

Welcome to the 4PB International Family Law Newsletter!

The International Child Law Group at 4 PB is made up of the following members of chambers (all profiles available at www.4pb.com):

Baroness Scotland QC

Henry Setright QC

Marcus Scott-
Manderson QC

Teertha Gupta QC

David Williams QC

Robin Barda

Alistair Perkins

Christopher Hames

Mark Jarman

Charles Hale

Paul Hopher

Cliona Papazian

Ruth Kirby

Hassan Khan

Cleo Perry

Jacqueline Renton

Michael Gratton

Andrew Powell

Michael Edwards

As the recently released statistics show, 2013 was a further year in which the number of international abductions increased (<https://www.gov.uk/government/news/new-fco-figures-show-parental-child-abduction-cases-on-the-rise>) and as such it was another hugely busy year for the International Child Law Group at 4PB. It was also a year in which the higher courts took a greater interest in international family law cases (and family law cases in general) than ever before.

The International Child Law Group here at 4PB were well represented in such cases, with members of Chambers appearing in all of the most high profile cases across the year – three cases in the Supreme Court involved multiple members, and in one (*In the Matter of A (Children)* (AP) [2013] UKSC 60) 10 members of chambers appeared. In addition we have had three applications to the European Court of Human Rights and one referral to the CJEU (only the second family case to be referred to that court from England and Wales).

In the increasingly fast moving world of international family law (and with more judgments than ever before being published on Bailii but perhaps not always formally reported) it can be difficult to keep abreast of case law. To try and help out we have prepared this newsletter, within which we intend to provide an update as to:

- Recent authorities;
- Upcoming events; and
- Other important news.

Some of the cases detailed in the newsletter will have been reported, but others will not and we hope that you will be assisted by having the details of those. Should you wish to know more about the arguments deployed in those cases you are most welcome to approach the member of chambers involved, who will do their best to assist.

We hope that this newsletter is of use to you. If you have any questions about it or any helpful pointers as to how we might improve the content or layout, please do get in touch.

Recent Authorities

In the matter of LC (Children)

[2014] UKSC 1

<http://www.bailii.org/uk/cases/UKSC/2014/1.html>

Members of chambers involved:



A mother and four children (aged 13, 11, 9 and 5) moved from England to Spain in July 2013 with the father's consent. The children returned to England over Christmas. At the conclusion of the trip two of the children hid their passports and the return flight was missed. The mother brought proceedings pursuant to the 1980 Hague Convention seeking their return.

At first instance the court found that the children were habitually resident in Spain and ordered their return. On appeal it was held that the eldest child's objections to a return should have been upheld. The matter was remitted to consider whether the separation of the sibling group would be intolerable.

The UKSC considered the proper approach to consideration of a child's habitual residence, holding that the state of mind of an adolescent child was a relevant factor in determining whether a period of residence could be described as 'habitual'. The matter was remitted for consideration of the habitual residence of all four children.

In the matter of KL (A Child)

[2013] UKSC 75

<http://www.bailii.org/uk/cases/UKSC/2013/75.html>

Members of chambers involved:



A mother had brought a child (aged 5) from the USA to England pursuant to an order of the US court that the child be so returned. That order was subsequently overturned on appeal, but by that time the mother and child had been in England for almost 12 months. The father sought the child's return to the USA. At first instance and on appeal the court had found that the child was not habitually resident in the USA.

The UKSC upheld the first instance finding on habitual residence. An outstanding appeal of an order sanctioning an international move could not prevent a child losing a habitual residence, determination of which was a question of fact. Nonetheless the UKSC ordered the child's return to the USA.

Re D (A Child)

[2013] EWHC 4078 (Fam)

<http://www.familylawweek.co.uk/site.aspx?i=ed123524>



A local authority had applied for care and placement orders in respect of an 18 month old child, D, who had been born to Czech parents. During an earlier fact finding hearing the father had returned to the Czech Republic. The mother had followed him and conceived another child, L, who was born in the Czech Republic and who remained living there. The mother applied for a transfer of the proceedings to the Czech Republic pursuant to Article 15 of Brussels II revised.

Mr Justice Mostyn distinguished this case from the earlier Article 15 decision of *Re K (A Child)* [2013] EWCA Civ 895 as here the Czech authorities (having been previously engaged in the process) had not indicated that they sought the repatriation of D to the Czech Republic. Nonetheless he considered the relevant test to be met and transferred the proceedings to the Czech Republic, but granted leave to appeal the decision.

Recent Authorities

In the Matter of E (A Child)

[2014] EWHC 6 (Fam)

<http://www.bailii.org/ew/cases/EWHC/Fam/2014/6.html>

The President of the Family Division, Sir James Munby has delivered a judgment giving guidance on the approach to jurisdiction and practice in care proceedings in respect of children who are nationals of other EU Member States.

Re G (A Child) [2013] EWHC 4017 (Fam)

<http://www.familylawweek.co.uk/site.aspx?i=ed127142>

Members of chambers involved:



Mr Justice Mostyn considered a jurisdictional dispute in relation to a child in respect of whom the English courts had made final orders authorising a temporary removal from the jurisdiction. The parties' had each subsequently issued proceedings in Italy. The mother then sought to commence proceedings in England, arguing that the English court retained jurisdiction.

It was held that the previous English orders could only be considered to be 'final' orders, the making of which ended the seisin of the court. Whilst Mr Justice Mostyn appeared to question the jurisdictional foundation of the Italian proceedings, he held that as the Italian courts *might* have jurisdiction and *might* have been properly seised it was for the Italian court to determine its own jurisdiction. The English proceedings were stayed.

Kinderis v Kineriene [2013] EWHC 4139 (Fam)

<http://www.bailii.org/ew/cases/EWHC/Fam/2013/4139.html>

A father sought the summary return of his child to Lithuania pursuant to the 1980 Hague Convention. He, in the usual way, was represented by panel solicitors and experienced counsel. The mother appeared in person as public funding had been refused on a merits basis, though the Judge felt that her defences had "*at least a realistic prospect of success*". She was unable to speak English and so had the assistance of an interpreter. The final hearing was adjourned due to the mother's lack of representation.

Mr Justice Holman commented: "*I wish to make absolutely clear that I understand and appreciate the need to be prudent with legal aid expenditure, which is also funded by the taxpayer. The merits test in screening legal aid applications is, in general terms, a necessary and appropriate one. But, in child abduction cases under the Hague Convention and Council Regulation Brussels IIA, the present procedure operates in a way which is unjust, contrary to the welfare of particularly vulnerable children at a time of great upheaval in their lives, incompatible with the obligations of this state under Article 11(3) of the regulation, and ultimately counter-productive in that it merely wastes taxpayers' funds. The only practical approach, consistent with the tight six week timetable, is an immediate grant of legal aid, to be reviewed if necessary after receipt of any relevant CAFCASS report. In that way, respondents to these applications, who are generally impecunious and highly vulnerable, would have the benefit of proper legal advice and representation at an early stage in these cases when they so desperately need it.*"

Upcoming events

➤ **Japan becomes the latest state to ratify the 1980 Hague Convention**

It is understood that the Convention will come into force in Japan on 1st April 2014, though it is not at this stage clear whether it will operate between England and Japan as of that date

Other news

➤ **Andrew Powell**

Last year Andrew Powell was awarded a Pegasus Scholarship by the Inner Temple. He has used that scholarship to travel to Los Angeles where he is working as an intern at Vorzimer Masserman, a boutique firm specialising in Surrogacy and fertility law. Andrew is writing a blog regarding his experiences named 'Wig and Gown in Tinsel Town', which you can follow at this address - <http://wigandgownintinseltown.com/>

➤ **Mrs Justice Russell**

On 13th January 2014 the Family Division welcomed Mrs Justice Russell as the latest addition to the ranks of High Court Judges.

➤ **Consultation on Brussels II revised**

We understand that the European Commission are intending to issue a consultation paper on BIIr, seeking views on what aspects of the Regulation require (or would benefit from) revision

➤ **The Office of International Family Justice**

Recent reports suggest that the Office for International Family Justice is experiencing a high level of demand for their assistance and that some of the requests are considered to all outside the proper ambit of judicial co-operation. An example can be seen in Re B [2013] EWCA Civ 1434.

