

4 PAPER BUILDINGS

Private Law Children Seminar

3 CPD – BTM/CHLS

21st November 2013

CHAIR

Catherine Wood QC

TOPICS & SPEAKERS:

A Private Law Update

Andrew Powell

Addiction & Family Breakdown Case Study

Alex Verdan QC & John Tughan

Experts - The Brave New World

Kate Branigan QC

Understanding Addiction – The things you need to know

Mandy Saligari MSc FDAP NCAC

Charter Harley Street

Dr Haizel

Claritest



4 Paper Buildings

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Section 1

4 Paper Buildings: About Us

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 innovative 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.

Many of the most serious, sensitive and significant family cases are undertaken by members of 4PB, from all sections of society, and instructions are received from clients ranging from government departments and local authorities, to individuals, ranging from celebrities, to parents trying to prevent children from being taken into care.

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.



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.

These agencies do a fantastic job in preventing homelessness, resolving debt problems, gaining care for the elderly and disabled and fighting exploitation.

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

Inside Chambers

We are well located in attractive premises in an historic building in the Inner Temple. The Royal Courts of Justice, the Principal Registry of the Family Division and other London courts are easily accessible.

Communication is central to our ethos. Clerks can connect solicitors and counsel anywhere in the world by telephone. Conference facilities can be made available at short notice to clients needing urgent face to face advice. Telephone and Skype conferences are also available.

Chambers has a well-integrated and extensive network of legal information resources, both electronic and in traditional law library form, with online access to both all major legal databases and to the outstanding facilities offered by the Inns of Court.

The Clerking and Administrative Team

Michael Reeves leads a dynamic, dedicated, and well-organised clerking team. As the interface between client and barrister, our clerks always seek to provide a quick response to any query.

Chambers 2014 particularly praises the clerking team "They have the best clerks in the business - their clerking is head and shoulders above the rest"

Clare Bello, our excellent practice manager, is responsible for the administration, financial management, premises and facilities, IT and aspects of marketing.

BarMark as a sign of excellence

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.

Publications and Continuing Professional Development

Our barristers write regularly for the legal, specialist, local authority and mainstream <http://www.4pb.com/media>, and provide insightful, practical, and relevant lectures of topical interest to solicitors, both in private practice or in-house, regional Resolution committees and family law groups.

Chambers has also established its own annual lecture series providing essential legal and procedural updates, as well as networking opportunities to meet our barristers on a more informal basis.

Equality and Diversity

Chambers is committed to equality of opportunity and to compliance with the Bar Standards Board's Equality and Diversity Code. Everyone who comes into contact with Chambers are treated on merit and are not discriminated against on the grounds of their ethnic or national origin, nationality, citizenship, age, sex, sexual orientation, marital status, disability, religion or political persuasion. To view a copy of our Equality and Diversity Policy please [click here](#).

Complaints and Discipline

Barristers and staff at 4PB always strive to maintain the highest standards of service. However, there may be occasions when a client is disappointed with our service. We take any cause for dissatisfaction seriously and it is our policy to investigate fully any complaint in accordance with BSB requirements. We aim to learn from any mistakes so as to improve our service in the future. To download our Complaints Policy, please [click here](#).

Standard Contractual Terms

As of 31st January 2013 Chambers are adopting the Bar Councils Standard Contractual Terms. To view these terms [click here](#)



Section 2

A Private Law Update

Andrew Powell

PRIVATE LAW CHILDREN UPDATE

ANDREW POWELL

4 PB

21 November 2013

OVERVIEW

- Contact / Residence
- Specific issue/ Parental Responsibility
- Leave to remove
- HFEA
- Costs
- The Private Law Working Group

CONTACT

Re W (Parental Responsibility Order: Inter-relationship with direct contact)
[2013]EWCA Civ 335

Re A (Interim Contact pending psychological assessment) [2013] EWCA Civ 543

Re M (Contact) [2012] EWHC 1948; [2013] 1 FLR 1403

AB v BB and Children (through their Children's Guardian) [2013] EWHC 227 (Fam)

Re C (Indirect Contact) [2012] EWCA Civ 1281; [2013] 2 FLR 272

G-C (A Child) [2013] EWCA Civ 301

RESIDENCE

Re G (Shared Residence) [2012] EWCA Civ 1434; [2013] 1 FLR 1323

Re C (Proceedings: Case Management) [2012] EWCA Civ 1489

Re J (Residence and Contact Dispute) [2012] EWCA Civ 1231

TB v DB (Change of Residence) [2013] EWHC 2274 & 2275 (Fam)

PR / SPECIFIC ISSUE

F v F [2013] EWHC 2683 (Fam)

Re G (Education: Religious Upbringing) [2012] EWCA Civ 1233, [2013] 1 FLR 677

A Mother v A Father [2012] EW Misc 15 (CC)

A v D (Parental Responsibility) [2013] EWHC 2963 (Fam)

CW v SG [2013] EWHC 854 (Fam), [2013] 2 FLR 655

RELOCATION POST RE K

Destination	Gate	Time	Status
PARIS	A43	12:00	DELAYED
FRANKFURT	A15	12:10	DELAYED
NEW YORK	B08	12:25	DELAYED
BRUSSELS	A21	12:30	DELAYED
ROME	A30	12:30	DELAYED
BOSTON	B01	12:35	DELAYED
LONDON	A19	12:40	DELAYED
RIO DE JANEIRO	B13	12:45	DELAYED
MADRID	A26	12:45	DELAYED
ATHENS	A37	12:50	DELAYED
STOCKHOLM	A40	13:00	DELAYED
DUBLIN			

RELOCATION POST RE K

Re F (Relocation) [2012] EWCA Civ 1364; [2013] 1 FLR 645

Re E (Relocation: Removal from Jurisdiction) [2012] EWCA Civ 1893; 2 FLR 290

S v T (Children)(Relocation) [2013] Fam Law 812

Re S (Relocation: Parental Responsibility) [2013] EWHC 1295

Re TC and JC (Children: Relocation) [2013] EWHC 292 (Fam), [2013] 2 FLR 484

Research – Dr. Rob George (University of Oxford) - www.law.ox.ac.uk/projects/relocation

HFEA 2008

Re D and L (Surrogacy) [2012] EWHC 2631 (Fam); [2013] 2 FLR 275

AB v CD and the Z Fertility Clinic [2013] EWHC 1418

J v G (Parental Orders) [2013] EWHC 1432

Re P-M [2013] EWHC 2328 (Fam)

Re C (A Child) [2013] EWHC 2413 (Fam)

M v F and H [2013] EWHC 1901 (Fam)

COSTS

HH v BLW (Appeal: Costs: Proportionality) [2012] EWHC 2199 (Fam)

Re T (Costs: Care Proceedings: Serious Allegations Not Proved) [2012] UKSC 36; [2013] 1 FLR 133

X Local Authority v Trimega Laboratories & ors [2013] EWCC 6 (Fam)



The Private Law Working Group

View from the President's Chambers (8)

<http://www.judiciary.gov.uk/Resources/JCO/Documents/family-court-guide/private-law/report-of-the-private-law-working-group.pdf>

- Chaired by Mr Justice Cobb
- Child arrangements programme
- Integrate pre existing protocol
- No time limit recommendation
- low risk cases should continue to be resolved swiftly at the FHDRA and expect that others will resolve at a later Dispute Resolution Appointment ('DRA')
- Recommends FHDRA's be heard by magistrates or DJs(MC)



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Section 3

Addiction & Family Breakdown Case Study

Alex Verdan QC & John Tughan

Addiction and Family Breakdown

Case Study

Scorsese v Scorsese

Marty ("F") is 55 and is a merchant banker. Carmella ("M") is 52 and is an anaesthetist. They have been married since 1997. Their children are Sonny (17), Michael (12) and Connie (10). They separated in 2012. F moved out and lives in a flat near to the family home. The children and M remain in the family home.

M's reason for seeking a divorce is the behaviour of F. In the main this relates to his alcohol abuse, which she says has been steadily getting worse over the last eight years. She says that when drunk he has an awful temper and "turns" so that she does not recognise his personality. She has a diary of "incidents" that shows the occasions when F returned to the home smelling of alcohol or appearing to be inebriated. That diary ends at the time F moved out of the home.

F denies any alcohol abuse but agrees that he and M have grown apart and agrees the relationship is over. He admits to social drinking and a working life that revolves around alcohol. He denies any alcohol problem. He says M is controlling and seeking to punish him for the breakdown in their relationship.

The history of the child care is that when both parents worked the family had a nanny to assist with the child care. M took her full maternity leave after the birth of each child. However, F was made redundant and was out of work for 3 years from 2007. For those years he was the primary carer and M worked full-time. During those years the family had various au-pairs to live in the family home but no nanny. There is a dispute between the parents about exactly how involved the au pairs were while F was at home but M accepts that F was the primary carer while she worked during that time.

Sonny is studying for A levels and wants to read Physics at Cambridge. Michael is doing well in his school and is a keen sportsman and Connie seems to be a future head-girl and grade A student.

Social services were involved as the writers of the s7 report because of an incident in 2009 when F came home late from a social event at the rugby club, where he had been since 11am, and a blazing row with M ensued. The whole family were awake and in tears and the police were called. F stayed in a hotel for that night, having been removed from the home by the police. The referral to social services followed. There has been no other incident reported to outside agencies by either parent. F accepts that he was "way out of line" on that occasion and says he has spent years apologising. Sonny told the social worker that he agrees with M that F has a bad

temper when drunk but that he is a “great” Dad when not in drink. Michael refused to answer questions about F and said he was “sick of it”. Connie said she just wanted everyone to get on.

F’s hair strand test results were received three days ago. The test result shows an EtG to “strongly suggest chronic excessive alcohol consumption (0.035 ng/mg) over the last three months.

F says that his drinking has increased since he separated from M. He is a “single man now” and he is having fun.

F has visiting contact with all the children. He does not go to the family home, by agreement. Sonny and F make their own arrangements and see each other several times per week. M opposes anything but visiting contact with Michael and Connie and now seeks for that contact to be professionally supervised, “until he sorts it out and sees a psychiatrist”.

F does not agree the hair strand test result. Nor does he agree that it points to his contact being supervised.

The last s7 report was in July 2013. It recorded a good relationship between F and the children, Michael “desperately wanting” to stay with F overnight so that they could go away overnight to watch international rugby and Connie being quite withdrawn and not wanting to answer questions.

The case is listed before Baroness Catherine Wood of Wiversfield-under-Hardy (sitting as a deputy High Court Judge). The issues before the Court for determination are:

- (i) a review of interim contact arrangements;
- (ii) F’s application for a further expert report. He seeks to instruct a different expert unit to undertake further tests relating to his alcohol use. M opposes and seeks a psychiatric evaluation of F’s alcohol abuse.

For M: Alex Verdan QC

For F: John Tughan

Relevant Case Law (attached)

Richmond LBC v B, W, B and CB [2011] 1 FLR 1345

Bristol City Council v A and A and Others [2013] 2 FLR 1153

X local authority v Trimega [2013] EWCC 6 (Fam) (County Court)

**Richmond London Borough Council v B,
W, B and CB [2010] EWHC 2903 (Fam)**

[2011] 1 FLR 1345

Family Division

Moylan J

12 November 2010

Care proceedings — Expert evidence — Alcohol abuse — Validity of hair testing to establish consumption below excessive consumption — Presentation of chemical analysis results

The mother had a history of severe alcohol abuse; her older children had been removed from her care. In care proceedings concerning the two younger children, an issue arose as to the whether the mother had consumed alcohol since the previous hearing. The relatively new technique of hair testing looked at two different 'markers' to measure alcohol consumption, ethyl glucuronide (EtG) and fatty acid ethyl esters (FAEEs); the Society for Hair Testing had agreed that, in respect of 3 cm proximal samples (about 3 months' growth), results above specific 'cut-off' levels were consistent with excessive consumption of alcohol, with the proviso that there was a 10% false positive at the cut-off levels; there was no peer agreed cut-off level for the line between abstinence and social drinking. The first laboratory cut a 3 cm sample taken from the mother into three 1cm samples; it then tested for EtG. There was a negative result in respect of the two older samples; EtG was detected in the newest segment of hair, but at a level significantly below the agreed cut off. A witness statement provided by a laboratory employee stated that 'The results are consistent with the use of alcohol by (the mother) within the relevant one month period'. At the mother's request a different laboratory conducted a test for FAEEs on a 6cm segment of hair; the result was described as 'negative', indicating 'abstention or virtual abstention'. The second laboratory also ran a test for EtG, which produced a negative result, but did not make the result available to the parties. A standard document accompanying the second laboratory's certificate of analysis stated that the procedure 'looks for and quantifies several markers that indicate alcohol abuse. These markers are only present when the subject consumes alcohol.' However, a promotional email sent by the same laboratory to the mother's solicitors stated 'there is no such thing as a zero result because ethanol is present in all hair, even that of teetotallers'. Further tests on the mother's hair by the second laboratory were all negative, which was said to mean 'no evidence of frequent excessive alcohol consumption'. Until the hearing the local authority was relying upon the first hair analysis results as establishing that the mother had consumed alcohol in the relevant period; after hearing oral evidence from the experts, the authority accepted that there was insufficient evidence to establish this, and that any further testing should be by way of urine testing.

Held – confirming an agreed supervision order –

(1) The guidance contained in Practice Direction: Experts in Family Proceedings Relating to Children [2009] 2 FLR 1383 was not advisory: it was mandatory, and was applicable to all expert evidence in family proceedings relating to children. Some of the expert evidence in this case appeared to have been treated as though it was not expert evidence, perhaps because results obtained from chemical analysis were thought to constitute essentially factual evidence. However, the Practice Direction applied to all expert evidence, and it would be rare that results from chemical analysis were not in fact being used and interpreted for the purposes of expert opinion evidence. In all cases, but particularly when a new technique was involved, the court and the parties needed to have available all the information necessary to understand what weight could be placed on the evidence, including any margins of error, whether

[2011] 1 FLR 1346

a proposition was a hypothesis or derived from peer reviewed and tested techniques, research and experience, and whether the proposition should be qualified in any way. Experts could rely upon their own experience and unpublished material to support their opinions, but the basis for the asserted opinion must be made sufficiently clear for its reliability to be properly assessed. As set out in *Re F (Children) (DNA Evidence)* [2007] EWHC 3235 (Fam), expert reports, especially those of a single expert, should be expressed in terms that could be understood by lay people, explaining clearly the scientific justification (and limitations) for the opinion expressed (see paras [8]–[12]).

(2) Considerable caution should be exercised when hair tests for alcohol were being interpreted and relied upon, particularly in isolation. Subject to the proviso that at very high levels (multiples of the agreed cut-off levels) hair tests might form a significant part of the evidential picture, hair tests should not be used to reach evidential conclusions by themselves in isolation from other evidence, but only as part of the evidential picture. In the absence of any peer agreed cut-off level for the line between abstinence and social drinking the court would need specific justification before accepting any such evidence (see paras [22], [55]).

Cases referred to in judgment [top](#)

F (Children) (DNA Evidence), *Re* [2007] EWHC 3235 (Fam), [\[2008\] 1 FLR 348](#), FD

Oxfordshire CC v DP, RS and BS [2005] EWHC 2156 (Fam), [\[2008\] 2 FLR 1708](#), FD

Practice Direction: Experts in Family Proceedings Relating to Children, 1 April 2008, [\[2009\] 2 FLR 1383](#)

R v Weller [2010] EWCA Crim 1085 (unreported) 4 March 2010, CA

Henry Lamb for the applicant

Jane Drew for the first respondent

George Butler for the second respondent

Sorrel Dixon for the third respondent

Richard Clough for the fourth and fifth respondents

Jacqui Gilliatt for the intervener

Cur adv vult

MOYLAN J:

[1] During the course of these care proceedings an issue arose as to the validity of hair testing for the purposes of seeking to establish whether a parent has consumed alcohol and, if so, to what extent. This arose in circumstances where the mother has a history of severe alcohol abuse which, with other factors, had resulted in her older children being removed from her care. In the event, once I had heard oral evidence from the experts involved in this case, that issue fell away for the purposes of these proceedings as it was accepted by the local authority that the evidence was not sufficient to establish that the mother had consumed alcohol in the period since early 2009. Further, and in my view, sensibly having regard to the evidence which I have heard, the local authority decided that any future testing should be by way of urine testing.

[2] It is very regrettable that this issue was not resolved earlier because it has resulted in the determination of these care proceedings, by an agreed supervision order, being delayed by some 8 months. This has, with hindsight, manifestly not been in the interests of the children the subject of these proceedings. For this reason and because the issues surrounding hair testing in connection with the consumption of alcoholic beverages are of wider interest, I am giving this public judgment which addresses only these latter issues.

[2011] 1 FLR 1347

[3] At this hearing the local authority has been represented by Mr Lamb, the mother by Miss Drew, the fathers by Miss Dixon and Mr Butler and the guardian by Mr Clough. Additionally, and unusually, the companies which have carried out the tests in this case, Trimega Laboratories

Ltd and TrichoTech, were given permission to intervene on the issue of the hair strand test results. Only Trimega have taken advantage of this opportunity and at this hearing they have been represented by Miss Gilliat. I am extremely grateful to counsel for the assistance they have provided.

[4] I have heard evidence from Professor Pragst and Mr O'Sullivan. Both have made clear that they have connections with the interested commercial entities, namely Trimega and TrichoTech. Professor Pragst provides advice to Trimega and Mr O'Sullivan is an employee of TrichoTech. This could have raised concerns about the independence of their evidence but I am satisfied that the evidence each of them gave to me has been unaffected by their respective relationships with these entities.

[5] Professor Pragst is an internationally recognised chemist and forensic toxicologist. Between 1966 and 1987 he worked in the field of organic and physical chemistry in the Chemical Institute of Humboldt University, Berlin. In 1987 he moved to the Institute of Legal Medicine at the University Hospital Charite, Berlin. Between 1989 and 2006 he was head of the Department of Toxicological Chemistry at the Institute of Legal Medicine. Since then he has continued to work at the Institute as a guest scientist. He has been engaged in a number of research projects including one involving the analysis of hair. With colleagues he started researching alcohol markers in hair in about 1996/97, developed a method of testing for fatty acid ethyl esters in 2000 and published in 2001. He has also co-operated with colleagues investigating the presence and testing of ethyl glucuronide in hair including Dr Michel Yegles from the University of Luxembourg.

[6] Mr O'Sullivan is employed by TrichoTech as a laboratory manager. He is a graduate of the Institute of Biology (Biochemistry), a Chartered Biologist and a Member of the Institute of Biology. He has worked in the field of drug analysis for over 20 years and has worked specifically in the detection of drugs in hair since 1999. He is clearly extremely experienced but it was clear from his evidence that he would defer to Professor Pragst on issues relating to the use of hair for alcohol testing.

[7] As I have said, this judgment deals with the testing of hair for the purposes of expert evidence being provided to the court on the consumption of alcoholic beverages. While hair analysis for the use of drugs other than alcohol has been used for many years, hair testing specifically for alcohol use is a relatively recent and developing science, at least in the field of forensic toxicology. It is clearly particularly important when new scientific tests are being used for forensic purposes that they have a sound basis which makes it appropriate for the results to be used in court proceedings and which is sufficiently explained so that the court and the parties have a full understanding of the evidential basis both of the tests themselves and of any opinions based on the interpretation of the results of such tests.

[8] In this context, it must be understood that the Practice Direction: Experts in Family Proceedings Relating to Children, 1 April 2008, [2009] 2 FLR 1383 applies to all expert evidence. It provides, among other things:

[2011] 1 FLR 1348

‘[3.1] An expert in family proceedings relating to children has an overriding duty to the court that takes precedence over any (other) obligation ...

[3.2] Among any other duties an expert may have, an expert shall have regard to the following duties:

(1) to assist the court in accordance with the overriding duty;

(2) to provide advice to the court that conforms to the best practice of the expert's profession; ...

[3.3] The expert's report shall ...:

(8) in expressing an opinion to the court:

...

- (b) describe their own professional risk assessment process and process of differential diagnosis, highlighting factual assumptions, deductions from factual assumptions, and any unusual, contradictory or inconsistent features of the case;
 - (c) highlight whether a proposition is a hypothesis (in particular a controversial hypothesis) or an opinion in accordance with peer reviewed and tested technique, research and experience accepted as a consensus in the scientific community; ...
- (9) where there is a range of opinion on any question to be answered by the expert:
- (a) summarise the range;
 - (b) highlight and analyse within the range of opinion an “unknown cause”, whether on the facts of the case (for example, there is too little information to form a scientific opinion) or because of limited experience, lack of research, peer review or support in the field of expertise which the expert professes;
 - (c) give reasons for an opinion expressed: the use of a balance sheet approach to the factors that support or undermine an opinion can be of great assistance to the court.'

[9] This guidance in the Practice Direction is not advisory, it is mandatory, subject only to the qualification that its terms have to be applied purposively to the specific circumstances of each case. It is applicable, as I have said, to all expert evidence in family proceedings relating to children.

[10] I have referred to the Practice Direction because some of the expert evidence which has been produced in this case appears to have been treated as though it was not expert evidence. It may well be that results obtained from chemical analysis are such as to constitute, essentially, factual rather than opinion evidence because they are not open to evaluative interpretation and opinion. Although I would add that it is common for such analysis to have margins of reliability. However, the Practice Direction applies to all expert evidence and it will be rare that the results themselves are not used and interpreted for the purposes of expert opinion evidence.

[2011] 1 FLR 1349

[11] It is self-evident why expert evidence needs to be given in accordance with the Practice Direction. The court and the parties need to have available all the information necessary to understand what weight can be placed on the evidence. This might be expected to include any margins of error in the chemical analysis, whether any proposition advanced based on the results of the chemical analysis is a hypothesis or a proposition derived from peer reviewed and tested techniques, research and experience and whether the proposition is or should be qualified in any way because, for example, it is based on limited empirical research. This is important in any event but is of particular relevance when new developments are being used to support forensic evidence, as has been the case with hair strand testing for alcohol.

[12] This is not to say that experts cannot rely on their own experience and unpublished material to support their opinions. It is well established that they can: see, for example, *R v Weller* [2010] EWCA Crim 1085 (unreported) 4 March 2010. However, the basis for the asserted opinion must be made sufficiently clear for its reliability to be properly assessed. During the course of submissions I was also referred to *Re F (Children) (DNA Evidence)* [2007] EWHC 3235 (Fam), [2008] 1 FLR 348 which dealt with DNA evidence. I agree with the points identified by Anthony Hayden QC, sitting as a deputy High Court judge, in para [31] of his judgment including in particular the need for experts to bear in mind that their reports should be expressed in terms which can be understood by lay people and in terms which explain clearly the scientific justification (and limitations) for the opinions being expressed. This is particularly acute when, as will often occur in family cases, expert evidence is being given by a single expert.

[13] In this judgment I deal only with the testing of hair. There are, of course, other longer established methods for seeking to establish alcohol consumption, including blood and urine testing. These test for the presence of ethanol and are, therefore, more direct than the tests being considered in this case. There are limitations, because of the length of time for which ethanol remains in the blood or urine, but they provide a more secure factual foundation.

Hair strand testing for alcohol consumption

[14] Briefly explained, hair strand tests to measure alcohol consumption are based on seeking to establish the concentration of ethyl glucuronide (EtG) and fatty acid ethyl esters (FAEEs). The levels of concentration are given as nanograms of EtG/FAEEs per milligram of hair or picograms of EtG/FAEEs per milligram of hair. The reason both nanograms and picograms are used is that the levels being analysed are very, very small. Accordingly, the results for EtG are usually given in terms of picograms to avoid the use of noughts below the decimal point – one nanogram equals 1,000 picograms.

[15] Hair grows at the rate of between approximately 0.7 and 1.5 cm per month. Accordingly, 3 cm represents, on average, 3 months' growth.

[16] The level of EtG or FAEEs found in a hair sample reflects the consumption of alcohol over the whole of the period covered by the sample. It does not determine the manner in which such alcohol might have been consumed: ie it does not determine the number of times on which alcohol might have been consumed nor the amount consumed on each such occasion.

[2011] 1 FLR 1350

It shows only the average consumption for the relevant period because both EtG and FAEEs are incorporated in the hair in or near the root and into grown hair.

[17] I must also deal with some of the terminology used in this judgment. Alcohol testing means testing for the purpose of seeking to establish the levels of EtG and FAEEs in a person's hair. I deal later in this judgment with the evidential value of these tests for the purposes of determining whether someone has consumed alcohol in the form of alcoholic beverages and, if so, to what extent. Abstinence means not drinking alcoholic beverages at all. Social drinking means consuming alcoholic beverages but at a level below that categorised as excessive consumption. Excessive consumption means the consumption of alcoholic beverages above the level set by the World Health Organisation, namely more than 60 grams of pure ethanol (7/8 units) per day over a period of several months.

[18] The limit of detection (LOD) is the lowest level at which the presence of a substance can properly be said to be detected. The limit of quantification (LOQ) is the lowest level at which the amount of a substance is sufficient for it to be quantified. If results are below the LOD or even below the LOQ they are at the limits of the test's capabilities and, as a result, there can be significant analytical errors within this range. In addition, the LOQ can vary depending on the 'noise' produced by the instruments being used.

[19] The Society of Hair Testing was set up in 1995 as an international body to promote research, develop international proficiency tests and encourage co-operation and exchanges between members. During the course of his evidence, Professor Pragst referred to the importance of laboratories undertaking proficiency tests to compare their results.

[20] On 16 June 2009 the Society adopted and published a 'Consensus of the Society of Hair Testing on hair testing for chronic excessive alcohol consumption' ('the Consensus'). The Consensus sets out agreed cut-off levels for both EtG and FAEEs which would 'strongly suggest chronic excessive alcohol consumption'. The levels proposed are obviously above, and significantly above, both the LOD and the LOQ. For EtG the agreed cut-off level has been put at 30 pg/mg (0.03 ng/mg) for the proximal 3 cm segment of hair. For FAEEs the agreed cut-off level has been put at 500 pg/mg (0.5 ng/mg), again for the proximal 3 cm segment of hair.

These levels have been agreed, partly so that standard levels are applied across all laboratories and partly because of a consensus that the results thereby produced are sufficiently robust to be relied upon. Professor Pragst said that these levels were agreed because there was general agreement that at these levels 10% of the results would be false positives and 10% would be false negatives. The length of 3cm was taken as the optimal length because this is the length tested by most laboratories and because there are not many 6 cm samples or shorter segments in the published research data. In respect of this last point, Professor Pragst said that the published data was not sufficient to establish the validity of testing 1cm sections of hair (save as described in para [22(iv)] below).

[21] The cut-off levels referred to above address only the issue of excessive consumption. No cut-off levels have been agreed for the purposes of seeking to identify a dividing line (in terms of amount of EtG and FAEEs) between abstinence and social drinking. This is in part because hair strand testing has been shown to produce false positive results: ie they have established the

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presence of EtG and FAEEs above the LOQ in those who have not consumed alcoholic beverages. It is also, importantly, because of the lack of empirical research, in particular published research, sufficient to justify the identification of such a dividing line.

[22] By the end of the hearing all counsel were agreed that the evidence in this case establishes the following points:

- (i) when used, hair tests should be used only as part of the evidential picture. Of course, at the very high levels which can be found (multiples of the agreed cut-off levels) such results might form a significant part of the evidential picture. Subject to this however, both Professor Pragst and Mr O'Sullivan agreed that 'You cannot put everything on the hair test'; in other words that the tests should not be used to reach evidential conclusions by themselves in isolation of other evidence. I sensed considerable unease on the part of Professor Pragst at the prospect of the results of the tests being used, other than merely as one part of the evidence, to justify significant childcare decisions;
- (ii) because of the respective strengths and weaknesses of each of the tests (for EtG and FAEEs), if hair tests are going to be undertaken, both tests should be used. Research has shown that the tests can produce conflicting results;
- (iii) the results produced by the tests should be used only for the purposes of determining whether they are or are not consistent with excessive alcohol consumption by use of the cut-off levels referred to in para [20] above. If they are not – in other words if the concentration found is below the generally recognised cut-off levels – the results are consistent with (indicative of) abstinence/social drinking. If the results are above the generally recognised cut-off levels, they are consistent with (indicative of) excessive alcohol consumption. Further, as referred to earlier in this judgment, at these cut-off levels the research evidence suggests that 10% of the results will be false positives. The tests cannot establish whether a person has been abstinent both because the non-detection of either EtG or FAEEs does not mean that the subject has not consumed alcohol and also because the detection of either at volumes below the cut-off levels referred to above does not mean that they have. Finally, on this point, the tests are not designed to establish abstinence or social drinking;
- (iv) the current peer agreed cut-off levels for both EtG and FAEEs are for the proximal 3 cm segment of hair. Whilst the testing of 1 cm segments (of the proximal 3 cm segment of hair) might have some value for the purpose of looking at trends (and also at very high levels referred to in (i) above), no cut-off levels have been established or generally agreed for 1 cm segments nor, as referred to earlier in this judgment, is there sufficient published data on testing such segments to enable the validity of such tests to be established. Accordingly, any evidence based on the testing

of 1 cm segments is unlikely to be sufficient to support conclusions as to the level of alcohol consumption;

- (v) notwithstanding what is set out in the Consensus, the witnesses in these proceedings agreed that, when tests demonstrate levels of EtG and FAEs above the cut-off levels referred to in para [20], the results can be said to be 'consistent' with excessive consumption over the relevant period. When a test demonstrates a lower level it is 'consistent' with abstinence/social drinking;
- (vi) as referred to in (iii) above, the current state of research means that there is no peer agreed cut-off level for the line between abstinence and social drinking. In the absence of any such peer reviewed and agreed cut off, any court would, in my view, need specific justification before accepting any such evidence.

The evidence

[23] Having summarised the effect of the evidence given in this case, I propose briefly to summarise the evidence itself.

[24] Alcohol cannot be detected directly in hair. However, when it is metabolised the body produces two minor metabolites, namely ethyl glucuronide (EtG) and fatty acid ethyl esters (FAEs). These metabolites are incorporated in and can be measured in hair. They are direct markers because they both contain the two carbon atoms present in ethanol. However, the fact that either EtG and/or FAEs are found to be present in hair in measurable quantities does not mean (ie does not support the proposition) that the subject of the test has consumed alcohol. Either could be found to be present as a result of other factors including through alimentary alcohol (eg some breads) and endogenous alcohol (through normal human metabolism).

[25] EtG is metabolised from ethanol in the liver. It is a very hydrophilic (water loving) compound. At present, although not conclusively established, EtG is understood to become incorporated into hair mainly through sweat. By this means it is incorporated into the hair matrix. It can be seen immediately that the extent to which it is incorporated will depend on a number of factors including how people sweat and the length of a person's hair; in addition, there are significant biological variations between people. There are other variable factors such as EtG, on the one hand, being susceptible to being washed out and, on the other, being capable of being incorporated as a result of the use of products on the hair which contain alcohol.

[26] FAEs are a group of more than 20 fatty acids. They are formed in the liver, the blood and all other tissues. They are very lipophilic (fat loving). FAEs are incorporated in hair through the sebum glands. This takes place both through the hair root and also outside the root. Four of the FAEs are tested, broadly being the four which have the highest concentrations. FAEs are not easily washed out of hair but can be affected by hair treatments – bleaching will reduce their concentration while the use of products containing alcohol will increase their concentration. Further, FAEs can be detected in hair as a result of exposure to alcohol in the atmosphere (such as a pub if there is a large amount of alcohol vapour in the air).

[27] Hair can be tested to establish the concentration of these minor metabolites present in the sample. It is a complex process using either gas chromatography/mass spectrometry or liquid chromatography/mass spectrometry.

[28] Research has shown that there is a relationship between alcohol consumption and the concentration of these markers in hair. There are many factors which will affect the level of the concentration of the markers, as a result of which there is no direct correlation between alcohol

consumption and the level of concentration of the markers. However, research has shown that there is sufficient of a relationship to justify using these markers to identify those who abuse alcohol. The definition used is that provided by the World Health Organisation of an average of 60 grams of ethanol per day over the course of several months.

[29] The cut-off levels set out in the Consensus have been agreed because they represent the optimal level at which there were the lowest number of false positives and the lowest number of false negatives. As a result of the variables present, such as the fact that metabolism varies from person to person, it is not possible to identify a clear divide. In Professor's Pragst research (and, I believe, others) the cut-off level was set, through empirical research and ROC analysis, at the point where the results were understood to produce 10% false negatives and 10% false positives.

[30] The tests have been designed to establish a pattern of drinking over a period of time and have not been designed, for example, to test for a single episode of drinking – the amount of either ETG or FAEs present is averaged for the whole period tested. Nor, more importantly, have they been designed to establish abstinence or social drinking. Abstinence cannot be established by means of these tests because research has shown that even those who have not consumed alcoholic drinks can test positive for both EtG and FAEs. This was not anticipated and their presence is explained by the fact that normal foods can contain alcohol and by the production of endogenous alcohol through normal human metabolism. Further, there is no reliable published data on the relationship between the consumption of alcohol and the concentration of these markers at levels below that which is consistent with excessive consumption as referred to in the next paragraph.

[31] Balancing the strengths and weaknesses of the tests for both EtG and FAEs in hair has led to it being generally acknowledged that, currently, they should only be used to ascertain whether the results are consistent with excessive consumption. As referred to earlier in this judgment, the Society of Hair Testing published the Consensus in June 2009. In order to arrive at an agreed uniform approach and thereby to standardise what had previously been variations in practice between the various laboratories that provide hair tests for alcohol, the Consensus made the following recommendations:

- (a) 'the cut off for EtG in hair strongly to suggest chronic excessive alcohol consumption is proposed at 30 pg/mg (0.03 ng/mg) scalp hair measured in the 0–3 cm proximal segment';
- (b) 'the cut off for the sum of the four esters (FAEs) in hair strongly to suggest chronic excessive alcohol consumption is proposed at 0.5 ng/mg (500 pg/mg) scalp hair measured in the 0–3 cm proximal segment'.

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These recommendations reflect the current international consensus and are due to be reviewed in 2011. The proposed review reflects the fact that the science in this area is developing.

[32] Professor Pragst recommends that both tests (ie for EtG and FAEs) should be carried out in part because of the different ways in which they are incorporated into hair and their different susceptibilities.

[33] All references to the length of a sample relate, for obvious reasons, to the length from the scalp end of the sample.

Hair test evidence in this case

[34] On 2 September 2009 a sample of the mother's hair was taken. This was then tested on 4 September by TrichoTech. A 3 cm section of the sample was cut into three 1 cm segments and each segment was separately tested for the presence of EtG. EtG was not detected in the two older segments but was detected in the newest segment. The amount detected was 0.022 nanograms per milligram (22 pg/mg) of hair.

[35] A report was provided in the form of a Criminal Justice Act witness statement from Mr O'Sullivan dated 17 September 2009 rather than in the form of an expert report. He stated that:

'The results are consistent with the use of alcohol by (the mother) within the time period covered by the most recent hair section analysed ...

Based on the current scientific evidence, EtG results in isolation can be suggestive of alcohol use or abstinence however they may not be conclusive. Clinical judgment in combination with laboratory tests is therefore strongly recommended for the best diagnosis. The degree of any alcohol use is a clinical decision.

It is not possible to determine the amount of alcohol an individual has consumed from the level of EtG detected in any hair section tested. There are many factors that influence the amount of EtG in hair such as the strength of alcohol consumed, the effect of cosmetic hair treatments and individual variations in alcohol metabolism.

For general guidance only, the level of EtG detected in the most recent hair section is in the low range in comparison with other samples analysed at the laboratory that have tested positive for EtG.'

[36] It can be seen that this statement did not provide a wholly clear picture of what was being said could be deduced from the discovery of 0.022 ng/mg of EtG in one segment of the mother's hair. It was said that the result was 'consistent' with the use of alcohol but it was then also said that EtG results 'can be suggestive of alcohol use or abstinence'. During the course of the hearing Mr O'Sullivan made it clear that TrichoTech have since changed their practice so that this result would now no longer be deemed significant – in part because they do not now rely on the results from 1 cm segments only but look at the average results from a 3 cm segment. If this latter approach had been adopted in September 2009 the result would have been said to have been negative.

[37] A further test was then undertaken, at the mother's request, by Trimega. A sample of hair was collected on 22 October 2009. A 6 cm segment

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was tested for FAEs. The concentration detected was an average of 0.03 ng/mg. In a 'Certificate of Analysis' this was described as a 'Negative' result explained as meaning: 'A negative result indicates no evidence of frequent excessive alcohol consumption in the fatty acid ethyl esters'. This interpretation was confirmed in a witness statement. It was later said by Trimega that the negative results indicated 'abstention or virtual abstention' during this 6-month period; ie mid-April to mid-October.

[38] In addition, although unknown to any of the parties until this hearing, a 3 cm section had also been analysed for the presence of EtG. This was done for the laboratory's own purposes. The result was 1.8 pg/mg; this is a 'negative' result. At this level the process is such that there exists a very wide margin of error; the result of 1.8 pg/mg is below the level of quantification. It is regrettable that this result was not made available to the parties as it might have affected the course of these proceedings.

[39] In October 2009 the parties in these proceedings were, therefore, faced with one test result which was said to be consistent with the consumption of alcohol in the period between the end of July and the end of August 2009 and another test result which was said to indicate abstention or virtual abstention.

[40] With the Certificate of Analysis from Trimega came a standard document entitled 'Hair Alcohol Testing Results Summary'. In respect of the presence of FAEs this document states:

'The procedure looks for and quantifies several markers that indicate alcohol abuse. These markers are only present when the subject consumes alcohol.

The markers are derived from the effect of consumed alcohol on a range of fatty acids secreted by the body to produce a homologous series of fatty acid ethyl esters. These esters can only form from the consumption and are unaffected by the use of alcohol in shampoo, conditioners

and treatment of any kind. The presence of these esters in the hair sample is evidence that the alcohol was ingested and absorbed by the body.'

[41] In early November, the mother's solicitors by chance received a promotional email from Trimega which listed a number of questions and answers, including the following:

‘Q: Does the EtG and FAEE concentration found in my client's test results equate to the quantity my client has consumed?’

A: No. We cannot quantify the exact amount of units your client has been drinking as Trimega does not measure the alcohol itself but rather identifies and quantifies metabolites produced by the body once alcohol has ingested. Results cannot be quantified into consumption levels due to differences in alcohol metabolism and physiology in hair growth ... As with all medically-based tests, results are not subject to the lineal laws of basic mathematics.

Q: If you cannot determine the quantity of alcohol consumed from the test results, what do these tests determine?

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A: Trimega determine whether the donor falls above or below the cut off level that we have set, which is 60 grams of pure ethanol per day over a protracted period.

Q: What is meant by a “positive” result?

A: A positive result is reported when the total concentration of FAEE and/or EtG exceeds the cut off level which correlates to 60 grams plus on a daily basis.

Q: Would teetotallers return a “zero” result?

A: There is no such thing as a zero result because ethanol is present in all hair, even that of teetotallers. These traces are the product of the environment, the metabolism of certain foods and cosmetics.'

[42] It can be seen that the above statements in the email differ from the ‘Results Summary’ in which it was stated that ‘These markers are only present when the subject consumes alcohol’. As will be apparent from this judgment, this bald assertion is not supported by research which has shown that false positive results can be obtained from those who have not consumed alcohol. However, as a result of this and other evidence in this case the local authority asserted, and continued to assert until the hearing before me, that the mother had consumed alcohol in the period since July 2009.

[43] As a result of the differences between the test results and also because of uncertainty as to what propositions it was being said the results supported, the mother's solicitors sent a number of written questions to both Trimega and TrichoTech.

[44] In his response, on behalf of TrichoTech, Mr O'Sullivan gave answers which, in hindsight, only further confused the position by stating among other things that:

- for EtG to be detected in any hair section analysed by TrichoTech, ‘it is estimated that the donor would have to consume, as a minimum, between approximately twenty and fifty units of alcohol per week over the course of the time period being tested’;
- the result of the test on the mother's hair ‘is consistent with the use of alcohol’
- EtG results ‘in isolation can be suggestive of alcohol use or abstinence; however they may not be conclusive. Clinical judgment in combination with laboratory tests is therefore strongly recommended for the best diagnosis’.
- the analytical cut-off for EtG is 0.01 ngs/mgs of hair.

He also enclosed the Consensus.

[45] In their response Trimega, among other things, state that they are not aware of any test which can demonstrate ‘complete abstinence’ and that FAEE alcohol tests can never produce a ‘zero result’ as the body absorbs small amounts of ethanol from the environment and from some

types of food. It is also said that it is 'scientifically unsound' to test hair for the presence of EtG on a month by month basis (ie by 1 cm segments) because of the effect of EtG

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laden sweat on the more mature sections of hair. As referred to earlier, Trimega also stated that their test results of the mother's hair indicated abstinence or virtual abstinence.

[46] A number of reports have been obtained from a consultant psychiatrist. Her reports are not relevant for the purpose of the issue addressed in this judgment save for comments made on hair testing for alcohol. I quote:

'The general view is that if ethyl glucuronide (EtG) is found in a hair strand sample, then the person has been drinking alcohol at a minimum of twenty units a week during the period tested. However, anecdotally there have been reports that low levels can be found in abstinent people.'

She also refers to her understanding that EtG and FAEs are produced following the consumption of alcohol and 'as they are said to originate only from alcohol, then they are accepted as very specific markers'. In addition, the consultant makes the very sound point that all results need to be taken in the context of a particular case, including the history and other medical information.

[47] On 26 January 2010, Professor Pragst and Mr O'Sullivan had an experts' meeting by telephone. By this date, neither had been requested to provide a full report and perhaps in part as a result of this the meeting appears to take the form more of a symposium than a formal experts' meeting. As McFarlane J cautioned in *Oxfordshire CC v DP, RS and BS* [2005] EWHC 2156 (Fam), [2008] 2 FLR 1708 at [109]:

'Experience shows that the manner in which experts express themselves at such meetings is less guarded than when they are writing reports for the court or giving oral evidence.'

[48] During the course of the meeting the experts provided a great deal of additional information. Professor Pragst makes it clear that if FAEs are being produced their concentration will increase from the proximal to the distal end of the hair being tested. This is because of the way they are incorporated into the hair. Mr O'Sullivan stressed that EtG testing on hair should really be used only as an indicator of excessive alcohol use. Both Professor Pragst and Mr O'Sullivan agreed that 'You cannot put everything on the hair test' – you have to look at the whole picture.

[49] Professor Pragst also referred to the fact that positive results for both EtG and FAEs can occur even though the subject of the tests has not consumed alcohol – ie false positive results. The reasons for such results occurring are said to include the existence of alimentary alcohol and of endogenous alcohol as well as the treatment of hair with products containing alcohol.

[50] The mother's hair was further tested by Trimega for the presence of FAEs in February 2010 and for FAEs and EtG in May and July 2010. The results were all 'negative' meaning that there was 'no evidence of frequent excessive alcohol consumption'. The concentration of FAEs from the February 2010 test of a 6 cm segment of the mother's hair was 0.53 ng/mg; the cut-off level then being used for 6 cm of hair was 1ng/mg. In his oral

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evidence Professor Pragst said that this (0.53 ng/mg) quantity of FAEs had been found in hair samples taken from children and teetotallers and that this result could not, therefore, be used to put forward any degree of probability that alcohol had been consumed. He made it clear later in his evidence that below the agreed cut-off levels, the test results are properly described as being in the range of social drinkers/abstinence because the tests do not enable these two categories to be distinguished. This sample, again unknown to the parties, was also tested for EtG. The result was, again, below the limit of quantification.

[51] The standard form explanation which was provided by Trimega with these later test results was different to that which was being used in 2009. However, the explanation remains, to put it neutrally, confusing. While it refers to the potential effect of endogenous alcohol, alimentary alcohol and hair products containing alcohol and to the tests being used as 'markers for chronic high alcohol consumption', it continues to be asserted that FAEEs and EtG are 'only present when the subject consumes alcohol'. This latter assertion is not correct.

[52] In addition, the witness statements provided on behalf of Trimega, which further sought to explain the test results, went much further than the evidence which I have heard would support. They included the assertion that the mother 'likely exhibits the characteristics of a very moderate drinker'; that the results tend 'to indicate continued low alcohol consumption'; and that 'interpretative reference ranges have been established' to distinguish between chronic alcohol abusers, moderate social drinkers and teetotallers. None of these assertions was supported by the evidence given at the hearing.

[53] Finally, both Professor Pragst and Mr O'Sullivan provided written answers to certain questions. The former stated that social drinkers may have EtG and FAEE values in the same range as teetotallers and that, as a consequence, the Society of Hair Testing has not agreed cut-off levels to seek to distinguish between the two categories. The latter stated that EtG testing by TrichoTech is 'not designed to show use or abstinence of alcohol; it is designed to show excessive use ... only'.

[54] I should also make clear that the results of other tests and other evidence did not indicate that the mother had consumed alcohol in the period since early 2009.

Conclusion

[55] I have set out in para [22] the effect of the evidence in this case. The evidence in this case and these conclusions have highlighted the need for the exercise of considerable caution when hair tests for alcohol are being interpreted and relied upon, both generally and particularly in isolation. Further, these conclusions only emerged during the course of the oral hearing. This should not have occurred as they should have been apparent at a much earlier stage of the proceedings. I regret to say that the hair testing evidence given in this case failed the parties and in particular the children.

[56] In his final submissions on behalf of the guardian, Mr Clough pointed to the potential consequences for the children in this case of the local authority's reliance on the results obtained from the hair sample taken in September 2009 – he described them as potentially 'catastrophic'. This is not to blame the local authority for such reliance but rather is a proper reminder of

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the need for expert evidence to be given in a manner which accords with the principles underlying the Practice Direction.

Order accordingly.

Solicitors: A local authority solicitor

HCL Hanne and Co for the first respondent

Mackesys for the second respondent

Neirizi Swan for the third respondent

Fisher Meredith for the fourth and fifth respondents

Payne Hicks Beach for the intervener

PHILIPPA JOHNSON

Law Reporter

**Bristol City Council v A and A and
Others [2012] EWHC 2548 (Fam)**

[2013] 2 FLR 1153

Family Division

Baker J

25 September 2012

Expert evidence — Hair strand testing — Erroneous result accepted to be due to human error — Whether the court should issue guidance on how hair testing should be carried out or used in court proceedings

In care proceedings in relation to two children, aged 4 and 3, the main issue was the mother's drug taking and the impact it had on her capacity to parent. Hair strand testing by Trimega Laboratories Ltd demonstrated that the mother had been using increasing amounts of cocaine and opiates right up until the sample was taken. The mother strongly denied the results and was granted permission to obtain a second set of results from Concateno Cardiff Ltd. Those results confirmed the mother's claim that she had not used drugs in the previous 4 months. A hearing was directed to resolve the issue of the conflict of evidence and both companies were granted permission to intervene. A hearing before the President of the Family Division was listed with directions to also consider whether hair strand testing remained a reliable method. Shortly before the hearing Trimega conceded that its results were erroneous and unreliable although the precise error remained unclear. An order was made by consent including that concession and directing a community-based assessment of the mother. The wider issue of the reliability of hair strand testing was adjourned for a future hearing. Both interveners prepared detailed submissions and Concateno suggested guidance ought to be issued by the court regarding this type of evidence

Held – refusing to further investigate the erroneous evidence or provide detailed guidance –

(1) The reason for raising the more general issue of the reliability of hair strand testing and for permitting the two companies to intervene was the possibility that the discrepancy between the test results was attributable to flaws in the science and, therefore, called into question its validity. The reason for that discrepancy was now accepted as human error. The integrity of the science and the validity of hair strand testing for drugs was unaffected by the case and there was no need for a general enquiry or to issue guidance as to how tests should be carried out or used in court proceedings (see para [22]).

(2) The jurisdiction of the family court was to determine specific disputes about specific families. It was not to conduct general enquiries into general issues. Occasionally, a specific case may demonstrate the need for general guidance, but the court must be circumspect about giving it, confining itself to instances where it was satisfied that the circumstances genuinely warrant the need for such guidance and, importantly, that it was fully briefed and equipped to provide it (see para [23]).

(3) In circumstances where both interveners admitted to commercial motivation, the court could not be confident that it would have all the information at its disposal to provide clear, detailed and objective guidance. Any process designed to provide such detailed guidance would have to allow other interested parties to make representations (see para [24]).

(4) The court endorsed the propositions that: the science involved in hair strand testing for drug use was now well-established and not controversial; a positive identification of a drug at a quantity above the cut-off level was reliable as evidence that the donor has been exposed to the drug in question; sequential testing of sections was a good guide to the pattern of use revealed; the quantity of drug in any given

section was not proof of the quantity actually used in that period but was a good guide to the relative level of use (low, medium, high) over time (see para [25]).

(5) Having regard to the overriding objective in the FPR, it would be inappropriate and disproportionate to allow any further share of the court's limited resources given the enormous demands on the time of judges of the Family Division (see paras [27], [28]).

(6) In appropriate circumstances the Family Justice System required and would continue to require expert evidence to ensure that it made the right decisions about the future of children. A high degree of responsibility was entrusted to expert witnesses in family cases. Erroneous expert evidence may lead to the gravest miscarriage of justice imaginable – the wrongful removal of children from their families (see para [30]).

Statutory provisions considered [top](#)

Children Act 1989, s 38(6)

Family Procedure Rules 2010 (SI 2010/2955), PD 12A, 25A

Cases referred to in judgment [top](#)

Re JS [2012] EWHC 1370 (Fam) (unreported) 29 March 2012, FD

Richmond London Borough Council v B, W, B and CB [2010] EWHC 2903, [\[2011\] 1 FLR 1345](#), [2010] All ER (D) 198 (Nov), FD

Robin Tolson QC for the first intervener

Piers Pressdee QC for the second intervener

The other parties were not represented on the issue determined in this judgment

Cur adv vult

BAKER J:

[1] This judgment considers a subsidiary issue that has arisen in care proceedings brought by Bristol City Council in respect of two children, SB and CB aged 4 and 3 respectively. Unusually, it is unnecessary to set out the family history that led to the proceedings. Suffice it to say that a major issue in the proceedings was the mother's drug-taking and its impact on her capacity to care for the children. She therefore underwent hair strand testing carried out in June 2011 by the second intervener, Trimega Laboratories Ltd (Trimega). The results purported to show that the mother had been using increasing amounts of cocaine and opiates right up to the date of the sample being taken. The mother, however, vehemently denied that this was the case, and she was, therefore, given permission to obtain a second analysis on a sample taken at the same time. The results of the second test, carried out by Concateno Cardiff Ltd (also known as TrichoTech but hereafter referred to as Concateno), appeared to confirm the mother's version that that she had not used drugs as described or at all for approximately the previous 4 months.

[2] Faced with this stark conflict of expert evidence, the proceedings were transferred to the High Court and listed for directions in October 2011 before me as Family Division liaison judge for the Western Circuit. In view of the local authority's understandable view of the impact of the mother's drug habit on her capacity to care for the children, I directed a hearing to resolve the conflict of evidence before any decision could be taken as to the long-term future of the family. Furthermore, the evidence appeared to raise questions as to the utilisation of hair strand testing to detect drug use. Accordingly, both Concateno and Trimega were given permission to intervene in the

proceedings. In view of the potential importance of the issues, I directed that the hearing be listed before the President of the Family Division, Sir Nicholas Wall, who had coincidentally arranged to sit in Bristol later that term.

[3] The specific issues listed before the President were as follows:

- (1) Which of the drugs tests on the mother's hair sample provides accurate and reliable evidence:
 - (a) Trimega only;
 - (b) Concateno only;
 - (c) both Trimega and Concateno; or
 - (d) neither?
- (2) In the light of the court's answers to question 1, what findings should the court make in relation to the mother's drug use?
- (3) What general guidance, if any, should be given to family courts about the use and interpretation of, and reliance upon, hair testing in the light of the apparent inconsistencies in the testing results provided by the two companies? Does hair testing remain a reliable method for determining drug use in family courts?

[4] At a further hearing on 14 November 2011 I provided that, whilst the case remained in the list before the President for the determination of the first two issues, 'the question of whether and, if so, when any other issues arising therefrom, including the third issue ... shall be determined will be considered by the President at [that] hearing'.

[5] The reason for including the third issue was that, at the time of the directions hearings before me, there was no clear explanation for the diametrically opposite conclusions of the two reports. It was plainly possible that the explanation lay in a straightforward error. On the other hand, it was suggested by the parties to the care proceedings, and accepted by the court, that the explanation may involve a systemic problem with hair strand drug testing.

[6] In the event, and after a considerable amount of time and effort had been expended by the interveners in preparing for the hearing, it was conceded by Trimega shortly prior to the start of the hearing before the President that its analysis was erroneous and unreliable. The precise error was, and remains, unclear. Trimega said (although this is not accepted by Concateno) that it was believed that there had been an error in the process by which the hair sample was collected. The first issue was, therefore, resolved by an agreement placed before the President on the first morning of the hearing and recited as follows in the eventual order made at the conclusion of that hearing:

'AND UPON it being agreed between the First and Second Intervenors that:

- (1) The Second Intervener accepts that a human error (believed by the Second Intervener to be in the collection process) has occurred in the production of its hair strand test results in this particular case;

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- (2) The answer to Issue 1 therefore is (b);
- (3) The Second Intervener will produce a report, to be filed and served in these proceedings by no later than 1 March 2012, setting out:
 - (a) as definitively as they can, the nature and source of that human error; and
 - (b)

the steps that they have taken to avoid the risk of such human error recurring in other cases; and

- (4) The Second Intervener will pay the costs of the First Intervener to be assessed if not agreed.'

[7] As a result of this agreement, the second issue was also resolved without a contested hearing. The court accepted that the scientific evidence demonstrated that the mother had used class A drugs until early 2011 but had been abstinent for 5 months prior to the hearing. As a result, the court directed a community-based assessment under the Children Act 1989, s 38(6). The President listed the case for an issues resolution hearing (IRH) before me on 15 March 2012. Although it is unnecessary to set out subsequent events in detail, it is worth pointing out that the assessment was positive, that the mother remains abstinent and is continuing to make progress, and that there is cautious optimism that she will be able to care for the children in the community.

[8] The order of the President of 24 November 2011 made no reference to the third issue. It did not list it as an issue to be considered at the IRH on 15 March or further within these proceedings. I am told that, during oral discussion, the President indicated that he would adjourn that issue generally and leave it to whoever took on the case as to whether they chose to deal with it. Leading counsel for the two interveners identified four propositions about which there was full agreement, and suggested that these could be incorporated in the President's judgment by way of resolution of the third issue, should the President see fit. In the event, the President did not take that course.

[9] The interveners were not required to attend the IRH before me on 15 March, but by that date a report had been filed on behalf of Trimega in accordance with the agreement recited in the President's order of 14 November. In addition, a skeleton argument from Mr Robin Tolson QC on behalf of Concateno was filed shortly before the hearing, addressing what were described as the 'inadequacies' of the Trimega report, making further criticisms of Trimega's work on this case, and suggesting general guidance that might be given by the court. At that hearing, in addition to making directions for the welfare stage of the care proceedings, to which no reference is necessary in this judgment, I directed that the question whether the third issue as identified in my earlier order should be further considered by the court should itself be determined at a preliminary hearing; that the interveners should attend that hearing by counsel; that no other party need attend, save that the mother was permitted to attend by counsel; and that Trimega should file a position statement in response to the latest skeleton from Concateno. On 4 April, as a result of the points raised in Mr Tolson's skeleton argument, I expanded the scope of the further hearing so that it would determine not

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merely whether the 'third issue' left unresolved following the President's hearing should be further considered but also whether there should be a further inquiry into the actions of the Trimega experts. The hearing was listed on 28 May but, in the event, that fixture had to be aborted because of pressure of other work, and consequently it was agreed that the court would resolve the two preliminary issues on the basis of written submissions alone.

[10] Those submissions are substantial in volume. Including the original skeleton arguments placed before the President, each intervener has filed four skeleton arguments or position statements. For this preliminary issue, Mr Tolson's document filed in March and running to 15 pages and 36 paragraphs was met by a 'position statement and skeleton argument' from Mr Piers Pressdee QC on behalf of Trimega that extended to 47 pages, 124 paragraphs and 13,001 words. This was followed by a supplemental document from Mr Tolson of a more modest size, but overall the effort expended by leading counsel on these two preliminary issues is very substantial. One wonders how voluminous their material would be, were I to direct a full hearing on the issues as proposed by Mr Tolson.

[11] I have carefully read all of their documents and I mean no disrespect for either counsel, or for their industry, in saying that it is neither necessary nor proportionate to set out their

submissions in any detail in this judgment. The answer to both preliminary issues is, in my judgment, straightforward.

[12] Mr Tolson's submissions can be summarised from his various documents as follows.

[13] First, he contends that 'Trimega's inadequacies risk belittling and damaging the reputation of this important testing and the companies carrying it out ... Trimega risk throwing out the industry's healthy baby with the bathwater that is Trimega's own'. He describes the report filed on behalf of Trimega to explain the error that occurred in this case as (inter alia) 'a whitewash' and 'inadequate', and submits that it 'not only highlights glaringly flawed processes at Trimega but also exposes all previous allegedly independent expert reports filed on Trimega's behalf as themselves deeply flawed and ... filed in plain breach of the duties imposed upon independent experts with family proceedings' as set out in the Family Procedure Rules 2010, PD 25A. He says that the error has never been subject to scrutiny, that it should as a matter of law be tested and that 'the system will have failed if it cannot be tested'.

[14] Secondly, he invites the court to endorse the four general propositions about the use of hair strand testing for drugs which were agreed between the interveners at the hearing before the President and which he submits are uncontroversial. Those propositions are as follows:

- (1) The science is now well-established and not controversial.
- (2) A positive identification of a drug at a quantity above the cut-off level is reliable as evidence that the donor has been exposed to the drug in question.
- (3) Sequential testing of sections is a good guide to the pattern of use revealed.
- (4) The quantity of drug in any given section is not proof of the quantity actually used in that period but is a good guide to the relative level of use (low, medium, high) over time.

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[15] Thirdly, Mr Tolson invites the court to consider giving more specific guidance, in particular that international standard ISO/IEC 17025:2005 provides 'the gold standard' for laboratories carrying out tests of this kind and that formal laboratory accreditation to this standard provides assurance of quality that the standards are being met. He submits that guidance on the use of hair strand testing for drug use would be in the interests of the family justice system because it would complement the decision of Moylan J in *Richmond London Borough Council v B, W, B and CB* [2010] EWHC 2903, [2011] 1 FLR 1345 concerning hair strand tests for alcohol and remove confusion as between hair strand testing for alcohol and hair strand testing for drugs.

[16] Mr Pressdee's submissions in reply can be summarised thus. His first and principal argument is that any further consideration of either the 'third issue' left unresolved by the President or the details of Trimega's error(s) is neither necessary nor appropriate, nor consistent with the overriding objective set out in para 1.2 of the Family Procedure Rules 2010, PD 12A – Public Law Proceedings Guide to Case Management (the Public Law Outline) which provides:

'(1) This Practice Direction has the overriding objective of enabling the court to deal with cases justly, having regard to the welfare issues involved. Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) ensuring that the parties are on an equal footing;
- (d) saving expense; and
- (e)

allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.'

[17] Mr Pressdee submits this overriding objective would not be served by extending the inquiry in the manner proposed by Concateno. He submits that, whilst it is often appropriate and helpful for courts to give guidance as to law and practice in family cases, such guidance normally arises as an adjunct to the court's decision rather than as a free-standing issue. When the hearing was listed before the President, there were possible resolutions of the first issue which might call into question the integrity of the science. Now that the first issue has been resolved by an admission of error by Trimega, no need for guidance arises. Through counsel, Trimega accepts 'that it did not fully or accurately investigate the reason for the difference between its test results and those of the First Intervener when first called upon to do so', and that 'initially it focused disproportionately on the aspects of the evidence that it felt supported its position and undermined that of the First Intervener, and that it was not as swift as it should have been to appreciate the contrary evidence and the wider picture'. Mr Pressdee further informs the court that Trimega 'has, following wide-ranging review of its service, instituted a large number of changes geared to improve the service that it provides and to ensure that errors of the kind that occurred in this case are not replicated in others'. Later in his skeleton argument he gives detail of the changes that Trimega has

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introduced to its collection and other processes. He therefore argues that a finding as to the actual source of Trimega's error is not necessary to resolve any threshold, assessment or welfare issue concerning the subject children.

[18] Secondly, Mr Pressdee points out that any guidance that the court may give affects not just the interveners but every other drugs company offering or looking to offer a hair strand drugs testing service to family courts. As a matter of essential fairness they would have to be given the opportunity to comment on any guidance contemplated and/or to formulate and suggest guidance of their own.

[19] Thirdly, Mr Pressdee refutes Mr Tolson's criticism of the report filed by Trimega, and submits that the primary motivation of Concateno is to obtain a judgment critical of Trimega, and guidance from the court, that could be used for commercial advantage: 'For all the rather pious talk of standing up for the industry, the evidence of a company acting to further its own self-interest is pretty plain to see'. There are further references to commercial factors later in the skeleton argument. For example, through counsel Trimega acknowledges 'that it should have apologised to the court and to the mother for failing to deliver an accurate and reliable service in this case'. Mr Pressdee adds, however, that 'but for the presence of its major commercial rival at court, ready to extract the greatest commercial advantage out of any such apology, it would have done'.

[20] Mr Pressdee's skeleton concludes with this peroration: 'The issue in the proceedings that fell to be resolved for their determination, warranting the involvement of the interveners, has long since been resolved. The focus of the court must now properly and exclusively be on the subject children. This is a care case. It is not some public inquiry'.

Discussion

[21] I accept Mr Pressdee's submission that the starting point is the overriding objective in para 1.2 of PD 12A. The three specific questions which arise are whether the proposed hearing would (1) deal with the case justly, having regard to the welfare issues involved; (2) deal with the case in a way that is proportionate to the nature, importance and complexity of the issues; and (3) allot to the case an appropriate share of the court's resources.

[22] As Mr Pressdee surmises, the reason for including the third issue on the agenda for consideration by the President, and for giving the two companies permission to intervene in the proceedings, was the possibility that the discrepancy between the test results provided by Trimega and Concateno was attributable to flaws in the science and, therefore, called into question the

validity of hair testing for drugs. In the event, the reason for the discrepancy is now accepted as being human error on the part of one of the companies, Trimega. The integrity of the science, and the validity of hair strand testing for drugs, is unaffected by this case. There is, therefore, no proven need for a general inquiry into the matter, or for detailed guidance as to how such tests should be carried out or used in court proceedings.

[23] Furthermore, I agree with Mr Pressdee's submission that this court is not the appropriate forum for any such inquiry. The jurisdiction of the family courts is to determine specific disputes about specific families. It is not to conduct general inquiries into general issues. Occasionally, a specific case may demonstrate the need for general guidance, but the court must be

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circumspect about giving it, confining itself to instances where it is satisfied that the circumstances genuinely warrant the need for such guidance and, importantly, that is fully briefed and equipped to provide it.

[24] The arguments advanced in this case have been littered with references to commercial factors. I have already referred to Mr Pressdee's frank assertion that Trimega had withheld an apology to the mother because it feared that its rival would exploit such an apology for commercial advantage. In this respect, Trimega's attitude does no credit to an organisation entrusted with the responsibility of providing independent expert advice to the court on matters that will affect the lives of children and families. In his final document, Mr Tolson on behalf of Concateno frankly acknowledged that 'ultimately ... both companies have commercial interests in this case which are entirely legitimate'. In circumstances where both interveners admit to commercial motivation, the court cannot be confident that it would have all the information at its disposal to provide clear, detailed and objective guidance. Any process designed to provide such detailed guidance would have to allow other interested parties to make representations.

[25] There is agreement amongst the interveners as to the four uncontroversial propositions advanced by Mr Tolson. The court endorses those propositions which, for ease of reference, I repeat here:

- (1) The science involved in hair strand testing for drug use is now well-established and not controversial.
- (2) A positive identification of a drug at a quantity above the cut-off level is reliable as evidence that the donor has been exposed to the drug in question.
- (3) Sequential testing of sections is a good guide to the pattern of use revealed.
- (4) The quantity of drug in any given section is not proof of the quantity actually used in that period but is a good guide to the relative level of use (low, medium, high) over time.

[26] For the reasons set out above, however, I decline to sanction any extension of this court process to lead to the promulgation of any more detailed guidance. Such a course would be unnecessary and disproportionate.

[27] I am equally unpersuaded that it would be appropriate or proportionate to allow any further share of the court's limited resources to continue the inquiry into the nature of Trimega's error. Mr Tolson describes the report prepared following the hearing before the President as a 'whitewash' and accuses Trimega of falsely asserting that the error lay in the collection process to conceal more fundamental flaws in their systems. He sets out the justification for that assertion in considerable detail. Mr Pressdee denies this allegation and goes into even more extensive detail as to the investigation carried out by Trimega into the cause of the human error in this case. In order to investigate those matters, fully and fairly, the court would in my judgment have to conduct a hearing lasting several days, summoning several witnesses from Trimega for oral evidence, and in all probability commissioning further independent expert evidence. At the conclusion of such a hearing, the court might give a judgment setting out its findings, but no order would follow.

[28] I do not regard this court in these proceedings as the appropriate forum for the investigation of these matters. I accept Mr Pressdee's submission that the court must be guided by the overriding objective as set out in para 1.2 of PD 12A. In my judgment a hearing for the purposes of giving guidance, or investigating the nature of Trimega's error in this case, would be disproportionate and an inappropriate use of the court's resources, given the enormous demands on the time of judges of the Family Division.

[29] Each intervener makes representations that the other should meet a proportion of its costs in connection with the hearings since November 2011. Trimega was ordered by consent to pay Concateno's costs up to and including that hearing. In my judgment, no further order for costs is appropriate. It was the court that, for reasons explained above, raised the question whether guidance should be given. The court has now concluded that no such guidance is needed beyond the agreed points set out above. It was the court that directed Trimega to investigate and report on its error. Having read that report, the court has concluded that any further inquiry by this court would be disproportionate and inappropriate. Neither of these decisions warrants any further costs penalty.

[30] Lest it be thought that this case diminishes the importance of expert evidence in family cases, I conclude by emphasising again that in appropriate circumstances the family justice system requires, and will continue to require, expert evidence to ensure that it makes the right decisions about the future of children. I repeat what I said in *ReJS* [2012] EWHC 1370 (Fam) (unreported) 29 March 2012 at para [47]:

'Whilst the courts always have to be vigilant to guard against the proliferation of experts in family proceedings, the court must, in my judgment, always have available to it the necessary expertise to make the right findings in these important and difficult cases.'

As Ryder J has recently observed in 'Judicial Proposals for the Modernisation of Family Justice' (July 2012) (at para 41):

'In every case, the judge should be able to say: is your expert necessary ie to what issue does the evidence go, is it relevant to the ultimate decision, is it proportionate, is the expertise out with the skill and expertise of the court and those already involved as witnesses by reference to the published and accepted research upon which they can rely and of which the court has knowledge.'

Plainly hair strand testing for drugs satisfies all of these criteria. But as this case illustrates, a high degree of responsibility is entrusted to expert witnesses in family cases. Erroneous expert evidence may lead to the gravest miscarriage of justice imaginable – the wrongful removal of children from their families.

Order accordingly.

Solicitors: *Wragge and Co* for the first intervener

Hanne and Co for the second intervener

SAMANTHA BANGHAM

Law Reporter

This judgment is being handed down in private on 4 October 2013. The judge hereby gives leave for it to be reported. The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and any other person identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the child and the adult members of the family must be strictly preserved.

Case number SG12C00045
Neutral Citation Number: [2013] EWCC 6 (Fam)

In the Principal Registry of the Family Division
Sitting at Kingston upon Thames County Court
Date: 4 October 2013

Before:

Her Honour Judge Williams

Between:

X local authority Applicant

And

Trimega Laboratories and Others Respondents

Counsel for the local authority: Miss Jenna Shaw
Counsel for the mother: Mr Ronan O'Donovan
Counsel for the father: Miss Laura Bayley
Solicitor for the child: Miss Charlotte Burns
Counsel for Trimega Laboratories Ltd: Mr Roger Hillman

Hearing date 30 September 2013

JUDGMENT

1. This judgment is given in relation to applications by 4 parties to care proceedings for wasted costs orders against Trimega Laboratories Ltd., ("Trimega"). The applications arise out of an error made by Trimega in a report following blood alcohol testing.

2. The parties to the care proceedings were the applicant local authority, mother, father and the child through her children's guardian. The child is now aged one year and 11 months old and was rehabilitated to the care of her mother following a hearing on 21 August 2013. The care proceedings were brought for a number of reasons but central to these proceedings was the mother's now acknowledged excessive drinking. In March 2013 the mother said she had

been abstinent from alcohol since August 2012. A final hearing was set down on 22 July 2013 with a time estimate of 5 days and the local authority's care plan up until almost the last minute was for placement of the child for adoption. This care plan was supported by the child's guardian.

3. At the final hearing on 22 July 2013 I was told that the mother had tested negative for alcohol for some months. There were reports from Trimega showing her CDT (carbohydrate deficient transferrin) level was below the cut-off level of 1.6%, in fact 0.4% on 26 March 2013, 0.4% on 12 April 2013 and 0.3% on 13 June 2013. Further Dr Cosmo Hallstrom, a consultant adult psychiatrist, had produced a report dated 17 July 2013 in which he changed his former opinion and supported rehabilitation of the child to her mother's care on the basis that the mother had made dramatic progress in the previous 6 months, now had good insight into her difficulties and had addressed many of her deficiencies. The risk of relapse was described as low and acceptable and it was said that the child was likely to be safe in her mother's care. The hearing was adjourned to 25 July 2013 for a new care plan to be written and a programme formulated for a staged rehabilitation to mother's care.

4. Between 22 and 25 July 2013 a further blood alcohol test report on the mother was received from Trimega. It was dated 17 July 2013 and the result for the mother's CDT level was 1.6% -- just on the cut-off point between negative and positive results and an obvious increase on previous results. It was of great concern in that it indicated that the mother appeared to have been drinking when she was adamant that she had been abstinent from alcohol for many months. Her abstinence was a crucial factor in the plan for rehabilitation of the child to her care. The local authority therefore no longer supported such a plan. On 25 July 2013 I gave directions, having found it was necessary to have further expert evidence in accordance with Part 25 Family Procedure Rules 2010, for further blood alcohol testing by a different expert and for Trimega to report in respect of the interpretation of mother's alcohol testing results and for a new final hearing date. An updated opinion had been sought urgently from Dr Hallstrom who said he no longer felt able to support the rehabilitation plan. On 25 July 2013 by email he said that "the fact that [the CDT] result was low a few weeks ago and now raised, raises the strong suggestion that there has been heavy drinking in the last week or two..." It is right to say that if it had not been for this new test result of 1.6% a final order would have been made on 25 July 2013 and the child returned to her mother's care.

5. In Trimega's report on the father of 7 December 2012 the interpretation section says that "CDT values below 1.6% cannot be used to distinguish between social drinking and abstinence but when the value is elevated above 1.6% this marker does reliably identify someone with excessive alcohol consumption".

6. In Trimega's reports on the mother dated 18 June 2013 and 17 July 2013 it said that:

"The CDT screening test has been found to be one of the most accurate blood biomarkers for alcohol abuse because individuals with a daily intake of more than 60 grams of alcohol over more than two weeks have elevated levels of CDT. In regular drinkers their level of CDT continues to be elevated for between two to four weeks after abstaining, depending on the original increase in the level that existed for that individual. That means that for most people who are dependent their elevated CDT level will be detected even if they find themselves able to abstain for a short period before a test is performed."

7. Trimega, in considering the significance of the raised CDT level as instructed after 25 July 2013, found that it had made a mistake and the CDT figure should have been 0.2% and not 1.6%. Trimega admitted the error and apologised then to the mother's solicitors by email dated 9 August 2013. An interim hearing was listed and on 21 August 2013 the child was returned to her mother's care under an interim supervision order in accordance with a new rehabilitation plan. The following orders were made, among others:

- The solicitor for the mother shall serve this order upon Trimega Labs inviting it to attend at 2pm on 3 September 2013 to explain the error made in the blood test result dated 17 July 2013 and to address the issue of wasted costs should any party make an application for a wasted costs order.
- Any application for wasted costs shall be filed and served on the parties and Trimega Labs by 4pm 28 August 2013.

8. On 3 September 2013 the care proceedings were finally disposed of by a supervision order being granted to the local authority and a residence order to the mother, together with other orders relating to the child.

9. Also on 3 September 2013, during the second part of the hearing, Marcus Donohue, a principal forensic scientist employed by Trimega, attended court. Trimega had no legal representation. Mr Donohue said that the error made was clerical and that the certificate of analysis would have been the same whether 0.2% or 1.6%, that is, interpreted as a negative result. He said that 1.7% and above would be classed as indicative of excessive alcohol consumption. He agreed he could not deal with the costs applications and the hearing was adjourned to 30 September 2013 and Trimega was joined as a party in relation to the issue of costs.

10. On 30 September 2013 I was told that the mother had been present outside court and an apology made to her by Trimega's representatives. All parties had filed position statements including their submissions. The court's power to award costs against an expert witness was not disputed by Trimega and it agreed to pay costs in the total sum of £17,167 which related to 3 otherwise unnecessary court hearings. The only issue remaining was whether judgment should be published. All parties save Trimega sought publication. I heard oral submissions on that issue.

Law

11. I am satisfied that this court has the power to award costs in these circumstances against an expert and I was referred to section 51 Senior Courts Act 1981, the Civil Procedure Rules 1998 Part 46.2 and the Family Procedure Rules 2010 Part 28.

12. I was also referred to case law and in particular:

Phillips v Symes [2004] EWHC 2330 (Ch) in which Peter Smith J at paragraph 95 said "it seems to me that in the administration of justice, especially, in spite of the clearly defined duties now enshrined in CPR 35 and PD35, it would be quite wrong of the court to remove from itself the power to make a costs order in appropriate circumstances against an expert who, by his evidence, causes significant expense to be incurred and does so in a flagrant reckless disregard of his duties to the court".

[Bristol City Council v A & A & Others \[2012\] EWHC 2548 \(Fam\)](#), a case concerning Trimega but on different facts, in which Baker J said at paragraph 30 "...a high degree of responsibility is entrusted to expert witnesses in family cases. Erroneous expert evidence may lead to the gravest miscarriage of justice imaginable – the wrongful removal of children from their families".

13. I do not say that the error made by Trimega amounted to a "flagrant reckless disregard" of its duties to the court and I accept it was a human error. I am reassured that the discovery of this error has lead Trimega to add a new procedure whereby a further specific check is made back to source material before a report is finalised and its staff understands the importance of the new measure. Trimega accepts that the mistake should not have occurred and is keen to make sure it does not happen again and it accepts that it was in breach of its duty to the court. Trimega accepts that the direct consequences were considerable upset and distress for the parents in this case, additional costs and not least a delay of four weeks for the child in being placed in her mother's care. Trimega has made its apology.

14. I have decided to publish this judgment because I consider that it is in the public interest to do so. The family courts should be as open and transparent as possible to improve public confidence and understanding. In this case expert evidence was relied upon and if the mistake had remained undiscovered it is probable, given the history in this case, that it would have led to the adoption of the child instead of rehabilitation to care of her parent. Close scrutiny of expert evidence is needed and all the surrounding circumstances have to be considered in a situation such as this where the interpretation of test results was so important and influential.

4.10.13



Section 4

Experts - The Brave New World

Kate Branigan QC

EXPERTS – THE BRAVE NEW WORLD

“Expert evidence is often necessary to a fair and complete court process. But growth in the use of experts is now a major contributor to unacceptable delay. The child’s timescales must exert a greater influence over the decision to commission reports and judges must order only those reports strictly needed for the determination of the case.....The court should seek material from an expert witness only when that information is not available, and cannot properly be made available, from parties already involved in proceedings.”

“.....judges must direct the process of agreeing and instructing expert witnesses as a fundamental part of their responsibility for case management. This responsibility should not in effect be delegated to the representatives of the parties, as is often the case currently. More judicial control needs to be exercised over letters of instruction that are often too long and insufficiently focused on the determinative issues”¹

THE REGULATORY FRAMEWORK

FAMILY PROCEDURE RULES 2010

1.1 The overriding objective

- (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.
- (2) Dealing with a case justly includes, so far as is practicable –
 - (a) ensuring that it is dealt with expeditiously and fairly;
 - (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;

¹ Family Justice Review Final Report – November 2011

- (c) ensuring that the parties are on an equal footing;
- (d) saving expense; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases

31st January 2013 saw the implementation of the Family Procedure (Amendment)(No. 5) Rules 2012. Key amendments:

1.4 Court's duty to manage cases

- (1) The court must further the overriding objective by actively managing cases.
- (2) Active case management includes –
 - (e) controlling the use of expert evidence

PART 25 – EXPERTS & ASSESSORS

25.1 Duty to restrict expert evidence

Expert evidence will be restricted to that which in the opinion of the court is necessary to assist the court to resolve the proceedings.

25.4

- (1) In any proceedings, a person may not without the permission of the court put expert evidence (in any form) before the court.

WHAT DOES 'NECESSARY' MEAN – THE LAW

Re TG (Care Proceedings: Case Management: Expert Evidence) [2013] EWCA Civ 5; [2013] 1 FLR 1250

"It is a matter for another day to determine what exactly is meant in this context by the word 'necessary', but clearly the new test is intended to be significantly more stringent than the old. The test of what is 'necessary' sets a hurdle which is, on any view, significantly higher than the old test of what is 'reasonably required'."

(para [30] per Sir James Munby P)

Re H-L (Expert Evidence: Test for Permission) [2013] EWCA 655

[3] "The short answer is that 'necessary' means necessary. It is, after all, an ordinary English word. It is a familiar expression nowadays in family law, not least because of the central role it plays, for example, in Article 8 of the European Convention and the wider Strasbourg jurisprudence. If elaboration is required, what precisely does it mean? That was a question considered, albeit in a rather different context, in Re P (Placement Orders: Parental Consent) [2008] EWCA Civ 535; [2008] 2 FLR 625, paras [120], [125]. This court said it "has a meaning lying somewhere between 'indispensable' on the one hand and 'useful', reasonable' or desirable' on the other hand", having "the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable." In my judgment, that is the meaning, the connotation, the word 'necessary' has in rule 25.1."

WHAT DOES 'NECESSARY' MEAN – THE PRACTICE

View from the President's Chambers: Expert Evidence July 2013

[2013] Fam Law 816

- Getting a grip of the ‘expert problem’ is crucial to meeting the demands of reform
- Major change in culture required – fewer experts, more focused approach in cases which require experts and shorter reports
- Robust case management required to control use of experts – including a ‘probing, questioning’ approach in cases where parties agree about the need for an expert
- Robust case management in line with the overriding objective

IF IN DOUBT DO WITHOUT

Re TG (Care Proceedings: Case Management: Expert Evidence) [2013] EWCA Civ 5; [2013] 1 FLR 1250

[35] – “.....the Court of Appeal has recently re-emphasised the importance of supporting first instance judges who make robust but fair case management decisions.....Of course, the Court of Appeal must and will intervene when it is proper to do so. However, it must be understood that in the case of appeals from case management decisions the circumstances in which it can interfere are limited. The Court of Appeal can interfere only if satisfied that the judge erred in principle, took into account irrelevant matters, failed to take into account relevant matters, or came to a decision so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.....This is not a question of judicial comity; there are sound pragmatic reasons for this approach. First, as Arden LJ pointed out in T & N (In Administration) v Royal & Sun Alliance PLC at para [47]

‘Case management should not be interrupted by interim appeals as this will lead to satellite litigation and delays in the litigation process.’ Secondly, as she went on to observe:

‘The judge dealing with case management is often better equipped to deal with case management issues.’

The judge well acquainted with the proceedings because he or she has dealt with previous interlocutory applications will have knowledge of and 'feel' for the case superior to that of the Court of Appeal.

[36] Exactly the same applies to family cases. Thus in Re C (Children)(Residence Order: Application being dismissed at Fact-Finding Stage) Thorpe LJ and I dismissed the appeal notwithstanding what I said was the 'robust view' His Honour Judge Cliffe had formed when deciding to stop the hearing. And in In the Matter of B (A Child)[2013] EWCA Civ 1545 (unreported) 7 November 2012 I refused permission to appeal from an order of Her Honour Judge Miranda Robertshaw involving what I described (para [16]) as 'apparently vigorous and robust case management,' I said (para [17]:

'The circumstances in which this court can or should interfere at the interlocutory stage with case management decisions are limited. Part of the process of family litigation in the modern era is vigorous case management by allocated judges who have responsibility for the case which they are managing. This court can intervene only if there has been serious error, if the case management judge has gone plainly wrong; otherwise the entire purpose of case management, which is to move cases forward as quickly as possible, will be frustrated, because cases are liable to be derailed by interlocutory appeals'

As Black LJ very recently observed in In the Matter of B (A Child), at para [35]

"...a judge making case management decisions has a very wide discretion and anyone seeing to appeal against such a decision has an uphill task."

Re G-C (A Child) [2013] EWCA 301; [2013] Fam Law 301

Re H-L (Expert Evidence: Test for Permission) [2013] EWCA 655

FPR 2010 r25.5.

KEY QUESTIONS/ISSUES

	APPLICABLE PROVISION(S) UNDER FPR 2010 – AS AMENDED	
What is an expert?	r25.2(1)	
What expertise do I need?		
What are the relevant considerations for the court?	r25.5	
When do I apply?	r25.6	
How do I apply?	Pt 18	

What should my application notice include?	r25.7; PD25C r3.10	
If I am making other applications at the same hearing do I have to file a separate application notice in relation to the instruction of an expert?	PD25C r3.8	
What enquiries can/should I be making of my proposed expert(s) in advance of the permission hearing?	PD25C r3	
The parties agree that an expert is necessary but we cannot agree the identity of the expert to be instructed – what do we do?	PD25C r3.6	

What happens if I don't have time to file a written application notice?	PD25C r3.9	
FPR 25.7(2)(b) says I have to attach a draft order to my application notice for permission – what should I include?	PD25C r3.11; PD25E; PD25 Annex A	
Letter of Instruction	PD25C r4.1	
Will I be able to get the expert to give live evidence at the final hearing?		
The court has directed the instructed expert(s) to attend court to give evidence at the final hearing – what preparatory steps do I need to take?		

IS IT ALL GLOOM AND DOOM?

Re DW (Termination of Parental Responsibility [2013] EWHC 854

Re CTL & CML [2013] EWHC 2134

Evaluating Expert Witness Psychological Reports: Exploring Quality – Professor Jane Ireland
(University of Central Lancashire)

- Study considered 126 expert psychological reports (both child and adult assessments) filed in family proceedings
- Evidence of unqualified experts being instructed – 20% of instructed psychologists were not deemed qualified on the basis of their submitted C.V.'s
- Only 10% of instructed psychologists maintained clinical practice external to the provision of expert reports
- 2/3 of reports rated as 'poor' or 'very poor'
- Only one quarter of reports adhered to CPR requirements for report content and presentation

When choosing your psychologist bear in mind the following:

- Instruction of experts be restricted to those registered to practice with the Health Professionals Council and who have full membership of an applied division of the British Psychological Society – i.e. clinical, forensic, educational, health, counseling
- Worth checking qualifications with British Psychological Society – C.V.'s not always clear as to what qualification is held
- Do not rely on expert witness commissioning companies as a potential marker of good quality reports

- Consider the competence of the expert to undertake the specific requirements of your case – reports undertaken by ‘expert’ with 6 month placement with children but no other evidence of completing child assessments/those with no mental health experience completing mental health assessments/diagnoses and those with no adult experience completing adult assessments
- Instruction of experts restricted to those in current practice. Should be an expectation that psychologists providing expert reports should continue to have contacts with relevant health, educational or government bodies or demonstrate continuing practice in the area they are assessing – ensures up to date practice and supervision of their wider work
- Beware the expert claiming to complete excessive amounts of independent expert work
- Ensure expert will undertake all work required under the assessment (evidence of some reliance on unqualified assistants conducting significant parts of assessment for which they are unqualified)
- Ensure psychometrics are not over used
- Ensure psychometric tests undertaken are up to date
- Risk assessments conform to expected and current standards

FJC/MoJ consultation – Standards for Expert Witnesses in the Family Courts – May 2013

Judicial Circular – 17th July 2013

Concluding remarks

Kate Branigan Q.C.



Section 5

Understanding Addiction – The things you need to know

**Mandy Saligari MSc FDAP NCAC
Charter Harley Street**

CHARTER HARLEY ST

trauma, addiction & mental health treatment

Understanding Addiction things you need to know

Mandy Saligari MSc FDAP NCAC

www.charterharleystreet.com

Definition

Addiction is the **mismanagement of emotion** by using something, **repeatedly**, in an attempt to **fix** how you feel to the **detriment of yourself** (and others)

www.charterharleystreet.com

CHARTER
HARLEY ST
trauma, addiction & mental health treatment

Where does it come from?

- Family predisposition
- Shape of brain at birth
- Trauma
- Family environment /peer influence

www.charterharleystreet.com

CHARTER
HARLEY ST
trauma, addiction & mental health treatment

The Manifestations of Addiction?

There are 14 manifestations of addiction currently treated worldwide:

- Drugs: prescription, legal, illegal
- Alcohol
- Food: Anorexia, Bulimia, Overeating
- Gambling
- Work
- Sex and Love
- Codependence
- Exercise
- Self-harm
- Obsessive Compulsive Disorder
- Internet and Gaming
- Shopping
- Caffeine
- Nicotine
- ACOA: adult child of the alcoholic/addict

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HARLEY ST**
trauma, addiction & mental health treatment

Core Characteristics

- Control
- Obsession
- Compulsion
- Expectation
- Resentment
- Projection
- Denial
- Deceit
- Shame
- Fear
- Isolation
- Self-centred/self-will/self-pity

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**CHARTER
HARLEY ST**
trauma, addiction & mental health treatment

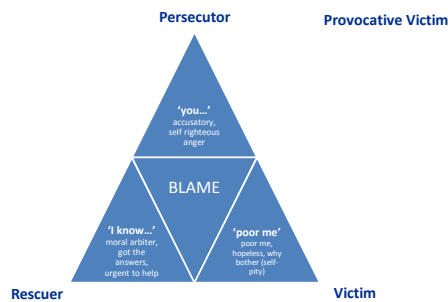
Addiction makes a person defensive and difficult to deal with:

DON'T get into the Drama Triangle

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trauma, addiction & mental health treatment

Karpmann's Drama Triangle also known as the cycle of co-dependency



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Don't bother fighting – let go, its more likely to work!

- Gratitude
- Repeat verbatim
- Acknowledge
- My point of view
- Gratitude

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HARLEY ST**
trauma, addiction & mental health treatment

Is it possible to get well?

- Government guidelines (alcohol): 3-4 units (m) 2-3 units (f)
- Controlled Drinking and Harm Reduction vs Abstinence vs Recovery
- Treatment
- Fellowships
- Therapy
- Aftercare
- Pre-mediation intervention
- The power of the lawyer

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**CHARTER
HARLEY ST**
trauma, addiction & mental health treatment

Testing

- **Breathalysing:** twice daily
- **Blood test:**
 - up to 28 days
 - Carbohydrate Deficient Transferrin (CDT) and Liver Function test (LFT) *combined*
- **Hair strand test:** 3-6 months

www.charterharleystreet.com

**CHARTER
HARLEY ST**
trauma, addiction & mental health treatment

Recovery

- Early recovery = 12-18 months
- Support for children; the difficulties (ACOA)

The Vertebrae of Recovery

- Abstinence
- Fellowship meetings (x 4 per week)
- Share
- Sponsor
- Step work
- Literature
- Service
- Outreach (3 x pd min)
- Gratitude list
- Affirmation
- Weekly/food planning
- Meditation and prayer

Recovery

- Surrender to help
- Faith / acceptance
- Visible consideration
- Humility (not 1 up nor down)
- Healthy shame
- Gratitude
- Accountability / honesty
- Consistent self care
- Communicative
- Reliable
- Open
- Willing

www.charterharleystreet.com

**CHARTER
HARLEY ST**
trauma, addiction & mental health treatment

**CHARTER
HARLEY ST**

trauma, addiction & mental health treatment

- Intensive Outpatient Programme **Day** and **Evening**
 - Scheduled **Aftercare** Programme
 - **Family** Programme
 - Counselling and Psychotherapy for individuals, couples and families
- Workshops including '**Understanding Addiction**'

www.charterharleystreet.com

Family Workshop: 'Understanding Addiction'

1 week intensive workshop dedicated to families and partners

- Wakes you up to the early signs
- Gives you a thorough understanding
- Core characteristics
- Practical techniques
- Better self-care
- Parental role
- Boundaries
- Compassion

www.charterharleystreet.com

**CHARTER
HARLEYST**
treating addiction & mental health disorders



Section 6

Speakers Profiles



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



Alex Verdán QC

Head of Chambers

"He is sublime. He is fantastic in court and his bedside manner is second to none. If he has a difficult children case, he is very caring and understanding. Added to this, he is an absolute fighter in court."

Chambers & Partners 2014

Star Individual

Experience

Year of Call: 1987

Year of Silk: 2006

Education

BA (Hons)

Diploma Law

Languages

French

Appointments

Deputy High Court Judge 2009

Recorder 2004 (Family/Crime/Civil)

Bar Standards Board Conduct Committee 2004 - 2009

Trustee of the charity Children and Families Across Borders 2008-2012

Family Law Bar Association Committee 2003-2005; 2008-2010

Centre for Child and Family Law Reform 2009 - 2012

Profile

Alex specialises in complex and serious children cases; both private law and public law. In particular those involving; intractable residence and contact disputes, internal relocations and leave to remove from the jurisdiction, serious emotional abuse, child fatalities and significant injuries and serious abuse with disputed medical evidence and often with linked criminal proceedings; allegations of sexual abuse; including false allegations; and factitious illness.

He was instructed by the children in reputedly the longest running care case in English legal history; the threshold hearing lasting for some 5 months and has just finished a 30 day fact finding.

He also has extensive experience in Inquiries both Public and Part 8, e.g. representing one of the local authorities in the [Climbie Inquiry](#), being Counsel to the [Isle of Man Commission of Inquiry into the Care of Young People](#) and regularly advises a number of local authorities in Part 8s.

He regularly advises local authorities on policy issues.

Alex also advises the media in relation to various aspects of family law.

He has been in practice for over 25 years and over that time has built up extensive experience in all types of children cases. Although the majority of his practice is now in the High Court Family Division/Principal Registry, he travels regularly to courts across the country and to various International jurisdictions.

Alex regularly lectures at family law conferences eg at Dartington Hall and seminars and provides training for judges (through the Judicial Studies Board), solicitors, psychiatrists and social workers.

He writes for various publications including [Family Law Week](#), Solicitors Journal and New Law Journal.

Professional Memberships

Family Law Bar Association

Association of Lawyers for Children

Affiliate Member of Resolution

Fellow of International Academy of Matrimonial Lawyers

Central London Collaborative Forum

Barrister of the Eastern Caribbean Supreme Court, British Virgin Islands Circuit

Recommendations

“Alex is a dream barrister. He is expert in his subject of children law, he speaks with authority, he wins his clients' trust and he is very easy to work with. What I most enjoy about working with Alex, and there are many things, is the attentiveness which he brings to cases. Ideas are treated with respect, questions promptly responded to, expectations managed sensitively, and clients made to feel that they and their views are important.

Alex is also trained as a mediator and a collaborative lawyer, the skills of which he transfers with ease to his work as an advocate.

I cannot recommend him highly enough.”

Gillian Bishop

“Alex Verdan is superb at what he does. At his level one expects his knowledge of the law to be very good but what he offers in addition is:

1. A very approachable style. As a solicitor one feels welcome to contact him as and when needed without having to send formal instructions. He is flexible, responsive, and easy to contact. At the same time he is respectful of the solicitor's role and relationship with the client.

2. His client handling skills are very good / superb. He is gentle and sensitive but doesn't pull his punches where needed in explaining risks / possible adverse outcomes etc.

3. His written work is good and he appears measured and thoughtful in court which is a gift in children work.”

Pamela Collis

“Having instructed and worked alongside Alex, I have been very impressed by his impeccable knowledge and skill in the Court room. His ability to handle the most sensitive and complex cases with ease is a great attribute. Alex is gracious and inspiring to watch in the Court room. He is able to manage the client's expectations to the highest standard. It has been a pleasure to work with Alex and I would not hesitate to instruct him again.”

Laura Burrows

“Alex is top of the premiere division in terms of advocacy. An excellent 'bed side' manner with clients and a great eye for detail. A calm and measured approach and an ability to achieve unlikely results.”

Sean McNally

“Alex has an excellent client manner and is superb in cross examination.”

Lisa Jones

“Calm and authoritative in advice (instinctively you know that you can cleave to his advice and assessments);

Focused and effective in court (reads the court, says what is needed with conviction and moves on);

Highly available and supportive (very user friendly for briefing solicitors);

Definitely a rock for when you are in a hard place.”

James Pirrie

“Alex is a meticulous campaigner who provides advice and results in a calm and authoritative manner. On his feet Alex delivers lethal cross examination often cloaked in such reasonable terms that few can see the storm coming. The children's silk of choice for any complex case.”

Mark Freedman

"I have had the pleasure of working with Alex on a number of difficult and complicated children cases over the last few years. He has a calm and measured court room manner which makes him a firm favourite with the Judges. He knows the law, does not take bad points, is always very well prepared and is very good at empathising with clients. He has a good sense of humor and is a pleasure to work with. I am confident that if I instruct Alex on a case my client will receive a first class service. Alex is one of the best QC's at the Family Bar who specialise in this area of law and I commend him to anyone who is in need of his expertise.

Julian Ribet

"I had the good fortune to be recommended Alex Verdan's professional services via a legal adviser.

During what proved to be a highly complex and extremely difficult case, Alex was faultless in every sense. His understanding of the matters at hand, grasp of the case load overall and management of all professionals concerned was commendable.

From day one, I was put at ease as a client - at no point did I doubt for an instant that Alex was anything less than 100% in control - in private conference his manner is reassuring and comforting, whilst always laying out the balance of issues, giving an overview to me as the client.

"I'd have no hesitation in recommending the services of Alex Verdan QC having seen first hand how he so eloquently and efficiently represented me successfully."

Wynton Faure

"I would unreservedly recommend Alex in this very specialist area of Child Law. We worked on a very complex, high profile case, that had previously proved very difficult. His guidance and insights were both proactive and pragmatic. He is a dream advocate and achieved every milestone he set for our client."

Richard Harbord

"I have no hesitation in recommending Alex as a barrister in Family Law work. He has assisted me in several cases and been great to work with. He is proactive, an excellent advocate and always willing to go the extra mile for the client. I am truly impressed!"

Suzanne Kingston

"A cool head, an exceptional advocate and a great tactician.

Michael Rowlands

Directories

Alex Verdan QC remains one of the most celebrated barristers doing children work and is well versed in the most complex private & public law cases. "He is sublime. He is fantastic in court and his bedside manner is second to none. If he has a difficult children case, he is very caring and understanding. Added to this, he is an absolute fighter in court."

Chambers & Partners 2014

Star Individual

Alex Verdan QC exhibits 'emotional intelligence when dealing with clients'.

Recommended as a Leading Family Silk in the area of Children Law

Legal 500 2013 Top Tier

Alex Verdan QC is one of the undisputed stars of the Children Bar. He is regularly instructed by magic circle firms in private law cases concerning issues such as false allegations, intractable contact and shared residence, while on the public law side he deals with cases of serious abuse or significant injury. Sources suggest that "his handling of any client is exceptional," and note that his advocacy is "charming, well prepared and silky."

Recommended as a Leading Family Silk in Chambers & Partners 2013

(Star Individual)

Alex Verdan QC is instructed in the most complex children cases, both public and private in nature. Observers applaud the "clarity of thought and delivery" of this barrister.

Recommended as a Leading Family Silk in Chambers & Partners 2012 (Ranked Band 1)

Alexander Verdan QC is much sought after for both public and private children work. Sources praise "his clear delivery in court and his sympathetic manner with clients."

Recommended as a Leading Family Silk in [Chambers and Partners](#) 2011 (Ranked Band 1)

Recommended as a Leading Silk in the area of Children Law in [Legal 500](#) 2011

Alexander Verdan QC, "does high-level children work, both private and public, and is regarded as a rising star among family silks." "He is a class act who talks such obvious good sense."

Recommended as a Leading Family Silk in [Chambers & Partners](#) 2010

The "calm and measured" Alexander Verdan QC is widely admired for the "clear and articulate advocacy" he applies to his children-related work. Although grounded in public law work, he is handling increasing amount of private children work.

Recommended as a Leading Family Silk in the area of Children in [Chambers & Partners](#) 2009

"Alexander Verdan QC is sensible....and does a very good job."

Recommended as a Leading Family Silk in the area of Children in [Chambers & Partners](#) 2008.

"Alexander Verdan QC is an approachable and effective advocate who can deal with conflict in an non-adversarial way. He undertakes work in care proceedings and public inquiries."

Recommended as a Leading Family Silk in the areas of Children in [Chambers & Partners](#) 2007

"Complex cases are all too familiar to Alex Verdan QC...he was involved in the Climbe Inquiry and is the toast of many a local authority and guardian".

Recommended as a Leading Family junior in the areas of Children in [Chambers & Partners](#) 2006

Practice areas

- [Private Law](#)
- [Public Law](#)
- [International](#)
- [Court of Protection](#)

Dispute resolution

- [Collaborative Lawyer](#)
- [Mediation](#)
- [Early Neutral Evaluator](#)

Direct Access

- [Direct Access](#)

Awards



Cases

Re W (Fact Finding: Hearsay Evidence) (2013)
[2013] EWCA Civ 1374

M (Children) (2013)
[2013] EWCA Civ 1147

Re B-S (Children) (2013)
[2013] EWCA Civ 1146

In the matter of A (Children) (2013)
[2013] UKSC 60

In the matter of B (A Child) [2013]
[2013] UKSC 33

A Council v (1) M (2) A (3) B (3) C (By Their Children's Guardian) sub nom Re B (Children) (Foreign Adoption: Refusal of Recognition) (2013)
[2013] EWHC 1501 (Fam)

Re N (Children) (2013)
AC9501952

Re A (Children) (2012)
[2012] EWCA Civ 1278

A Local Authority and C and D and A & B (by their Children's Guardian)
[2012] EWHC 1975 (Fam)

Re S (Children) (2012)
[2012] EWCA Civ 847

A v B and C [2012]
[2012] EWCA Civ 285

A London Borough v O and Others [2011]
2011 EWHC 2754 (Fam)

D L & another v London Borough of Newham 2011
[2011] EWHC 2666 (Admin)

R (on the application of (1) DL (2) ML) (Claimants) v Newham London Borough Council (Defendant) & Secretary of State for Education (Interested Party) (2011)
[2011] EWHC 1890 (Admin)

A Local Authority v C (2011)
[2011] EWHC 231 (Fam)

T v T (2010)
[2010] EWCA Civ 1366

A London Borough Council v K & others
[2009] EWHC 850

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

Re F-H (Children) (2008)
(2009) 1 FLR 349; [2008] EWCA Civ 1249

Re W (Children) (2008)
[2008] 2 FLR 1170 [2008] EWCA Civ 538

Re IC (2008)
[2008] EWCA Civ 198; (2008) 2 FLR 267 : (2009) 2 WLR 185

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

City of Westminster v IC (By His Litigation Friend the Official Solicitor) and KC and NNC
[2007] EWHC 3096 (Fam)



Kate Branigan QC

Experience

Year of Call: 1985

Year of Silk: 2006

Education

LLB (Soton)

Languages

French

Profile

Kate specialises in serious and complex children cases both public and private law. In particular, Kate specialises in cases involving serious physical/fatal injuries to children; fabricated/induced illness behaviour; sexual abuse (including fabricated allegations and 'false memory'); serious domestic violence; disabled parents, in particular parents with learning difficulties and serious psychiatric/psychological difficulties; intractable contact disputes and leave to remove.

For 18 years Kate was based on the Western Circuit practising in all areas of family law, in particular specialising in public law work for local authorities, parents and guardians and private client work, but also undertaking serious domestic and violent crime for both prosecution and defence.

Since moving to 4 Paper Buildings in 2002 and in particular since taking Silk in 2006, Kate has maintained her practice across all aspects of children law whilst developing a particular interest in cases involving non-accidental injury (including fatal injuries), neglect and FII behaviour. Kate's cases frequently involve jurisdictional, religious and ethnic dimensions and she has developed a particular expertise in representing parents with physical and learning disabilities and serious psychiatric and psychological problems.

Kate also has a significant private law practice, having undertaken a number of important specific issue applications together with intractable contact disputes and application for leave to remove.

Kate has maintained her links with the Western Circuit, regularly presenting lectures for solicitors in-house, Resolutions and other organisations with an interest in issues relating to children law. Kate has a long-standing relationship with the Roberts Centre in Hampshire which provides family support services and staff and venues for short and long-term observed, supported and supervised contact and is a voluntary speaker for the Children's Society

Professional Memberships

Family Law Bar Association

Western Circuit

Inner Temple

Wessex Family Law Bar Association

FLBA Committee - 2011

Directories

Recommended as a Leading Silk in the area of Children Law

[Legal 500 2013](#)

Recommended as a Leading Silk in the area of Children Law

[Legal 500 2012](#)

Practice areas

- [Private Law](#)
- [Public Law](#)
- [International](#)
- [Court of Protection](#)

Dispute resolution

- [Mediation](#)
- [Early Neutral Evaluator](#)

Direct Access

- [Direct Access](#)

Cases

A London Borough v M [2012]

awaiting FLR reporting

Re L-R (Children) (2011)

[2011] EWCA Civ 1034

A Local Authority v C (2011)

[2011] EWHC 231 (Fam)

Re F (Children) (2010)

[2010] 2 FLR 1455 : [2010] Fam Law 1053 : [2010] EWCA Civ 826

W (Children)

[2010] UKSC 12

Re M (A Child) (2009)

[2009] EWCA Civ 1385 : [2010] Fam Law 452

Re L (A Child) (2009)

[2010] 2 FLR 188 : [2010] Fam Law 132 : (2009) 106(34) LSG 16 : [2009] EWCA Civ 1239

Re A (Joint Residence: Parental Responsibility)

[2008] 2 FLR 1593

Re A, HA v MB (Brussels II Revised: Article (11)7 Application) (2007)

[2007] EWHC 2016, [2008] 1 FLR 289 : Times, November 2, 2007

N v N and F Trust

[2006] 1 FLR 856

B v B (Residence: Condition Limiting Geographic Area)

[2004] 2 FLR 979

Re C (Welfare of Child: Immunisation)

[2003] 2 FLR 1095

Re C (Welfare of Child: Immunisation)

[2003] 2 FLR 1167

A v Times Newspapers Ltd

[2003] 1 FLR 689

Re C (Abduction: Consent)

[1996] 1 FLR 414



John Tughan

"He is focused and tenacious - a real fighter and excellent advocate."

Chambers and Partners 2014

Experience

Year of Call: 1991

Education

Campbell College, Belfast
Liverpool University, LLB (Hons) 1990

Profile

John's practice encompasses both private law and public law proceedings relating to children. He is experienced in the most complex cases and he regularly appears in high profile and complex matters. His experience (in both the private and public fields) includes cases involving sexual abuse, the death or injury of a child (including very complex medical evidence), intractable parental disputes, press injunctions, human rights applications, adoption and the inter-relationship with the judicial review jurisdiction. John represents all parties in such cases. He is experienced in lengthy and complex trials.

In private proceedings John is experienced in proceedings with intractable issues, internal and external relocation of children and serious and complex allegations. John is often instructed in the most difficult cases requiring expert inter-personal skills.

John is experienced in media management and applications for press reporting restrictions orders. This experience has included some of the most high profile cases in recent years and has included the "Baby P" litigation and the "Little Ted's Nursery" scandal. Such issues often include both the national and international media.

John regularly advises local authorities on issues of policy and is often asked to draft such policies within a team of professionals. He enjoys such collaborative work.

John appears in Judicial Review proceedings that include issues of family law. Such issues include local authority policy, educational issues and the inter-relationship between the limits of the Court's jurisdiction and the role of the local authority.

John has been continuously recommended by Chambers and Partners as a leading junior in the field of children law for a decade.

John does undertake direct access work.

John writes a quarterly updating article for Family Law Week.

Professional Memberships

Family Law Bar Association
Midlands Circuit
Inner Temple

Directories

Represents children, parents and local authorities, among others, in complex and high-profile care cases, and enjoys a fine reputation for his work on matters pertaining to death, injury and sexual abuse.

Expertise: "He is focused and tenacious - a real fighter and an excellent advocate."

Chambers & Partners 2014

The "charming and well-prepared" John Tughan is a well-respected specialist in care proceedings and private law matters such as contact and residence.

Recommended as a leading Family Junior in Chambers & Partners **2013**

John Tughan "wastes no time in getting to the gist of the matter," and stands out for his impressive public law children practice. He represents children, parents, interveners and the local authorities in the most complex matters.

Recommended as a Leading Family Junior [Chambers and Partners 2012](#)

John Tughan, meanwhile, is highly regarded for representing local authorities in public children law proceedings.

Recommended as a Leading Family Junior [Chambers and Partners 2011](#)

John Tughan's advocacy is clear, persuasive and direct, and he is well liked in the profession.

Recommended as a Leading Family Junior [Chambers and Partners 2010](#)

John Tughan is described as a "no nonsense barrister" with public and private law proceedings at the heart of his practice.

Recommended as a Leading Family Junior in the area of Children - [Chambers and Partners 2009](#)

His "firm but approachable style" and "ability to smooth the waters" has won him a loyal following of many solicitors [Chambers & Partners 2005]. John is described as "excellent in both advocacy and substantive law."

Recommended as a Leading Family Junior [Chambers & Partners 2008](#)

Practice areas

- [Private Law](#)
- [Public Law](#)

Direct Access

- [Direct Access](#)

Cases

Re AK and MK (Fact finding: physical injuries) (2013)
[2013] EWHC 3158 (Fam)

Re L [2012]
[2012] EWHC 3069 (Fam)

A Local Authority and C and D and A & B (by their Children's Guardian)
[2012] EWHC 1975 (Fam)

A Local Authority v C (2011)
[2011] EWHC 231 (Fam)

F and L v A Local Authority and A
[2009] EWHC 140 (Fam), [2009] 2 FLR 1312, Hedley J.

R (on the application of (1) Ainsworth T (2) Thermitis T (3) S v Newham London Borough Council (2008)
[2008] EWHC 2640 (Admin); (2009) 1 FLR 311

Lambeth London Borough Council (applicant) v (1) S (2) C (3) v (4) J (by his children's guardian n) (respondents) & (1) Commissioner of Police of the Metropolis (2) Secretary of State for the Home Department (interveners) [2007]
1 FLR 152, [2006] EWHC 326 (Fam)

B County Council v R (2007)
[2007] EWHC 2742 (Fam); (2008) 1 FLR 1252

Re L (Special Guardianship: Surname)
2 FLR 50, CA [2007] EWCA Civ 196



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

Constitutional 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. Andrew represented the applicants in the Family Division in *Re P-M* [2013] EWHC 2328 (Fam) in their application for parental orders following a surrogacy arrangement in the USA.

In February 2013 Andrew was awarded a Pegasus Scholarship. As a Pegasus Scholar Andrew will be working at a niche law firm in California specialising in surrogacy and fertility 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)

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



Section 7

Members List

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



Brian Jubb
Call: 1971



Amanda Barrington-Smyth
Call: 1972



Robin Barda
Call: 1975



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



Charles Hale
Call: 1992



Michael Simon
Call: 1992



Justin Ageros
Call: 1993



Rob Littlewood
Call: 1993



Paul Hephher
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



Rhianon Lloyd
Call: 2002



Kate Van Rol
Call: 2002



Ceri White
Call: 2002



Matthew Persson
Call: 2003



Dorothea Gartland
Call: 2004



Samantha Woodham
Call: 2006



Laura Morley
Call: 2006



Nicola Wallace
Call: 2006



Michael Gratton
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



Julia Townend
Call: 2011

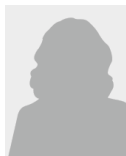


Zoe Taylor
Call: 2011

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