skills.
Recommended as a Leading Silk in Chambers and Partners 2012 (Star Performer)

‘Devastating advocate’ Henry Setright QC is ‘unrivalled in this area’.
Recommended as a Leading Family Silk in the Legal 500 2011 (First Tier for Children Law)

Henry Setright QC is a leading expert in cross-jurisdictional children disputes. He recently represented the interveners in Re I (A Child), the first family law case to be heard in the Supreme Court. According to sources, “he is an unbeatable cross-examiner with an encyclopaedic knowledge of international law.”
Recommended as a Leading Silk in Chambers and Partners 2011 (Star Performer)

Recommended as a Leading Family Silk in the Legal 500 2010

“Setright is a distinguished figure in the field of international abduction”.
Recommended as a Leading Silk in Chambers and Partners 2010

‘Henry Setright QC is the go-to man when it comes to international work’as ‘there isn’t anything he doesn’t know’, according to market sources. A ‘formidable advocate’, he is a ‘wonderful tactician with a sharp analytical mind’ who applies his skills to a high-profile practice focusing on international children and family work.
Chambers & Partners 2009

4 Paper Buildings recently welcomed international family law specialist Henry Setright QC.
Recommended as a Leading Family Silk in the Legal 500 2009

A very impressive advocate at the peak of his powers… Henry Setright QC routinely argues several cases a year in the Court of Appeal and/or the House of Lords – most but not all of these relate to international child abduction or other cross-border child issues falling under Brussel II regulations. ‘Very notable in the area, and justifiably so’, he sets the tone for many of the juniors in the set.
Chambers and Partners 2008

Henry Setright QC is ‘your man in child abduction’ matters due to his ‘unrivalled knowledge of abduction law’. In addition to his sterling international children law practice, he has also ventured into the field of forced marriages.
Chambers and Partners 2007

Henry Setright QC has been in over 80 reported family cases (more than anyone else at the bar) and has ‘accumulated more knowledge

and kudos than many could hope for in a lifetime.' International child abduction is his strong suit in a practice that takes in children matters generally. He has further been a pioneer in the area of forced marriages.
Chambers and Partners 2006

Henry Setright QC is rated as a leading Silk by Chambers Directory. His particular bent is towards legal matters pertaining to child abduction, an area where few can effectively challenge him. 'The most experienced and well-regarded international child abduction barrister – he is a wonderful tactician.
Chambers and Partners 2005

Practice areas

- International
- Court of Protection

Dispute resolution

- Early Neutral Evaluator

Cases

Re K (A Child) (2014)
[2014] UKSC 29

Re F (A Child) (2014)
[2014] EWCA Civ 275

C (A Child) [2013]
[2013] EWCA Civ 204

Re LC (Children) (2014)
[2014] UKSC 1

Re KL (A Child) [2013]
[2013] UKSC 75

Re B (A Child) (2013)
[2013] EWCA Civ 1434

O v O [2013]
[2013] EWHC 2970 (Fam)

Re LC (Children) (2013)
[2013] EWCA Civ 1058

DL (Appellant) v EL (Respondent) & (1) Reunite International Child Abduction Centre (2) Centre for family law and practice (Interveners) (2013)
[2013] EWCA Civ 865

HJ (A Child) [2013]
[2013] EWHC 1867 (Fam)

LCG v RL [2013]
[2014] 1 FLR 307; [2013] EWHC 1383 (Fam)

Re LM (A Child) [2013]
[2013] EWHC 646 (Fam)

Re S (A Child) [2013]
[2013] EWHC 647 (Fam)

In the matter of (1) RAI (2) MI (Children) sub nom AI v MT (2013)
2013 EWHC 100 (Fam)

Cambra v Jones [2013]
[2014] 1 FLR 5; [2013] EWHC 88 (Fam)

Re C (A Child) (2013)
AC9401262

C (A Child) [2013]
[2013] EWCA Civ 204

Re H (A Child) & The United Mexican States (Intervener) (2013)
AC9501919

DL v EL (Hague Abduction Convention - Effect of Reversal of Return Order on Appeal) [2012]
[2013] EWHC 49 (Fam)

Re Y (A Child) (2013)
AC9601636

Re Y (A Child) (2013)
[2013] EWCA Civ 129

Re J (Children) [2012]
[2012] EWCA Civ 1511

ZA & PA v NA (2012)
[2012] EWCA Civ 1396

HSE Ireland v SF (a minor) (2012)
[2012] EWHC 1640 (Fam)

S (A Child) [2012]
[2012] UKSC 10

J v J (Relinquishment of Jurisdiction) (2011)
[2012] 1 FLR 1259 : [2012] Fam Law 399; [2011] EWHC 3255 (Fam)

(1) Diego Andres Aguilar Quila & Amber Aguilar (2) Shakira Bibi & Suhyal Mohammed (Appellants) v Secretary of State for the home department (Respondent) & (1) Advice on individual rights in Europe (Aire Centre) (2) Southall Black Sisters & Henna Foundation (Interveners) (2011)
[2011] UKSC 45; [2012] 1 AC 621 : [2011] 3 WLR 836 : [2012] 1 All ER 1011 : [2012] 1 FLR 788 : [2011] 3 FCR 575 : [2012] HRLR 2 : [2011] UKHRR 1347 : 33 BHRC 381 : [2012] Imm AR 135 : [2011] INLR 698 : [2012] Fam Law 21 : (2011) 108(41) LSG 15 : (2011) 155(39) SJLB 31 : Times, October 20, 2011

Re H-K (Children) (2011)
[2011] EWCA Civ 1100

O v P (2011)
[2011] EWHC 2425 (Fam)

Re E (Children) [2011]
[2011] UKSC 27

Re E (Children) sub nom (1) KE (2) TB (Appellants) v SE (Respondent) & (1) Reunite (2) Aire Centre (Interveners) (2011)
[2011] EWCA Civ 361

Barbara Mercredi V Richard Chaffe (2011)
[2011] 2 FLR 515 : [2011] 2 FCR 177 : [2011] Fam Law 584 : (2011) 108(13) LSG 21;[2011] EWCA Civ 272

Aguilar Quila and Amber Aguilar (2) Bibi and Mohammed (Appellants) V Secretary of State for The Home Department (Respondent) & (1) Advice on individual rights in Europe (Aire Centre) (2) Southall Black Sisters and Henna Foundation (Interveners) (2010
[2010] EWCA Civ 1482

Chief Constable and AA v YK & 5 ORS
[2010] EWHC 2438 (Fam)

Re A (Children) (Abduction: Interim Powers) sub nom EA v (1) GA (2) Westminster City Council (3) Salford City Council (2010)
[2011] 1 FLR 1; [2010] EWCA Civ 586; Times, June 16, 2010

Re U (Abduction: Nigeria) [2010]
[2010] EWHC 1179 (Fam); [2011] 1 FLR 354

W (Minors) [2010]
[2010] 2 FLR 1165 : [2010] Fam Law 787 : [2010] EWCA 520 Civ

Re I (A Child) (2009)
[2009] UKSC 10

B (A Child) [2009]
[2010] 1 FLR 1211 : [2010] 1 FCR 114 : [2010] Fam Law 130 : (2009) 153(45) SJLB 28 : [2009] EWCA Civ 1254

LAB v KB (Abduction: Brussels II Revised) [2009]
[2009] EWHC 2243 ; [2010] 2 FLR 1664

Re S (A Child) (2009)
[2010] 1 FLR 1146 : [2010] Fam Law 23 : [2009] EWCA Civ 1021

A (Applicant) v H (Respondent) & (1) Registrar General for England & Wales (2) Secretary of State for Justice (Interveners) (2009)
[2010] 1 FLR 1; [2009] EWHC 636 (Fam)

S v Slough Borough Council & Ors (2008)
[2008] EWHC 3013 (Fam)

Re E (Abduction: Intolerable Situation)
2008] EWHC 2112 (Fam); [2009] 2 FLR 485

Re S-R (Contact: Jurisdiction) (2008)
(2008) 2 FLR 1741;

Re T (Abduction: Rights of Custody) (2008)
[2008] 2 FLR 1794; [2008] EWHC 809 (Fam)

MM v VM (AKA VRM) (2007)
[2007] UKHL 55 (2008); 1 AC 1288 : (2007) 3 WLR 975 : (2008) 1 All ER 1157 : (2008) 1 FLR 251 : Times, December 6, 2007

Re M (Children) (2007)
(2008) 1 FLR 699; [2007] EWCA Civ 1059

H v (1) D (2) X & Y (By Their Guardian AD Litem, O) (2007)
[2007] EWHC 802 (Fam)

Re F (A Child) (Application for Child Party Status) (2007)
[2007] 2 FLR 313; [2007] EWCA Civ 393

Re M (A Child) (2007)
(2007) 2 FLR 72; [2007] EWCA Civ 260

Re F (A Child) (Abduction: Child's Wishes) (2007)
(2007) 2 FLR 697; [2007] EWCA Civ 468

Re D (A Child) (2006)
[2006] UKHL 51; (2007) 1 AC 619 : (2006) 3 WLR 989 : (2007) 1 All ER 783 : (2007) 1 FLR 961 : Times, November 17, 2006 : Independent, November 21, 2006

Re F (2006)
(2007) 1 FLR 627; [2006] EWHC 2199 (Fam)

CC v PC (2006)
[2006] EWHC 1794 (Fam)

Re EC (A Child) (2006)
(2007) 1 FLR 57 : [2006] EWCA Civ 1115; Times, July 19, 2006

Re D (A Child) (2006)
[2006] EWCA Civ 830

Re D (A Child) (2006)
[2006] EWCA Civ 830

Re M (A Child) (2006)
(2006) 2 FLR 1180 : [2006] EWCA Civ 630; Times, July 3, 2006 : Independent, May 24, 2006

Re D (Children) (2006)
(2006) 2 FLR 305; [2006] EWCA Civ 146

X Metropolitan Borough Council v (1) SH (2) PH (3) AH (2005)
[2005] EWHC 1713 (Fam)

Re E (A Child) (2005)
(2005) 2 FLR 759; [2005] EWHC 848 (Fam)

S v (1) B (2) Y (A Child) (2005)
(2005) 2 FLR 878 : [2005] EWHC 733 (Fam); Times, May 17, 2005

Re W (A Child) (2004)
(2005) 1 FLR 727; [2004] EWCA Civ 1366

W v W (2004)
(2004) 2 FLR 499; [2004] EWHC 1247 (Fam)

Re C (Abduction: Settlement) Sub Nom in the Matter of Inherent Jurisdiction (2004)

(2005) 1 FLR 127; [2004] EWHC 1245 (Fam)

Re J (Children) (2004)
(2004) 2 FLR 64 : [2004] EWCA Civ 428; Times, April 12, 2004

Re J (A Child) (Child Returned Abroad: Convention Rights) (2004)
(2004) 2 FLR 85 : [2004] EWCA Civ 417; Times, April 14, 2004

Re H (Children) (Abduction: Grave Risk) (2003)
(2003) 2 FLR 141; [2003] EWCA 355

Re S (A Child: Abduction)
[2003] 1 FLR 1008

Re L (Abduction: Childs Objections to Return) (2002)
(2002) 1 WLR 3208 : (2002) 2 FLR 1042 : [2002] EWHC 1864 (Fam): Times, October 14, 2002

Re S (A Child) (2002)
(2002) 1 WLR 3355 : (2002) 2 FLR 815 : [2002] EWCA Civ 908: Times, July 15, 2002

Re S (Children) (Child Abduction: Asylum Appeal) (2002)
(2002) 1 WLR 2548 : (2002) 2 FLR 465 : [2002] EWCA Civ 843 : Times, June 3, 2002

Re S (Children) (Child Abduction : Asylum Appeal) (2002)
(2002) 2 FLR 437 : [2002] EWHC 816 (Fam); Times, May 9, 2002

W and W v H (2002)
(2002) 2 FLR 252;

W and B v H (2002)
(2002) 1 FLR 1008

Rashid Al-H V Sara F (2001)
(2001) 1 FLR 951 : [2001] EWCA Civ 186 ; Times, March 2, 2001

Re JS (Private International Adoption)
[2000] 2 FLR 638

Re T (Children) Sub Nom Re T (Minors) (Abductions : Custody Rights) Sub Nom Re T (Abduction : Child's Objections to return) (2000)
(2000) 2 FLR 192 : Times, April 24, 2000

Re M (Abduction: Conflict of Jurisdiction) (2000)
(2000) 2 FLR 372

Re KR (A Minor) (Abduction : Forcible Removal) (1999)
(1999) 4 All ER 954 : (1999) 2 FLR 542 : Times, June 16, 1999

Re C (A Minor) (Child Abduction) (1999)
(1999) 2 FLR 478 : Times, May 14, 1999

Re M (Abduction: Leave to Appeal) (1999)
(1999) 2 FLR 550

Re S (Abduction: Return into Care) (1998)
(1999) 1 FLR 843

Re D (Abduction : Acquiescence) (1998)
(1999) 1 FLR 36

Re S (Child Abduction: Acquiescence) (1998)
(1998) 2 FLR 893

P v P (Minors) (Diplomatic Immunity: Jurisdiction) (1998) sub nom Re P (Diplomatic Immunity: Jurisdiction) (1998)
(1998) 1 FLR 1026 : Times, March 25, 1998

P v P (Minors) (Diplomatic Immunity: Jurisdiction) (1998) sub nom Re P (Diplomatic Immunity: Jurisdiction) (1998)
(1998) 1 FLR 1026 : Times, March 2, 1998

Re T (Staying Contact in Non-Convention Country) (Note)
[1999] 1 FLR 262

Re S (A Minor : Abduction: Acquiescence) (1997)
(1998) 2 FLR 115

Re S (A Minor) (Child Abduction: Delay : Child's Preference) (1997)

(1998) 1 FLR 651 : Times, November 20, 1997

Re P (Minors) (1997)
AC9000075

Re O (Child Abduction) (1997)
(1997) 2 FLR 712

Re Pelling (Rights of Audience) (1997)
(1997) 2 FLR 458

Re O (A Minor) (Child Abduction: Custody Rights) (1997)
(1997) 2 FLR 702 : Times, June 24, 1997

Re M (Abduction) (1996)
(1997) 2 FLR 690

A Metropolitan Borough Council v DB (1996)
(1997) 1 FLR 767 : (1997) 37 BMLR 172

Re M (Petition to European Commission of Human Rights)
[1997] 1 FLR 755

The Ontario Court v M and M (Abduction: Children's Objections) (1996)
(1997) 1 FLR 475

Re S (Abduction: Children: Separate Representation) (1996)
(1997) 1 FLR 486

Re A (Minors) (Child Abduction) (1995)
(1996) 1 WLR 25 : (1996) 1 All ER 24 : (1996) 1 FLR 1 : Independent, October 16, 1995

Re S (Abduction: European Convention) (1995)
(1996) 1 FLR 662

Re P (A Minor) (Child Abduction: Declaration) (1995)
AC0002049 Times, February 16, 1995

Re N (Child Abduction: Jurisdiction) (1994)
(1995) 2 WLR 233 : (1995) 2 All ER 417

Re H (Minors) (Abduction: Custody Rights: Re S (Minors) (Abduction: Custody Rights) (1991)
(1991) 2 AC 476 : (1991) 3 WLR 68 : (1991) 3 All ER 230 : (1991) 2 FLR 262 : (1992) FCR 45 : (1991) Fam Law 227 : (1991) 141 NLJ 891 : (1991) 135 SJLB 52

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Marcus Scott-Manderson QC

"Has a detailed knowledge of technical aspects of law and is a well-respected international children practitioner."
Chambers & Partners 2014

Experience

Year of Call: 1980
Year of Silk: 2006

Education

BCL MA (Oxon)
Harrow School, Christ Church Oxford, Boulter Exhibition in Law, Glasgow University (Department of Forensic Medicine), Hague Academy of International Law Dana Fellowship, Hardwicke Scholarship Lincoln's Inn, Droop Scholarship Lincoln's Inn, Ver Heyden de Lancey Prize in Forensic Medicine, Inns of Court School of Law

Profile

International cases relating to children.

Professional Memberships

British Academy of Forensic Sciences
Family Law Bar Association
Lincoln's Inn

Directories

Maintains an excellent track record in cross-border child abduction cases.

Expertise: "Has a detailed knowledge of technical aspects of law and is a well-respected international children practitioner."

Recent work: Successfully argued a test case on the conflict between ECJ and English definitions of habitual residence in the context of Hague Convention abduction.
Chambers & Partners 2014

Marcus Scott-Manderson QC is noted for his 'excellent attention to detail'.
Recommended as a Leading Family Silk in the area of Children Law
Legal 500 2013

Marcus Scott-Manderson QC specialises in international children's cases including child abduction. Recent cases have included H-K (Children) in the Court of Appeal, concerning questions of habitual residence.
Recommended as a Leading Family Silk in Chambers and Partners 2013

The ‘extraordinary’ Marcus Scott-Manderson QC is recommended for child abduction work.
Recommended as a Leading Family Silk in the Legal 500 2012 (Top Tier)

For international children matters, Marcus Scott Manderson QC "is amazing and really knows his stuff inside-out." Complex child abduction is his forte, with sources going out of their way to praise his excellent attention to detail.
Recommended as a Leading Silk in Chambers and Partners 2012

Marcus Scott-Manderson QC has 'outstanding attention to detail and an encyclopaedic knowledge of the law'.
Recommended as a Leading Family Silk in the Legal 500 2011 (Top Tier)

With a high success rate is Marcus Scott Manderson QC, "a conscientious silk who knows everything there is to know about international child abduction." His "calm and impressive manner in court" inspires confidence in clients.
Recommended as a Leading Silk in Chambers and Partners 2011 (Ranked 1st)

Marcus Scott-Manderson QC has 'outstanding attention to detail and an encyclopaedic knowledge of the law'.
Recommended as a Leading Family Silk in the Legal 500 2011 (Top Tier)

A distinguished figure in the field of international abduction, Marcus Scott-Manderson QC, who is "immensely respected by the courts for his fair-minded approach.
Recommended as a Leading Silk in Chambers and Partners 2010

Marcus Scott Manderson QC is 'one of the top silks for abduction cases', and has 'an encyclopaedic knowledge of all children cases, as well as old-school manners.'
Recommended as a Leading Family Silk in the Legal 500 2010

Marcus Scott-Manderson QC remains sought after for his "encyclopaedic knowledge of the law" and "vim and vigour in pursuit of his goals." He is best known for his international work, particularly in the field of child abduction.
Recommended as a Leading Family Silk in Chambers and Partners 2009.

Recommended as a Leading Family Silk in the Legal 500 2009

Marcus Scott-Manderson QC is a "clear leader in the field of child abduction work," as well as in related cross-jurisdictional family law battles like those concerning wives abandoned following failed arranged marriages. "A stickler for detail," he also does some domestic public law work.
Recommended as a Leading Silk, Chambers and Partners 2008.

Marcus Scott-Manderson QC receives exceptional feedback from solicitors who say he is ' very knowledgeable on child abduction', and is ' always prepared to go that extra mile', being a ' conscientious silk with an encyclopaedic knowledge of the subject'.
Legal 500, 2008.

Practice areas

- International

Cases

Re A (Children) (2013)
AC9101290

LA v (1) MF (2) CY (3) RN (4) N (2013)
[2013] EWHC 1433 (Fam)

Re N (Children) (2013)
AC9501952

Re T (A Child: Article 15 of B2R) [2013]
[2013] EWHC 521 (Fam)

In the matter of (1) RAI (2) MI (Children) sub nom AI v MT (2013)
2013 EWHC 100 (Fam)

Re L (A Child) (2012)
[2012] EWCA Civ 1157

Viktorija Baranauskaite v (1) Doncaster Metropolitan Borough Council (2) AB (A Child By Her Children's Guardian) (2012)
[2012] EWCA Civ 978

AB (A Child) [2012]
[2012] EWCA Civ 978

Re LSDC (A Child) (2012)
[2012] EWHC 983 (Fam)

Re H-K (Children) (2011)
[2011] EWCA Civ 1100

In the matter of C (A Child) sub nom AL v (1) JH (2) C (A Child by her Guardian) (2011)
[2011] EWCA Civ 521

Barbara Mercredi V Richard Chaffe (2011)

[2011] 2 FLR 515 : [2011] 2 FCR 177 : [2011] Fam Law 584 : (2011) 108(13) LSG 21;[2011] EWCA Civ 272

Mercredi v Chaffe

F v J [2010]
[2010] EWHC 2909 (Fam)

J v S (2010)
[2011]1 FLR 1694; [2010] EWHC 2098 (Fam)

C (A Child)
[2010] 2 FCR 664 : [2010] EWCA Civ 89

Re K (Children) (2009)
[2010] 1 FLR 782; [2009] EWCA Civ 986

A (Applicant) v H (Respondent) & (1) Registrar General for England & Wales (2) Secretary of State for Justice (Interveners) (2009)
[2010] 1 FLR 1; [2009] EWHC 636 (Fam)

Re F (A Child) (Abduction: Objections to Return) (2009)
[2009] EWCA Civ 416

Re S (Care: Jurisdiction) (2008)
[2008] EWHC 3013 (Fam); (2009) 2 FLR 550

S v Slough Borough Council & Ors (2008)
[2008] EWHC 3013 (Fam)

Re Z (Abduction)
[2008] EWHC 3473 (Fam); [2009] 2 FLR 298

Re RD (2008)
(2009) 1 FLR 586

Medway Council v G & Ors(2008)
[2008] 2 FLR 1687; [2008] EWHC 1681 (Fam)

Re E (Abduction: Intolerable Situation)
2008] EWHC 2112 (Fam); [2009] 2 FLR 485

B-G v B-G (2008)
[2008] 2 FLR 965; [2008] EWHC 688 (Fam)

Re T (Abduction: Rights of Custody) (2008)
[2008] 2 FLR 1794; [2008] EWHC 809 (Fam)

In re M and another (Children) (Abduction:Rights of Custody)
[2007] 3 WLR 975

MM v VM (AKA VRM) (2007)
[2007] UKHL 55 (2008); 1 AC 1288 : (2007) 3 WLR 975 : (2008) 1 All ER 1157 : (2008) 1 FLR 251 : Times, December 6, 2007

Re G (Abduction: Withdrawal 0f Proceedings, Acquiescence, Habitual Residence) (2007)
[2008] 2 FLR 351; [2007] EWHC 2807 (Fam)

Re M (Children) (2007)
[2007] EWCA Civ 992

Re A, HA v MB (Brussels II Revised: Article (11)7 Application) (2007)
[2007] EWHC 2016, [2008] 1 FLR 289 : Times, November 2, 2007

H v (1) D (2) X & Y (By Their Guardian AD Litem, O) (2007)
[2007] EWHC 802 (Fam)

Re F (A Child) (Application for Child Party Status) (2007)
[2007] 2 FLR 313; [2007] EWCA Civ 393

Re M (A Child) (2007)
(2007) 2 FLR 72; [2007] EWCA Civ 260

Re F (A Child) (Abduction: Child's Wishes) (2007)
(2007) 2 FLR 697; [2007] EWCA Civ 468

Re D (A Child) (2006)
[2006] UKHL 51; (2007) 1 AC 619 : (2006) 3 WLR 989 : (2007) 1 All ER 783 : (2007) 1 FLR 961 : Times, November 17, 2006 : Independent,

November 21, 2006

Re D (A Child) (2006)
[2006] EWCA Civ 830

Re C (A Child) (2006)
[2006] EWHC 1229 (Fam)

Re D (A Child) (2006)
[2006] EWCA Civ 830

Re M (A Child) (2006)
(2006) 2 FLR 1180 : [2006] EWCA Civ 630; Times, July 3, 2006 : Independent, May 24, 2006

A v L Sub Nom In ReA (A Child) (Foreign Contact Order: Jurisdiction) (2003)
[2003] EWHC 2911 (Fam) ; (2004) 1 All ER 912 : (2004) 1 FLR 641 : Times, December 10, 2003

Re H (Children) (Abduction: Grave Risk) (2003)
(2003) 2 FLR 141; [2003] EWCA 355

Re D (Stay of Children Act Proceedings) (2003)
[2003] EWHC 565 (Fam) (2003) 2 FLR 1159

Re L (Abduction: Childs Objections to Return) (2002)
(2002) 1 WLR 3208 : (2002) 2 FLR 1042 : [2002] EWHC 1864 (Fam): Times, October 14, 2002

Re S (A Child) (2002)
(2002) 1 WLR 3355 : (2002) 2 FLR 815 : [2002] EWCA Civ 908: Times, July 15, 2002

Re S (Children) (Child Abduction : Asylum Appeal) (2002)
(2002) 2 FLR 437 : [2002] EWHC 816 (Fam); Times, May 9, 2002

Flintshire County Council v (1) Mr Kilshaw (2) Mrs Kilshaw (3) Guardian ad Litem (4) Official Solicitor (5) Mr A Wecker (6) Mrs T Wecker sub nom Flintshire County Council v K (2001)
(2001) 2 FLR 476

(1) Jon Venables (2) Robert Thompson v (1) News Group Newspapers Ltd (2) Associated Newspapers Ltd (3) MGN Ltd (2001)
(2001) Fam 430 : (2001) 2 WLR 1038 : (2001) 1 All ER 908 : (2001) EMLR 10 : (2001) 1 FLR 791 : (2001) HRLR 19 : (2001) UKHRR 628 : Times, January 16, 2001 : Independent, January 17, 2001 : Daily Telegraph, January 16, 2001

Re JS (Private International Adoption)
[2000] 2 FLR 638

Re M (Abduction: Intolerable Situation) (2000)
(2000) 1 FLR 930

Re C (Minors) (Abduction: Habitual Residence) (1999)
(1999) 1 FLR 1145 : Times, February 23, 1999

Re H & Ors Sub Nom H V H (Child Abduction: Acquiescence) (1997)
(1998) AC 72 : (1997) 2 WLR 563 : (1997) 2 All ER 225 : (1997) 1 FLR 872 : Times, April 17, 1997 : Independent, April 15, 1997

H v H (Abduction: Acquiescence)
[1996] 2 FLR 570

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Catherine Wood QC

"A great advocate. She manages clients' expectations and achieves good results. She's very focused, very organised - the all-round package."
Chambers & Partners 2014

Experience
Year of Call: 1985
Year of Silk: 2011

Education
LLB (Hons) (Lond)

Appointments
Recorder 2007

Profile
Catherine has a long established, well- deserved reputation as being one of the country's leading barristers in the field of private children cases. Appointed in 2007 as a family law Recorder Catherine is able to draw on her extensive experience both as advocate and Judge when representing clients. Frequently instructed in protracted and complicated disputes, often involving an international element, relocation, allegations of sexual abuse, parental alienation and expert evidence.

Professional Memberships
Family Law Bar Association
South Eastern Circuit
Bar Pro Bono Unit
Middle Temple
International Academy of Matrimonial Lawyers

Directories
Has gone from strength to strength since taking silk in 2011 and is particularly noted for her efforts in serious private law children cases, especially those concerning sexual abuse and parental alienation.

Expertise: "A great advocate. She manages clients' expectations and achieves good results. She's very focused, very organised - the all-round package."
Chambers & Partners 2014

Catherine Wood QC has thrived since taking silk in 2011. One instructing solicitor said that "she is incredibly helpful and authoritative – she is my go-to person when I don't know what I'm doing." Wood specialises in private law children work, including Hague Convention cases. Recommended as a Leading Family Silk in Chambers and Partners 2013

Catherine Wood QC, who is "superb on every level, technically brilliant, relaxed and reassuring with clients." She was regarded as "the best junior private children lawyer in the country," and is expected to continue to impress in silk.

Recommended as a Leading Family Silk in Chambers and Partners 2012

Recently appointed silk Catherine Wood QC is also highly recommended.
Recommended as a Children Law Leading New Silk in The Legal 500 2011

Catherine Wood handles private children work with an emphasis on contact and residence disputes. According to commentators "she has an assured manner with clients and an excellent instinct for the right approach in any given case."
Recommended as a Leading Family Junior in Chambers and Partners 2011 (Ranked 1st)

Catherine Wood, a private law children expert who is “a determined opponent who is prepared to the nth degree."
Recommended as a Leading Family Junior in Chambers and Partners 2010 (Ranked 1st)

Recommended as a Children Law Leading Junior in The Legal 500 2010

"A dogged opponent who is guaranteed to be well prepared," Catherine Wood moves up the table this year after receiving a welter of positive feedback: "She is destined for the High Court Bench, she is that good." Peers laud Wood's "ability to inspire real confidence," noting that her "apparently laid-back style masks a wolf in sheep's clothing."
Recommended as a Leading Family Junior in Chambers and Partners 2009

Catherine Wood who has 'excellent instincts' and 'an assured touch with clients and judges alike'.
Recommended as a Children Law Leading Junior in The Legal 500 2009

"Calm and understated,” according to interviewees, Wood “does not add personal drama to already charged situations.” Matters in question include private law disputes over contact and residence, as well as public law disputes concerning neglect, abuse and the continuation of medical treatment.
Recommended as a Leading Family Junior in **Chambers and Partners 2008**

"Effective, hard-hitting style" brings her a strong solicitor following. As one source mused: "It would be hard to find a more pleasant barrister to do your case well."
Recommended as a Leading Family Junior in **Chambers and Partners 2007**

Catherine Wood is ‘a children specialist with excellent instincts, and an assured touch with clients and judges alike’.
Legal 500, 2008

Practice areas

- Private Law
- Public Law
- International
- Court of Protection

Dispute resolution

- Collaborative Lawyer
- Mediation
- Early Neutral Evaluator

Cases

A (Applicant) v H (Respondent) & (1) Registrar General for England & Wales (2) Secretary of State for Justice (Interveners) (2009)
[2010] 1 FLR 1; [2009] EWHC 636 (Fam)

K v K (2006)
[2007] 1 FCR 355

Re A (Abduction: Habitual Residence: Consent)
[2006] 2 FLR 1

Re U (Re-opening Appeal)
[2005] 2 FLR 444

Re Uddin (A Child)
[2005] 1 WLR 2398

Re S (A Child) (Financial Provision)
[2005] 2 WLR 895

Harris v Harris; Attorney-General v Harris
[2001] 2 FLR 895

Re G (Care Proceedings: Spilt Trials)
[2001] 1 FLR 872

Re H (A Child) (Contact) (2000)
LTL 27/6/2000 EXTEMPORE

Re DH (A Minor) (Child Abuse)
[1994] 1 FLR 679

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Teertha Gupta QC

"A joy to work with, he's knowledgeable and so very on the ball. He focuses on issues in order to ensure he gets a result for the client." "He's always available to talk and is very innovative in his solutions to problems."
Chambers and Partners 2014

Experience

Year of Call: 1990
Year of Silk: 2012

Education

Mill Hill School,London
Leeds University
Inns of Court School of Law.

Languages

Conversational Bengali

Appointments

Recorder (Civil, Crime and Family) 2009

Profile

Teertha has been a barrister for 23 years and was appointed Queen's Counsel in March 2012 as a specialist Family practitioner in International Family Law, namely the international relocation of children, cross-border parental abduction, and representing adults where there are allegations of forced marriage or of being stranded abroad by the other spouse. International jurisdictional instruments and treaties (such as The Human Trafficking Convention 2005, The Hague Conventions and Brussels II Revised) as well as 'fact finding' in hotly contested domestic private and public law matters are also his forte. Teertha's work is mainly in the Royal Courts of Justice in London: in the High Court and in the Court of Appeal. He has been involved in 6 full appeals in the UKSC/House of Lords and counting and has also made oral submissions in the ECJ.

Before he took silk, Teertha won two of the most prestigious awards at the Family Bar namely Chambers and Partners Family Junior of the Year in 2008 and in 2011 he won the Jordan's Family Law Barrister of the Year Award 2011 (at the time he was the only junior to be shortlisted in a field of Queen's Counsel).

In his first year of silk Teertha has already successfully led in the UK Supreme Court (Re T Children [201] UKSC 36 for CAFCASS). He is a senior trial advocate. Because of the confidential nature of his work he cannot name his private clients but he advises and represents people and children from all different walks of life, as well as institutions and charities (the latter *pro bono*). Advising in consultation on the law, the likely outcomes (which sometimes involves robust advice) and tactics are his routine work. Many of his private law cases involve parties of high net worth and hence a general understanding of the financial issues is vital but this is not Teertha's established specialism -

he is often brought in to conduct the litigation and orchestrate decisions over the children or jurisdiction in such cases and to 'dovetail' with the ancillary relief teams.

Teertha has been the Advocate to the Court as instructed by the Attorney General (Re *S a child [2008] EWHC 3013 (Fam)* and intervening on behalf of the Attorney General in *MA and JA and The Attorney General [2012] EWHC 2219 (Fam).*

Teertha has been interviewed on Radio Four: Face the Facts and Law in Action. http://www.bbc.co.uk/programmes/b01l7wq5 http://news.bbc.co.uk/1/hi/programmes/law_in_action/3965871.stm

Teertha has spoken in the House of Commons and was named by Lord Lester in the House of Lords as one of the four senior *pro bono* lawyers behind the Forced Marriage Civil Protection Bill which became a statute in 2007. http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70126-0001.htm

Teertha also sits as a part time Circuit Judge (a Recorder) in the Criminal and Civil courts as well as in the Family courts- this experience helps him to understand the judicial thought process and what it is that judges may find relevant, when he is presenting a case as a senior barrister. Teertha also conducted many Criminal jury trials in the 1990's, for example at the Old Bailey and this experience has proved most useful when cross-examining, as senior trial counsel, in the Family Courts.

Teertha has trained as a mediator and a collaborative lawyer. His aims are to be cost effective; to provide knowledgeable, unstuffy, straight forward advice; to try avoid litigation where possible and finally but most importantly in Court: to represent his clients persuasively and fearlessly.

Professional Memberships

Barristers Benevolent Association
Inner Temple
Family Justice Council (Diversity sub-committee)
FLBA
Barrister of the Eastern Caribbean Supreme Court, British Virgin Islands Circuit
Member of The British Association of Sports Lawyers

Directories

Has thrived since taking silk in 2012 and is highly respected for his work on cross-jurisdictional children cases.

Expertise: "A joy to work with, he's knowledgeable and so very on the ball. He focuses on issues in order to ensure he gets a result for the client." "He's always available to talk and is very innovative in his solutions to problems."

Recent work: Appeared on behalf of CAFCAS in the Supreme Court in Re: T. He successfully persuaded the Law Lords that the Court of Appeal was wrong in its analysis that costs follow the event in care cases.
Chambers & Partners 2014
Ranked Band 1

Recommended as a Leading Silk in the area of Children law
Legal 500 2013

Teertha Gupta QC is an "exceptional advocate" whose ascension to silk in 2012 was, in the eyes of market observers, richly deserved. His principal area of focus is international children cases. Recent matters have included S (Wardship: Stranded Spouses), a case concerning a bride brought to the UK to marry a British citizen, who was then drugged and abandoned in Pakistan without a passport after giving birth.
Recommended as a Leading Family Silk Chambers & Partners 2013

International child abduction specialist Teertha Gupta QC's recent QC appointment is 'a formal confirmation of a standard that he has worked to for many years now'.
Recommended as a New Family Silk in the Legal 500 2012

Teertha Gupta is held in extremely high regard for his children work: "He is a solid advocate and the go-to junior for all international children work." International child abduction and relocation matters are his forte, and solicitors flock to him as he has "not only first-class legal expertise, but also a delightful and charming style."
Recommended as a Leading Family Junior in Chambers and Partners 2012 (Ranked 1st)

Teertha Gupta is the 'leading child abduction junior at the family Bar'
Recommended as a Leading Family Junior in the Legal 500 2011 (Top Tier)

Teertha Gupta is a premier junior for international children work. "He has an approachable and relaxed manner and knows exactly what he is doing," sources say. They comment admiringly that "charm allied to brains always makes for a potent combination."
Recommended as a Leading Family Junior in Chambers and Partners 2011 (Ranked 1st)

Teertha Gupta represents a recent excellent hire for the set. Noted for his encyclopaedic knowledge of the law and his interest in abduction and forced marriage, he is "an enthusiastic and thoroughly committed lawyer who gives it his all every time.
Recommended as a Leading Family Junior in Chambers and Partners 2010 (Ranked 1st)

Teertha Gupta was voted as ‘Family Junior Barrister of the Year’ at the Chambers and Partners Bar Awards in September 2008.

Recommended as a Leading Family Junior in the Legal 500 2010

Teertha Gupta is, like Setright, mightily impressing peers and clients with his expert understanding of international child abduction, forced marriages and matters relating to stranded spouses. Widely regarded as ‘one of the leading juniors,’ he has ‘courage and tenacity when faced with the toughest challenges’.
Chambers and Partners 2009 (Ranked 1st)

Recommended as a Leading Family Junior in the Legal 500 2009

Described as ‘the cat’s whiskers’ by opposing counsel for his combination of ‘sophisticated legal knowledge, good cross examination and effective case presentation’, Gupta spends much of his time on cross border disputes regarding children. In addition he has established himself as one of only a tiny handful of experts in the niche area of international forced marriages.
Chambers and Partners 2008

Gupta’s practice is heavily built on this topic and also child abduction cases. Clients find him ‘professional and expeditious’ singling him out as a ‘barrister who is going places’.
Chambers and Partners 2007

Gupta is a great favourite of the Home Office-Foreign Office’s Forced Marriage Unit and is known for both his accessibility and his ‘unflinching devotion to the cause’.
Chambers and Partners 2006

Teertha Gupta is ‘a rising star in international abduction work’.
Legal 500 2008

Teertha Gupta is highly recommended in forced marriage and child abduction matters.
Legal 500 2007

Teertha Gupta is widely viewed as the leading junior in forced marriage cases and is also highly recommended for his expertise in child abduction matters.
Legal 500 2006

Practice areas

- Private Law
- Public Law
- International

Dispute resolution

- Collaborative Lawyer
- Early Neutral Evaluator

Awards

Cases

Re KP (A Child) (2014)
[2014] EWCA Civ 554

Re LC (Children) (2014)
[2014] UKSC 1

Re KL (A Child) [2013]
[2013] UKSC 75

Re LC (Children) (2013)
[2013] EWCA Civ 1058

NN v ZZ & Ors [2013]
[2013] EWHC 2261 (Fam)

DL (Appellant) v EL (Respondent) & (1) Reunite International Child Abduction Centre (2) Centre for family law and practice (Interveners) (2013)
[2013] EWCA Civ 865

I (A Child) & J (A Child) [2013]
[2013] EWCA Civ 259

In the matter of (1) RAI (2) MI (Children) sub nom AI v MT (2013)
2013 EWHC 100 (Fam)

Re H (A Child) & The United Mexican States (Intervener) (2013)
AC9501919

Re O (A Child) (2012)
[2012] EWCA Civ 1576

MA v JA and the Attorney General [2012]
[2012] EWHC 2219 (Fam)

T (Children) [2012]
[2012] UKSC 36

H (A Child) [2012]
[2012] EWCA Civ 913

Re E (Children) [2011]
[2011] UKSC 27

JK v KC (2011)
[2011] Fam Law 1204; [2011] EWHC 1284 (Fam)

DB v (1) ZA (2) RA (By his Guardian Judith Bennett-Hernandez) & (1) Metropolitan Police Service (2) Croydon London Borough Council (Interveners) (2011)
[2011] EWHC 277 (Fam)

Chief Constable and AA v YK & 5 ORS
[2010] EWHC 2438 (Fam)

F v J [2010]
[2010] EWHC 2909 (Fam)

Re S (Wardship) (2010)
[2011] 1 FLR 305 : [2010] Fam Law 1074 ; [2010] EWHC 1669 (Fam)

Re I (A Child) (2009)
[2009] UKSC 10

K v K (2009)
[2010] 1 FLR 1295 : [2010] Fam Law 8 : [2009] EWHC 2721 (Fam)

H v (1) M (2) H (A Child by her Guardian Sarah Vivian) (2009)
[2010] 1 FLR 598 : [2010] 2 FCR 433 : [2009] Fam Law 1123 : (2009) 153(37) SJLB 36 : [2009] EWHC 2280 (Fam)

RS v (1) KS (2) LS (By his Guardian) (2009)
[2009] EWHC 1494 (Fam)

Re P-J (Children) (2009)
[2009] EWCA Civ 588

Re S (A Child) (2009)
[2009] EWCA Civ 993

A (Applicant) v H (Respondent) & (1) Registrar General for England & Wales (2) Secretary of State for Justice (Interveners) (2009)
[2010] 1 FLR 1; [2009] EWHC 636 (Fam)

Re H (Abduction) [2009]
[2009] 2 FLR 1513; [2009] EWHC 1735 (Fam)

Re S (Care: Jurisdiction) (2008)
[2008] EWHC 3013 (Fam); (2009) 2 FLR 550

S v Slough Borough Council & Ors (2008)
[2008] EWHC 3013 (Fam)

EM (Lebanon) v Secretary of State for the Home Department (2008)
[2008] UKHL 64; (2008) 3 WLR 931 : (2009) 1 All ER 559 : (2008) 2 FLR 2067 : (2009) HRLR 6 : (2009) UKHRR 22 : Times, October 24, 2008

Re RD (2008)
(2009) 1 FLR 586

Re RC and BC (2008)
(2009) 1 FLR 574

Re S (A Child) (2008)
[2008] EWCA Civ 951

SB v RB (Residence; Forced Marriage: Childs Best Interest) (2008)
(2008) 2 FLR 1588

Re B (A Child) sub nom RB v (1) FB (2) MA (2008)
[2008] 2 FLR 1624; [2008] EWHC 1436 Fam

R v P (2008)
[2008] EWHC 737 (Fam); (2008) 2 FLR 936

MC (Claimant) v SC (Defendant) & CC & ORS (CHILDREN) (Interveners) (2008)
[2008] EWHC 517 (Fam); [2008] 2 FLR 6

AD v (1) CD (2) AD (2007)
[2007] EWCA Civ 1277; (2008) 1 FLR 1003 : Times, January 9, 2008

MM v VM (AKA VRM) (2007)
[2007] UKHL 55 (2008); 1 AC 1288 : (2007) 3 WLR 975 : (2008) 1 All ER 1157 : (2008) 1 FLR 251 : Times, December 6, 2007

Re C (Costs: Enforcement of Foreign Contact Order) (2007)
[2008] 1 FLR 619; [2007] EWHC 1993 (Fam)

M v M (2007)
[2007] EWHC 1404 (Fam); [2007] 2 FLR 1010

Re S (Practice: Muslim Women Giving Evidence) (2006)
(2007) 2 FLR 461; [2006] EWHC 3743 (Fam)

Re D (A Child) (2006)
[2006] UKHL 51; (2007) 1 AC 619 : (2006) 3 WLR 989 : (2007) 1 All ER 783 : (2007) 1 FLR 961 : Times, November 17, 2006 : Independent, November 21, 2006

Re ML & AL (Children) (Contact Order: Brussels II Regulation) (2006)
[2006] EWHC 3631 (Fam)

Re D (Paternity)
FLR 2007 2 26

Re ML & AL (Children) (Contact order: Brussels II Regulation) (2006)
[2006] EWHC 2385 (Fam)

NS v MI (2006)
(2007) 1 FLR 444; [2006] EWHC 1646 (Fam)

Re EC (A Child) (2006)
(2007) 1 FLR 57 : [2006] EWCA Civ 1115; Times, July 19, 2006

Re SA (Vunerable adult with capacity: marriage)
[2005] EWHC 2942 (Fam)

Re SK (2005)
(2006) 1 WLR 81 : (2005) 3 All ER 421 : (2005) 2 FLR 230 ; [2004] EWHC 3202 (Fam)

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David Williams QC

David Williams QC has established himself as a go-to advocate for Hague Convention matters, and is particularly noted for his strengths in cases involving abductions and reciprocal enforcement. "A favourite for complex jurisdictional disputes, he knows the technical issues really well."
Chambers & Partners 2014

Experience
Year of Call: 1990
Year of Silk: 2013

Education
LLB

Languages
Conversational French

Profile
David was called to the Bar in 1990 and for the first 10 years practiced in family, crime and personal injury cases. During this time he gained extensive trial experience (including successful defences at the Old Bailey) dealing with the most serious cases including big money divorces, sexual abuse, rape, serious brain injury and sexual abuse. In 2000 David moved to 4 Paper Buildings and began to specialise in Family Law, in particular cases with an international dimension. He was appointed Queens Counsel in March 2013. His approach combines rigorous analysis and preparation and an emphasis on seeking a consensual resolution where practical with a robust presentation of the case when agreement proves impossible. He has considerable experience in cases where expert evidence whether medical, legal, accountancy or otherwise is involved.

Over the last 13 years at 4 Paper Buildings David has developed a practice which covers all aspects of international family law; in particular relating to children. David has particular expertise in and advises and appears on behalf of clients in the following categories of cases,

- relocation (permanent and temporary),
- incoming abductions (Hague and non-Hague),
- outgoing abductions,
- jurisdictional conflict cases – covering children and divorce,
- reciprocal enforcement of orders and mirror orders,
- international aspects of public law cases, in particular issues connected with placements of children abroad,
- Forced marriage and stranded spouse cases,
- Private law disputes, in particular but not limited to those with some international dimension.

David also has experience of and can act in a wide range of other family cases including adoption, recognition of foreign divorces, surrogacy, 1984 Matrimonial and Family Proceedings Act cases for financial remedies after a foreign divorce and Court of Protection matters.

He has particular experience in the operation of BIIR and other European Regulations, the 1980 and 1996 Hague Conventions and other

international instruments. His practice has given him wide experience in the laws of many other countries, in particular countries where Sharia law applies. He is a Member of the International Academy of Matrimonial Lawyers and through this and his practice he has extensive contacts with family lawyers from a wide range of other countries.

In the last 3 years he has appeared in the first family case from England to be referred to the Court of Justice of the European Union (Mercredi-v-Chaffe) and the first child abduction case to be heard by the UK Supreme Court (Re E). His work in these two cases led to him being awarded the Chambers and Partners Family Junior of the Year award in October 2011.

David is also a qualified mediator, including being trained in and being approved by the Ministry of Justice to conduct Mediation Information and Assessment meetings. He is able to mediate in not only in children cases but also in finance cases and indeed all issues cases. These will usually be conducted as a sole mediator but in accordance with the Hague Mediation Good Practice Guide David will co-mediate on abduction and on some re-location cases. For abduction and relocation cases David has arrangements with two mediators who have legal aid mediation contracts and so there is the opportunity to co-mediate these cases under legal aid cover.

David acts for parents and children, for local authorities and for charities and his practice covers most tribunals from the High Court to the ECHR. He represented the Applicant father in the Court of Justice of the European Union in 2010 and acted for the Plaintiff father in the House of Lords in Re M in 2007. He appeared for the Respondent mother in Re E in the UK Supreme Court in 2011 and was instructed as part of a team to file an amicus brief in the United States Supreme Court. In 2002 he appeared for the Applicant in the ECtHR when that Court held that the UK was in breach of the ECHR in respect of its treatment of trans-sexuals. He regularly appears in the Court of Appeal and has appeared in many other reported cases with an international dimension. David has an interest and particular experience in representing children. He has been active in ensuring that an appropriate balance is struck in allowing their voice to be heard whilst seeking to protect them from adult disputes. He appeared in the leading cases in this field including Re M (in the House of Lords) Re C (Abduction: Separate Representation of Children) [2008] 2 FLR 6 and Re J (Abduction: Children's Objections) [2012] 1 FLR 457.

As a result of his extensive experience he has been instructed to act in other countries as an expert on English family Law. Prior to being called to the Bar he worked for the Legal Services Commission for three years and he is committed to ensuring that publicly funded clients are able to compete on a level playing field.

David is a Consultant Editor of the International Children Law Information Portal and a Contributing Author to Butterworth's Family Law Service.

David lectures and writes regularly. Recent lectures include one on the 1996 Hague Convention to the Family Division Judges and on habitual residence to the Judicial College. In April 2013 he is making a presentation on Preliminary References to the CJEU to Italian, Bulgarian, Croatian and Slovenian family judges at the European Research Academy. He spoke at the Centre for Family Law and Practice Inaugural Conference on International Family Law and regularly presents lectures and webinars on relevant topics. He has had articles published in International Family Law, Family Law, New Law Journal and others.

David is a member of the Professional Conduct Committee of the Bar Standards Board.

His other interests include membership of the Society of Labour Lawyers, of which he is a member of the Executive Committee and Chair of the Family Law Group. Cycling, vintage motorbikes and history keep him out of trouble at weekends.

Blog:

http://internationalfamilylaw-dw.blogspot.com/

Professional Memberships

Family Law Bar Association
International Academy of Matrimonial Lawyers
Alternative Dispute Resolution Group
Bar Pro Bono Unit
Inner Temple

Directories

Has established himself as a go-to advocate for Hague Convention matters, and is particularly noted for his strengths in cases involving abductions and reciprocal enforcement.

Expertise: "A favourite for complex jurisdictional disputes, he knows the technical issues really well."

Recent work: Successfully handled a case in the Court of Appeal regarding the proper interpretation of 'habitual residence' in Hague Convention cases.
Chambers & Partners 2014

New silk David Williams QC combines 'a cerebral approach with encyclopaedic knowledge of both domestic and European points of law.'
Recommended as a New Silk in the area of Children Law
Legal 500 2013

David Williams has a fine reputation in the field of international children law, and tackles cases relating to Hague and non-Hague Convention abductions, reciprocal enforcement and relocation. Sources note his immense "enthusiasm and vigour" when tackling cases, and agree that he is a "very impressive and knowledgeable leading junior in abduction," who is "excellent with clients."

Recommended as a Leading Family Junior in Chambers & Partners **2013**
(Ranked Band 1)

Recommended as a Leading Family Junior in The Legal 500 **2012**

The “extremely hard-working” David Williams, meanwhile, is praised as “one of the best junior child abduction barristers in the country.” He garners plaudits.
Recommended as a Leading Junior in Chambers and Partners **2012** (Ranked in First Tier)

David Williams is a ‘recognised expert’
Recommended as a Leading Family junior in areas of Children Law and Family Law The Legal 500 **2011**

David Williams, who has an ever-growing reputation for Hague Convention work.
Recommended as a Leading Family Junior in Chambers and Partners **2011**

The ‘insightful’ David Williams ‘really knows his stuff’.
Recommended as a Leading Family junior in The Legal 500 **2010**

David Williams, a lawyer who has carved a niche for himself in Hague Convention matters. Williams has a large number of reported cases under his belt and is known his “extreme perspicacity.”
Recommended as a Leading Family Junior in Chambers and Partners **2010**

Recommended as a Leading Family junior in **The Legal 500 2009**

David Williams is recommended for his burgeoning International child abduction practice. He is praised for his “calm and efficient” demeanor and his “sensitivity to clients’ needs.”
Recommended as a leading Family Junior in the area of Children in Chambers & Partners **2009**

David Williams... ‘comes highly recommended’.
Recommended as a Family Law leading Junior in **Legal 500, 2008**

Practice areas

- Private Law
- International

Dispute resolution

- Mediation
- Early Neutral Evaluator

Direct Access

- Direct Access

Awards

Cases

RE G (A CHILD) (2014)
[2014] EWCA Civ 680

Re KP (A Child) (2014)
[2014] EWCA Civ 554

Tomas Palacin Cambra v (1) Jennifer Marie Jones (2) Jessica Maria Palacin Jones (2014)
[2014] EWHC 913 (Fam)

Re LC (Children) (2014)
[2014] UKSC 1

Re LC (Children) (2013)
[2013] EWCA Civ 1058

Re A (Children) (2013)
AC9101290

DL (Appellant) v EL (Respondent) & (1) Reunite International Child Abduction Centre (2) Centre for family law and practice (Interveners) (2013)

[2013] EWCA Civ 865

Re Y (A Child) (2013)
AC9601636

Re Y (A Child) (2013)
[2013] EWCA Civ 129

J (Habitual Residence) (2012)
[2012] EWHC 3364 (Fam)

Re J (Children) [2012]
[2012] EWCA Civ 1511

JRG v EB [2012]
[2012] EWHC 1863 (Fam)

AJ (Appellant) v JJ (First Respondent) & (1) KK (2) JAJ (3) JUJ (By Their Solicitor NH) (Interveners) (2011)
[2011] EWCA Civ 1448

Re H-K (Children) (2011)
[2011] EWCA Civ 1100

Re E (Children) [2011]
[2011] UKSC 27

Re E (Children) sub nom (1) KE (2) TB (Appellants) v SE (Respondent) & (1) Reunite (2) Aire Centre (Interveners) (2011)
[2011] EWCA Civ 361

Re X (2011)
Document No. AC9401023

Barbara Mercredi V Richard Chaffe (2011)
[2011] 2 FLR 515 : [2011] 2 FCR 177 : [2011] Fam Law 584 : (2011) 108(13) LSG 21;[2011] EWCA Civ 272

Mercredi v Chaffe

Re A (Children) (Abduction: Interim Powers) sub nom EA v (1) GA (2) Westminster City Council (3) Salford City Council (2010)
[2011] 1 FLR 1; [2010] EWCA Civ 586; Times, June 16, 2010

Re U (Abduction: Nigeria) [2010]
[2010] EWHC 1179 (Fam); [2011] 1 FLR 354

W v W (2009)
[2010] 1 FLR 1342 : [2010] Fam Law 228 : (2010) 154(1) SJLB 28 : [2009] EWHC 3288 (Fam)

Re R (A Child) sub nom DE L v H (2009)
[2010] 1 FLR 1229 : [2010] Fam Law 328 : [2009] EWHC 3074 (Fam)

De L v H [2009]
[2009] EWHC 3074 (Fam); [2010] 1 FLR 1229

LAB v KB (Abduction: Brussels II Revised) [2009]
[2009] EWHC 2243 ; [2010] 2 FLR 1664

K v K (2009)
[2009] EWHC 132 (Fam)

Re Z (Abduction)
[2008] EWHC 3473 (Fam); [2009] 2 FLR 298

A v B (Abduction: Declaration)
[2008] EWHC 2524 (Fam)

Re E (Abduction: Intolerable Situation)
2008] EWHC 2112 (Fam); [2009] 2 FLR 485

B T v J R T (2008)
[2008] EWHC 1169 (Fam); [2008] 2 FLR 972

MC (Claimant) v SC (Defendant) & CC & ORS (CHILDREN) (Interveners) (2008)
[2008] EWHC 517 (Fam); [2008] 2 FLR 6

In re M and another (Children) (Abduction:Rights of Custody)
[2007] 3 WLR 975

MM v VM (AKA VRM) (2007)
[2007] UKHL 55 (2008); 1 AC 1288 : (2007) 3 WLR 975 : (2008) 1 All ER 1157 : (2008) 1 FLR 251 : Times, December 6, 2007

Re L (Abduction: Consent)
[2008] FLR (forthcoming. [2007] EWHC 2181 (Fam)

Re L (Abduction: Consent) (2007)
[2008] 1 FLR 914; [2007] EWHC 2181 (Fam)

Re M (Children) (2007)
[2007] EWCA Civ 992

Re A, HA v MB (Brussels II Revised: Article (11)7 Application) (2007)
[2007] EWHC 2016, [2008] 1 FLR 289 : Times, November 2, 2007

Mubarak-v-Mubarik
[2007] 2 FLR 364

X v X (Crown Prosecution Service Intervening)
[2005] 2 FLR 487

I v United Kingdom
[2002] 2 FLR 518

Re B (Disclosure to other Parties)
[2001] 2 FLR 1017

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Charles Hale QC

The 'very personable' Charles Hale is 'one of the very few senior juniors around who can tackle both financial remedy and children cases with equal facility'. 'He is meticulous in preparation and a master of cross-examination.'
Legal 500 2013

Experience
Year of Call: 1992
Year of Silk: 2014

Education
LLB (Hons)
Blackstone Scholar
Middle Temple

Appointments
Elected member of the Bar Council of England and Wales

Profile
Charles was appointed to the rank of Queens Counsel in 2014. He is a family advocate with particular expertise in all aspects of matrimonial finance and Schedule 1 (financial remedies) and private law children work. He is regularly instructed in international family disputes, leave to remove and child abduction cases involving international law, Brussels I and II and international treaties. He has provided advice and Affidavits of Laws in French and Australian divorce cases. In domestic cases, Charles has a reputation for dealing with the most complex matters involving financial disputes as well as intractable and alienated parent cases, vulnerable adult/child cases and also cases arising out of same sex/alternative family disputes.

Awarded the Family Law Junior of the Year in 2012 by Jordans, Ranked in Band 1 for both children and finance by Chambers and Partner and being one of only 5 family barrister listed in their Top 100 Barristers list, Charles was one of the few recognised leading juniors in both matrimonial finance and children work, a practice he continues now as Leading Counsel.

Professional Memberships
Family Law Bar Association
Association of Lawyers for Children
South Eastern Circuit
Middle Temple
Member of the International Association of Matrimonial Lawyers (IAML)

Directories

Charles Hale is a family practitioner who is a master at both matrimonial finance and children related cases. He is regularly instructed by leading London and national solicitors and has handled cases of the utmost complexity and sensitivity such as A, B and C (2012), a matter concerning the relationship of a gay birth father to a child of lesbian mothers. Other recent matters of note include Re T (Children), which raised a very significant point in respect of costs in children proceedings involving local authorities. "A very smooth operator with clients, he

shows an empathy and understanding of their emotional issues which is second to none. Clients are made to feel that he is really part of the fight."

Chambers 100 List UK Bar
The Chambers Bar 100 ranks the top barristers practising at the Bar of England and Wales.

Elicits much acclaim for his work on both the matrimonial finance and children law sides, and is routinely sought out for his strengths on high-value divorce cases and large-scale cross-jurisdictional children disputes.

Expertise:"His delivery is well judged and he is very easy to work with. He inspires a lot of confidence."

Recent work: Hale acted on behalf of the Grandparents Association in a widely publicised Supreme Court appeal regarding the liability of a local authority to pay the costs of a party to care proceedings.
Chambers & Partners 2014
Ranked in Band 1 for both Children and Matrimonial Finance

The 'very personable' Charles Hale is 'one of the very few senior juniors around who can tackle both financial remedy and children cases with equal facility'. 'He is meticulous in preparation and a master of cross-examination.'
Recommended as a Leading Junior in the areas of Children Law and Family Law (including divorce and ancillary relief)
Legal 500 2013

Charles Hale climbs the rankings for both children law and matrimonial finance matters, and receives strong plaudits for his work pertaining to international children disputes and high net worth divorces. Sources reveal that he "never takes a bad point," while adding that he is a "smart advocate" who is "good at finding solutions to intractable problems."
Recommended as a leading Family Junior in Chambers & Partners **2013**
(Band 1)

The ‘impressive’ Charles Hale, who is ‘a number-one choice for complicated children cases as well as financial issues’.
Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2012**

Charles Hale "is very good at both money and children cases," and is thus a popular choice amongst solicitors for cases that contain both elements. He has a "very conciliatory approach and is extremely popular with clients," say sources.
Recommended as a Leading Junior for Children and Matrimonial Finance in Chambers and Partners **2012**

Charles Hale is an ‘exceptional performer’ who is ‘outstanding at both children and money work’. Charles Hale is ‘a formidable advocate, particularly in cross-examination ’.
Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2011**

Charles Hale is a popular choice among many of London's leading solicitors. He is equally adept at children and matrimonial finance work. Sources note that "his jovial character enables him to forge strong relationships with clients."
Recommended as a Leading Junior Chambers and Partners **2011**

Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2010**

Charles Hale who undertakes both leave-to-remove cases and matrimonial finance matters. Hale is "a tremendously hard-working barrister who always has a very keen sense of his cases."
Recommended as a Leading Junior Chambers and Partners **2010**

The 'brilliant' Charles Hale is recommended as a 'pleasure to work with'.
Recommended as a Leading Junior in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief) in The Legal 500 **2009**

Charles Hale brings his "straight-talking approach" and "excellent attention to detail" to a practice that combines children-related matters with matrimonial finance work. He is regulalry briefed, as is a "careful, vigorous and balanced advocate."
Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in Chambers and Partners **2009**

Charles has a broad practice embracing public and private law ancillary relief and child abduction. “Clients love him”, reported one solicitor, “because he is one of the few barristers prepared to give them a little TLC”
Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in Chambers and Partners **2008**

Charles Hale is known primarily for his children work, although he does have a sound financial practice. "Exceptionally helpful and reassuring", he is a "delightful fellow."
Recommended as a Leading Family Junior in the areas of Children and Matrimonial Finance in Chambers and Partners **2007**

Practice areas

- Financial Remedies
- Private Law
- Public Law
- International
- Court of Protection

Direct Access

- Direct Access

Awards

Family Law Awards 2012
JUNIOR BARRISTER OF THE YEAR

Cases

MB v GK [2014]
[2014] EWHC 963 (Fam)

N v C [2013]
[2013] EWHC 399 (Fam)

T (Children) [2012]
[2012] UKSC 36

A v B and C [2012]
[2012] EWCA Civ 285

Re R (A Child) sub nom DE L v H (2009)
[2010] 1 FLR 1229 : [2010] Fam Law 328 : [2009] EWHC 3074 (Fam)

De L v H [2009]
[2009] EWHC 3074 (Fam); [2010] 1 FLR 1229

D v S sub nom Re E (A Minor) (DOB 19 May 2000) : S v D (2008)
[2008] EWHC 363 (Fam); (2008) 2 FLR 293

Hammerton v Hammerton (2007)
[2007] EWCA Civ 248

Re G (Interim Care Order: Residential Assessment)
[2006] 1 FLR 601

Re G (A Minor) (Interim Care Order: Residential Assessment)
[2005] Daily Cases

Re G (A Minor) (Interim Care Order: Residential Assessment)
[2006] 1 AC 576

Re G (Interim Care Order: Residential Assessment)
[2004] 1 FLR 876

B County Council v L & Ors (2002)
[2002] EWHC 2327 (Fam)

Michael Andrew Gayle v Julie Nwamara Gayle (2001)
[2001] EWCA Civ 1910

Re L (Removal from Jurisdiction: Holiday)
[2001] 1 FLR 241

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Alistair G Perkins

Experience
Year of Call: 1986

Education
St John's School Leatherhead

Keele University (BA Law and American Studies) Graduated 1985

Appointments
Panel member "Council of the Inns of Court Disciplinary Tribunal" (now Bar Standards Board) since 2004

Pupil Supervisor (Middle Temple) since 1994

Profile
Alistair has now amassed over 20 years experience of court work involving children and vulnerable adults. Nearly all of his work is now in the High Court and a significant proportion involves complex issues often with an international element. He has appeared in several cases that have featured in the national media.

Professional Memberships
Family Law Bar Association
Middle Temple

Practice areas
- Private Law
- Public Law
- International
- Court of Protection

Cases
Re LRP (A Child) (Care Proceedings - Placement Order) [2013]
[2013] EWHC 3974 (Fam)

A v A [2013]
[2013] EWHC 3554 (Fam)

In the matter of A (Children) (2013)
[2013] UKSC 60

Re H, R and E (Children) [2013]
[2013] EWHC 3857 (Fam)

Joyce v Joyce [2013]
[2013] EWHC 1353 (Fam)

Re C (A Child) (2013)
[2013] EWCA Civ 431

ZA & PA v NA (2012)
[2012] EWCA Civ 1396

Re F-H (Children) (2008)
(2009) 1 FLR 349; [2008] EWCA Civ 1249

X Local Authority v N J & 6 Ors (2008)
(2008) 2 FLR 1389; [2008] EWHC 1484 (Fam)

Brent London Borough Council v (1) SK (2) HK (AKA HL) (A Child) (2007)
(2007) 2 FLR 914 : (2008) BLGR 37; [2007] EWHC 1250 (Fam)

Re C (Care: Consultation with Parents not in the Childs Best Interests) (2005)
(2006) 2 FLR 787; [2005] EWHC 3390 (Fam)

Westminster City Council v (1) RA & (2) B (3) S (By their Children's Guardian) (2005)
(2005) 2 FLR 1309 : [2005] EWHC 970 (Fam); Times, June 6, 2005

Re K (Replacement of Guardian Ad Litem) (2000)
(2000) 1 FLR 663

In Re K (A Minor) (Removal from Jurisdictiion: Practice) (1999)
(1999) 2 FLR 1084 : Times, July 29, 1999

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Mark Jarman

"He knows the law and will put together good arguments at really short notice."
Chambers & Partners 2014

Experience
Year of Call: 1989

Education
LLB (Hons)

Languages
French

Profile
Mark is a dedicated family advocate whose practice encompasses all aspects of family law. His easy approach, robust advocacy and user friendly demeanour make him a popular choice with solicitors.

Children
Mark regularly represents local authorities, parents and guardians in public law proceedings across all tiers of Court. Such cases involve non accidental injury including 'baby shaking' cases, infant death, sexual and physical abuse as well as neglect cases. In private law cases, Mark represents parents in relation to residence applications, including shared residence, contact and specific issue.

International Movement of Children
Mark regularly appears in the High Court representing parents in cases of Child Abduction, (both Hague and non Hague cases), Inherent Jurisdiction, Wardship, Brussels II and International Relocation of Children.

Divorce
Within the breakdown of marriage, Mark represents husbands and wives in ancillary relief cases, including “big money” cases, financial provision for children and CSA appeals. Increasingly Mark is instructed in cases where the court's jurisdiction is questioned and the issue of “Forum Conveniens” has to be determined. Additionally Mark has appeared in the Care Standards Tribunal in an appeal against the incorporation of a social worker on the POCA list.

Interests
Mark’s interests include sailing, skiing and squash.

Professional Memberships
Family Law Bar Association
Inner Temple
Affiliate Member of Resolution

Directories
A new entrant in the rankings this year, who is noted for his handling of high-profile cases concerning abduction and the international movement of children.

Expertise: "He knows the law and will put together good arguments at really short notice."

Recent work: Recently appealed in the Court of Appeal in Re: J, a Hague abduction case.
Chambers & Partners 2013

Recommended as a Leading Junior in the area of Child Law
The Legal 500 2013

Practice areas

- Private Law
- Public Law
- International

Dispute resolution

- Collaborative Lawyer

Direct Access

- Direct Access

Cases

Re KP (A Child) (2014)
[2014] EWCA Civ 554

MB v GK [2014] -contempt - sentencing
[2014] EWHC 1122

Re B (A Child) (1980 Hague Convention Proceedings) (2014)
[2014] EWCA Civ 375

MB v GK [2014]
[2014] EWHC 963 (Fam)

Harrow v Afzal [2014]
[2014] EWHC 303 (Fam)

Harrow v Afzal [2014] (sentencing remarks)
[2014] EWHC 303 (Fam)

Re SJ (A Child) (Habitual Residence: Application to Set Aside) [2014]
[2014] EWHC 58 (Fam)

Button v Salama [2013]
[2013] EWHC 2974 (Fam)

Button v Salama [2013]
[2013] EWHC 2972 (Fam)

Re M (A Child) (2013)
[2013] EWCA Civ 1131

AJ (Appellant) v JJ (First Respondent) & (1) KK (2) JAJ (3) JUJ (By Their Solicitor NH) (Interveners) (2011)
[2011] EWCA Civ 1448

Re H-K (Children) (2011)
[2011] EWCA Civ 1100

Re C (Children) (2011)
[2011] EWCA Civ 1230

M v M (2010)
[2010] EWHC 3350 (Fam)

Re A (Children) (2010)
[2010] 2 FLR 577; [2010] EWCA Civ 208

M v B (2009)
[2009] EWHC 3477 (Fam)

X County Council v B (2009)
[2010] 1 FLR 1197; [2009] EWHC 2635 (Fam)

Re H (Abduction) [2009]

[2009] 2 FLR 1513; [2009] EWHC 1735 (Fam)

Re S (Care: Jurisdiction) (2008)
[2008] EWHC 3013 (Fam); (2009) 2 FLR 550

S v Slough Borough Council & Ors (2008)
[2008] EWHC 3013 (Fam)

W v F (2007)
[2007] EWHC 779 (Fam)

R v S (2006)
[2006] EWHC 3374 (Fam)

Arthurworrey v Secretary of State for Education and Skills
[2004] 268 PC

Re R (Adoption: Father's Involement)
[2001] 1 FLR 302

Re S (A Child) (2000)
(2001) 1 FLR 302

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Hassan Khan

Hassan Khan enjoys a fine reputation for his work in cross-jurisdiction children matters, particularly those concerning child abduction, surrogacy and forced marriage. Chambers & Partners 2014

Experience
Year of Call: 1999

Education
University of Liverpool LLB (Hons) 1998

Languages
Urdu

Appointments
Legal assessor for the nursing and midwifery fitness to practice panel.

Profile
Hassan is a children law practitioner mostly appearing in the High Court. He has an established practice in international children cases and has a particular interest in Child Abduction; Brussells II Revised Regulation; Wardship and Inherent Jurisdiction; Forced Marriage; Abandonment/Stranded Spouses; Vulnerable Adults; Removal from the Jurisdiction; Care Proceeding (especially with international element); Inter-Country adoption.

Hassan represented Dr Abedin, the 33 year old GP forced to marry in Bangladesh in one of the first applications under the Forced Marriage (Civil Protection) Act 2007.

Professional Memberships
Family Law Bar Association (FLBA)
Lincolns Inn

Directories
Enjoys a fine reputation for his work in cross-jurisdiction children matters, particularly those concerning child abduction, surrogacy and forced marriage.

Expertise: "I use him a lot for cases with complex issues; he sits down and gives 100% effort and dedication. He is good to work with and really approachable."

Chambers & Partners 2014

Hassan Khan specialises in international children matters, and is particularly noted by sources for his work in surrogacy cases. Other areas of focus include cases concerning child abduction, forced marriage, adoption and stranded spouses.
Recommended as a Leading Family Junior in Chambers and Partners **2013**

Hassan Khan is an up-and-coming junior whose practice is expected to rise in prominence. Sources note that he is carving out a niche in

international child abduction and surrogacy, and that he "really cares passionately for his client."
Recommended as a Leading Family Junior in Chambers and Partners **2012**

Practice areas

- Private Law
- Public Law
- International

Direct Access

- Direct Access

Awards

Cases

RE G & M (2014)
[2014] EWHC 1561 (Fam)

C (A Child) [2013]
[2013] EWCA Civ 204

Re W [2013]
[2013] EWHC 3570 (Fam)

In the matter of A (Children) (2013)
[2013] UKSC 60

A v D (Parental Responsibility) [2013]
[2013] EWHC 2963 (Fam)

SK v (1) HD (2) SD (3) UD (4) MD (5) FD (2013)
[2013] EWHC 796 (Fam); [2014] Fam Law 22

Re C (A Child) (2013)
AC9401262

C (A Child) [2013]
[2013] EWCA Civ 204

Re H (A Child) & The United Mexican States (Intervener) (2013)
AC9501919

VK v JV [2012]
[2013] 2 FLR 237; [2012] EWHC 4033 (Fam)

Re A (A Child) (No.2) (2011)
[2011] 1 FLR 1817 : [2011] 1 FCR 141 : [2011] Fam Law 365 : [2011] EWCA Civ 12

In The Matter of A (A Child) (2010)
[2010] EWCA Civ 1413

Re K (A Child) (2010)
[2010] EWCA Civ 1546

K v K (2009)
[2009] EWHC 132 (Fam)

Re F (Abduction: Removal outside jursidiction)
[2008] EWCA Civ 854

Re E (Abduction: Intolerable Situation)
2008] EWHC 2112 (Fam); [2009] 2 FLR 485

Re S-R (Contact: Jurisdiction) (2008)
(2008) 2 FLR 1741;

Re T (Abduction: Rights of Custody) (2008)
[2008] 2 FLR 1794; [2008] EWHC 809 (Fam)

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Jacqueline Renton

"She has an excellent practice and is wise beyond her years of call."
Chambers & Partners 2014

Experience

Year of Call: 2007

Education

Private International Law Course, The Hague Academy of International Law, Den Haag 2007
Bar Vocational Course, Inns of Court School of Law, 2007
Diploma in Law, City University, 2006
BA (Hons) Theology and Politics, University of Bristol, 2005
Queen Mother Scholarship, Middle Temple, 2006
Queen Mother Scholarship, Middle Temple, 2005

Profile

Jacqueline is a Family Law Practitioner who has a specialist interest and experience in the field of International children law. Jacqueline appears regularly in the High Court and has also appeared in the Court of Appeal and Supreme Court.

Prior to joining chambers, Jacqueline worked for one year at the international Child Abduction and Contact Unit doing case management and legal research in international child abduction and Brussels II Revised cases.

Jacqueline has appeared in the following reported cases concerning the international movement of children in this jurisdiction:-

W v W [2010] 1 FLR 1342
Re H and L [2010] 1 FLR 1229
MA v DB [2011] 1 FLR 724
EF v MGS [2011] EWCH 3139 (Fam)
SJ & Anor v JJ & Anor [2011] EWHC 3450 (Fam)
Z (A Child) [2012] EWHC 139 (Fam)
A v T [2011] EWHC 3882 (Fam)
SJ v JJ [2012] EWHC 931 (Fam)
R v A [2013] EWHC 692 (Fam)
Re F (Relocation) [2012] EWCA Civ 1364
The matter of A (Children) (AP) [2013] UKSC 60
The matter of LC (Children) [2013] UKSC
C v D [2013] EWHC 2989
ET v TZ [2013] EWHC 2621 (Fam)
Re F (Abduction: Consent) [2014] EWHC 484 (Fam)
Re N (A Minor) [2014] EWHC 749 (Fam)

In **Re F (Relocation) [2012] EWCA Civ 1364**, Jacqueline successfully represented the mother (without a leader) in the Court of Appeal in respect of her application to relocate the child to Spain. The case has become the leading case on the law of relocation in England and

Wales.

Jacqueline has also appeared in two Supreme Court cases:-

In **The matter of A (Children) (AP) [2013] UKSC 60**, she represented (with others) one of the Interveners, Children and Families Across Borders. The case considered the interplay between Brussels II Revised Regulation 2003, Family Law Act 1986 and the use of the *parens patriae* jurisdiction.

In **The matter of LC (Children) [2013]**, she successfully represented (together with her leader) the eldest child in Hague Convention 1980 proceedings. The Supreme Court accepted that a child's state of mind is relevant to the assessment of habitual residence under article 3 of Hague Convention 1980 and also provided clarification as to the test to be applied when considering whether or not to join children to Hague Convention 1980 proceedings.

Jacqueline has also recently been involved in a high-profile case that led to the first ever enforcement of an English order in the Russian courts, pursuant to the Hague Convention 1996: http://www.bbc.co.uk/news/uk-england-london-25025890

Jacqueline has also filed two *amicus curiae* briefs in the Supreme Court of the United States of America:-

Abbott v Abbott [2009] (judgment in USSC 17th May 2010) – a landmark decision on the interpretation of Rights of Custody, pursuant to article 3 of the Hague Convention 1980 and the first Hague Convention 1980 case to be heard in the Supreme Court of the United States of America.

Chafin v Chafin (Case no. 11-1347) – the court importantly determined that a Hague Convention 1980 appeal is not moot if the child who is the subject of that appeal has already been returned to the requesting state by virtue of an earlier return order.

Jacqueline is Editor-in-Chief of the International Children Law Information Portal (ICLIP): www.familylawiclip.co.uk (a joint enterprise with Jordans Family Law Publishing.) The Portal includes case law updates, articles and international blogs in the field of international children law.

Jacqueline was short listed as "Young Barrister of the Year" at Jordans Family Law Awards 2012 and as "Legal Commentator of the Year" at Jordans Family Law Awards 2013.

Jacqueline's lectures and articles to date are as follows:

- "International Children Law Update" for Family Law Week (published every 6 months since July 2010)
- Various in-house lectures on international child abduction, at times with the International Child Abduction and Contact Unit, Reunite and Cafcass
- Podcast on "1996 Hague Convention" for Jordans Family Law, May 2013
- Webinar on "International Jurisdiction" for CLT, December 2012
- Webinar on "Contact: the domestic and international dimension" for CLT, May 2012
- Webinar on "International Child Relocation" for CLT, October 2011
- Webinar on "Residence, Contact and Domestic Abuse" for CLT, July 2011
- "Re E: Initial Considerations" – Family Law Week, June 2011
- Lecture on "The Brussels II Revised Regulation 2003 and Relocation" at the Relocation Seminar held by The Centre for Family Law and Practice, May 2011
- Interview on "International Child Abduction" for LNTV, April 2011
- Panel member on international child abduction discussion group at the International Child Abduction, Forced Marriage and Relocation held by The Centre for Family Law and Practice, June / July 2011
- "Fact Finding on Domestic Violence in Private Law, Children Cases. Preventing Delay: A Suggestion" (co-authored with Anne-Marie Hutchinson O.B.E) – Family Law Week, November 2009
- "Age of consent?" – New Law Journal, October 2009
- "Forced Marriage Checklist for county court judges dealing with applications under the Forced Marriage (Civil Protection) Act 2007" (co-authored with Teertha Gupta), July 2008
- "The Hague Academy of International Law 2007", International Family Law, March 2008

Jacqueline has also been interviewed by BBC Radio 4 in relation to international child abduction on "Face the Facts"

Prior to coming to the bar, Jacqueline represented Bristol University and Middle Temple in both national and international debating competitions and was England's Representative on World Debating Council in 2005 and 2006. She was ranked 21st in the world and an Octo-Finalist at the World University Debating Championships 2005. Jacqueline also lectured on Islamic family law.

Professional Memberships

Family Law Bar Association
Middle Temple
Association of Lawyers for Children

Recommendations

"I have had the pleasure of working with Jacqueline on many international child abduction cases and I have always been impressed by her integrity and the quality of her work. She is a skillful advocate with an encyclopaedic knowledge of her chosen field and I have no hesitation in recommending her."

Mark Kosmin-Barr

Directories

Seen as a rising star in cross-jurisdiction children matters, and has been frequently sought after to handle cases relating to child abduction, relocation and international custody/access.

Expertise: "She has an excellent practice and is wise beyond her years of call."
Chambers & Partners 2014

Practice areas

- Private Law
- International

Awards

Cases

Re N (A Minor) [2014]
[2014] EWHC 749 (Fam)

Re F (Abduction: Consent) [2014]
[2014] EWHC 484 (Fam)

Re LC (Children) (2014)
[2014] UKSC 1

C v D [2013]
[2013] EWHC 2989 (Fam)

In the matter of A (Children) (2013)
[2013] UKSC 60

Re F (Child) (2012)
[2012] EWCA Civ 1364; 2013] 1 FLR 645 : [2012] 3 FCR 443 : [2013] Fam Law 37 : (2012) 156(41) SJLB 31

SJ v JJ [2012]
[2012] EWHC 931 (Fam)

Z (A child) [2012]
[2012] EWHC 139 (Fam)

A v T [2011]
[2011] EWHC 3882 (Fam)

EF v MGS [2011]
[2011] EWHC 3139 (Fam)

SJ and Another v JJ and Another [2011]
[2011] EWHC 3450 (Fam)

MA v DB (2010)
[2011] 1 FLR 724 : [2010] Fam Law 1161

W v W (2009)
[2010] 1 FLR 1342 : [2010] Fam Law 228 : (2010) 154(1) SJLB 28 : [2009] EWHC 3288 (Fam)

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Andrew Powell

Regularly appears in court on all matters relating to children in the private, public and international sphere. Andrew is a composed, practical and dynamic advocate.

Experience

Year of Call: 2008

Education

University of Manchester (BSocSc Social Anthropology First Class)
University of Leeds (LLM)
BPP Law School (BVC)
Pegasus Scholarship 2013
Bedingfield Scholarship (Gray's Inn) 2007
Mooting Finalist University of Leeds 2006
Consitutional Law Essay Prize (University of Leeds) 2005
The Professor Max Gluckman Prize (University of Manchester - Awarded for Highest First Class Degree)

Profile

Andrew specialises in all areas of family law, with an emphasis on children work. Andrew has appeared on his own in all levels of court including the Court of Appeal. He has been led in the High Court and in the Court of Appeal in public law and child abduction matters. Solicitors and lay clients find that he adopts an approachable and personable style.

Andrew has a particular interest in the law relating to surrogacy and the Human Fertilisation and Embryology Act 2008 and disputes concerning social and biological parenthood. Andrew represented the same-sex parents in the High Court in Re P-M [2013] EWHC 2328 (Fam) in their application for parental orders following an international surrogacy arrangement.

After receiving a Pegasus Scholarship from Inner Temple, earlier this year Andrew spent 3 months working at a boutique law firm in Los Angeles specialising in fertility and surrogacy law.

Andrew also has experience appearing in the Court of Protection, and is keen to expand his practice in this area of law.

In 2013 Andrew was shortlisted for the Young Family Barrister of the year award.

Outside work, Andrew enjoys running and cycling and is a volunteer at the Toynbee Hall Legal Advice Centre. Prior to coming to the Bar he read social anthropology at university obtaining the highest first class degree in his year.

Professional Memberships

Gray's Inn
Family Law Bar Association
Association of Lawyers for Children
South Eastern Circuit
FLBA National committee member (since 2011)
Associate member of the American Bar Association (Family law section)

Practice areas

- Financial Remedies
- Private Law
- Public Law
- International
- Court of Protection

Direct Access

- Direct Access

Awards

Cases

Re P-M [2013]
[2013] EWHC 2328 (Fam)

Re C (A Child) (2012)
[2012] EWCA Civ 1281

H (A Child) [2012]
[2012] EWCA Civ 913

R v (1) A Local Authority (2) B (3) ABC (By Her Children's Guardian) (2011)
[2011] EWCA Civ 1451

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Rachel Chisholm

Experience
Year of Call: 2010

Qualifications
Inner Temple Exhibition Scholar 2010-2011

Education
BA (Hons) Classics, University of Bristol
GDL, City University
BVC, BPP Law School

Profile

Rachel has successfully completed pupillage under the supervision of John Tughan, David Williams and Harry Gates. During her pupillage, Rachel was led by twice by Jane Probyn in lengthy fact finding hearings concerning serious non-accidental injuries to children. Since becoming a tenant, Rachel has a broad practice covering all aspects of family work.

Rachel was led by Baroness Scotland QC and Ruth Kirby on behalf of The Centre for Family Law and Practice in the matter of A (Children) (2013) [2013] UKSC 60.

In March 2013, Rachel co-authored a paper on intractable private law children disputes which was accepted by the 6th World Congress on Family Law and Children's Rights. She was awarded an International Professional and Legal Development Grant which enabled her to co-present this paper at the Congress in Sydney, Australia.

Rachel has also been awarded a Pegasus Scholarship and will be travelling to Sarajevo, Bosnia in September 2014 to work with the legal charity, 'TRIAL', for three months.

Rachel worked at the Children's Legal Centre in London before starting her pupillage. She has also worked in the United States as an intern at The Louisiana Capital Assistance Centre in New Orleans.

Professional Memberships
Inner Temple
FLBA

Practice areas
- Financial Remedies
- Private Law
- Public Law
- International
- Court of Protection

Cases

In the matter of A (Children) (2013)
[2013] UKSC 60

Section 9

Members List

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Barristers

4 Paper Buildings has an ‘unrivalled collection of senior and junior barristers in the field. Predominantly known for its children work, but also has some ’really excellent people for matrimonial finance cases’. Legal 500 2011

Barristers

Alex Verdan QC
Call: 1987 | Silk: 2006
Head of Chambers

Jonathan Cohen QC
Call: 1974 | Silk: 1997

Baroness Scotland QC
Call: 1977 | Silk: 1991

Henry Setright QC
Call: 1979 | Silk: 2001

Marcus Scott-Manderson QC
Call: 1980 | Silk: 2006

Kate Branigan QC
Call: 1985 | Silk: 2006

Jo Delahunty QC
Call: 1986 | Silk: 2006

Michael Sternberg QC
Call: 1975 | Silk: 2008

Catherine Wood QC
Call: 1985 | Silk: 2011

Rex Howling QC
Call: 1991 | Silk: 2011

Teertha Gupta QC
Call: 1990 | Silk: 2012

David Williams QC
Call: 1990 | Silk: 2013

Charles Hale QC
Call: 1992 | Silk: 2014

Brian Jubb
Call: 1971

Amanda Barrington-Smyth
Call: 1972

Robin Barda
Call: 1975

Dermot Main Thompson
Call: 1977

Jane Rayson
Call: 1982

Mark Johnstone
Call: 1984

Elizabeth Coleman
Call: 1985

Alistair G Perkins
Call: 1986

Christopher Hames
Call: 1987

Stephen Lyon
Call: 1987

James Shaw
Call: 1988

Mark Jarman
Call: 1989

Sally Bradley
Call: 1989

Barbara Mills
Call: 1990

Joy Brereton
Call: 1990

Joanne Brown
Call: 1990

Sam King
Call: 1990

Alison Grief
Call: 1990

David Bedingfield
Call: 1991

John Tughan
Call: 1991

Cyrus Larizadeh
Call: 1992

Michael Simon
Call: 1992

Justin Ageros
Call: 1993

Rob Littlewood
Call: 1993

Paul Hepher
Call: 1994

Cliona Papazian
Call: 1994

Judith Murray
Call: 1994

Ruth Kirby
Call: 1994

Sarah Lewis
Call: 1995

Nicholas Fairbank
Call: 1996

James Copley
Call: 1997

Justine Johnston
Call: 1997

Oliver Jones
Call: 1998

Lucy Cheetham
Call: 1999

Hassan Khan
Call: 1999

Cleo Perry
Call: 2000

Harry Gates
Call: 2001

Rebecca Foulkes
Call: 2001

Katie Wood
Call: 2001

Rhiannon Lloyd
Call: 2002

Kate Van Rol
Call: 2002

Ceri White
Call: 2002

Matthew Persson
Call: 2003

Dorothea Gartland
Call: 2004

Francesca Dowse
Call: 2004

Greg Davies
Call: 2005

Samantha Woodham
Call: 2006

Laura Morley
Call: 2006

Nicola Wallace
Call: 2006

Michael Gration
Call: 2007

Jacqueline Renton
Call: 2007

Andrew Powell
Call: 2008

Henry Clayton
Call: 2007

Sophie Connors
Call: 2009

Michael Edwards
Call: 2010

Harry Nosworthy
Call: 2010

Rachel Chisholm
Call: 2010

Jonathan Evans
Call: 2010

Julia Townend
Call: 2011

Zoe Taylor
Call: 2011

Door Tenants

Paul Hopkins QC
Call: 1989 | Silk: 2009
Door Tenant

Professor Marilyn Freeman
Call: 1986
Door Tenant

Susan Baldock
Call: 1988
Door Tenant

Elizabeth Couch
Call: 2003
Door Tenant

Belle Turner
Call: 2003
Door Tenant