4 PAPER BUILDINGS

Public Law

3 CPD – BTM/CHLS

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CHAIR

Jo Delahunty QC

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Section 1

4 Paper Buildings: About Us

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About Us

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

What the market says:

Chambers has won a large number of prestigious awards, including leading legal publisher, Jordan's 'Family Law Chambers of the Year Award' in 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 2012, for child law matters, says we are 'the best lawyers in London', as well as being 'the most experienced, specialist international set of chambers in the country, if not the world'. Our barristers are seen as 'able to handle high-net worth ancillary relief [claims] in divorces'.

Those accolades follow on from Chambers UK 2011, which described us as 'first port of call for highly complex, public and private children('s case) disputes' and 'simply the best in the business' for children law work, with 'the biggest names in the field', whilst also having 'considerable expertise in high-net worth matrimonial finance disputes'.

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.

akidspace
Supporting children through family breakdown

The London Legal Support Trust

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

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 2012 particularly praises our 'high level of client service', singling out our 'excellent clerking team, always providing a great service even with difficult timeframes.'

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.

Section 2

An Introduction to International Aspects of Public Law

Dorothea Gartland

AN INTRODUCTION TO INTERNATIONAL ASPECTS OF PUBLIC LAW

The jurisdictional basis for making public law orders under the Brussels II Regulation:

1. This issue was determined by the ECJ in **Re C (Case C-435/06) [2008] 1 FLR 490.**

2. The Finnish mother in this case was living with her two children in Sweden. The (Swedish) local authority ruled that the children should be taken into care but there was a delay whilst the authority awaited confirmation of its decision by the local county administrative court. Before this had happened, the mother took both children back to Finland where they were living with their grandmother.

3. The Swedish police sought the assistance of the Finnish police to assist then in enforcement of the decision. The Finnish police ordered that the mother handed the children over to the Swedish authorities. The mother appealed that decision at first instance and when her initial appeal was refused, she appealed to the Finnish supreme administrative court.

4. The Finnish Court decided to stay proceedings and make a preliminary reference to the ECJ to determine whether a public law decision in connection with a child's welfare such as taking children into care or placing them in a foster family fell within 'civil matters'.

5. The ECJ said it did [para 53].

6. The legal context for this decision starts with Recital 5 of the Regulation which states: '*In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding'.*

7. Article 1 of Brussels II Revised provides: '1 This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to - ... (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.'

8. Article 1(2) provides that the matters referred to in Article 1(1)(b) deal, inter alia with "(a) rights of custody and rights of access; and ..(d) the placement of the child in a foster family or in institutional care; ...'

9. Article 2(7) states that the term "parental responsibility" 'shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;'

10. Article 2(9) explains that the term "rights of custody" 'shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;'

11. Article 8(1) provides that 'The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.'

12. A court is seised pursuant to Article 16(1)(a) 'at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent'.

Making a preliminary reference to the CJEU:

13. This procedure is open to all Member States' national judges. They may refer a case already underway to the Court in order to question it on the interpretation or validity of European law. On principle the ECJ must answer the question put to it. It cannot refuse to answer on the grounds that this response would be neither relevant nor timely as regards the original case. It can, however, refuse if the question does not fall within its sphere of competence. Any court can make a referral (ie, an FPC) however a national court MUST make a referral if it is a national court of last resort.

14. A preliminary ruling has the force of *res judicata*. The ruling is binding on the national court which made the reference and on all national courts of the Member States.

15. Jurisdiction for this ruling comes under Article 19(3) of the Treatment on European Union ("TEU") and Article 267 of the Treaty on the Functioning of the European

Union ("TFEU"). Preliminary ruling proceedings before the Court of Justice are free of charge and the Court will not rule on costs; it is for the referring court or tribunal to rule on costs.

The right time to make a preliminary reference?

16. The guidance from the Court states that the right time to make a reference is when the national proceedings have reached a stage at which the referring court or tribunal is able to define the legal and factual context of the case, so that the Court of Justice has available to it all the information necessary to check, where appropriate that EU law applies to the main proceedings. The guidance also states that it may also be appropriate for the reference to be made, only after both sides have been heard.

17. In **Health Service Executive v SC and AC (Case C-92/12) [2012] 2 FLR 1040** the CJEU heard an urgent preliminary ruling on the application of the Irish Health Service Executive (HSE). The High Court in Ireland made a reference on the 16/02/12, the decision was received on the 17/02/12 and the Court gave its ruling on the 26th April 2012.

18. This case demonstrates another situation in which a family lawyer may be called upon to advise a client, **the proposed placement of a child in England from abroad**. The relevant Article is 56 of the Regulation. This states as follows:

1. Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.
2. The judgment on placement referred to in paragraph 1 may be made in the requesting state only if the competent authority of the requested State has consented to the placement.
3. The procedures for consultation or consent referred to in paragraphs 1 and 2 shall be governed by the national law of the requested State.
4. Where the authority having jurisdiction under Articles 8 to 15 decides to place the child in a foster family, and where such placement is to take place in another

Member State and where no public authority intervention is required in the latter Member State for domestic cases of child placement, it shall so inform the central authority or other authority having jurisdiction in the latter State.

19. The child concerned was habitually resident in Ireland and was subject to a care order in Ireland until her 18th birthday. Her mother lives in London. The child had been in foster care placements and in secure care institutions in Ireland for many years and had a history of absconding and of self harm. It was the opinion of treating clinical professionals in Ireland that for her own protection, the child should remain in a secure care institution to be clinically assessed and provided with therapy. The professionals considered that there was no institution in Ireland which could meet her specific needs and the child had consistently expressed the wish to be closer to her mother in England.

20. The HSE considered that in order to meet the child's welfare needs it was obliged to obtain a placement at a secure institution in England. The HSE's application to the High Court in Ireland was for the Court's consent to placement of the child by the competent authority pursuant to Article 56 of the Regulation. The High Court placed the child in a secure institution in England on a short term basis. The questions the Court asked for a preliminary ruling on are set out at paragraph 47 of the judgment:

1. Does a judgment which provides for the detention of a child for a specified time in another Member State in an institution providing therapeutic and educational care come within the material scope of [the Regulation]?
2. If the answer to Question one is yes, what obligations, if any, arise out of Article 56 of [the Regulation] as to the nature of the consultation and consent mechanism to ensure the effective protection of a child who is to be so detained?
3. Where a court of a Member State has contemplated the placement of a child for a specified time in a residential care institution in another Member State and has obtained the consent of that State in accordance with Article 56 of [the Regulation], must the judgment of the court directing the placement of a child for a specified time in a residential care institution situated in another Member State be recognised and / or declared enforceable in that other Member State as a precondition to the placement being effected?

4. Does a judgment of the court directing the placement of the child for a specified time in a residential care institution situate (sic) in another Member State and which has been consented to by that Member State in accordance with Article 56 of [the Regulation] have any legal effect in that other Member State prior to the grant of a declaration of recognition and / or enforceability upon the completion of the proceedings seeking such declaration of recognition and / or enforceability?
5. Where a judgment of the court directing the placement of the child for a specified time in a residential care institution situate (sic) in another Member State under Article 56 of [the Regulation] is renewed for a further specified time, must the Article 56 consent of the other Member State be obtained upon the occasion of each renewal?
6. Where a judgment of the court directing the placement of the child for a specified time in a residential care institution situate (sic) in another Member State under Article 56 of [the Regulation] is renewed for a further specified time must the judgment be recognised and / or enforced in that other Member State upon the occasion of each renewal?

21. ECJ held that "a judgment of a court of a Member State which orders the placement of a child in a secure institution providing therapeutic and educational care situation in another Member State and which entails that, for her own protection, the child is deprived of her liberty for a specified period, is within the material scope of the Regulation." [para 66] (my emphasis).

22. The Court went on to hold that whilst Member States have a margin of discretion as regards the consent procedure, "the consent referred to in Art 56(2) of the Regulation must be given, prior to the making of a judgment on placement of a child, by a competent authority, governed by public law. The fact that the institution where the child is to be placed gives its consent is not sufficient."

23. And further, despite the representations of the Irish and German governments, the Court held that: "the Regulation must be interpreted as meaning that a judgment of a court of a Member State which orders the compulsory placement of a child in a secure care institution in another Member State, must, before its enforcement in the requested Member State, be declared to be enforceable in that Member State. In order not to

deprive the Regulation of its effectiveness, the decision of the court of the requested Member State on the application for a declaration of enforceability must be made with particular expedition and appeals brought against such a decision of the court of the requested Member State must not have a suspensive effect."

24. And finally it stated: "Where a consent to placement under Art 56(2) of the Regulation has been given for a specified period of time, that consent does not apply to orders which are intended to extend the duration of the placement. In such circumstances an application for a new consent must be made."

25. The Irish HSE and the English High Court has clear guidance as to how to place children in English institutional care by virtue of Irish orders. Whilst cases concerning issues of mental health are relatively rare, this is an important decision when considering the ambit of Article 56 itself which speaks of 'institutional care' and of 'foster care'. Many children, who are the subject of care proceedings in other EU countries, seem to be arriving in England without the Article 56 procedure being initiated.

Provisional, including protective measures:

26. A few months later the English High Court considered the CJEU's ruling above in the case of **HSE v SF (A Minor) [2012] EWHC 1640 (Fam)**, a decision of Baker J. The 17 year old was the subject of a full care order in Ireland and the HSE wished to place the child in a secure care institution in England. At the same time as the HSE applied to the English court for the making of orders for the recognition and enforceability of the Irish order for the child's placement in institutional care, the HSE also applied an urgent application to the High Court for provisional relief pursuant to Article 20 of the Regulation.

27. Article 20 provides:

1. "In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate."

28. Baker J cites the three conditions that the CJEU has said must be satisfied before a court may take protective measures under Article 20, namely:

- **The measures concerned must be urgent;**
- **They must be taken in respect of persons or assets in the Member State where the court seised of the dispute is situated; and**
- **They must be provisional.**[1]

29. In **re A**, the CJEU explained [para 48]**:** "These measures are applicable to children who have their habitual residence in one Member State but stay temporarily or intermittently in another Member State and are in a situation likely seriously to endanger their welfare, including their health or their development, thereby justifying the immediate adoption of protective measures."

30. Baker J went on to note that as a result of the judgment in **HSE v SC** urgent consideration was being given to the need for amendments to Part 31 of the FPR 2010 before concluding: "Unless and until any amendments are implemented, however, there may well be cases when a court in an EU country wishes to place a child in this country urgently, in circumstances where the child's welfare means that the placement cannot be postponed until the completion of the recognition and enforcement procedures under FPR Part 31. In such circumstances, Article 20 will have a crucial role."

31. At the back of this talk is a copy of the order made by the Court in this case which sets out the relevant recitals and addresses the interim nature of the measures taken.

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[1] Cf **Re A (area of Freedom, Security and Justice (C-523/07) [2009] 2 FLR 1** [para 47], and **Deticek v Sgueglia (C-403/09) [2010] 1 FLR 1381.** Baker J states at paragraph 9: "In **Deticek**, the Court emphasised (at para [38]), that, in that it represents an exception to the system of jurisdiction laid down by the Regulation, the provisions of Article 20 must be interpreted strictly."

Interim measures and the transfer of proceedings:

32. An earlier example of where interim measures pursuant to Article 20 of the Regulation were considered in **re S (Care: Jurisdiction) [2008] EWHC 3013 (Fam) [2009] 2 FLR 550.** In that case a Roma child, aged 14 at the time of the proceedings had been brought to England for the purpose of engaging in criminal activity. The child's father had been arrested and charged with offences in relation to child trafficking. The child was expressing a strong and consistent view to return to Romania and to the care of her Mother.

33. Charles J concluded that the child was habitually resident in Romania and that therefore pursuant to Article 8 of the Regulation, Romania was the Member State of jurisdiction. The English local authority had been granted an interim care order, which the child now challenged. Charles J held that even if he had found the child to have been habitually resident in the English jurisdiction, he would have sought transfer of this case to Romania pursuant to Article 15 of the Regulation. Having liaised with the Romanian judge in this case through the offices of Thorpe LJ, the court was satisfied that the present plan of the Romanian authorities was to place the child in accommodation away from, and not known to, her family, until a Court hearing in Romania.

34. The Judge drew an analogy in the case to situations in which the Court is dealing with an application for a summary return of a child under the 1980 Hague Convention where a defence is raised under Article 13b)[2], and Article 11 of the Regulation[3] applies: "Then the question arises whether the court is satisfied that it has been established that adequate arrangements have been made to secure the protection of the child, against the background that the court of a child's habitual residence can make an enforceable order for return which, in my view, gives weight, and ultimately priority, to the views of the court and the relevant authorities in its country on the adequacy or appropriateness of the protective arrangements."

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[2] Article 13 of the Hague Convention 1980
Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –
b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

[3] Article 11 addresses the **Return of the child**

35. At paragraph 89 of the judgment Charles J sets out the lessons to be learned which are likely to be relevant to any case involving protective measures under Article 20. I think this is of particular relevance:

"(vii) It will be unusual for this court under Art 20 (or in any other such cases) to embark upon fact-finding hearings. Rather the focus should be on the identification of the range of possible issues and risks for decision by the foreign court and the putting in place of appropriate interim measures to minimise harm arising from the materialisation of such risks and to enable the foreign court to take such advantage, as it thinks fit, of the work and steps taken and thus the information gathered in this country. However, in some cases it may be appropriate for the English court to make findings of fact, for example if a relevant incident took place here and those who took part in it live here and do not speak the language of the relevant foreign court."

36. As anticipated in **Re S** above, Article 15 of the Regulation enables transfer of cases involving children to other courts in the EU better placed to hear the case. This is particularly relevant in the context of international cases where parents have fled from or to this jurisdiction.

Parents moving across borders to evade state intervention in family life:

37. The situation in which a parent moves from one local authority to another in order to try to avoid state intervention is not a new phenomenon. The situation now occurs more frequently on an international basis and this was commented on by Thorpe LJ in his Annual Report of the Office of the Head of International Family Justice for England and Wales:

"The tendency of dangerous parents to bolt when social services are exercising legitimate protective powers is all too common and much to be disregarded by demonstrating that there is no gain in flight. Judicial collaboration is required for the protection of children at significant risk of harm. We are seeing a rising number of these types of cases being referred to the Office, mostly involving Eastern-European countries." [4]

[4] http://www.judiciary.gov.uk/publications-and-reports/reports/family/international-family-justice-report-2011-2012

38. In **Tower Hamlets v MK [2012] EWHC 425 (Fam) [2012] 2 FLR 762**, two polish girls aged 8 and 6 were found living in a disused hut by a railway line in the company of two polish men who were brothers. One of the men was married to the girls' mother. The children had been abducted from Poland by the two men in an attempt to prevent them from being accommodated in Poland by the Local Authority. The Polish authorities did not seek a return of the children and the Local Authority sought a full care order.

39. By the final hearing the children had been in this jurisdiction for 21 months and no one was seeking their return to Poland. Baker J concluded that the English court had jurisdiction pursuant to Article 10(a) of the Regulation as a result of the fact "that all persons having rights of custody (including the mother and the Polish authorities) have acquiesced in the removal or retention of the children to or in this country." In the alternative he found that all the requirements in Article 10(b)(i) of the Regulation were satisfied and the children were now habitually resident here.

40. In **Re S [2010] EWCA Civ 465 [2010] 2 FLR 1960**, the Court of Appeal approved the use of wardship rather than care proceedings in circumstances in which the 7 year old child of an Italian mother travelled to Spain where the child's father lived. The Mother and child left following a local authority's unsuccessful attempt to obtain an EPO and its stated intention to start care proceedings.

41. At the appeal hearing the parents contended that the removal of the child to Spain was perfectly lawful as the Mother was the sole person in this jurisdiction exercising parental responsibility for the child and had taken her to Spain. There was therefore no unlawful removal under the 1980 Hague Convention. The parents went on to submit that the child had now lost her habitual residence in England and had gained habitual residence in Spain.

42. Wall LJ held that the issue of the child's habitual residence remained an open question and should be decided "on proper evidence and after full argument" but that "for the purposes of an emergency application it was, in my view, properly open to the judge to take the view that, as the child had lived here throughout and had been peremptorily removed, albeit by one parent, nonetheless she had not lost her habitual residence in England." [para 13].

43. Wall LJ then held, that on an emergency basis: "a judge...is entitled to say that if this has been a lawful removal, and if there is a lawful retention, and if the Hague Convention does not apply, then the only basis upon which this child can be returned to the jurisdiction of England and Wales is by wardship; and therefore subs (b) of s100(4) applies. Equally, it seems to me, on the information provided to her by the local authority, given the circumstances in which the child had been found only a few days before, that it was open to the judge on an emergency basis to say that there is a likelihood in those circumstances that, if the court's inherent jurisdiction is not exercised, she is likely to suffer significant harm. So, in my judgment, the court was in the circumstances entitled to ward the child."

44. The Court however stayed the first instance decision ordering the return of the child to this jurisdiction.

45. A slightly different situation arose in **Bridgend County Borough Council v GM and Another [2012] EWHC 3118 (Fam) & [2013] 1 FLR 987** in circumstances where parents fled this jurisdiction to Spain in order to prevent social services from removing their child. The child was born in Spain and Spanish social services were involved with a plan for the child to remain at home with the Mother with social services monitoring. Meanwhile the local authority had obtained an emergency protection order, the child was located in Spain with assistance from the Spanish authorities and an application was made by the local authority for the removal of the child. The Father had by now returned to this jurisdiction. The child was located and removed by the English local authority social worker and placed in foster care in this jurisdiction.

46. The Court held that the Spanish court and now the English court were able to exercise jurisdiction in respect of the child pursuant to Article 13 due to the child's presence at the relevant time. Moor J found that the child had never been habitually resident in this jurisdiction and had never been habitually resident in Spain either. On that basis he held: "as she was not habitually resident in Spain, the Hague Convention does not apply to this case. It would not be possible to institute proceedings under that Convention to secure her return to Spain."

47. Moor J declined to find whether or not the child's removal from Spain had been illegal despite concluding "I accept that there remains a doubt as to whether there was the appropriate authorisation."

48. However the Local Authority had issued its proceedings for a care order the day before the child arrived in this jurisdiction, (ie before the child was present in the jurisdiction). In order to rectify this, the current proceedings were dismissed, and the child was made subject to the High Court's inherent jurisdiction pending the correct issuing of the local authority's care application[5].

49. By way of completing this part of the talk, I wanted to refer to the offence of abduction of a child by a parent from local authority care. In the past criminal abduction by a parent was hardly every prosecuted by the CPS, for the general reason that the Court of Appeal did not consider prosecution a proportionate response by the State when there were adequate remedies in the family court

50. However practitioners should note that this is no longer necessarily the case following the conjoined appeals of **R v Kayani and R v Solliman [2011] EWCA Crim 2871** and the guidance given by the Court of Appeal in which the Lord Chief Justice stated: *"At its most serious, therefore, the offence of child abduction is akin to kidnapping."*. It is important to note that these cases involved private law offences of parent abduction but this is something to bear in mind given that the Child Abduction Act 1984 applies to children in local authority care.[6]

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[5] It would be interesting to consider these facts again since the Supreme Court's decision in **Re A (Children) (AP) [2013] UKSC 60.** The Supreme Court was clear that it would not have been able to determine that case on the issue of habitual residence without making a reference to the Court of Justice.

[6] 1 (1) "Subject to subsections (5) and (8) below, a person connected with a child under the age of sixteen commits an offence if he takes or sends the child out of the United Kingdom without the appropriate consent.
(8) This section shall have effect subject to the provisions of the Schedule to this Act in relation to a child who is in the care of a local authority detained in a place of safety, remanded otherwise than on bail or the subject of proceedings or an order relating to adoption.
http://www.legislation.gov.uk/ukpga/1984/37/section/1 and http://www.legislation.gov.uk/ukpga/2012/10/schedule/12/prospective
SCHEDULE (*Modifications of section 1 for Children in Certain cases) : Children in care of local authorities and voluntary organisations* 1 (1) This paragraph applies in the case of a child who is in the care of a local authority **[F1** within the meaning of the Children Act 1989**]** in England or Wales. Where this paragraph applies, section 1 of this Act shall have effect as if—the reference in subsection (1) to the appropriate consent were a reference to the consent of the local authority **F2** . . . in whose care the child is; and subsections (3) to (6) were omitted"
http://www.legislation.gov.uk/ukpga/1984/37/schedule/paragraph/1/data.pdf and
http://www.legislation.gov.uk/ukpga/1984/37/schedule/paragraph/3

The issue of transfer to a court better placed to hear the case under Article 15 of the Regulation:

51. This was considered more recently in **Re T (A Child: Art 15 Brussels II Revised) 2013 EWHC 521 (Fam) [2013 2 FLR 909**, by Mostyn J. The 17 year old mother and 20 year old father were Slovakian Romani citizens. The child, now 10 months old, was conceived in Slovakia when the mother was 15 and was being cared for in a State children's home there. The mother and father ran away and travelled to the UK where the mother's family had already emigrated. In England the local authority became involved and care proceedings were instituted and following assessment the local authority sought a care plan of adoption.

52. The Slovakian Central Authority contacted the English Central Authority (ICACU) arguing that as a matter of EU law, the mother and child were habitually resident in Slovakia; stating that the mother was herself subject to an order entitled to recognition and enforcement here; and that this was a case where a request should be made by the court for transfer of the case to Slovakia under Article 15 of the Regulation. Mostyn J held that the child had not acquired habitual residence in England and Wales and that applying what was then the Court of Appeal decision in **re A**, the child was not habitually resident in Slovakia either. Mostyn J held that the English court had jurisdiction under Article 13 of the Regulation based on the child's presence and made directions for transfer of the case to Slovakia.

53. The child's guardian appealed the decision, in particular i) because of her view and the view of the local authority, that the child would be at risk of harm if placed back with the mother in institutional care in Slovakia and ii) because in her view the decision for transfer was premature and should not have been determined until the Court had concluded the hearing of the local authority's care and placement order applications.

54. The Court of Appeal dismissed the appeal on both of these grounds. Of particular relevance to future applications where similar arguments might be employed on behalf of a child is the view of the Court at paragraph 24 voiced by Thorpe LJ:

"We must take it that the child protection services and the judicial services in Slovakia are no less competent than the social and judicial services in this jurisdiction, and Mostyn J was, in my view quite right to reject that proposal."

55. However the Court of Appeal granted the appeal in respect of the legal test for consideration of Article 15 of the Regulation on the basis that it must be uniform across all Member States [para 19] and thereby affirming the guidance of Munby J in **AB v JLB [2008] EWHC 2965 (Fam):** as

"i) First, it must determine whether the child has, within the meaning of Article 15(3), 'a particular connection' with the relevant other member State – here, the United Kingdom. Given the various matters set out in Article 15(3) as bearing on this question, this is, in essence, a simple question of fact. For example, is the other Member State the former habitual residence of the child (see Article 15(3)(b)) or the place of the child's nationality (see Article 15(3)(c))?.
ii) Secondly, it must consider whether the child of that other Member State 'would be better placed to hear the case, or a specific part thereof'. This involves an exercise in evaluation, to be undertaken in the light of all the circumstances of the particular case.
iii) Thirdly, it must determine if a transfer to the other court 'is in the best interests of the child'. This again involves an evaluation undertaken in the light of all the circumstances of the particular child."

Transfer of proceedings to this jurisdiction:

56. An application for Article 15 transfer of care proceedings to this jurisdiction was considered and granted by Cobb J in **LM (A Child) (Transfer of Irish Proceedings), Re [2013] EWHC 646 (Fam), [2013] 2 FLR 708.** This decision has since been cited with approval by the President in **The matter of HJ (A Child) [2013] EWHC 1867 (Fam).**

57. The **LM** judgment sets out the relevant Family Procedure Rules for request for transfer of proceedings under Article 15 of the Regulation from rules 12.61-12.71 inclusive. Rule 12.66(2) requires the Court to allocate a case as if the application under s 31 of the Children Act 1989 had been made in England and Wales [paragraphs 43-47].

58. Theis J has recently adopted the **LM** guidance in transferring a case to Slovakia but unlike the situation in **re S [2008]** discussed above, the Court conducted a fact finding hearing prior to the transfer of proceedings. [cf. **LA v ML & Ors [2013] 2052 (Fam), LA v ML & Ors [2013] 2053 (Fam).**

The 1996 Hague Convention:

59. The final area I would like to briefly mention is the position in respect of signatory countries to the 1996 Hague Convention of which this country is now part. This enables the Court in this jurisdiction to take interim protective measures to protect children from outside of the EU. For example a local authority can apply for an interim care order in respect of a child who is physically present here but is habitually resident in a contracting state to the Convention.[7]

[7] Cf. The Ministry of Justice has published the 1996 Hague Convention Practice Guide http://www.justice.gov.uk/downloads/protecting-the-vulnerable/official-solicitor/international-child-abduction-and-contact-unit/1996-hague-convention-guide.pdf and see also The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010.

Order in HSE v SF (A Minor) re interim measures pursuant to Article 20 of the Regulation:

UPON the Court reading:

1. the documents identified in the reading list submitted with the Applicant's Grounds and Skeleton Argument;

2. the skeleton argument filed on behalf of the Applicant entitled "Summary Skeleton Submissions on the Placement of Children following the Decision in Case C-92/12 PPU."

AND UPON the Applicant undertaking as soon as reasonably practicable:

1. to lodge at Court a signed copy of the Order of Mr Justice Birmingham dated 3 May 2012 and a signed copy of the certificate referred to in Article 39 of Council Regulation (EC) 2201/2003;

2. to issue an application for registration under the provisions of Council Regulation (EC) 2201/2003 of the Order of Mr Justice Birmingham dated 3 May 2012 in the Principal Registry of the Family Division.

AND UPON the Court being satisfied in light of the evidence it has considered that:

1. the matter is urgent;

2. the measures provided below constitute provisional protective measures within the meaning of Article 20 Council Regulation (EC) 2201/2003

AND UPON the Court noting that SF's circumstances (including the deprivation of her liberty to which she will be subject upon her transfer to and placement at the facility run by [the English Unit]) are to be the subject of regular reviews by the High Court in Ireland, the next such review being on 14.5.12

AND UPON the Court being satisfied that it is appropriate that there be direct judicial communication between the High Court in Ireland and the High Court in England regarding SF's circumstances, so as to ensure that her circumstances are to be reviewed on a regular basis

IT IS ORDERED AND DECLARED ON AN INTERIM BASIS, PENDING FURTHER ORDER OF THE COURT, THAT:

1. SF do reside at [the English Unit] for purposes of such care and treatment as may in the opinion of the Director of [the English Unit] be necessary.

2. There be leave to the staff of [the English Unit] to detain at or return SF to [the English Unit] and to use reasonable force (if necessary) in so detaining her or returning her.

3. There be leave generally to Director of [the English Unit] and those under their direction (to include all or any of the multi-disciplinary team including clinical, care or similar professional and/or ancillary health care staff) to furnish such treatment and care as in their opinion may be necessary.

4. The above orders are made as being in the best interests of SF and are exercisable whether or not she consents thereto.

IT IS ORDERED THAT:

5. The Principal Registry of the Family Division shall issue forthwith upon the same being presented by the Applicant the application herein for registration under the provisions of Council Regulation (EC) 2201/2003 of the Order of Mr Justice Birmingham dated 3 May 2012 in the Principal Registry of the Family Division. Any future hearings in this matter are to be listed before, and reserved to, Mr Justice Baker if available.

6. The Applicant shall inform the Court (by email) as soon as reasonably practicable any orders (and accompanying judgments, if appropriate) made by the High Court in Ireland pursuant to such reviews conducted by that Court.

7. There be liberty to all to apply to a puisne judge of the Family Division on 24 hours' notice, to be listed before, and reserved to, Mr Justice Baker if available.

8. No order as to costs.

Dorothea Gartland
4 Paper Buildings

Section 3

Expert Evidence
A Practical Guide to recent Developments

Paul Hepher & David Bedingfield

EXPERT EVIDENCE
– ANOTHER CHAPTER IN A CONTINUING STORY

The history of the use of expert evidence shows that the reforms that have been implemented over the past several years, including the 1998 Civil Procedure Directions and the new PD 25 of the Family Procedure Rules 2010, are merely part of a century-long struggle by courts to provide an answer to the problems posed by expert evidence. This new rule in family proceedings that an expert must be "necessary" for the court to decide a relevant issue is, I submit, simply a further chapter in this on-going story.

The expert, as we all know, is expected to give an opinion about the most significant issues in a case.[8] A paradox underlies the use of all expert evidence: the reason an expert is required is that the decision-maker lacks the expertise of the expert and requires that expert's help. How is that same decision-maker also competent to judge the content of the expert's evidence? How is the decision-maker to choose, for example between two competing experts, each using different methodologies beyond the ken of any non-specialist?[9]

Judges, and Parliament, have been seeking an answer to that question since at least the late 18th century. One of the responses always canvassed is this: cede the decision to a specialist panel of experts. Courts, however, have been jealous of their jurisdiction to decide disputes, and (it is submitted) for good reason: courts in the United Kingdom have deservedly developed a reputation for fairness and for careful consideration of the competing interests involved in any dispute. Courts have also now developed a considerable body of law, giving to litigants and their advisors at least some reasonable certainty that like cases will be treated alike.

This move to restrict expert evidence must therefore be understood as part of a century-long struggle by the judiciary to maintain its jurisdiction, and to deal with the ever-increasing complexity presented by disputes involving scientific or medical evidence.

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[8] I avoid the use of the term "ultimate issue," but it is now accepted—after some 200 years of debate—that in fact experts regularly give their opinion about the ultimate issues to be decided by the jury.

[9] This was famously pointed out by Judge Learned Hand in his 1901 article for the Harvard Law Review (perhaps the most cited article about evidence in all of legal literature): How can we expect jurors to decide between experts when the jurors' ignorance is the premise for allowing the expert to testify in the first place? (See Learned Hand, *Historical and Practical Considerations Regarding Expert Testimony* 15 Harv L Rev 40, 54 (1901).)

First, the principles:

1) all litigation can be reduced to core disputes;
2) all disputes can be reduced to competing stories, and each story-teller seeks to tell the decision-maker a narrative that convinces the decision-maker to decide the dispute in that party's favour;
3) an expert, unlike any other witness, can give an opinion about the competing narratives on offer.

A court must treat an expert with some deference, because a judge is only a specialist lawyer, and is not a specialist in whatever scientific (or other) point is in dispute. The expert, on the other hand, is considered an expert precisely because he or she has an expertise the judge does not have.

As Tal Golan tells us in his magisterial history of expert evidence, the "creation story" for most historians looking at the question of experts in the courtroom is the case of *Folkes v Chadd* [1782] 3 Doug KB 157, where Chief Justice Gould (and a jury) had before them the classic civil dispute that cries out for "experts" to tell us what to do.[10]

The case concerned Wells Harbour, a natural harbour surrounded by low-lying salt marshes. The marshland surrounding the harbour was fertile, and several local farmers began in the late 1760s to drain the marshland for agricultural use. The harbour at the same time began silting up, threatening the shipping industry that was growing in an around Wells Harbour. The question, of course, was the cause of the silting: was it the farmers' new embankments, or would the silting have occurred in any event? The harbour commissioners claimed the embankments caused the silting. The farmers denied this. The harbour commissioners sued the farmers, and the battle lines were drawn.

Both parties were well-funded, and both sides therefore commissioned experts. The harbour commissioners relied on anecdotal and experience-based experts. Those witnesses set

[10] See Golan, Laws of Men and Laws of Nature: the history of Scientific Expert Evidence in England and America; Cambridge: Harvard University Press (2004).

out in factual terms the rapid deterioration of the harbour after the embankments were built. Civil engineers also gave evidence for the commissioners, based on the factual background given by earlier witnesses, and offered the conclusion (which, of course, was the ultimate issue in the case) that the embankments had caused the deterioration in the harbour.

The landowners brought in the scientist John Smeaton, a member of the Royal Society. Smeaton sought to apply "scientific principles," and gave the opinion that natural causes predominated—the harbour's silting process was inevitable.

The trial judge, Chief Justice Gould, excluded Smeaton's evidence. In the justice's view, Smeaton's opinion was not based upon enough specific observations and direct evidence, and therefore was nothing more than speculation the jury should not be permitted to hear. Lord Mansfield and the Court of Appeal, however, allowed the landowners' appeal, holding that the jury should hear Smeaton's evidence. In Mansfield's view, Chief Justice Gould, when he excluded Smeaton's evidence, took from the jury the real issue to be decided: between the two competing scientific theories, which theory is more likely than not correct?

Lord Mansfield's view that the trial judge should not play an overly restrictive gatekeeping function therefore became the common-law rule.[11] The use of experts became, if not commonplace, at least not rare, certainly not rare in the more well-funded actions in the QBD. A party in a civil or criminal matter was permitted to present to a jury expert evidence that presumed to answer the ultimate issue before the jury, though of course the "ultimate issue rule" was employed to force experts to tip-toe around actually responding to the question the jury had to answer.[12] Golan sets out several 19th century examples: Was a new sugar-refining process prone to explode? Did a copper-smelting operation create acid rain and destroy a season of crops? Did pollution from alum works contaminate well water? As Golan shows, in each case the plaintiff's experts gave one conclusion, the defendants' experts gave another. The trial judges

[11] As Golan shows us, however, it is overly simplistic to say that Mansfield LJ knowingly created the current regime of experts countering experts. That instead was the fault of a gradual accretion of adversarialism in the 19th century and increasing control of evidence by the parties in the face of a complacent judiciary. (See P50-51.)

[12] See *Re: A and BC Chewing Co Ltd* (1968) 1 QB 159; Cross on Evidence, 7th ed, p. 501; See also *R v Stockwell* (1993) 97 Cr App R 260, The Times, 11 March 1993; ". . . . if there ever was such a prohibition [against an expert giving an opinion on the ultimate issue] it has long been hallowed in the breach."

did not seek to examine prior to the trial the scientific methodologies used by the competing experts, but simply left all of that to cross examination before the jury.

The criminal courts also saw the rise of the expert after Mansfield's judgment, but as Professor Katherine Watson has shown (See "Medical and Chemical Expertise in English Trials for Criminal Poisoning, 1750-1914"; Cambridge Journal of Medical History, July 2006, pp 373-390), it would appear there were few opportunities for juries in criminal cases to hear "battles of the experts" prior to the mid-1830s. Professor Watson shows why: in several cases where defendants had allegedly poisoned the victim by arsenic or other toxic chemicals, the only evidence before the jury was from a poorly trained apothecary or surgeon who had only a basic knowledge of chemistry and toxicology—which of course were fields in their infancy in any event. Many times, even in the absence of any contrary expert evidence, the jury simply wasn't convinced, even though it would appear from all accounts that in fact the victim had been poisoned.

Police and the Home Office therefore sought to instruct better, more sophisticated experts. As Professor Watson tells us, by the 1830s the Home Office had settled on a few well respected and trusted experts in the most difficult cases.

In 1831, the Society of Apothecaries mandated that candidates for its diploma attend lectures in medical jurisprudence. Guy's Hospital established a lectureship in medical jurisprudence the same year. The young surgeon Alfred Swaine Taylor (1806-1880) was given the post, and, as Watson tells us, for the next 40 years Taylor worked tirelessly to establish a profession of forensic toxicologists. His textbooks influenced generations of scientists.

Other toxicologists also emerged during the 1830s, including, in Bristol, William Herapath (1796-1868). Herapath was largely self-taught, but developed such a reputation for brilliance he was regularly consulted as a professional analyst. He became one of the founders of the Bristol Medical School, which opened in 1832. He lectured on chemistry and toxicology there until 1867.

Herapath's appearance in 1835 at the trial of Mary Ann Burdock, where he successfully demonstrated the presence of arsenic in a body that had been buried for 14 months, marked a first in English forensic analysis. It led to a career for Herapath as an expert witness that was second only to Taylor's.

The professionalization of the expert witness in both civil and criminal cases in the 1840s and 1850s led (inevitably, some would say) to the charge that some experts would say whatever they were being paid to say. Golan cites newspaper stories from the 1840s that revealed how juries were "bewildered, perplexed, and left in despair as to knowing how to decide" when presented with competing expert evidence. Judges were frustrated and "disgusted at the partisanship" of the witnesses. (P.62)

By the 1860s, Golan shows us, judges and commentators were pressing for reform. Golan sets out a series of lectures given in 1860 at the Royal Society of Arts in England that sound stunningly modern; in fact, the reforms suggested in 1860 have been implemented, one by one, in the last century and a half. Some are being implemented today.

1) Get rid of the jury. Concerned about the ignorance of the fact-finder and the paradox of demanding that a non-scientist decide questions of science? Take the decision from the lay fact-finder and give it to a professional. As Golan shows us, the supposed impossibility of jurors understanding difficult scientific evidence played a large role in the eventual elimination of the jury from civil cases in the United Kingdom.[13]

2) Give the court, not the parties, the sole right to commission an expert report. The scientific community since early Victorian times sought to address the problem presented by the spectre of the "hired gun" expert who would say whatever he was

[13] In 1846, Parliament created the County Courts, where judges were able to decide both issues of fact and law. Many litigants preferred the cheaper and quicker option of a civil trial in the County Courts before a judge rather than the expensive trial before a jury in the Queen's Bench Division, and that became the preferred option. In 1854 a change in the rules in the QBD gave litigants in civil cases the option of choosing a judge rather than a jury, and many, if not most, chose to have a judge. In 1933, Parliament provided in the Administration of Justice (Miscellaneous Provisions) Act 1933 that juries should be empanelled in cases involving allegations of fraud, libel, slander, malicious prosecution, false imprisonment, seduction, and breach of promise of marriage, and that judges in the QBD had a discretion whether to empanel juries in other civil cases: it quickly became almost impossible to convince a judge to empanel a jury in any case where scientific or other expert evidence was likely to be heard (In 1981, Parliament in the Senior Courts Act 1981, s. 59, removed seduction and breach of promise of marriage from juries.) In 1966, it was held that juries did not have the ability to assess damages in personal injury cases. See *Ward v James* [1966] 1 QB 271, CA, per Lord Denning. Again, the primary reason it was believed juries could not perform this task was because of the prevalence of expert evidence regarding the impact of the injury on the claimant, and the likely disagreement of the medical experts regarding both causation and damages. In 1990, a claimant in the London Underground fire at King's Cross sought to have a jury hear his case. The court refused to do so, citing Denning LJ's reasoning in *Ward v James.* See *Singh v London Underground*, The Independent, 26 April 1990.

paid to say by giving to the court (rather than to either party) the sole power to appoint an expert in the case. Michigan and Rhode Island, in the US, passed Acts in the early 1900s mandating court-appointed experts. Golan discusses proposals from bar associations to establish official lists of experts in the mid-nineteenth century. The Children Act 1989 (and the Family Proceedings Rules 1991) provided that only if the trial judge agreed could experts be instructed. (The test to be applied with regard to whether experts were required was from 1991 until 31.1.2013 simply whether the expert evidence would be helpful to the decision-maker. That changed, of course, in February 2013.) And of course in 1998 civil judges in England and Wales were given control of the instruction of experts—subject, of course, to Article 6 of the ECHR and basic common-law fairness.

3) Scrutinise carefully the methodology of any proposed expert. Courts should not be permitted to rely on expert evidence unless it was deemed "reliable" by the medical or scientific community. (In other words, Lord Mansfield got it wrong when he said that in the end the jury should in most cases be permitted to hear whatever expert the parties submitted for their consideration.) The United Kingdom Law Commission, in March, 2011, essentially sought to restate this principle in its recommendations regarding the use of experts in criminal jury matters.[14] It is clear that the new rule of "necessity" imposed by the Family Division follows from this view: that heretofore courts have not scrutinised carefully enough the actually expertise of the expert. Judges, in this view, must be experts themselves, at least about the narrow issue involved in the dispute before them. The Law Commission proposed that in criminal cases there be made available to the judges an expert panel with the sole purpose of commenting upon the proposed "reliability" of any expert's report in dispute.[15]

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[14] The Law Commission was chaired by Munby P, currently the President of the Family Division. The Commission examined several miscarriages of justice that had occurred after poorly reasoned and shoddy expert evidence had been relied upon by judges and juries, and concluded that trial judges should play a more active "gatekeeping" role with regard to expert evidence. In particular, trial judges should apply a new reliability-based admissibility test for expert opinion evidence. The opinion evidence of an expert should be admissible only if the court is satisfied that it is sufficiently reliable to be admitted. To determine whether the evidence is sufficiently reliable, the court must apply the following test: 1) is the evidence predicated on sound principles, techniques and assumptions; 2) have the principles, techniques and functions been properly applied to the facts of the case; 3) is the evidence supported by those principles, techniques and assumptions? See Law Commission Report No 190: "Expert evidence in Criminal Proceedings in England and Wales," at www.lawcom.gov.uk/expert_evience.htm.

[15] That proposal of course brings with it its own problems: will the parties have an opportunity to cross examine the panel when a decision goes against a party? Will the parties have access to all of the work of the panel?

4) Finally, and as a last resort, give the decision to a panel of experts. It is no secret that the coalition government considered very carefully whether applications under Part IV of the Children Act 1989 should be taken away from the judiciary and placed in front of a tribunal, much like a Mental Health Tribunal or a Special Educational Needs Tribunal, with no funding for legal aid for the parties. That, at present, seems no longer to be the case, but it is right that Parliament will certainly do something to stop the rise in expenditure caused by lengthy care proceedings unless the judiciary imposes its own cost-cutting measures.

How, then, should we consider the recent changes imposed upon litigants in family proceedings? Readers will of course know that the Family Procedure Rules 2010 were amended to require, as of 31 January 2013, that judges first find that an expert is "necessary" prior to giving approval for the instruction of that expert. Two panels of the Court of Appeal have now addressed the meaning of "necessary", and it is clear that the test makes it likely that the use of experts in family proceedings will decrease.[16]

Again, however, the changes must be viewed in the context of several developments over the last two decades. First, it was not assumed that litigation under the Children Act 1989 would become as expert driven as it has become. It was assumed by Parliament that care proceedings under Part IV of the Act would require no more than 12 weeks, primarily because it was assumed that social services departments would have fully assessed the child prior to issuing proceedings. Courts in most cases, in other words, would simply rubber-stamp the local authority's decision. That has not proved correct, for two reasons: 1) local authorities were in many cases staffed by incompetent social workers who were perceived as being unable to assess the sometimes complex family dynamics presented in difficult cases under Part IV of the Children Act 1989; 2) litigants in cases under Part IV of the Children Act 1989 were fully funded by legal aid, and courts routinely gave litigants permission to instruct experts who might contradict the local authority's conclusions. Cases therefore became lengthier and more expensive as experts were brought in to assess and re-assess the parents and those who might potentially parent the child. This expense has grown exponentially since implementation of the CA 1989 in October, 1991.

[16] See *In the Matter of TG (A Child)* [2013] EWCA Civ 5; *Re HL (A Child)* [2013 EWCA Civ 655.

The second development in the last several years, of course, is that public funding for litigation is being radically reduced. There is a rationing, of sorts, that has now been put in place by a judiciary that is seeking to preserve, as far as possible, a system that is facing a twenty to thirty per cent reduction in its funding.

And the third (and to my mind equally important) development is this: judges who hear these cases are better trained and more specialised tribunals than in the past. These judges are increasingly not helped by certain kinds of "expert" evidence. Perhaps the most obvious examples would be evidence from psychologists regarding either risk assessment of dangerous parents or regarding the likely causes of bad parenting by parents with a "personality disorder". Another is the assessment by a "drug and alcohol" specialist regarding the risk of someone resuming a dependency on controlled substances or alcohol.

The evidence for this development is of course nothing more than anecdotal, but there are studies now available (and widely read by judges) that at the very least present a troubling picture. A report produced by the University of Central Lancashire (with funds provided by the Family Justice Council) was published in February, 2012, and identified a number of current criticisms of psychological reports:[17]

- Psychological evidence has been presented as scientific fact in cases where the evidence amounted to no more than speculation and conjecture.
- The theories on which the reports were based were often untested.
- Evidence is too often based on concepts not accepted generally in the field, concepts that have not been (and many times cannot be) demonstrated empirically.
- Psychometric evidence has been submitted as scientific fact when it does not meet the criteria.
- There is an overuse of jargon by psychologists, with no explanation of the terms used.

[17] The Central Lancashire researchers sought to undertake a small, largely qualitative study to explore the quality of expert psychological reports submitted in family proceedings. Using recognized experts in the field, the study sought to judge quality by considering first the qualification of the expert giving evidence, and second by developing and applying a framework of quality measures. The quality measures were developed by drawing on established experts in the field.

- In too many cases, few attempts are made by the psychologists to evaluate the credibility of the source of information; allegations are therefore often reported as facts.
- Risk assessments focus primarily on unstructured clinical and actuarial approaches, rather than on structured clinical assessment, with or without actuarial anchoring.

The report is required reading. Almost 20 per cent of the psychologists who submitted reports were not qualified, in the view of the assessors, to provide a psychological opinion. Nearly all of the witnesses were not maintaining clinical practices, but were instead full-time expert witnesses. There was an over reliance on psychometrics. Some of the psychologists used defunct or out of date assessment techniques. Too many of the reports made comments about mental health when there was clearly no expert background in that area. Two-thirds of the reports were rated as "poor" or "very poor".

In response to this study (and no doubt prompted by cost-cutting concerns as well), the coalition government on 6 May 2013 announced consultation regarding "new national standards to raise the quality of experts used in family courts". (The consultation ended in July.) The government wants to make certain that only "qualified, experienced and recognised professionals" provide evidence. According to the government, "[f]or too long there has been an increasing trend in England and Wales for expert witnesses to provide unnecessary and costly evidence—in the form of further written statements, clarifications and additional court appearances." Family Justice Minister Lord McNally, in his statement announcing the consultation, relied upon the Independent Family Justice Review by David Norgrove, noting that Norgrove and his team had identified "weaknesses in the quality of evidence" given in family proceedings. (The announcement also noted, and revealingly, I contend, that some £52 million had been spent in the 12 months prior to October 2011 on expert reports in family proceedings.)

It has to be accepted that in part the decision to restrict the instruction of experts to cases where it is "necessary" rather than simply desirable or helpful is budget-driven and represents a rationing of scarce resources. But it is also undeniable that experienced

family judges (in other words, the High Court and the appellate judiciary) see case after case where psychologists or other experts spend 40 pages to re-state the blindingly obvious. The point of experts is to bring expertise to the case that is not ordinarily available to the decision-maker. It is clearly the view of the President of the Family Division, and the Court of Appeal, that in too many cases trial judges do not focus sufficiently on the question of whether the supposed expert will really bring expertise that is not already available to a well-trained judge.

The question to be answered by the Court of Appeal or the Supreme Court, of course, will come in the hard case: for example, a non-accidental injury shaking case where there will be clear disagreements between distinguished experts. A court deciding this type of case, it is submitted, must be given the discretion to determine that both experts are "necessary". In other words, decisions regarding these life and death cases must not be driven solely by the demands of the Chancellor of the Exchequer.

David Bedingfield
4 Paper Buildings

EXPERTS

who needs them

practice, procedure and where we go from here

FAMILY JUSTICE REFORMS

1. The President spelt out his vision early this year in his inaugural View from the President's Chambers:

   "Crucial to our meeting what the reforms demand of us is getting a grip on the expert problem. The problem does not, of course, lie with experts themselves. It lies in the use we make of them. Three things are needed:

   - First a reduction in the use of experts
   - Second, a more focused approach in the cases where experts are still needed
   - Third, a reduction in the length of expert reports."

   He went on within his third View From the President's Chambers circulated on 28th June 2013, and attached to this note, to flesh out the developments he anticipates under these headings. There can be little doubt that the use of experts will continue significantly to reduce.

2. Judges are exhorted to engage in robust and vigorous case management to this end, a view point emphasized within the lead judgments given by the President in **Re TG (Care Proceedings: Case Management: Expert Evidence) [2013] EWCA Civ 5** & **Re H-L (A Child) [2013] EWCA Civ 655** where at para 5 he stated:

   "In *Re TG (Care Proceedings: Case Management: Expert Evidence)* I encouraged case management judges to apply appropriately vigorous and robust case management in family cases; I emphasised the very limited grounds upon which this court – indeed, I should add, any appellate court – can properly interfere with case management decisions; and I sought to reassure judges by pointing out how this court has recently

re-emphasised the importance of supporting first-instance judges who make robust but fair case management decisions. I take the opportunity to reiterate these important messages."

3. The approach of the case management judge is to demand of the advocate "three good reasons why you say this expert is necessary". The Judge is then to adopt a hands on approach to drafting the letters of instruction and formulating the questions, which are to be fewer and more focused. In practice now judges may decline to allow the advocates to leave the court building until the letter of instruction is agreed and drafted. E-mails flowing between advocates and judges thrashing out the minutiae of drafts are not unheard of.

4. As Munby LJ has said to Parliament:

> *"Social workers are experts. In just the same way, Cafcass officers are experts. What has gone wrong with the system is that we have at least two experts in every case – a social worker and a guardian – and yet we have grown up with the culture of believing that they are not really experts and we therefore need experts with a capital E. Much of the time we do not."*

5. The President aims, as an outcome in properly implementing the revised PLO, to "re-position social workers as trusted professionals playing the central role in care proceedings which too often of late has been overshadowed by our unnecessary use of and reliance upon other experts".

THE REVISED PLO

6. The revised PLO places much greater emphasis at the first hearing than hitherto on decision making to determine the issues within the case and evidence required. That first hearing is to be the Case Management Hearing, to take place at day 12, when appropriate directions, will be given for expert evidence. This is intended to present a significant acceleration within the proceedings from the outset.

7. Under the new PLO much more than previously will have been progressed by the Local Authority in advance of this stage. PD 25A makes provision for expert reports to be commissioned before the commencement of proceedings. Whilst the court's permission will still be needed to put any such report before the court, Local Authorities are now looking to obtain expert reports, for example cognitive assessments of parents where appropriate, before the fast ticking countdown begins upon issue.

8. The pre-proceedings checklist requires the LA to attach a social work statement to its application form detailing, inter alia, any assessments then outstanding. This should pave the way to enabling the parties to make preliminary enquiries of the expert further to PD 25C para 3.2. No later than day 10 the advocates will meet to identify any proposed experts and draft questions. They will immediately after, if not in time for the advocates' meeting, have to prepare the Part 25 application notice.

APPLYING FOR PERMISSION

9. FPR 25.7(2) provides that:

> (2) In any proceedings –
>
> (a) the application notice requesting the court's permission as mentioned in rule 25.4 must state –
>
> (i) the field in which the expert evidence is required;
>
> (ii) where practicable, the name of the proposed expert;
>
> (iii) the issues to which the expert evidence is to relate;
>
> (iv) whether the expert evidence could be obtained from a single joint expert;
>
> (v) the other matters set out in Practice Direction 25C or 25D, as the case may be; and
>
> (b) a draft of the order sought is to be attached to the application notice requesting the court's permission and that draft order must set out the matters specified in Practice Direction 25C or 25D, as the case may be.
>
> (3) In children proceedings, an application notice requesting the court's permission as mentioned in rule 25.4 must, in addition to the matters specified in paragraph (2)(a), state the questions which the expert is to be required to answer.

10. PD25C goes on to stipulate that the notice must state:

> (a) the discipline, qualifications and expertise of the expert (by way of C.V. where possible);

(b) the expert's availability to undertake the work;

(c) the timetable for the report;

(d) the responsibility for instruction;

(e) whether the expert evidence can properly be obtained by only one party (for example, on behalf of the child);

(f) why the expert evidence proposed cannot properly be given by an officer of the service, Welsh family proceedings officer or the local authority (social services undertaking a core assessment) in accordance with their respective statutory duties or any other party to the proceedings or an expert already instructed in the proceedings;

(g) the likely cost of the report on an hourly or other charging basis;

(h) the proposed apportionment (at least in the first instance) of any jointly instructed expert's fee; when it is to be paid; and, if applicable, whether public funding has been approved.

11. Further to PD25C, para 3.11, a draft order must be attached setting out:

(a) the issues in the proceedings to which the expert evidence is to relate and which the court is to identify;

(b) the questions relating to the issues in the case which the expert is to answer and which the court is to approve ensuring that they

(i) are within the ambit of the expert's area of expertise;

(ii) do not contain unnecessary or irrelevant detail;

(iii) are kept to a manageable number and are clear, focused and direct;

(c) the party who is responsible for drafting the letter of instruction and providing the documents to the expert;

(d) the timetable within which the report is to be prepared, filed and served;

(e) the disclosure of the report to the parties and to any other expert;

(f) the organisation of, preparation for and conduct of any experts' discussion (see Practice Direction 25E – *Discussions between Experts in Family Proceedings*);

(g) the preparation of a statement of agreement and disagreement by the experts following an experts' discussion;

(h) making available to the court at an early opportunity the expert reports in electronic form;

(i) the attendance of the expert at court to give oral evidence (alternatively, the expert giving his or her evidence in writing or remotely by video link), whether at or for the Final Hearing or another hearing; unless agreement about the opinions given by the expert is reached at or before the Issues Resolution Hearing

("IRH") or, if no IRH is to be held, by a date specified by the court prior to the hearing at which the expert is to give oral evidence.

12. The party responsible for instructing the expert, in agreement with the other parties where appropriate, must prepare a letter of instruction to the expert and, further to PD 25 C para 4.1:

(a) set out the context in which the expert's opinion is sought (including any ethnic, cultural, religious or linguistic contexts);

(b) set out the questions approved by the court and which the expert is required to answer and any other linked questions ensuring that they –

(i) are within the ambit of the expert's area of expertise;

(ii) do not contain unnecessary or irrelevant detail;

(iii) are kept to a manageable number and are clear, focused and direct; and

(iv) reflect what the expert has been requested to do by the court

(Annex A to this Practice Direction sets out suggested questions in letters of instruction to (1) child mental health professionals or paediatricians, and (2) adult psychiatrists and applied psychologists, in Children Act 1989 proceedings);

(c) list the documentation provided, or provide for the expert an indexed and paginated bundle which shall include –

(i) an agreed list of essential reading; and

(ii) a copy of this Practice Direction and Practice Directions 25B and E and where appropriate Practice Direction 15B;

(d) identify any materials provided to the expert which have not been produced either as original medical (or other professional) records or in response to an instruction from a party, and state the source of that material (such materials may contain an assumption as to the standard of proof, the admissibility or otherwise of hearsay evidence, and other important procedural and substantive questions relating to the different purposes of other enquiries, for example, criminal or disciplinary proceedings);

(e) identify all requests to third parties for disclosure and their responses in order to avoid partial disclosure, which tends only to prove a case rather than give full and frank information;

(f) identify the relevant people concerned with the proceedings (for example, the treating clinicians) and inform the expert of his or her right to talk to them provided that an accurate record is made of the discussions;

(g) identify any other expert instructed in the proceedings and advise the expert of their right to talk to the other experts provided that an accurate record is made of the discussions;

> (h) subject to any public funding requirement for prior authority, define the contractual basis upon which the expert is retained and in particular the funding mechanism including how much the expert will be paid (an hourly rate and overall estimate should already have been obtained), when the expert will be paid, and what limitation there might be on the amount the expert can charge for the work which they will have to do. In cases where the parties are publicly funded, there may also be a brief explanation of the costs and expenses excluded from public funding by Funding Code criterion 1.3 and the detailed assessment process.

13. The questions for the expert need to be few, focused and direct, without unnecessary or irrelevant detail. The letters of instruction must be finalized on the day of the CMH.

14. The reports themselves must be succinct, focused and analytical, and above all, evidence based. PD 25 B 4.1(e) requires the expert to confine himself to "matters material to the issues in the case". The President argues that many expert reports should require no more than 25 or perhaps 50 pages. There is no scope anymore for lengthy case summaries and detailed histories padding out a report.

15. The Courts may now specify the length reports are to be. Judges will name and shame experts who fail to be sufficiently focused and on point in reporting. Pauffley J did precisely this in **Re IA [2013] EWHC 2499 Fam** where she roundly criticized the paediatrician whom she had instructed to prepare a short 10 to 12 page report on a child's clinical presentation and to interpret blood results, who strayed well beyond this remit and doubled the required length of his report. In giving judgment Pauffley J stated in her concluding paragraphs (113-115):

> In the 1980s and 1990s before it became the norm for experts (particularly paediatricians and psychologists) to produce absurdly lengthy reports, courts were routinely confronted with, for example, radiological reports in the form of letters which extended to about a page and a half. Professor Christine Hall at Great Ormond Street Hospitals was masterly in her ability to distil essential information and opinion within an impressively succinct report.
>
> Her contributions to cases of this kind, and she was but one example of the then general trend in radiology, contained all the judge needed to know about the nature of the injury, mechanism, force required, likely acute and sequential symptoms, whether a proffered explanation was consistent with the injury as revealed or not.
>
> Reports of that kind were singularly helpful. The modern way exemplified by Dr Rylance's over-inclusive and doubtless expensive report is no longer acceptable.

> Experts must conform to the specifics of what is asked of them rather than, as here, provide something akin to a 'paediatric overview.' I struggle to recall a single instance when such expansive and all inclusive analysis has been of real utility in a case of this kind.

NECESSITY & PROPORTIONALITY

16. **Re TG (Care Proceedings: Case Management: Expert Evidence) [2013] EWCA Civ 5** reported at [2013] 1 FLR 1250, was concerned with a case management decision made by HHJ Bellamy, then sitting in the High Court, refusing the parents' Part 25 application, made on two separate occasions, to instruct a biomechanical engineer to give evidence as to whether the level of force created by the 12 day baby moving in a baby bouncer, could have caused him injury. The Court of Appeal dismissed the parents' appeal against this refusal, upholding the judge's decision. HHJ Judge Bellamy, given that he had already made directions for 5 medical experts to report, and that there was expert evidence that the injuries occurred in separate incidents, had found that the expert evidence of the biomechanical engineer was not reasonably required and that the cost and potential delay the report would generate was disproportionate to the likely benefit.

17. Munby LJ, in giving the lead judgment on appeal, upheld the Judge's decision. In so doing, he took this opportunity as the new President to stress the obligation of the court to further the overriding objective of rule 1.1 of the Family Proceedings Rules 2010, namely to deal with cases expeditiously and fairly in a manner which is proportionate to the complexity of the issues. He also went on to set out the new test, taking effect from 31st January 2013, moving from the old "reasonable requirement" test, stating:

> **[30]** Thus the Family Procedure Rules 2010 (FPR) as they are today and as they were when His Honour Judge Bellamy had to decide what was to happen in the present case. But they are very shortly to be modified. With effect from 31 January 2013 the amendments made by the Family Procedure (Amendment) (No 5) Rules 2012 come into force. Rule 1.4(2) is re-cast to provide (para (e)) that active case management includes 'controlling the use of expert evidence'. Rule 25.4(1) is also re-cast, to provide that:
>
> 'In any proceedings, a person may not without the permission of the court put expert evidence (in any form) before the court.'
>
> **Rule 25.1 is significantly amended, to provide that:**

> **'Expert evidence will be restricted to that which in the opinion of the court is necessary to assist the court to resolve the proceedings'.**
>
> **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 text of what is 'necessary' sets a hurdle which is, on any view, significantly higher that the old test of what is 'reasonably required'.**

18. That other day came some 5 months later when the President gave the answer in giving judgment on appeal in **Re H-L (A Child) [2013] EWCA Civ 655.** At para 3 he stated:

> **[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 Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (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 r 25.1.

19. The case concerned a 2 year old child suffering from a rare genetic disorder affecting bone development, who suffered bruising which was suspected to be non accidental. The only expert evidence was from the clinicians treating her. The trial judge refused permission to the mother to instruct a geneticist, haemotologist and paediatrician. He relied on the fact that there was no evidence that the child had an increased propensity to bruise on account of her condition. The Court of appeal overturned this decision in part, allowing for the limited instruction of a geneticist.

20. McFarlane J reasoned, in allowing the appeal to this extent, that the question as to whether the child's condition made her more prone to manifest bruising was central to the case. The geneticist involved to date had indicated that this question was outside his own knowledge and experience. At para 25 he states:

> "If the mother and those acting for her wish to challenge or seek elaboration upon that opinion during the course of the trial Dr Wright is in no position to

take the matter any further. That is, in my view, a situation which potentially falls short of the requirements of the European Convention, Art 6 and the overriding objective in r 1.1 of FPR 2010."

21. Both TG and H-L turn upon the specific facts in play in each case. Whilst they make clear that the new test of necessity requires an increased stringency and far higher degree of scrutiny when it comes to the Court allowing instruction of an expert, nonetheless both cases, on their own facts, spell out the need for the right experts to assist the court in complex matters in the right circumstances. McFarlane J's judgment provides a useful foil to a case management process which otherwise might increasingly become overly rigorous in curtailing the use of experts.

Paul Hepher

4 Paper Buildings

6th October 2013

VIEW FROM THE PRESIDENT'S CHAMBERS (3)

The process of reform : expert evidence

Sir James Munby, President of the Family Division

In my first 'View from the President's Chambers' ([2013] Family Law 548), I said that getting a grip on what I called the 'expert problem' was "crucial to our meeting what the reforms demand of us." I outlined my thinking on what was needed. I returned to the point in my second 'View' ([2013] Family Law 680). I make no apologies for returning to it again, nor for repeating some of what I have already said.

My focus here is on the use of experts in care cases. My starting point is the proposed statutory requirement that care cases are to be concluded within 26 weeks and that expert evidence is to be restricted to what is "necessary". My call to everyone in the family justice system is simple and clear. We can and must reduce the excessive length of far too many care cases. In order to achieve this we must get a grip on our excessive and in many instances unnecessary use of experts.

I emphasise a point I have previously made: The problem does not lie with the experts themselves. It lies in the use we make of them.

Experts – the process of reform

Reform of the use of experts in family cases is a process which although well under way is still ongoing.

The process started on 31 January 2013 when amendments to Part 1 and Part 25 of the Family Procedure Rules 2010 (FPR) came into force together with Practice Directions 25A-25F. For present purposes the most important of these are PD25A, PD25B and PD25C.

On 16 May 2013 the Ministry of Justice and the Family Justice Council published a Consultation Paper, on proposed draft 'Standards for Expert Witnesses in the Family Courts in England and Wales.'

On 1 July 2013 the revised PLO comes into force.

Further developments can be expected.

Experts – the way ahead

What is required is a major change of culture. Three things are needed: first, a reduction in the use of experts; second, a more focussed approach in the cases where experts are still needed; and, third, a reduction in the length of expert reports. Let me take these in turn.

Reducing the use of experts

With effect from 31 January 2013, FPR 25.1 was amended. The old test – whether expert evidence was "reasonably required" – was replaced with a significantly stiffer test – is the expert "necessary"? That change raises the bar significantly: *Re TG (Care Proceedings: Case Management: Expert Evidence)* [2013] EWCA Civ 5, [2013] 1 FLR 1250, para [30].

What is meant by the word "necessary"? The answer is to be found in *Re H-L (A Child)* [2013] EWCA Civ 655, para [3]:

> "The short answer is that 'necessary' means necessary … If elaboration is required … 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.""

So, in every case we must consider the reasons behind the request for an expert's report. Why is this additional evidence necessary? How will it add to the information the court already has? Is there not already an expert in the case who can provide that information – the social worker or the children's guardian?

Social workers are experts. In just the same way, I might add, CAFCASS officers are experts. In every care case we have at least two experts – a social worker and a guardian – yet we have grown up with a culture of believing that they are not really experts and that we therefore need experts with a capital E. The plain fact is that much of the time we do not.

Social workers may not be experts for the purposes of FPR Part 25, but that does not mean that they are not experts in every other sense of the word. They are, and we must recognise them and treat them as such.

One of the problems is that in recent years too many social workers have come to feel undervalued, disempowered and de-skilled. In part at least this is an unhappy consequence of the way in which care proceedings have come to be dealt with by the courts. If the revised PLO is properly implemented one of its outcomes will, I hope, be to re-position social workers as trusted professionals playing the central role in care proceedings which too often of late has been overshadowed by our unnecessary use of and reliance upon other experts.

So there are two aspects to the central question, Is this expert necessary?

First we have to ask, Is this a matter on which expert assistance is necessary? We do not need an expert to tell us what is already familiar to us as family justice professionals. Secondly, if the answer to the first question is in the affirmative, we have to ask, Is this a matter on which it is necessary to have as an expert

someone other than the social worker or the CAFCASS officer? For if the social worker or the CAFCASS officer can provide the relevant expertise the employment of some other expert will not be necessary.

In addressing these questions, we must always having regard, as required by FPR 1.1, to the overriding objective: that the court deal with the case "justly, having regard to any welfare issues involved", "expeditiously and fairly", "in ways which are proportionate to the nature, importance and complexity of the issues" and "allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

The case management judge may not direct an expert report unless judicially satisfied that the report is "necessary". In considering that question the case management judge will have regard in particular to FPR 25.5. If not so satisfied, then the judge will not direct the report. So, 'if in doubt do without'.

A more focused approach

The new rules, the new approach, need to be robustly enforced by case management judges. The role of the judges will be crucial. Robust and vigorous case management is essential. Can I remind you of what I said in *Re TG* and more recently in *Re H-L*.

Some experts will no longer be required at all. Robust case management also requires that those experts who are needed have to deliver their reports more promptly and in a shorter and more focused fashion.

FPR 1.4(2) was recast with effect from 31 January 2013 to provide (paragraph (e)) that active case management includes "controlling the use of expert evidence." How is this to be done?

At this point we need to focus on the revised PLO which comes into force on 1 July 2013. There are two crucial documents. The first is a new *Practice Direction 36C – Pilot Scheme: Care and Supervision Proceedings and other proceedings under Part 4 of the Children Act 1989*. The other, annexed to PD36C, is the revised PLO itself: *Pilot Practice Direction 12A – Care, Supervision and other Part 4 proceedings: Guide to Case Management. under Part 4*

In my previous 'View', I explained how the revised PLO is going to put a much greater emphasis than hitherto on the first hearing. It has been re-named the Case Management Hearing (CMH) to bring out the key fact that it is to be *the* effective case management hearing. The CMH will take place on Day 12. It is vital to the entire process of reform in dealing with care cases. At the CMH the case management judge will set the timetable for the case. And critically, having decided what expert evidence is necessary and, equally important, decided what expert evidence is *not* necessary, the judge will give appropriate directions for expert evidence (see the PLO, Stage 2). One of the most vitally important functions of the case management judge at the CMH is to ensure proper implementation of the new arrangements in relation to experts. It is at the CMH, and not at some later stage in the proceedings, that the necessary directions in relation to experts must be given in every case from now on.

The new arrangements include work to be done before the issue of proceedings.

The revised PLO requires the local authority (see the PLO, Pre-proceedings checklist) to attach a social work statement to its application form. The social work statement is required (see the definition in the PLO, paragraph 7.1) to include details of any necessary evidence and assessments that are outstanding and the local authority's case management proposals. So the local authority on Day 1 must set out its thinking in relation to expert evidence. The local authority, and indeed the other prospective parties, will need to consider PD25A, paragraph 3, which deals with pre-application instruction of experts.

Following the issue of proceedings, the court on Day 2 (see the PLO, Stage 1) will consider allocation and give standard directions, including directions for the filing and serving of any application for permission relating to experts under FPR Part 25.

PD25C, paragraphs 3.2-3.5, set out the process for making preliminary enquiries of the expert "in good time for the information requested to be available" for the CMH

No later than 2 clear days before the CMH there must be an advocates' meeting at which (see the PLO, Stage 2) the advocates must identify any proposed experts and draft questions in accordance with FPR Part 25.

PD36C, paragraph 7.1, substitutes a new FPR 25.6, which requires the parties to apply for permission under FPR 25.4 "as soon as possible and … no later than the Case Management Hearing"; see also PD25C, paragraphs 3.7-3.9.

FPR 25.7(2)(a) sets out what the application notice "must" include; amongst other things the matters set out in PD25C, paragraph 3.10:

> "(a) the discipline, qualifications and expertise of the expert (by way of C.V. where possible);
>
> (b) the expert's availability to undertake the work;
>
> (c) the timetable for the report;
>
> (d) the responsibility for instruction;

(e) whether the expert evidence can properly be obtained by only one party (for example, on behalf of the child);

(f) why the expert evidence proposed cannot properly be given by an officer of the service, Welsh family proceedings officer or the local authority (social services undertaking a core assessment) in accordance with their respective statutory duties or any other party to the proceedings or an expert already instructed in the proceedings;

(g) the likely cost of the report on an hourly or other charging basis;

(h) the proposed apportionment (at least in the first instance) of any jointly instructed expert's fee; when it is to be paid; and, if applicable, whether public funding has been approved."

PD25C, paragraph 3.11, requires a draft order to be attached to the application setting out various matters, including the following:

"(a) the issues in the proceedings to which the expert evidence is to relate and which the court is to identify;

(b) the questions relating to the issues in the case which the expert is to answer and which the court is to approve ensuring that they –

(i) are within the ambit of the expert's area of expertise;

(ii) do not contain unnecessary or irrelevant detail;

(iii) are kept to a manageable number and are clear, focused and direct;

(c) the party who is responsible for drafting the letter of instruction and providing the documents to the expert;

(d) the timetable within which the report is to be prepared, filed and served".

PD25C, paragraph 4.1, specifies what must be included in the draft letter of instruction.

The requirements of the PLO, FPR Part 25 and PD25C must be complied with and, I emphasise, in time for the CMH. It is no longer acceptable for advocates to arrive at the CMH without a properly drafted application which complies with FPR 25.7 and PD25C, paragraph 3.10, or without a draft order which complies with PD25C, paragraph 3.11, or without a draft letter of instruction which complies with P25C, paragraph 4.1. Those who fail without good cause may expect to be criticised.

If these requirements are met, the CMH will be effective. If they are not, the CMH will not be effective and the timetable may be irretrievably prejudiced. The case management judge must be rigorous in ensuring that parties comply with the PLO, with FPR Part 25 and with PD25C. If they have not, the case management judge must ensure that any non-compliance is noted at the end of the CMH in the Case Management Order (see the PLO, Stage 2, and the definition in paragraph 7.1) and recorded on the court's electronic Care Monitoring System. Non-compliance which necessitates a Further Case Management Hearing (see the PLO, paragraph 1.2, and Stage 2) is a serious matter. It may, where appropriate, be penalised in costs.

Assuming that all the requirements of the PLO, FPR Part 25 and PD25C are met in time, the case management judge will be able to decide at the CMH what expert evidence is necessary and able to give directions accordingly. The case management judge must adopt a probing and questioning stance. The mere fact that all the parties are agreed that an expert is necessary does not absolve the judge of personal responsibility for deciding whether or not the expert is indeed necessary. Nor does it of itself provide a ground of appeal if the judge nonetheless decides that the expert is not necessary: *Re F (A Child)* [2013] EWCA Civ 656.

The case management judge's approach should be: 'give me three good reasons why you say this expert is necessary'. At the same time the judge must encourage the other parties in their turn to state their views robustly as to whether the proposed expert evidence is necessary. They should no longer sit on the fence or adopt a position of neutrality, whether benevolent or otherwise. If in their view the expert is not necessary the other parties should say so and explain why.

Reducing the length of expert reports

Too many expert reports are unnecessarily and unhelpfully long, sometimes far too long. There are two reasons for this.

First, in too many cases the expert is asked far too many questions, questions which are either unnecessary or repetitive or both. The responsibility for putting a stop to this rests with the case management judge. PD25C, paragraphs 3.11 and 4.1, throw on the parties the obligation to provide the court with drafts of the letter of instruction and of the questions proposed to be put to the expert. But the case management judge must adopt a more 'hands on' approach in approving the final form of both the letter of instruction and, in particular, the questions the expert is to answer. There must in future be fewer and more focused questions. As PD25C, paragraph 3.11(b), stipulates, the questions must *not* contain "unnecessary or irrelevant detail", they must be "kept to a manageable number" and they must be "clear, focused and direct." This is not a task to be delegated to the parties' legal representatives, nor should they be allowed time after the CMH to finalise their suggestions. If the form of the letter of instruction and the formulation of the questions has not been fixed by the end of the CMH, then I would encourage the case management judge to direct that the parties' legal representatives are not to leave the court precincts until they have prepared a final draft which has been approved by the judge. These vital documents, whose timely production is so important if the timetable is to be maintained, must be finalised on the day of the CMH.

The second problem is that too many expert reports, like too many local authority documents, are simply too long, largely because they contain too much history and too much factual narrative. I repeat what I have previously said. I want to send out a clear message: expert reports can in many cases be much shorter than hitherto, and they should be more focused on *analysis* and *opinion* than on history and narrative. In short, expert reports must be *succinct*, *focused* and *analytical*. But they must also of course be *evidence based*.

PD25B, paragraph 4.1(e), requires the expert to confine himself to "matters material to the issues in the case". PD25B, paragraph 9.1, sets out the required content of the expert's report. Paragraph 9.1(b) provides that the expert must *summarise* the facts and instructions which are material to the conclusions and opinions expressed in the report, but only as far as is *necessary* to explain them. Paragraph 9.1(h) provides that the report must contain a *summary* of the expert's conclusions and opinions. The emphasis on summary is apparent.

Case management judges must take appropriate steps to encourage compliance by experts with these requirements. Judges cannot of course tell experts what they are to say; but they can require compliance with PD25B. And there is no reason why case management judges should not, if appropriate, specify the

maximum length of an expert's report. The courts have for some time been doing say in relation to witness statements and skeleton arguments. So, why not for expert's reports? Many expert's reports, I suspect, require no more than (say) 25 or perhaps 50 pages, if that. Here, as elsewhere, the case management judge must have regard to the overriding objective and must confine the expert to what is necessary.

Section 4

"Keep Calm and Do It in 26 weeks"
A Survivor's Manual for The New PLO & 26 weeks Syndromes

Cyrus Larizadeh

THE REVISED PLO AND 26 WEEKS

1. The new PLO is upon us all. The promised revolution within the family justice system has begun. You have here a survival pack of information and summary of key practical points to enable the care practitioner to stay afloat through these unchartered waters.

2. The pilot PLO Practice Direction 12 A is included in this pack and has been significantly reduced in length and incorporates several key changes to underpin a move towards a system which routinely concludes care cases within 26 weeks.

3. Specifically:

- There is now a requirement for a smaller quantity of more analytical material to be produced by the local authority on application, as well as a key change in respect of Checklist Documents, as they are not to be filed with the court unless expressly directed. They will, however, continue to be disclosed to other parties and the timeframe within which they must be produced is now tighter. The filing and service of documents is to be more focused on what is relevant.

- The pilot PLO also encourages the early identification of care cases which may need to be transferred to a more senior tier of judiciary. The court will appoint a children's guardian and give directions to Cafcass in this regard within one working day of receipt of the application form and Annex Documents from the local authority.

- A more productive first hearing to be held by Day 12, so that effective case management decisions can be made early, helping to ensure that decisions can be made within a 26 week timeframe (in all but a few cases). To reflect this aim, the first hearing will be renamed the Case Management Hearing (CMH). A Further Case Management Hearing will take place only if necessary as soon as possible after the CMH . The former Case Management Conference stage has been removed from the PLO altogether.

- The pilot PLO also directs the courts to seek earlier completion of cases by using the Issues Resolution Hearing (IRH) as the final hearing in the proceedings if all identified issues have been resolved.

4. For the plan to work the system must achieve the following:

- judicial continuity;
- improved quality of local authority evidence provided to the court;
- improved quality of police , hospital and non SW material
- immediate allocation of Cafcass Guardians;
- reduced length of time in less complex cases for additional assessments;
- reduced length of time to complete relative assessments;
- tighter case management; and
- most importantly, a serious undertaking by all agencies to focus on the specific circumstances of the child, to recognise the impact of delay for this child and to create a culture of urgency in the courtroom.

5. There is virtually no case law on this area yet but the information on the ground is that judges have been on the courses and at the road shows and are insistent now that the 26 weeks will be met.

6. Munby LJ President has clear views about the targets and aims as set out in the View from the President's Chambers (included here) – these will continue to be updated from time to time. He has taken ownership of the schemes and is driving it forward on a campaign to win hearts and minds. He calls for commitment, dedication and enthusiasm, that all within the family justice system might play their part to make the reforms happen. We are tasked to do everything by the end of this year that we will be required by law to do from April next year.

7. About the 26 week deadline for care proceedings, Sir James says:

> *"A comparatively small number of exceptional cases apart, we can and must meet the 26 week limit. We can, because various pilots and initiatives are not merely showing us that it can be done but, even more important, showing us how it can be done. We must, because if we do not, government and society will finally lose patience with us. I believe it can be done and I am determined to do everything in my power to make sure that it is. My message is clear and uncompromising: this deadline can be met, it must be met, it will be met. And remember, 26 weeks is a deadline, not a target; it is a maximum, not an average or a mean. So many cases will need to be finished in less than 26 weeks."*

8. In ***Devon County Council v EB & Ors*** [2013] EWHC 968 (Fam), a complex fact finding hearing concerning twins born to parents who suffered from a range of medical conditions, Mr Justice Baker took the opportunity to comment on the introduction of a 26 weeks time limit for care proceedings, the adducement of expert evidence and the role of specialist family practitioners.

Baker J said:

> *"[T]his case demonstrates that, whilst it will be possible to conclude the vast majority of care cases within 26 weeks, as proposed by the modernisation reforms, there will still be a small minority of cases, exceptional cases, where the investigation takes longer. ..... Judges must be vigilant to identify those rare cases which require longer time. It is, of course, important that these cases are identified as soon as possible at the outset of proceedings and that any delay is kept to a minimum."*

(Professor Pope recommended series of genetic tests for OI)

9. Mr Recorder Gupta QC in **Re A 26.10.12 unreported case**

> *"The s.31 application in this case was issued on 24th November 2010 and is the type of case that under the new system would probably have been 'done and dusted' by May 2011; it is now late October 2012. I ask myself rhetorically: in view of the ECHR rights involved and the oft quoted sentiments of Lord Templeman, will there still be room in the new system for 'planned and purposeful delay' or will the statute allow for no movement- a procedural guillotine of the umbilical chord? In practice will there only be the old refuge of 'exceptionality'?" In cases where children are to be separated from their parents care -the most draconian of jurisdictions- will there not be some 'wriggle room' for a relaxation of statutory timescales, to investigate the idea that a parent might actually evolve in his or her parenting abilities during the proceedings. Will there be no room in the future for such magic to happen?*
>
> *But, as stated recently by the Court of Appeal in G v NPT [2010] EWCA 821, as no doubt agreed by all here today, all avenues must be explored before the possibility of rehabilitation is simply written off.*
>
> *The time factor is relevant again here, as what the professionals and the parents needed was for the Mother to be able to show over an appreciable period of time that she had evolved in her ability to care for her child. This would not have been possible in 26 weeks."*

10. In his fourth view from the President's Chambers Munby LJ drew attention to the newly published documents necessary to implement the new PLO. They include the prescribed allocation and proposal form and form of Orders for Directions on Issue and the form of Case Management Order. They are available on line at http://www.judiciary.gov.uk/publications-and-reports/FamilyCourtGuide. They are produced within these notes along with the Allocation and Gatekeeping guidance document and the "House Rules" on drafting orders.

11. The President has also endorsed use of a Template for local authorities to follow when issuing care applications. No-one is obliged to use this particular template, which continues to be developed. As a working guide as to what to focus on, it is however hugely helpful. A copy is attached.

12. In July 2013 the Centre for Research on Children & Families at the University of East Anglia published "Evaluation of the Triborough Care Proceedings Pilot", its report for the Triborough Care Proceedings Steering Group. The report examined in detail the care case load of the three London Boroughs of Hammersmith and Fulham, Kensington and Chelsea, and Westminster from April 2012. The report concluded that the Triborough pilot had succeeded in reducing the length of care proceedings over the first nine months of the pilot from a median duration of 49 weeks the previous year to 27 weeks for the first nine months of this year. The President further concluded in looking at the results, that in coming down towards the 26 week deadline, justice had not been compromised. His most recent view is attached. The full report is available on http://www.uea.ac.uk/ssf/centre-research-child-family/news-and-events/news/2012-13/Triborough .

13. By way of summary, there are number of key factors for practitioners to be aware of:

i. Ensure the longest possible run up pre proceedings – the timetable is engaged only on issuing of proceedings. The assessments and documentary preparation can commence before issue. Give yourselves breathing space by issuing as late as possible without compromising safety.

ii. Set up an effective and well trained administrative team to assist you with tasks such as documentary collation and indices from previously proceedings

iii. SWs should do running chronologies to ensure

iv. Have all key reports in one place in SW records

v. In complex cases such as sexual abuse – a case plan overview useful to have a clear structure.

vi. A decision must be made early on before CMH by advocates that this is a case likely to be outside of 26 weeks – fact finding, medical testing, FDAC or other exceptional long term work or case involving complex international assessment

vii. There will be unrealistic pressure from recorders and new judges which may need to be combatted by clear submissions to oppose any unworkable deadlines.

viii. Shorter FAST and SGO assessments – are these realistic?

ix. Faster police CRB checks – is this possible

x. Telephonic viability assessments (including in foreign countries)

xi. Unless orders (including for kinship)

xii. Timescales for the child will become 26 weeks even though it can be different with different children .

xiii. There will be pressure to subsume medium term work under a supervision order if the work is incomplete at around 26 weeks

xiv. There will be more emphasis on good old fashioned social work and less on experts

xv. There will be pressure not to have fact finding hearings or to have a combined hearing at the end

xvi. Either or risk assessments

xvii. Experts availability sought at the outset

xviii. Experts to begin work pre fact finding

xix. Applications for 38(6) assessments will take place at CMH or shortly thereafter and again courts will only allow short assessments.

xx. Shorter final threshold documents in some cases – shorter interim threshold documents in all cases – succinct questions – succinct everything !

14. The problems already with the pilot scheme:

i. human unpredictability
ii. police disclosure
iii. medical disclosure
iv. listing problems
v. lack of judicial continuity
vi. lack of continuity of advocates
vii. positive kinship assessments leading to longer assessments

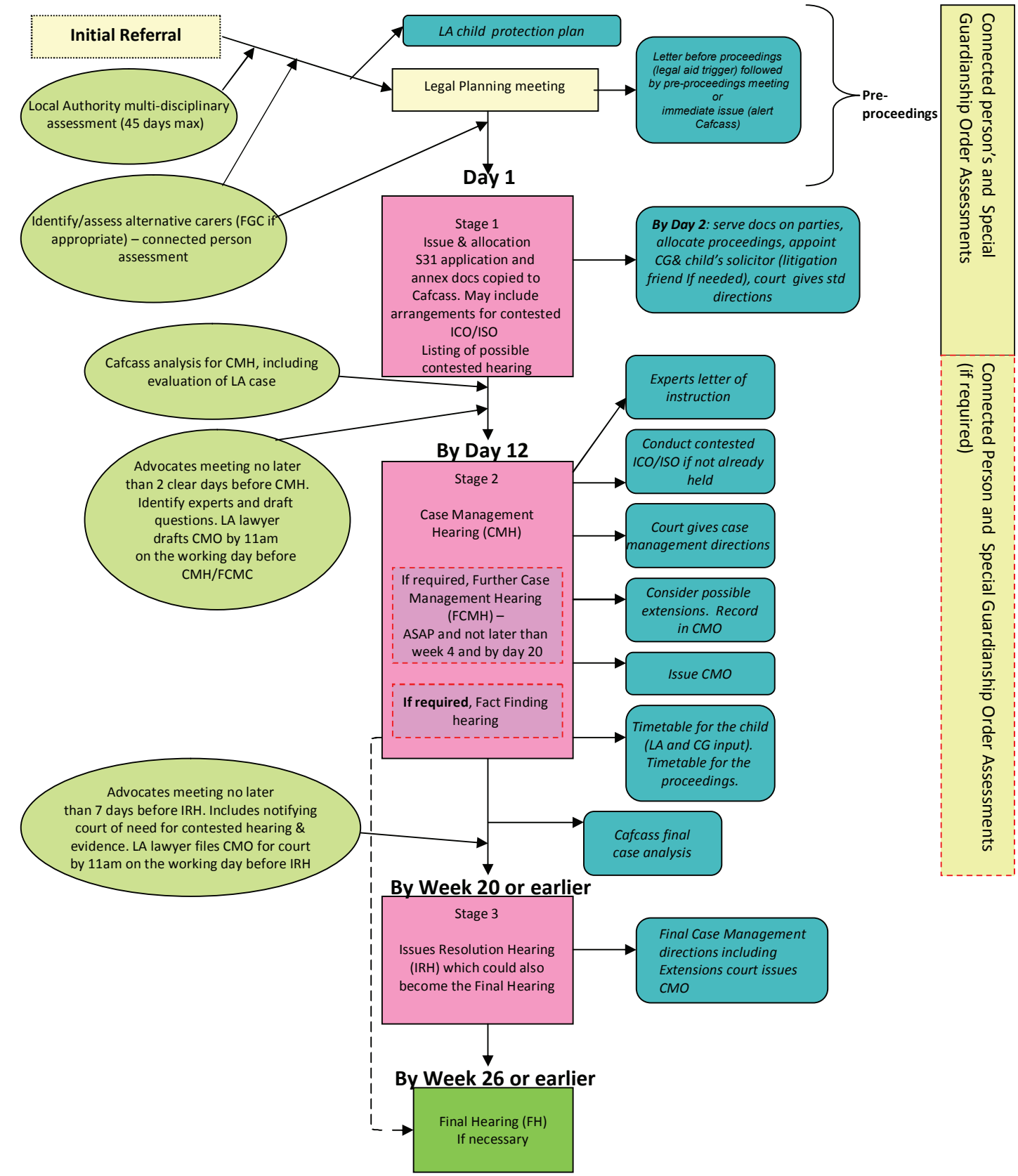
15. You must decide : are we here to meet targets or to ensure we achieve the best outcome for the child? CAN WE ACHIEVE BOTH ? What happens when targets will need to be set to one side to achieve the best outcome for the child?

16. How are you going to evaluate your performance during the pilot scheme? Will you be able to give positive feedback to improve the service?

17. REMEMBER : **'KEEP CALM AND DO IT IN 26 WEEKS'**

CYRUS LARIZADEH & PAUL HEPHER
4 PB

Public Law Outline (26 weeks)



Input | *Output* | PLO stage

FGC: Family Group Conference CG: Children's Guardian
CMO: Case management order ICO: Interim Care Order ISO: Interim Supervision Order
Note: The court may give directions without a hearing, including setting a date or period for the FH.
Reference to Cafcass includes CAFCASS CYMRU

VIEW FROM THE PRESIDENT'S CHAMBERS (2)

The process of reform : the revised PLO and the local authority

Sir James Munby, President of the Family Division

In my previous 'View from the President's Chambers' ([2013] Family Law 548), I referred to the work underway on a revised PLO. An interim version of the revised PLO will be published at the end of May 2013 and will come into effect on 1 July 2013. It will be superseded in April 2014 by the final version, incorporating any further adjustments that experience over the previous months has shown are desirable. But although it is still work in progress the main outlines of the revised PLO are now clear and will in all probability remain substantially unchanged.

In my previous 'View', I explained how the new PLO is going to put a much greater emphasis than hitherto on the first hearing, which will be re-named to bring out the key fact that it is to be the effective case management hearing. This fundamental change is vital to the entire process of reform in dealing with care cases. *If* the first case management hearing is effective, then we will meet the 26 week deadline; if it is not we will not. As I explained, an effective first case management hearing requires – necessitates – that the local authority, CAFCASS and the case management judge all play their parts. Current thinking is that, to achieve this, the first case management hearing should take place on Day 12. (This will be evaluated in the light of experience between July 2013 and April 2014.) Crucial to what everyone else is able to do is compliance by the local authority with its obligations under the revised PLO. It is on this that I wish to concentrate here.

The key principle is very simple: the local authority must deliver its material – the right kind of material – on Day 1. If that does not happen, the entire timetable will be thrown out. What must the local authority deliver? And what do I mean by the 'right kind of material'?

The revised PLO will require the local authority to attach the following documents to the application filed with the court on Day 1:

- The social work chronology

- The social work statement and genogram
- Any current assessment relating to the child and/or the family and friends of the child to which the social work statement refers and on which the local authority relies
- The threshold statement
- The care plan
- The allocation proposal form.

On Day 2 the local authority must serve on the other parties (but must *not* file with the court unless expressly directed to do so) the 'checklist documents'. These are:

- Evidential and other documents which already exist on the local authority's files (for example, previous court orders and judgments / reasons, any relevant assessments, including section 7 or section 37 reports, and single, joint or inter-agency reports, such as health, education, Home Office, UKBA and Immigration Tribunal documents). These documents are to be served with the application form.
- A list of decision making records (for example, records of key discussions with the family, key local authority minutes and records, pre-existing care plans and letters before proceedings). These documents are to be indentified by list, not served, but must be disclosed on request by any party.

It is important to note that documents need not be served or listed if they are older than two years before issue of the proceedings unless reliance is placed on them in the local authority's evidence.

Pausing to take stock, two key elements in the revised PLO will be noted. First, the clear distinction it draws between (i) those documents which are to be filed with the court and served on the parties, (ii) those documents which are to be served on the parties but not filed with the court unless directed, and (iii) those documents which are to be listed for the parties but not served unless requested. Second, the restriction of documents to the most recent, limited to those from the last two years. In other words, both the filing and service of documents is to be more focused, with a concentration on what is relevant, what is central, what is key, rather than what is peripheral or merely historical.

At the same time, there is a strong imperative to produce documents that are *focused* and *succinct*. The social work chronology must contain a *succinct* summary of the *significant* dates and events in the child's life. The threshold statement is to be *limited to no more than 2 pages*. And the social work statement is to be *limited* to the following evidence:

- Summary
    - The order sought
    - *Succinct* summary of reasons
- Family
    - Family members and relationships especially the primary carers and significant adults / other children
    - Genogram
- Threshold
    - Precipitating events
    - Background circumstances
        - Summary of children's services involvement cross-referenced to the chronology
        - Previous court orders and emergency steps
        - Previous assessments
    - *Summary* of harm and / or likelihood of harm
- Parenting capacity
    - *Assessment* of child's needs
    - *Assessment* of parental capacity to meet needs
    - *Analysis* of why there is a gap between parental capacity and the child's needs
    - *Assessment* of other significant adults who may be carers
- Child impact
    - Wishes and feelings of the child(ren)
    - Timetable for the child
    - Delay and timetable for the proceedings
- Early permanence and contact
    - Parallel planning
    - Placement options

    - Contact framework
- Case management
    - Evidence and assessments necessary and outstanding
    - Case management proposals

The significance of *assessment* and *analysis* will be apparent.

We must get away from existing practice. All too often, and partly as a result of previous initiatives, local authorities are filing enormously voluminous materials, which – and this is not their fault – are not merely far too long; too often they are narrative and historical, rather than analytical. I repeat what I have previously said. I want to send out a clear message: local authority materials can be much shorter than hitherto, and they should be more focused on analysis than on history and narrative.

In short, the local authority materials must be *succinct* and *analytical*. But they must also of course be *evidence based*.

We need to distinguish clearly between what is fact and what is professional evaluation, assessment, analysis and opinion. We need to distinguish between the general background and the specific matters relied on to establish 'threshold'.

Even if there has been local authority involvement with the family extending over many years, both the social work chronology and the summary of the background circumstances as set out in the social work statement can – and if they can then they must – be kept appropriately short, focusing on the key significant historical events and concerns and rigorously avoiding all unnecessary detail. We do not want social work chronologies extending over dozens of pages. Usually three or four pages at most will suffice. The background summary in the social work statement, particularly if it is cross-referenced to the chronology and avoids unnecessary repetition of what is already set out in the chronology, need be no more than a page or two.

The threshold statement can usually be little more than a page, if that. We need to remember what it is for. It is not necessary for the court to find a mass of specific facts in order to arrive at a proper threshold finding. Take a typical case of chronic

neglect. Does the central core of the statement of threshold need to be any more detailed than this?

> "The parents have neglected the children. They have
> - Not fed them properly
> - Dressed them in torn and dirty clothes
> - Not supervised them properly
> - Not got them to school or to the doctor or hospital when needed
> - Not played with them or talked to them enough
> - Not listened to the advice of social workers, health visitors and others about how to make things better: and now will not let the social worker visit the children the home [the evidence to support the case being identified by reference to the relevant page numbers in the bundle]."

I think not.

Careful thought needs to be given to the evidence required to establish 'threshold'. Voluminous statements will usually not be required. Take the case of chronic neglect I have just referred to. No more than four or five pages (if that) from each of the school teacher, the health visitor and the family's GP will surely suffice to establish much of the factual basis for the local authority's case, supported by similarly succinct and focused statements from the social workers who can speak of their own personal knowledge of conditions in the home and the attitude of the parents. Of course the court can act on the basis of evidence that is hearsay. But direct evidence from those who can speak to what they have themselves seen and heard is more compelling and less open to cross-examination. Too often far too much time is taken up by cross-examination directed to little more than demonstrating that no-one giving evidence in court is able to speak of their own knowledge, and that all are dependent on the assumed accuracy of what is recorded, sometimes at third or fourth hand, in the local authority's files.

What, after all, does the court need? It needs to know what the nature of the local authority's case is; what the essential factual basis of the case is; what the evidence is

upon which the local authority relies to establish its case; what the local authority is asking of the court, and why.

Work done by the local authority in the period pre-proceedings – front loading – is vital for two quite different reasons. Often it can divert a case along a route which avoids the need for proceedings. When that is not possible, and proceedings have to be commenced, work done beforehand will pay rich dividends later on. A case presented in proper shape on Day 1 will proceed much more quickly and smoothly than a case which reaches the court in an unsatisfactory state. A week, two weeks, four weeks, spent productively before proceedings are commenced will usually produce greater savings of time later on. On occasions *urgency* will necessarily trump *readiness*, but very often it need not.

It is not for me to tell local authorities how to organise themselves. But practical experience seems to suggest that local authority lawyers need to get involved, advising and assisting their social work clients, earlier than is often the case; that a properly organised legal planning meeting is invaluable – indeed, the key to achieving timely outcomes to care proceedings –; and (a key lesson from the Tri-borough, the Bi-borough and similar projects) that the employment of a local authority case manager is vital.

Two other features of pre-proceedings work have a direct and crucial bearing on the future smooth running of the case. The sending by the local authority to the parents of a timely 'letter before proceedings' is vitally important, because it triggers the availability of public funding for them. Equally important is the need for pre-proceedings work to focus on identifying and evaluating possible family carers and discussing with the parents their potential need for such support and the risks they may be running of losing their children if such potential carers are not involved early on in the process.

One of the problems is that in recent years too many social workers have come to feel undervalued, disempowered and de-skilled. In part at least this is an unhappy consequence of the way in which care proceedings have come to be dealt with by the courts. If the revised PLO is properly implemented one of its outcomes will, I hope,

be to re-position social workers as trusted professionals playing the central role in care proceedings which too often of late has been overshadowed by our unnecessary use of and reliance upon other experts.

Social workers are experts. In just the same way, I might add, CAFCASS officers are experts. In every care case we have at least two experts – a social worker and a guardian – yet we have grown up with a culture of believing that they are not really experts and we therefore need experts with a capital E. The plain fact is that much of the time we do not.

Social workers may not be experts for the purposes of Part 25 of the Family Procedure Rules 2010, but that does not mean that they are not experts in every other sense of the word. They are, and we must recognise them and treat them as such.

ANNEX TO PRACTICE DIRECTION 36C

PILOT PRACTICE DIRECTION 12A
CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT

1. THE KEY STAGES OF THE COURT PROCESS

1.1 The Public Law Outline set out in the Table below contains an outline of—

(1) the order of the different stages of the process;

(2) the matters to be considered at the main case management hearings;

(3) the latest timescales within which the main stages of the process should take place in order to achieve the aim of resolving the proceedings within 26 weeks.

1.2 In the Public Law Outline—

(1) "CMH" means the Case Management Hearing;

(2) "FCMH" means Further Case Management Hearing;

(3) "ICO" means interim care order;

(4) "IRH" means the Issues Resolution Hearing;

(5) "LA" means the Local Authority which is applying for a care or supervision order or a final order in other Part 4 Proceedings;

(6) "OS" means the Official Solicitor.

1.3 In applying the provisions of FPR Part 12 and the Public Law Outline the court and the parties must also have regard to-

(1) all other relevant rules and Practice Directions and in particular-

- FPR Part 1 (Overriding Objective);
- FPR Part 4 (General Case Management Powers);
- FPR Part 15 (Representation of Protected Parties) and Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings);
- FPR Part 22 (Evidence);

- FPR Part 25 (Experts) and the Experts Practice Directions;
- FPR 27.6 and Practice Direction 27A (Court Bundles);

(2) President's Guidance issued from time to time on

- Allocation and Gatekeeping;
- Judicial continuity and deployment;
- Prescribed templates and orders;

(3) Justices' Clerks Rules 2005 and FPR Practice Direction 2A (Functions of the Court In The Family Procedure Rules 2010 And Practice Directions Which May Be Performed By a Single Justice of the Peace).

PUBLIC LAW OUTLINE

<table>
<tr><th colspan="2">PRE-PROCEEDINGS</th></tr>
<tr><td colspan="2">PRE-PROCEEDINGS CHECKLIST</td></tr>
<tr><td>Annex Documents are the documents specified in the Annex to the Application Form which are to be attached to that form and filed with the court:
Social Work Chronology
Social Work Statement and genogram
The current assessments relating to the child and/or the family and friends of the child to which the Social Work Statement refers and on which the LA relies
Threshold Statement
Care Plan
Allocation Proposal Form
Index of Checklist Documents</td><td>Checklist documents (already existing on the LA's files) are –
(a) Evidential documents including-
Previous court orders and judgments/reasons
Any assessment materials relevant to the key issues including Section 7 and 37 reports
Single, joint or inter-agency materials (e.g., health & education/Home Office and Immigration Tribunal documents);
(b) Decision-making records including –
Records of key discussions with the family
Key LA minutes and records for the child
Pre-existing care plans (e.g., child in need plan, looked after child plan and child protection plan)
Letters Before Proceedings
Only Checklist documents in (a) are to be served with the application form
Checklist Documents in (b) are to be disclosed on request by any party
Checklist documents are not to be–
filed with the court unless the court directs otherwise; and
older than 2 years before the date of issue of the proceedings unless reliance is placed on the same in the LA's evidence</td></tr>
</table>

STAGE 1 ISSUE AND ALLOCATION

DAY 1 AND DAY 2

On Day 1 (Day of issue):

- The LA files the Application Form and Annex Documents and sends copies to Cafcass/CAFCASS CYMRU
- The LA notifies the court of the need for a contested ICO hearing where this is known or expected
- Court officer issues application

Within a day of issue (Day 2):

- Court considers allocation, and if appropriate, transfers proceedings in accordance with the President's Guidance on Allocation and Gatekeeping
- LA serves the Application Form, Annex Documents and evidential Checklist Documents on the parties together with the notice of date and time of CMH
- Court gives standard directions on Issue and Allocation including:
  - Checking compliance with Pre-Proceedings Checklist including service of any missing Annex Documents
  - Appointing Children's Guardian (to be allocated by Cafcass/CAFCASS CYMRU)
  - Appointing solicitor for the child only if necessary
  - Appointing (if the person to be appointed consents) a litigation friend for any protected party or any non subject child who is a party, including the OS where appropriate
  - Filing and service of a LA Case Summary
  - Filing and service of a Case Analysis by the Children's Guardian
  - Making arrangements for a contested ICO hearing (if necessary)
  - Filing and Serving the Parents' Response
  - Sending a request for disclosure to, e.g., the police
  - Filing and serving an application for permission relating to experts under Part 25 on a date prior to the advocates meeting for the CMH
  - Directing the solicitor for the child to arrange an advocates' meeting 2 days before the CMH
  - Listing the CMH

- Court officer sends copy Notice of Hearing of the CMH by email to Cafcass/ CAFCASS CYMRU

STAGE 2 - CASE MANAGEMENT HEARING	
ADVOCATES' MEETING (including any litigants in person (FPR12.21E(5))	CASE MANAGEMENT HEARING
No later than 2 clear days before CMH (or FCMH if it is necessary)	CMH : by Day 12 A FCMH is to be held only if necessary, it is to be listed as soon as possible and in any event no later than day 20 (week 4)
• Consider information on the Application Form and Annex documents, the LA Case Summary, and the Case Analysis • Identify the parties' positions to be recited in the draft Case Management Order • If necessary, identify proposed experts and draft questions in accordance with Part 25 and the Experts Practice Directions • Identify any disclosure that in the advocates' views is necessary • Immediately notify the court of the need for a contested ICO hearing • LA advocate to file a draft Case Management Order in prescribed form with court by 11a.m. on the working day before the CMH and/or FCMH	• Court gives detailed case management directions, including: - Confirming allocation and/or considering transfer - Drawing up the timetable for the child and the timetable for the proceedings and considering if an extension is necessary - Identifying additional parties and representation (including confirming that Cafcass/CAFCASS CYMRU have allocated a Children's Guardian) - Identifying the key issues - Identifying the evidence necessary to enable the court to resolve the key issues - Deciding whether there is a real issue about threshold to be resolved - Determining any application made under Part 25 and otherwise ensuring compliance with Part 25 where it is necessary for expert(s) to be instructed - Identifying any necessary 3rd party disclosure and if appropriate giving directions - Giving directions for any concurrent or proposed placement order proceedings

	- Ensuring compliance with the court's directions - If a FCMH is necessary, directing an advocates' meeting and Case Analysis if required ; - Directing filing of any threshold agreement, final evidence and Care Plan and responses to those documents for the IRH - Directing a Case Analysis for the IRH - Directing an advocates' meeting for the IRH - Listing (any FCMH) IRH, Final Hearing (including early Final Hearing) - Giving directions for special measures and/or interpreters - Issuing the Case Management Order

STAGE 3 - ISSUES RESOLUTION HEARING	
ADVOCATES' MEETING (including any litigants in person (FPR12.21E(5))	IRH
No later than 7 days before the IRH	As directed by the court, in accordance with the timetable for the proceedings
• Review evidence and the positions of the parties • Identify the advocates' views of- - the remaining key issues and how the issues may be resolved or narrowed at the IRH including by the making of final orders - the further evidence which is required to be heard to enable the key issues to be resolved or narrowed at the IRH - the evidence that is relevant and the witnesses that are required at the final hearing - the need for a contested hearing and/or time for oral evidence to be given at the IRH • LA advocate to- - notify the court immediately of the outcome of the discussion at the meeting - file a draft Case Management Order with the court by 11a.m. on the working day before the IRH	• Court identifies the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the IRH • Court considers whether the IRH can be used as a final hearing • Court resolves or narrows the issues by hearing evidence • Court identifies the evidence to be heard on the issues which remain to be resolved at the final hearing • Court gives final case management directions including: - Any extension of the timetable for the proceedings which is necessary - Filing of the threshold agreement or a statement of facts/issues remaining to be determined - Filing of: - final evidence & Care Plan ○ Case Analysis for Final Hearing (if required) ○ Witness templates ○ Skeleton arguments - Judicial reading list/reading time, including time estimate and an estimate for judgment writing time - Ensuring Compliance with PD27A (the Bundles Practice Direction) - Listing the Final Hearing • Court issues Case Management Order

2. FLEXIBLE POWERS OF THE COURT

2.1 Attention is drawn to the flexible powers of the court either following the issue of the application in that court, the transfer of the case to that court or at any other stage in the proceedings.

2.2 The court may give directions without a hearing including setting a date for the Final Hearing or a period within which the Final Hearing will take place. The steps, which the court will ordinarily take at the various stages of the proceedings provided for in the Public Law Outline, may be taken by the court at another stage in the proceedings if the circumstances of the case merit this approach.

2.3 The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing. For example, if the issue on which the case turns can with reasonable practicability be crystallised and resolved by taking evidence at an IRH then such a flexible approach must be taken in accordance with the overriding objective and to secure compliance with section 1(2) of the 1989 Act and achieving the aim of resolving the proceedings within 26 weeks or the period for the time being specified by the court.

2.4 Where it is anticipated that oral evidence may be required at the CMH, FCMH or IRH, the court must be notified in accordance with Stages 2 and 3 of the Public Law Outline well in advance and directions sought for the conduct of the hearing.

2.5 It is expected that full case management will take place at the CMH. It follows that the parties must be prepared to deal with all relevant case management issues, as identified in Stage 2 of the Public Law Outline. A FCMH should only be directed where necessary and must not be regarded as a routine step in proceedings.

3. COMPLIANCE WITH PRE-PROCEEDINGS CHECKLIST

3.1 It is recognised that in a small minority of cases the circumstances are such that the safety and welfare of the child may be jeopardised if the start of proceedings is delayed until all of the documents appropriate to the case and referred to in the Pre-proceedings Checklist are available. The safety and welfare of the child should never be put in jeopardy because of lack of documentation. (Nothing in this Practice Direction affects an application for an emergency protection order under section 44 of the 1989 Act).

3.2 The court recognises that the preparation may need to be varied to suit the circumstances of the case. In cases where any of the Annex Documents required to be attached to the Application Form are not available at the time of issue of the application, the court will consider making directions on issue about when any missing documentation is to be filed. The expectation is that there must be a good reason why one or more of the documents are not available. Further directions relating to any missing documentation will also be made at the Case Management Hearing.

4. ALLOCATION

4.1 The court considers the allocation of proceedings in accordance with the Allocation Order and whether transfer is appropriate in accordance with this Order and the Guidance issued by the President on Allocation and Gatekeeping. When proceedings are issued in the magistrates' court the justices' clerk or assistant justices' clerk (with responsibility for gatekeeping and allocation of proceedings) will discuss allocation and transfer with a district judge of the county court (with responsibility for allocation and gatekeeping of proceedings as provided for in the Guidance issued by the President on Allocation and Gatekeeping) and will, where appropriate, transfer the case.

5. THE TIMETABLE FOR THE CHILD AND THE TIMETABLE FOR PROCEEDINGS

5.1 The timetable for the proceedings:

(1) The court will draw up a timetable for the proceedings with a view to disposing of the application—

(a) without delay; and

(b) in any event with the aim of doing so within 26 weeks beginning with the day on which the application was issued.

(2) The court, when drawing up or revising a timetable under paragraph (1), will in particular have regard to—

(a) the impact which the timetable or any revised timetable would have on the welfare of the child to whom the application relates; and

(b) the impact which the timetable or any revised timetable would have on the duration and conduct of the proceedings.

5.2 The impact which the timetable for the proceedings, any revision or extension of that timetable would have on the welfare of the child to whom the application relates are matters to which the court is to have particular regard. The court will use the Timetable for the Child to assess the impact of these matters on the welfare of the child and to draw up and revise the timetable for the proceedings.

5.3 The “Timetable for the Child” is the timetable set by the court which takes into account dates which are important to the child’s welfare and development.

5.4 The timetable for the proceedings is set having particular regard to the Timetable for the Child and the Timetable for the Child needs to be reviewed regularly. Where adjustments are made to the Timetable for the Child, the timetable for the proceedings will have to be reviewed consistently with the aim of

resolving the proceedings within 26 weeks or the period for the time being specified by the court.

5.5 Examples of the dates the court will record and take into account when setting the Timetable for the Child are the dates of—

(1) any formal review by the Local Authority of the case of a looked after child (within the meaning of section 22(1) of the 1989 Act);

(2) any significant educational steps, including the child taking up a place at a new school and, where applicable, any review by the Local Authority of a statement of the child's special educational needs;

(3) any health care steps, including assessment by a paediatrician or other specialist;

(4) any review of Local Authority plans for the child, including any plans for permanence through adoption, Special Guardianship or placement with parents or relatives;

(5) any change or proposed change of the child's placement; or

(6) any significant change in the child's social or family circumstances.

5.6 To identify the Timetable for the Child, the applicant is required to provide the information needed about the significant steps in the child's life in the Application Form and the social work statement and to update this information regularly taking into account information received from others involved in the child's life such as the parties, members of the child's family, the person who is caring for the child, the children's guardian and the child's key social worker.

5.7 Where more than one child is the subject of the proceedings, the court should consider and will set a Timetable for the Child for each child. The children may not all have the same timetable, and the court will consider the appropriate progress of the proceedings in relation to each child.

5.8 Where there are parallel care proceedings and criminal proceedings against a person connected with the child for a serious offence against the child, linked directions hearings should where practicable take place as the case progresses. The timing of the proceedings in a linked care and criminal case

should appear in the Timetable for the Child. The aim of resolving the proceedings within 26 weeks applies unless a longer timetable has been set by the court in order to resolve the proceedings justly. In these proceedings, early disclosure and listing of hearings is necessary.

6. EXTENSIONS TO THE TIMETABLE FOR PROCEEDINGS

6.1 The court is required to draw up a timetable for proceedings with a view to disposing of the application without delay and with the aim of doing so within 26 weeks. If proceedings can be resolved earlier, then they should be. A standard timetable and process is expected to be followed in respect of the giving of standard directions on issue and allocation and other matters which should be carried out by the court on issue, including setting and giving directions for the Case Management Hearing.

6.2 Having regard to the circumstances of the particular case, the court may consider that it is necessary to extend the time by which the proceedings are intended to be resolved beyond 26 weeks to enable the court to resolve the proceedings justly. When making this decision, the court is to take account of the guidance that extensions are not to be granted routinely and are to be seen as requiring specific justification. The decision and reason(s) for extending a case should be recorded in writing (in the Case Management Order) and orally stated in court, so that all parties are aware of the reasons for delay in the case. The Case Management Orders must contain a record of this information, as well as the impact of the court's decision on the welfare of the child.

6.3 The court may extend the period within which proceedings are intended to be resolved on its own initiative or on application. Applications for an extension should, wherever possible, only be made so that they are considered at any hearing for which a date has been fixed or for which a date is about to be fixed. Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if

possible, the other parties of the nature of the application and the reason for it. The party should then make the application orally at the hearing.

6.4 If the court agrees an extension is necessary, the intention is that an initial extension to the time limit may be granted for up to eight weeks (or less if directed) in order to resolve the case justly, meaning that the maximum time limit for proceedings will be 34 weeks. If more time is necessary, in order to resolve the proceedings justly, a further extension of up to eight weeks may be agreed by the court. There is no limit on the number of extensions that may be granted in a particular case.

6.5 If the court considers that the timetable for the proceedings will require an extension beyond the next eight week period in order to resolve the proceedings justly**,** the Case Management Order should—

(1) state the reason(s) why it is necessary to have a further extension;
(2) fix the date of the next effective hearing (which might be in a period shorter than a further eight weeks); and
(3) indicate whether it is appropriate for the next application for an extension of the timetable to be considered on paper.

6.6 The expectation is that, subject to paragraph 6.5, extensions should be considered at a hearing and that a court will not approve proposals for the management of a case under FPR 12.15 where the consequence of those proposals is that the case is unlikely to be resolved within 26 weeks or other period for the time being allowed for resolution of the proceedings. In accordance with FPR 4.1(3)(e), the court may hold a hearing and receive evidence by telephone or by using any other method of direct oral communication. When deciding whether to extend the timetable, the court must have regard to the impact of any ensuing timetable revision on the welfare of the child.

7. INTERPRETATION

7.1 In this Practice Direction—

“Allocation Proposal Form” is the proposal in the prescribed form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

“Care Plan” means a “section 31A plan” referred to in section 31A of the 1989 Act;

“Case Analysis” means a written or, if there is insufficient time for a written, an oral outline of the case from the perspective of the child's best interests prepared by the children's guardian or Welsh family proceedings officer for the CMH or FCMH (where one is necessary) and IRH or as otherwise directed by the court, incorporating an analysis of the key issues that need to be resolved in the case including _

(a) a threshold analysis;

(b) a case management analysis, including an analysis of the timetable for the proceedings, an analysis of the Timetable for the Child and the evidence which any party proposes is necessary to resolve the issues;

(c) a parenting capacity analysis;

(d) a child impact analysis, including an analysis of the ascertainable wishes and feelings of the child and the impact on the welfare of the child of any application to adjourn a hearing or extend the timetable for the proceedings; and

(e) an early permanence analysis including an analysis of the proposed placements and contact framework;

“Case Management Order” is the prescribed form of order referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

“Day” means “business day”;

“Experts Practice Directions” mean-

(a) Practice Direction 25A (Experts – Emergencies and Pre Proceedings Instructions);
(b) Practice Direction 25B (The Duties of An Expert, The Expert's Report and Arrangements For An Expert To Attend Court);
(c) Practice Direction 25C (Children's Proceedings – The Use Of Single Joint Experts and The Process Leading to An Expert Being Instructed or Expert Evidence Being Put Before the Court);
(d) Practice Direction 25E (Discussions Between Experts in Family Proceedings).

"Genogram" means a family tree, setting out in diagrammatic form the child's family and extended family members and their relationship with the child;

"Index of Checklist Documents" means a list of Checklist Documents referred to in the Public Law Outline Pre-Proceedings Checklist which is divided into two parts with Part A being the documents referred to in column 2, paragraph (a) of the Pre-Proceedings Checklist and Part B being those referred to in column 2, paragraph (b) of the Pre-proceedings Checklist;

"Letter Before Proceedings" means any letter from the Local Authority containing written notification to the parents and others with parental responsibility for the child of the Local Authority's plan to apply to court for a care or supervision order and any related subsequent correspondence confirming the Local Authority's position;

"Local Authority Case Summary" means a document prepared by the Local Authority legal representative for each case management hearing in the form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

"Parents' Response" means a document from either or both of the parents containing
(a) in no more than two pages, the parents' response to the Threshold Statement, and

(b) the parents' placement proposals including the identity of all relatives and friends they propose be considered by the court;

"Section 7 report" means any report under section 7 of the 1989 Act;

"Section 37 report" means any report by the Local Authority to the court as a result of a direction under section 37 of the 1989 Act;

"Social Work Chronology" means a schedule containing—

(a) a succinct summary of the significant dates and events in the child's life in chronological order- a running record up to the issue of the proceedings;

(b) information under the following headings—

(i) serial number;

(ii) date;

(iii) event-detail;

(iv) witness or document reference (where applicable);

"Social Work Statement" means a statement prepared by the Local Authority limited to the following evidence—

<u>Summary</u>

(a) The order sought;

(b) Succinct summary of reasons with reference as appropriate to the Welfare Checklist;

<u>Family</u>

(c) Family members and relationships especially the primary carers and significant adults/other children;

(d) Genogram;

<u>Threshold</u>

(e) Precipitating events;

(f) Background circumstances;

(i) summary of children's services involvement cross-referenced to the chronology;

(ii) previous court orders and emergency steps;

(iii) previous assessments;

(g) Summary of significant harm and or likelihood of significant harm which the LA will seek to establish by evidence or concession;

Parenting capacity

(h) Assessment of child's needs;

(i) Assessment of parental capacity to meet needs;

(j) Analysis of why there is a gap between parental capacity and the child's needs;

(k) Assessment of other significant adults who may be carers;

Child impact

(l) Wishes and feelings of the child(ren);

(m) Timetable for the Child;

(n) Delay and timetable for the proceedings;

Early permanence and contact

(o) Parallel planning;

(p) Placement options;

(q) Contact framework;

Case Management

(r) Evidence and assessments necessary and outstanding;

(s) Case management proposals;

"Standard Directions on Issue and Allocation**"** means directions given by the court on issue and upon allocation and/or transfer in the prescribed form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

"Threshold Statement" means a written outline by the legal representative of the LA of the facts which the LA will seek to establish by evidence or concession to satisfy the threshold criteria under s31(2) of the 1989 Act limited to no more than 2 pages;

"Welfare Checklist "means the list of matters which is set out in section 1(3) of the 1989 Act and to which the court is to have particular regard in accordance with section (1)(3) and (4).

This Practice Direction is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Lord McNally, Minister of State, by authority of the Lord Chancellor and comes into force on 1st July 2013

PRACTICE DIRECTION 36C—PILOT SCHEME: CARE AND SUPERVISION PROCEEDINGS AND OTHER PROCEEDINGS UNDER PART 4 OF THE CHILDREN ACT 1989

This Practice Direction supplements FPR Part 36, rule 36.2 (Transitional Arrangements and Pilot Schemes)

SCOPE

1.1. This Practice Direction is made under rule 36.2 and sets up a Pilot Scheme. The Pilot Scheme applies to Part 4 proceedings (defined in FPR 12.2 as modified by paragraph 6.1 below) which are started–

(1) in any magistrates' court, county court and the High Court in accordance with the Allocation Order and the Guidance on allocation of proceedings issued from time to time by the President of the Family Division;

(2) on the Relevant Start Date in relation to that court (see paragraph 2.1 below) or any time from that date until 31st March 2014;

THE RELEVANT START DATE

2.1 A court will choose one of the following dates ("the Relevant Start Date")—

(1) 1st July 2013;

(2) 5th August 2013;

(3) 2nd September 2013; or

(4) 7th October 2013,

on which the court will start to operate the Pilot Scheme.

PUBLICATION OF RELEVANT START DATE

3.1 The list of courts choosing to start operating the Pilot Scheme from 1st July 2013 may be found (from 25th June 2013) at http://www.justice.gov.uk/protecting-the-vulnerable/care-proceedings-reform. Courts joining the Pilot Scheme after 1st July will be added to the list of courts on the website not less than 7 working days before the Relevant Start Date.

PURPOSE OF THE PILOT SCHEME

4.1 The purpose of the Pilot Scheme is to assess the use of new practices and procedures to support the 26 week time limit for Part 4 proceedings in the amendments made to section 32 of the Children Act 1989 by clause 14 of the Children and Families Bill, as introduced into Parliament on 4th February 2013.

http://www.education.gov.uk/aboutdfe/departmentalinformation/childrenandfamiliesbill/a00221161/children-families-bill

MODIFICATION OF THE FPR AND PRACTICE DIRECTIONS DURING OPERATION OF THE PILOT SCHEME

5.1 During the operation of the Pilot Scheme the Family Procedure Rules 2010 and the Practice Directions supporting those Rules will apply as modified by paragraphs 6.1 to 14.1.

Modification of FPR Part 12

6.1 In rule 12.2-

(1) for the definition of "Case Management Order", substitute—

""Case Management Order" means an order in the form referred to in Practice Direction 12A or Pilot Practice Direction 12A;";

(2) after the definition of "interim order" insert-

""Part 4 proceedings" means proceedings for—

(a) a care order except an interim care order, or the discharge of such an order under section 39(1) of the 1989 Act;

(b) an order giving permission to change a child's surname or remove a child from the United Kingdom under section 33(7) of the 1989 Act while a care order is in force with respect to the child;

(c) a supervision order except an interim supervision order, the discharge or variation of such an order under section 39(2) of the 1989 Act, or the extension or further extension of such an order under paragraph 6(3) of Schedule 3 to that Act;

(d) an order making provision regarding contact under section 34(2) to (4) of the 1989 Act made at the same time as the making of a care order other than an interim care order or later or an order varying or discharging such an order under section 34(9) of that Act;

(e) an education supervision order, the extension of an education supervision order under paragraph 15(2) of Schedule 3 to the 1989 Act, or the discharge of such an order under paragraph 17(1) of Schedule 3 to that Act;

(f) an order under section 39(3) of the 1989 Act varying a supervision order in so far as it affects a person with whom the child is living but who is not entitled to apply for the order to be discharged; or

(g) the substitution of a supervision order for a care order under section 39(4) of the 1989 Act;";

(3) In the definition of "public law proceedings"—

(a) after ""public law proceedings" means", insert "Part 4 proceedings and";

(b) in paragraph (d) of the definition, for "a care order" substitute "an interim care order";

(c) in paragraph (e) of the definition, after "1989 Act" insert "while an interim care order is in force with respect to the child";

(d) in paragraph (f) of the definition, for "a supervision order under section 31(1)(b)" substitute "an interim supervision order under section 38(1)";

(e) in paragraph (g) of the definition, after "1989 Act" insert "made at the same time as the making of an interim care order or later";

(f) in paragraph (j) of the definition, for "a supervision order" substitute "an interim supervision order";

(g) omit paragraphs (h) and (m) of the definition.

6.2 In rule 12.5—

(1) for paragraph (a)(iii), substitute-

"(iii) in Part 4 proceedings, the Case Management Hearing;";

(2) at the end of paragraph (a)(iii) omit "or";

(3) after paragraph (a)(iii), insert—

"(iiiA) in so far as practicable in public law proceedings other than Part 4 proceedings, the First Appointment; or";

(4) in paragraph (a) after "Practice Directions 12A or B", insert "and Pilot Practice Direction 12A" ;

(5) in paragraph (c) after "Practice Directions 12A or B", insert ", Pilot Practice Direction 12A" ;

(6) at the beginning of the words in parentheses following the rule, insert— "Pilot Practice Direction 12A sets out the details relating to the Case Management Hearing and".

6.3 In rule 12.7(2) (b) after "Practice Directions 12A or B", insert ", Pilot Practice Direction 12A".

6.4 After rule 12.8, insert—

"(Practice Direction 12C (Service of Application in Certain Children Proceedings) provides that in Part 4 proceedings the minimum number of days prior to the Case Management Hearing for service of the application and accompanying documents is 7 days. The Court has discretion to extend or shorten this time (see rule 4.1(3) (a)).)".

6.5 After the heading to Chapter 3 "SPECIAL PROVISIONS ABOUT PUBLIC LAW PROCEEDINGS", insert—

"**Application of rules 12.21B to 12.21E**

12.21A Rules 12.21B to 12.21E apply to Part 4 proceedings.

The timetable for the proceedings

12.21B The court will draw up the timetable for the proceedings or revise that timetable with a view to disposing of the proceedings without delay.

Directions

12.21C (1) The court will direct the parties to—

(a) monitor compliance with the court's directions; and

(b) tell the court or court officer about—

(i) any failure to comply with a direction of the court; and

(ii) any other delay in the proceedings.

The Case Management Hearing and the Issues Resolution Hearing

12.21D (1) The court will conduct the Case Management Hearing with the objective of—

(a) confirming the court to which the proceedings have been allocated or, if necessary, considering transfer of the proceedings in accordance with the Allocation Order ;

(b) drawing up a timetable for the proceedings in accordance with rule 12.21B including the time within which the proceedings are to be resolved;

(c) identifying the issues;

(d) giving directions in accordance with rule 12.12 and Pilot Practice Direction 12A to manage the proceedings.

(2) The court may hold a Further Case Management Hearing only where this hearing is necessary to fulfil the objectives of the Case Management Hearing set out in paragraph (1).

(3) The court will conduct the Issues Resolution Hearing with the objective of—

(a) identifying the remaining issues in the proceedings;

(b) as far as possible resolving or narrowing those issues;

(c) giving directions to manage the proceedings to the final hearing in accordance with rule 12.12 and Pilot Practice Direction 12A.

(4) Where it is possible for all the issues in the proceedings to be resolved at the Issues Resolution Hearing, the court may treat the Issues Resolution Hearing as a final hearing and make orders disposing of the proceedings.

(5)The court may set the date for the Case Management Hearing, a Further Case Management Hearing and the Issues Resolution Hearing at the times referred to in Pilot Practice Direction 12A.

(6) The matters which the court will consider at the hearings referred to in this rule are set out in Pilot Practice Direction 12A.

(Rule 25.6 (experts: when to apply for the court's permission) provides that unless the court directs otherwise, parties must apply for the court's permission as mentioned in rule 25.4 as soon as possible and in Part 4 Proceedings no later than the Case Management Hearing.)

Discussion between advocates

12.21E (1) When setting a date for the Case Management Hearing or the Issues Resolution Hearing the court will direct a discussion between the parties' advocates to—

(a) discuss the provisions of a draft of the Case Management Order; and

(b) consider any other matter set out in Pilot Practice Direction 12A.

(2) Where there is a litigant in person the court will give directions about how that person may take part in the discussions between the parties' advocates.

(3) Unless the court directs otherwise—

(a) any discussion between advocates must take place no later than 2 days before the Case Management Hearing; and

(b) a draft of the Case Management Order must be filed with the court no later than 11 a.m. on the day before the Case Management Hearing.

(4) Unless the court directs otherwise—

(a) any discussion between advocates must take place no later than 7 days before the Issues Resolution Hearing; and

(b) a draft of the Case Management Order must be filed with the court no later than 11a.m. on the day before the Issues Resolution Hearing.

(5) For the purposes of this rule 'advocate' includes a litigant in person.".

6.6 For rule 12.22, substitute—

"12.22 Rules 12.23 to 12.26 apply in so far as practicable to public law proceedings other than Part 4 proceedings.".

Modification of FPR Part 25

7.1 For FPR 25.6, substitute-

"When to apply for the court's permission

25.6 Unless the court directs otherwise, parties must apply for the court's permission as mentioned in rule 25.4 as soon as possible and—

(a) in Part 4 proceedings referred to in rule 12.2, no later than the Case Management Hearing;

(b) in public law proceedings other than Part 4 proceedings referred to in rule 12.2, no later than the Case Management Conference;

(c) in private law proceedings referred to in rule 12.2, no later than the First Hearing Dispute Resolution Appointment;

(d) in adoption proceedings and placement proceedings, no later than the first directions hearing;

(e) in proceedings for a financial remedy, no later than the first appointment;

(f) in a defended case referred to in rule 7.1(3), no later than any case management hearing directed by the court under rule 7.20.".

Modification of FPR Part 27

8.1 Omit the words in parentheses following FPR27.6.

Modification of Practice Direction 5A (Forms)

9.1 In Table 1(Index to forms), in the box in column 2 which applies to FPR Part 12-—

(1) omit "C17" and "C17A";

(2) for "C11O" substitute "C110A", and

(3) after "PLP 10"insert, "(PLO8 and PLO9 do not apply to Part 4 proceedings)".

9.2 In Table 2 (List of Forms)—

(1) omit the entries for Forms C17 and C17A;

(2) for the entry for Form C110, substitute "C110A Application for a Care or Supervision Order and Applications for other orders under Part 4 of the Children Act 1989.".

Application of Practice Direction 12A (Public Law Proceedings: Guide to Case Management) and Pilot Practice Direction 12A (Care, Supervision and Other Part 4 Proceedings: Guide to Case Management)

10.1 In relation to public law proceedings other than Part 4 proceedings, Practice Direction 12A will apply, so far as practicable, without modification.

10.2 In relation to Part 4 proceedings, Pilot Practice Direction 12A as set out in the Annex to this Practice Direction will apply in place of Practice Direction 12A.

Modification of Practice Direction 12C (Service of Application in Children Proceedings)

11.1 In the Table in paragraph 1.1—

(1) in Box 3,column 1, after "(section 31 of the 1989 Act)" insert "and other Part 4 proceedings";

(2) in Box 3, column 2, for "Form C110" substitute "Form C110A".

11.2 For paragraph 1.2, substitute—

"1.2 When filing the documents referred to in column 2 of the Table in paragraph 1.1, the applicant must also file sufficient copies for one to be served on each respondent and, except for Part 4 proceedings, Cafcass or CAFCASS CYMRU. In relation to Part 4 proceedings, the applicant need not file a copy of the documents for Cafcass or CAFCASS CYMRU as it is the applicant who sends copies of these documents to Cafcass or CAFCASS CYMRU in accordance with Pilot Practice Direction 12A.".

11.3 In the table in paragraph 2.1—

(1) in Box 1,column 1, after " (s33(7) of the 1989 Act)" insert "while an interim care order is in force with respect to the child";

(2) in Box 2, column 1, after "(section 14A of the 1989 Act)" insert-

“care or supervision order (section 31 of the 1989 Act) except an interim care order or an interim supervision order (section 38 (1) of the 1989 Act);

an order permitting the child’s name to be changed or the removal of the child from the United Kingdom (s33(7) of the 1989 Act) while a care order is in force with respect to the child”;

an order making provision for contact under section 34(2) to (4) of the 1989 Act made at the same time as the making of a care order other than an interim care order or later or an order varying or discharging such an order under section 34(9) of the 1989 Act;”;

(3) in Box 3, column 1-

(a) for “care or supervision order (section 31 of the 1989 Act)” substitute “an interim care order or an interim supervision order (section 38 (1) of the 1989 Act)”;

(b) after “section 34(2) to (4) of the 1989 Act “, insert “made at the same time as the making of an interim care order or later”.

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Modifications to Practice Direction 27A (Family Proceedings: Court Bundles: (Universal Practice to be Applied in all Courts other than the Family Proceedings Court)

12.1 In Practice Direction 27A—

(1) in the heading omit “Other than the Family Proceedings Court”;

(2) in paragraph 1.1 omit “(other than the Family Proceedings Court)”;

(3) in paragraph 2.1(d) omit " except for Family Proceedings Courts”;

(4) for paragraph 2.2 substitute-

""Hearings" includes-

(a) all appearances before a judge, district judge or a magistrates' court, whether with or without notice to other parties and whether for directions or for substantive relief; and

(b) in a magistrates' court, references to a directions appointment whether conducted by the justices, a district judge (magistrates' court) or a justices’ clerk."";

(5) at the beginning of paragraph 2.5, insert "In relation to a county court or the High Court,";

(6) in paragraph 4.1, for "a judge" substitute "the court";

(7) in paragraph 6.1, for the references to "case management conference " substitute "Case Management Hearing";

(8) in paragraphs 6.3, 7.1,and 12.1, for "judge" substitute "court";

(9) in paragraph 7.2 -

(a) for "Unless the judge" substitute "Unless the court";

(b) in sub paragraph (c) for "for hearings at any other court" substitute " for hearings in a county court or the High Court";

(c) after sub paragraph (c) insert-

"(d) in the magistrates' court, at the court office of the court where the hearing is to take place.";

(10) the reference to—

(a) the “Public Law Protocol (2003) 2 FLR 719” in paragraph 6.1;

(b) the “Practice Direction: Care Cases: Judicial Continuity and Judicial Case Management appended to the Public Law Protocol (2003) 2FLR 719” in paragraph 15; and

(c) “the Public Law Protocol” in paragraph 15,

shall be read as if it were a reference to Pilot Practice Direction 12A Care Supervision and Other Part 4 Proceedings: Guide to Case Management contained in Practice Direction 36C.

<u>Modifications to Practice Direction 27B (Attendance of Media Representatives at Hearings in Family Proceedings)</u>

13.1 In paragraph 2.1(a), after “Case Management Conferences” insert “Case Management Hearings, any Further Case Management Hearings”.

<u>Modifications to Practice Direction 27C (Attendance of Media Representatives at Hearings in Family Proceedings)</u>

14.1 In paragraph 2.1(a), after “Case Management Conferences” insert “Case Management Hearings, any Further Case Management Hearings”.

The Right Honourable Sir James Munby
The President of the Family Division

Signed by authority of the Lord Chancellor:

Lord McNally
Minister of State
Ministry of Justice

AND IN THE MATTER OF: **Child A**

BEFORE MR RECORDER GUPTA QC

1. This case returns to me after a number of months. First I had to deal with an application to separate Child A, from his Mother's care for the first time and then I dealt with an interim decision. Child A will be 2 years old soon**.** My "first judgment" was delivered on 5th April 2011 and this can be found in the bundle at [**B36**], the "second judgment" was delivered on 27/28th July, 2011 and this can be found in the bundle at [**B96**].

2. In the April 2011 decision it was with a heavy heart that I approved the Local Authority's interim care plan to remove the child from his mother's care at the *L Residential Unit*, where the parents had had a negative assessment at a cost to the Local Authority of approximately £70,000; the interim care plan was for him to live in short term foster care with extensive contact with his parents.

3. It is worthy of note that I stated at paragraph 59 of the First Judgment:

> "Recommendations: It is L's opinion, at this stage of the assessment, that neither Mother nor Father, together or separately, are able to meet Child A's needs in the long-term"

4. At that stage of the First Judgment the Local Authority did not mention 'twin track planning' in their interim care plan.

5. At paragraph 13 of the First Judgment I stated:

> "The Local Authority seek an interim Care Order and an Interim Care

> Plan, now draft 4. It does not use the phrase "twin planning". They seek to place the child in foster care, with maternal contact being about five times a week and paternal contact being about four times a week".

Although that approach was wrong in law and practice, one can see the reasons for the omission when one looks at the conclusion of the *L* report at the time: [§59] and the interim recommendations at the time of Child A's Guardian (Ms X) and the chartered clinical psychologist and Dr C the psychiatrist all of which I reproduced in my First Judgment at length. In *L* report it was stated that neither the Mother or Father together or separate can meet Child A's needs.

6. I have reminded myself of paragraph 43 of my First Judgment where I said:

> "I pause there and add, these parents really have done everything that they could possibly do to try and keep their child. They love their child and, despite their limitations, there are many positives in the care that they have shown for this child during the course of their assessment at the L Residential Unit, and no doubt these will all be set out at the final hearing."

And also paragraph 93 of my First Judgment:

> "The overall picture is of a pleasant, good woman, who is extremely vulnerable and who needs ongoing support, and I refer back to the needs and outcomes assessment quotes that I have set out in this judgment."

7. And I have reminded myself of the fact that the Mother confirmed that her 18 month relationship with the Father was over and that she wished to be assessed by herself, with the support of Mrs Y (albeit in a more hands-on role to what is being suggested now). At the time the Local Authority was unclear

about the sustainability of the separation between the parents and the practicality of assistance that Mrs Y could provide.

8. I also quote from paragraph 119 of my First Judgment:

> "The Social Worker did not really want to speak to the Care Plan. She said she was not the author of it. She had not spoken to the parents before putting in the contact proposals in the Care Plan, which were, at the time I read it, three times a week. She had not read the Guardian's report, and, as I said earlier, she did not accept readily that the Mother loved her child, but she did accept there needed to be a new assessment of the Mother now that she is a single parent."

9. The s.31 application in this case was issued on 24th November 2010 and is the type of case that under the new system would probably have been 'done and dusted' by May 2011; it is now late October 2012. I ask myself rhetorically: in view of the ECHR rights involved and the oft quoted sentiments of Lord Templeman, will there still be room in the new system for 'planned and purposeful delay' or will the statute allow for no movement- a procedural guillotine of the umbilical chord? In practice will there only be the old refuge of 'exceptionality'?" In cases where children are to be separated from their parents care -the most draconian of jurisdictions- will there not be some 'wriggle room' for a relaxation of statutory timescales, to investigate the idea that a parent might actually *evolve* in his or her parenting abilities during the proceedings. Will there be no room in the future for such magic to happen?

10. I point out here that on any criteria this case probably would not have been regarded as 'exceptional' in November 2010. I for one sincerely hope and expect that when the new recalibrated care proceedings are up and running, in practice there will be scope for proceedings like these, because what happened in Child A's case is something that must be encouraged, namely the reunification of the child with his Mother over a lengthy period of time-while still remaining within the Court's eye.

11. In July 2011 I heard the up-dated evidence from Dr C and Dr Z and it was in favour of the Mother being provided with a course of CBT and here I quote the following sections from my Second judgment, (from the 28th July 2011 hearing):

> "4. During this hearing I have heard evidence from Miss B, Dr Z (the adult psychologist) and Dr C (and adult psychiatrist). Whilst not having made up my mind, I confess that I was starting to feel uneasy about the hearing being the final hearing relating to this child because of the following. Prior to this hearing, in April, the social worker confirmed that she had only seen the mother once with the baby during a contact session, and we had never visited her in her new home – a place where she has been living independently since a date in April 2011. She said that a seven week assessment (the mother was suggesting a viability assessment) would be in Child A's time scales. Miss B also said that contact had been increased because the mother had requested it, rather than any assessment reasons, and she was not aware that the mother had been seeking therapy."

> "5. I made some critical comments about Miss B last time she gave her evidence. I continue to unimpressed by her. I have seen the contact notes. As the mother's counsel said, they are uniformly good. Despite her difficulties, the mother has been able to see her son fives time a weeks without fail. The journey is about five hours in total by bus, but I think most of the time Social Services has provided transport. When she is with Child A contact is extremely positive. I fail to see how an assessment based by the social worker on viewing one contact sessions, and remotely obtaining views from the mother's social worker Ms F, who has now filed a statement which is not too critical, could have met the expectations of this court, the guardian and the parents following the April hearing."

“6. The guardian, arguably rightly, approached the matter from Child A’s perspective. “What is the point of a further assessment if the comprehensive residential L report and the experts, Z and C, were all negative?” was the basis of her position at the outset of this hearing.

“7. On the morning of the second day, however, after reading the up-to-date material, the latter two experts gave their evidence. Dr Z stated: “My report was probably unduly negative about the mother. There are more possibilities than I thought. I would not like to say that she could not make a go of it on her own. I am now weighted towards Mother. I agree she was hindered and held back by the complexity of having the father in her life and had trouble at a care-giving level. She now has a separate place to live and I would give more weight to that. I have read her latest position statement and am inclined to agree with it. It is unfair not to give her a chance because of capacities. She has the capacity to plan and think ahead, and she has motivation. I am inclined towards her. Generally, I think she is more able than I thought she was. She seems to cope well without decompensating”. (By “decompensating” the psychologist meant the mother having florid episodes, including self-harm, and seeing issues as catastrophes.) Dr Z said that the mother, “without decompensating”, seemed to be able to deal with a number of issues. Those issues were separating from the child, pursuant to my judgment in April of this year; managing contact with Child A; separating from her partner (Child A’s father); moving into her own independent accommodation; and the stress of these ongoing proceedings, which cannot be overstated. Dr Z saw the mother’s life as having been simplified by Father’s absence, and he saw there being a definite role for cognitive behavioural therapy running alongside an assessment of the mother, although he accepted that, without Child A living with her, an assessment would necessarily be “ a bit false”. Dr Z said, “CBT does not need to be put in place urgently. A community-based assessment would be helpful. I worry about how representative it is as an assessment. Therefore there needs to be longer periods with Child A” Dr Z also outline the mother’s need for

long-term therapy to deal with the causes, rather than the symptoms of the mother's malaise. Therapy seems to have been requested by the local authority, having looked at the minutes of the Adoption Panel meeting dated 11 July, where Miss B mentioned that she proposes to request it."

"8. Dr Z read the second statement of Miss Y and he noted the positives in it, whilst at eh same time underlying her lack of objectivity which served to emphasise in my view, his objectivity all the more."

"9. Dr C then gave evidence. He concurred with Dr Z's "change of emphasis", but was more cautious about CBT being a panacea and the mother being able to access it on the NHS within a time scale which would meet Child A's needs. In this evidence he said, "I agree with DBT in the main. It is a very useful form of therapy, managing moods, but can she assimilate it, access it ultilise it? It is not a panacea, but it would improve her changes of dealing with stress. As tasks become more complex it can be more difficult to engage. The important issue is: is there somebody who can tailor it? It is a positive thing that there has been no bad reaction by the mother to the split-up with the father. There are no emotional decompensation points. She has some sense of the threat to Child A by her mother [the maternal grandmother] as she was told me that she was very clear and showed some insight. Her abilities are limited to manage her emotions, hampered by previous experiences and her IQ. She could engage with CBT if delivered appropriately and the gains assessed properly. I have nothing to add after Dr Z."

"10. I pause there. Dr C mentioned the gains being assessed properly, that is to say, 'would the mother be able to access CBT?' and, if she did so, 'has she accessed it?'"

"11. Following this oral evidence, which I have only summarised in very short form, as it has now been agreed that this has turned into an

interim hearing, the guardian put her thinking cap on and filed a document on the morning of Wednesday 27 July, which I append hereto. The local authority has reconsidered its position (albeit understandably reluctantly) and is to be congratulated on doing that. Its new position is that, rather than take up the mother's proposal of a viability assessment by Miss D or by an assessment by an independent social worker, it submits that its own family intervention team can do the job."

"19. I need crucial information to make my decision as to whether this mother can respond well to CBT and whether she is living independently in the community. To date the local authority has proved unable to assess the later and is not proposing to assess the f ormer at this stage, other than to try to speed the referral to the NHS. I see twelve sessions with Miss E and her involvement in Mr H's independent social worker report which incidentally, will cost the local around about £15 times twelve (£180) as a proportionate way of obtaining the information that I need before I make a decision about whether or not this child is to be adopted. I have no hesitation in saying that this is assessment, not simply therapy for therapy's sake. I am conscious of the burden that this order will place on the public purse and the public policy reasons that run counter to this order. But again, this is a proportionate and necessary step for me to take to determine this case. This is a way of assessing Child A and Child A's care from his mother in the future."

"23. The cost of Mr H will be approximately £3000 - 4,000 although it is difficult to say until he has seen the papers in this matter. The local authority are likely to pay about 40% of that. His hourly charges are likely to be around £50, and the community Legal Services Commission will probably be paying around £30 of that."

"25. I have carefully considered both the written and the oral submissions of Mr M who has made a valiant attempt to explain the

local authority's actions today (and indeed its inaction). But his explanation as to how the medical evidence in the past prevented the local authority's child social worker and the mother's adult social worker from carrying through the care plan of April did not add up. Nor did his explanation as to how an interim assessment based solely on positive contact sessions can result in a position where the local authority were seeking the adoption of the child. A further point, as I remind myself of paragraphs 114, 115 and 118 of my judgment of April 2011, is to ensure that justice is done and is seen to be done that I consider that the guardian's choice of assessment should be taken up at this stage. We have limited time. I do not want to expose Child A to any failings by the local authority to follow through its interim care plan of assessment which, arguably, has happened in the last few months, although I have not made a formal finding on that point."

"26. It is in Child A's best interests for there to be as little delay as possible. I have borne in mind the welfare checklist. But, as stated recently by the Court of Appeal in G v NPT [2010] EWCA 821, as no doubt agreed by all here today, all avenues must be explored before the possibility of rehabilitation is simply written off. Added to this is the concerning development evidenced by the Adoption Panel notes, namely that Dr Saunders is concerned that Child A is described as "placid and docile" and that his head has grown rapidly – a possible sign of hydrocephalus, making his future uncertain. Whilst this may mean that Child A's carers will have to be of a high standard, it may also mean that his prospects of being adopted may be deleteriously affected. There will be further evidence on this in September."

12. This case came back in front of me in November and December 2011. On the 16th of December 2012 the threshold criteria were agreed and I hereby direct that they should be attached to this judgment. By that time, one year on from the commencement of the proceedings, the Local Authority (albeit absolutely correct to start these proceedings) was cautiously optimistic about

rehabilitation. That optimism continued to the extent that on 1st February 2012 Child A was physically returned to his Mother's full time care.

13. However that did not signal the end of the local authority's concerns and it was absolutely necessary for these proceedings to continue for a further 8 months for all professionals to be able to come to a decision that despite the social services' worries, for example about hygiene and about the Mother's ability to work with them honestly in May 2012, she could in fact provide good enough care for her child.

14. The time factor is relevant again here, as what the professionals and the parents needed was for the Mother to be able to show over an appreciable period of time that she had *evolved* in her ability to care for her child. This would not have been possible in 26 weeks.

15. By the time that this matter came back before me on Monday of this week, the Guardian had filed a report supporting a Supervision order and a Residence order to the Mother, as did the independent social worker Mr H [**E700**]. I provide some quotes from Mr H's 12th September report:

> "Child A has changed a significant amount since I last saw him. In my opinion, these changes are positive and more than I would have expected [**E707**]…He presented as clean and well dressed. My assessment of The Mother's parenting from within this observation is very much the same as in my first report. [**E707**]… He appeared healthy and well cared for. He had no difficulty in approaching or communicating with her and it appears that they have a secure attachment to one another [**707**].
> It is my opinion that he should remain in her full time care with changes to the support which I have detailed below [**E708**]"

I also quote from Dr Z's 13th September report [**E712**]:

> "I understand that the rehabilitation has gone favourably rather than unfavourably. I have read the Residential Home Statement by Miss G

dated today as well as the Residential Home chronology/log with a date range of 09.05.2012 to 10.07.2012). The staff have dealt with dealt with what appear to be minor rather than significant problems and anything that looks like it might have turned into a bigger problem did not, apparently materialise. The Mother comes across both as having learned how to get the support she needed and having been cooperative"

"In risk assessment terms, I would argue that she has lied about something comparatively minor. It wasn't what I would call a typical lie, e.g. about drug or alcohol use or seeing a violent partner she wasn't supposed to see. Given that her mental health did not deteriorate after stopping Citalopram it suggests she was not wholly misguided when choosing to stop the medication"

"On balance, I do not feel there is any strong basis for changing my opinion bearing in mind my remit was to provide opinion from a psychological perspective. I am concerned that she lied but not significantly so given the subject matter of the lie and how apparently very little material difference it has made"

The CLA Review of 5th October 2012 also is worthy of quotation:

"Since the concerns that were presented from May 2012 to the Mother she has made every effort to rectify them and is working well with professionals. The Mother has done well and the concerns have lessened but the concerns remain how long this can be maintained, and the consistency at which the Mother can provide this, especially once the support has been reduced and once it is ceased [**G87**]."

16. I have scrutinised the Guardian's report, who is also an expert, she supports the return of Child A to the care of the Mother [**G84 and G87**]. Child A is generally healthy. Miss J the Health Visitor stated that all Child A's immunisations are up to date and his next immunisation will be in two years

time. At one stage if memory serves, there were concerns over the size of Child A's head. It has subsequently been found that Child A is missing a chromosome. I remain unsure what this means in practice.

17. As can be seen after concerns were raised in May 2012 the Local Authority reverted to its original plan of adoption, albeit an open one. The concern was how Child A's progress could be maintained, especially when the Mother's support is reduced or ceased [**G87**]. But the child has continued to live and it seems thrive in his Mother's care and I have seen some photographs of a bonny boy. Indeed it was not until Monday of this week that the Local authority was able to read the Guardian's report and take stock and, with a few mutterings from me, take an honest and professional decision that separating Child A again from his mother (this time permanently) was not justified in all the circumstances.

18. Recently the Mother, Mr K and his mother went on holiday to Bangor. This went wonderfully well, they enjoyed meals out together and it was a very positive experience for all [**G86**]. I understand that this was the Mother's first holiday since she was a child, which says much about the difficult life she has led.

19. What I am sure is that Child A is happy and thriving in his mother's care and that her care is supported by Child A's Father who it seems is willing to take a back seat role with regard to contact for Child A's sake. Child A's contact with his siblings is to take place six times per year.

20. I have before me a written agreement and Supervision Order care plan which I have read very carefully and which I wholeheartedly endorse. The parties have worked hard to put this in place.

21. I have considered the welfare checklist and the parties' respective human rights as well as the public policy issues. This mother has had to evolve in her parenting style under the microscopic scrutiny of many professionals. This time it is the local authority that has had to make the 'leap of faith' and I congratulate them on making it. If there are any major concerns in the next year this matter can return to me - I sincerely hope that it does not, it is about time she is left to get on with it.

END

President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Part 4 proceedings

Introduction

(1) This Guidance is issued by the President of the Family Division and applies to all care, supervision and other Part 4 proceedings commencing from the relevant start date as defined in Practice Direction 36C[1] paragraph 2.

(2) This Guidance applies to the allocation of all relevant proceedings to:

(a) magistrates, with assistant Justices' Clerks (referred to in this Guidance as legal advisers) acting as case managers in the Family Proceedings Court; or

(b) District Judges (Magistrates' Courts) in the Family Proceedings Court; or

(c) Judges in a County Court or the High Court,

until the allocation procedures for the single Family Court come into force in 2014.

(3) The purpose of the Guidance is to ensure that all new care, supervision and other Part 4 proceedings are allocated to the appropriate level of judge and, where appropriate, to a named case management judge (or case manager in the Family Proceedings Court) who shall provide continuity for the proceedings in accordance with the President's Guidance on Judicial Continuity and Deployment.

Gatekeeping teams

(4) Each Designated Family Judge (DFJ) will lead a gatekeeping team in each of the care centres that are nominated by the President to be Designated Family Centres. A gatekeeping team will consist of the Designated Family Judge, his nominated deputy, the Justices 'Clerk (or his nominated legal adviser) and an equal number of District Judges of the County Court nominated by the Designated Family Judge, and nominated legal advisers who will be identified by the Justices' Clerk in agreement with the Designated Family Judge. The number of nominated legal advisers and nominated District Judges of the County Court is to be consistent with the needs of the business and the expertise of those who are available.

(5) All applications for care, supervision and other Part 4 orders which are received for issue by 4.00 pm will be issued by HMCTS and placed before the nominated legal adviser and nominated District Judge of the County Court for their joint consideration on the next working day or as soon as possible if urgent. Local Authority applicants are to complete and submit an Allocation Proposal Form (which is annexed to this

[1] Pilot Scheme: care and supervision proceedings and other proceedings under part 4 of the Children Act 1989

guidance) when issuing proceedings. The Allocation Proposal Form is to be used by the nominated legal adviser and nominated District Judge of the County Court to record their allocation decision and reasons.

(6) A District Judge of the County Court and a legal adviser are to be available at fixed times on each weekday to allocate jointly all care and supervision proceedings that have been issued. It is recommended that if they do not sit together at a fixed time in a court list for this purpose they have a listed time for discussion between each other, for example, an hour at the beginning of the day. They will consider the file in each new application that has been issued on the preceding day and any urgent applications that are outstanding and determine whether the proceedings should be allocated and/or transferred to the Family Proceedings Court, the County Court or the High Court, and whether in the case of the Family Proceedings Court or the County Court, they should be allocated to a District Judge in accordance with the schedule to this Guidance. They will record their allocation decision and reasons on the Allocation Proposal Form. The legal adviser will make any appropriate transfer decision.

(7) Where the District Judge and the legal adviser with responsibility for allocation decide that the proceedings should be allocated to a Circuit Judge or a District Judge or a High Court Judge, the legal adviser will transfer the proceedings to the County Court and refer the allocation decision to the Designated Family Judge or his nominated deputy who will allocate the proceedings to a named Judge in the County Court or transfer the proceedings to the High Court and record the allocation decision and his reasons on the Allocation Proposal Form.

(8) The District Judge and the legal adviser with responsibility for allocation will have access to information about existing allocated case volumes in the Family Proceedings Court and in the County Court to help inform allocation decisions as well as information about when and where Case Management Hearings can be listed. In a case issued in a Family Proceedings Court, when the allocation decision has been made, the legal adviser, or if proceedings are issued in the county court or the High Court, the District Judge will issue the Standard Directions on Issue and Allocation in accordance with the revised PLO together with any appropriate Transfer Order and Notice of Hearing. The unified family administration will notify by e-mail the relevant local authority of the date, time, venue and identity of the allocated case management judge (or case manager) for the Case Management Hearing and will list the Case Management Hearing before an identified case management judge or case manager in accordance with the guidance of the DFJ and the allocation and transfer decisions that have been made.

(9) If the District Judge and the legal adviser with responsibility for allocation cannot agree or they require further guidance, they must refer the allocation decision to the Designated Family Judge or his nominated deputy. The Designated Family Judge may make the allocation decision jointly with or may take advice from the Justices' Clerk or his nominated deputy having regard to whether the proceedings have been

transferred.

(10) An allocation decision made by the District Judge or the legal adviser with responsibility for allocation does not prevent the possibility of a party to the proceedings making a subsequent application for transfer of the proceedings or for a review of the decision.

(11) If a care or supervision application is issued by a local authority as "urgent" with a request for an early hearing to authorise the removal of a child and permission to abridge time to serve the parties, the application for expedition and any consequential directions will be considered by the District Judge and the legal adviser with responsibility for allocation. These are exceptional cases which may include newborn babies who are about to be discharged from hospital where the issue of care and supervision order applications is part of planned pre-proceedings involvement with the family. In all other cases where there is an identified real and immediate safety risk to the child, the expectation is that an application will be made for an Emergency Protection Order. This Guidance does not affect the existing procedures for dealing with Emergency Protection Order applications.

(12) The Designated Family Judge shall monitor the allocation and gatekeeping process with a consultation group comprising: a Circuit Judge, a District Judge of the County Court, a District Judge (Magistrates Court), the Justices' Clerk or his nominated deputy, a legal adviser and two members of the administration in the Designated Family Centre. The consultation group will meet at least once a month to identify any allocation questions upon which the advice of the Designated Family Judge or the Family Division Liaison Judge is required to ensure that there is consistency of allocation, effective use of resources and the identification of specific questions, the answers to which will be used as local guidance by the District Judges and the legal advisers with responsibility for allocation.

Principles

(13) Allocation decisions must continue to be made in accordance with the Allocation and Transfer of Proceedings Order 2008; the Practice Direction – Allocation and Transfer of Proceedings 3rd November 2008; and the Family Proceedings (Allocation to Judiciary) Directions 2009.

(14) This Guidance identifies criteria which are intended to be consistent with the above Orders and Directions and the decisions of superior courts.

(15) This Guidance is intended to reflect the wide variation in the level of experience and expertise in the family courts. Cases should be allocated to judges or magistrates and case managers with the appropriate level of experience to ensure that judicial resources are used most effectively. In determining allocation, judicial continuity is an important consideration and the President's Guidance on Judicial Continuity and Deployment is to be followed.

(16) While the Family Proceedings Court remains separate, the allocation of proceedings is a matter for the gatekeeping team under the guidance of the Designated Family Judge (The aim is that when provisions for the single family court come into force no distinction will be drawn between proceedings which may be heard by District Judges of the County Court and District Judges (Magistrates Courts)). There is an expectation that District Judges will assume personal responsibility for all case management hearings in proceedings allocated to them in accordance with the President's Guidance on Judicial Continuity and Deployment.

(17) In determining allocation, regard should be had to the judicial and HMCTS resources available in each court and the needs of the parties to ensure that cases are listed before the appropriate level of judge with the minimum of delay, so that all proceedings are heard within the Timetable for the Child and within a maximum of 26 weeks or any extended timetable for the proceedings directed by a case management judge.

Allocation Guidance

(18) Subject to the guidance given below, all care, supervision and Part 4 proceedings may be heard by any judge, or magistrate who has been authorised or nominated to conduct care and supervision proceedings and may be case managed by any judge or legal adviser who has likewise been authorised or nominated.

(19) Proceedings described in the schedule to this Guidance are not to be allocated to magistrates or the legal adviser acting as their case manager unless specifically approved by the Justices' Clerk (or his nominated deputy) in consultation with the Designated Family Judge. There is an expectation that magistrates will not hear any contested hearing where the ELH is in excess of 3 days without the same having been approved from time to time by the Justices' Clerk (or his nominated deputy) in consultation with the Designated Family Judge.

(20) Proceedings described in Part 1 of the schedule to this Guidance may be allocated to a District Judge of the County Court, a District Judge (Magistrates' Court) or a Recorder.

(21) Proceedings described in Part 2 of the schedule to this Guidance are to be allocated to a Circuit Judge or Recorder or to a Judge sitting in the High Court and are not to be allocated to a District Judge of the County Court or a District Judge (Magistrates' Court) unless specifically released by the Designated Family Judge or one of his nominated deputies.

(22) Proceedings described in paragraph H of part 2 of the schedule to this Guidance are to be transferred and allocated to a Judge of the Family Division of the High Court. On the commencement of legislation relating to the single Family Court these proceedings are likely to have to be issued in the High Court, not the Family Court.

Schedule to the Allocation and Gatekeeping Guidance	
Part 1	Part 2
A) Risk assessment issues (1) Allegations or risk of a) serious physical or sexual abuse causing or likely to cause significant injury to the relevant children, and/or b) serious sexual abuse of the relevant children	A) Risk assessment issues (1) Allegations of physical or sexual abuse which involve any of the following features: • Exceptional gravity in relation to the acts alleged or the nature of the harm suffered • Where there is, or is likely to be, conflicting expert opinion from more than two expert witnesses on any key issue • Shaking injuries involving retinal haemorrhage/ brain injury/ fractures • Complex medical questions involving novel issues or the determination of causation
(2) Allegations of serious domestic violence eg. causing significant injury particularly if witnessed by the child	(2) Allegations of extremely serious domestic violence or rape, particularly if witnessed by the child
	(3) Risk of serious physical or emotional harm arising from – • Death of another child in family, a parent or other significant person • A parent or other significant person who may have committed a grave crime e.g. murder, manslaughter or rape
(4) Significant disputed issues relating to psychiatric illness of a parent and/or a child	

	(5) History of suspicious death of a child in the family
(6) Significant disputed medical issues relating to the relevant child	(6) Complex medical issues, including medical causation issues and medical treatment issues including where any of the parties suffer from psychiatric illness or psychological issues or any significant disability such as profound deafness, blindness or learning disability, or which will require specialist knowledge and services in respect of parenting capacity or the needs of the children
<u>B) Unusual/Complex issues relating to ethnicity or religion</u> None	<u>B) Unusual/Complex issues relating to ethnicity or religion</u> (7) Significant contested issues in respect of religion, culture or ethnicity or involving medical treatment relating to the same
<u>C) Non-subject child as a party (particularly if under 16)</u> (8) Where a child may be required to give evidence.	<u>C) Non-subject child as a party (particularly if under 16)</u> (8) Where children (including parents who are under the age of 18) are, or may be, required to give evidence and be joined as a party
<u>D) Capacity issues</u> (9) Where there is a need for the Official Solicitor or another litigation friend to represent the interests of an incapacitated adult	<u>D) Capacity issues</u> (9) Where there is a need for the Official Solicitor or another litigation friend to represent the interests of more than one incapacitated party

E) Real possibility of conflict of expert evidence or difficulty in resolving conflict in the evidence of witnesses (10) Where there is an identified need for no more than two expert witnesses to report on the same key issue(s)	E) Real possibility of conflict of expert evidence or difficulty in resolving conflict in the evidence of witnesses (10) Where there is an identified need for more than two expert witnesses to report on the same key issue(s)
F) Novel or difficult point of law None	F) Novel or difficult point of law (11) Where the case involves a difficult point of law, issues of public policy or unusually complex or sensitive issues (12) Allegations of serious abuse where there are, or are likely to be, criminal proceedings and consideration of issues regarding disclosure of information or public interest immunity (13) Complex issues as to disclosure – where a party seeks leave to withhold information from another party, or where there is an issue about the release of confidential information involving a difficult point of law, or where disclosure of documentation involves a difficult or sensitive exercise of discretion or public policy issues (14) Where there are concurrent criminal proceedings in the Crown Court relevant to the issues between the parties and joint directions hearing(s) may be required. (15) Cases not in category H below, but which have significant immigration/status issues.

G) Existing proceedings relating to the child or a sibling which are proceeding before another court or have been recently completed before another court (16) Consideration must be given to listing the current proceedings before the judge who heard or is hearing the proceedings relating to the child or sibling in order to provide continuity.	G) Existing proceedings relating to the child or a sibling which are proceeding before another court or have been recently completed before another court (16) Consideration must be given to listing the current proceedings before the judge who heard or is hearing the proceedings relating to the child or sibling in order to provide continuity.
International Proceedings	H) High Court Reserved Jurisdictions International Issues (17) There is an issue concerning placement for adoption of the child outside the jurisdiction (18) Proceedings with an international element relating to recognition or enforcement of orders, conflict or comity of laws or which have exceptional immigration / asylum status issues
(19) Cases in which placement is limited to temporary removal to a Hague Convention country.	(19) Cases in which an application is made for (a) permanent placement or (b) temporary removal from the jurisdiction to a non-Hague convention country;
	20) Cases in which a child has been brought to this jurisdiction in circumstances which might constitute a wrongful removal or retention either from a EC Member State, a Hague Convention

	country (a contracting State to the 1980 Hague Child Abduction Convention and/or a contracting State to the 1996 Hague Child Protection Convention) or a non-Convention country; (21) Cases in which a child is alleged to have been abducted overseas and applications have been made in this jurisdiction such as for a declaration that the child was habitually resident in this country prior to the abduction or for an order that the child be returned with a request for assistance etc; and (22) Cases in which Tipstaff Orders are applied for.
	<u>Inherent Jurisdiction</u> (23) Injunctions invoking the inherent jurisdiction of the court (24) Interim or substantive relief which requires the inherent jurisdiction of the High Court to be invoked. <u>Other</u> (25) Applications for Declaratory Relief (26) Applications which require the jurisdiction of the Administrative Court to be invoked (27) Issues as to publicity (identification of a child or restriction on publication or injunctions seeking to restrict the freedom of the media)

	(28) Applications in medical treatment cases e.g. for novel medical treatment or life saving procedures
I) Other case management issues (29) Where a "split hearing" or finding of fact hearing is necessary and judicial continuity cannot otherwise be ensured	I) Other case management issues (29) Where a "split hearing" or finding of fact hearing is necessary and judicial continuity before a District Judge cannot be ensured
	(30) Where possible local authority failures to progress plans to protect the child(ren) in the case are likely to be addressed critically by the court because it is alleged that there has been systemic failure in the proceedings and other proceedings

PUBLIC LAW OUTLINE
ALLOCATION PROPOSAL

PART 1 – to be completed by the applicant Local Authority on issue
PART 2 – to be completed by the Allocation Judges

PART 1 (To be completed by Local Authority)	
Court:	
Applicant:	
Names and ages / dob of children:	
Names of parents or proposed parties:	
REASONS FOR ALLOCATION AND TRANSFER	
Judicial continuity – provide Case Number, name of judge & date of last relevant order and whether proceedings have finished or are outstanding:	
Interpreter(s) required (state which party and language(s)) and any special measures:	
Applicant's Allocation Proposal **Applicable paragraphs of the schedule to the President's Guidance on Allocation and Gatekeeping:**	*(Delete as appropriate)* [Case Manager & Magistrates] [District Judge (Magistrates Court)] [District Judge in the County Court] [Circuit Judge in the County Court] [DFJ / section 9 sitting as a Judge of the High Court] [High Court Judge]
PART 2 (To be completed by the Court)	
Allocation decision and reasons	• Case Manager & Magistrates in the Family Proceedings Court • District Judge (MC) in the Family Proceedings Court • Transfer to County Court for allocation to a District Judge • Transfer to County Court for allocation to a Circuit Judge • Transfer to the County Court for consideration of transfer to the High Court
Listed for Case Management Hearing [insert time & date] before [Name Court or Judge}	

Allocation Judge: District Judge _____ &

Legal Adviser _____

Date:

FAMILY ORDERS PROJECT

HOUSE RULES

1. The prescribed body of standard orders shall take effect on the date fixed for opening for business of the Family Court.

2. All orders made by the Family Court shall be in the standard forms for non-children and private children cases, as appended below. Specific variants will be devised and used for (among other cases), child abduction orders, forced marriage orders, public law orders, tipstaff orders, freezing and search orders, and Part IV FLA 1996 orders.

3. Where the order is made in the High Court in respect of a reserved matter the standard forms shall be used also, save that the name of the court shall be changed to The High Court of Justice, Family Division, Principal (or *[place]* District) Registry.

4. In a non-children case the order shall express the title of the case as

    a. The Marriage of XX and YY, or
    b. The Civil Partnership of XX and YY, or
    c. The Relationship of XX and YY, or
    d. The Family of XX and YY,

5. An order shall state in its heading the statute(s), or European Regulation(s), or Protocol under which the powers in question are exercised. It shall not state that the inherent powers of the court are being exercised.

6. Where a party was represented by an advocate, that advocate shall be named on the face of the order.

7. The order shall not recite the documents which the court read, or the witnesses who were heard, save in a case where an order is made without notice, in which case the details shall be recorded in a recital.

8. Where an order is made without notice the reason for withholding any notice must be recorded in a recital. Where an order is made on short notice the reason for withholding full notice must be recorded in a recital.

9. Parties:
    a. The parties shall be specified in the first paragraph of the order.
    b. The applicant for the relief in question shall be referred to in the order as the "applicant"; and the respondent shall be referred to as the "respondent". The parties shall **not** be referred to by their titles in the main suit (i.e. petitioner and respondent) save in respect of orders made in the main suit.
    c. Children shall be referred to by their first forename and surname.
    d. The children's guardian shall be referred to as "the guardian".

e. Other parties shall be referred to as first respondent, second respondent etc

10. If a party acts by a litigation friend or a child by a children's guardian this must be stated in the first paragraph of the order.

11. An order shall be consecutively numbered from 1 irrespective of whether the paragraph in question concerns a definition, recital, agreement, undertaking or order. Schedules, Annexes or Appendices should not be used unless their content is of very great length and would, if placed in the body of the order, disrupt its natural reading. An example would be an elaborate and very lengthy sequence of tax and other financial indemnities given in a financial remedy case.

12. Subparagraphs, to two levels only, are permitted and shall be numbered (a),(b) etc, then (i), (ii) etc (with or without brackets).

13. Every order shall begin with a definition paragraph of terms used in the order. Abbreviations may be used.

14. Grammatical modality:
    a. The following grammatical modality shall be used for imperative verbs: "The respondent shall pay/transfer etc"
    b. The following grammatical modality shall be used for prohibitory verbs: "The respondent must not remove/ transfer/molest etc".

15. For the purposes of capitalisation the following style (consistent with the use in the FPR 2010) shall be used uniformly in respect of the judiciary, the courts, and legal representatives:

High Court judge
circuit judge
district judge
court
Court of Appeal
High Court
Family Court
county court
magistrates' court
counsel
leading counsel
solicitor
petitioner
respondent
applicant
appellant
intervener
party/parties

16. An obligation to do an act as provided for in an order shall be taken to include causing the act to take place. Thus the phrase "or cause to be paid", shall not be included in an order.

17. An obligation to do an act within a specified period shall state the actual date and time by which the act must be done.

18. Dates shall be specified without ordinal possessives and must use the full name of the month and the year in full form e.g. 17 May 2013 and not 17th May 2013 or 17/5/13 or May 17th, 2013 or "this 17th day of May 2013". Times must be stated using the 24 hour format e.g, 17:00 or 12:00, not 5pm or noon.

19. Distances should be specified metrically up to 1,000 metres. Beyond that distance either system, statute or metric, may be used.

20. Monetary sums shall be denoted numerically, save that for sums expressed in millions the abbreviation "m" may be used. Other variants e.g. "M" or "millions" should not be used. Currencies shall be expressed by the usual symbols. Thus, for example, £, €, US$ and A$ should be used, not GBP, EUR, USD and AUD.

21. The body of orders should always be prepared in Times New Roman Font, 12 point, with single spacing. Justification should be used.

22. Although not grammatically pure the plural pronoun "their" should be used in a singular sense instead of "his or hers".

23. Clear English (or Welsh in the Principality) should be used at all times. Archaic legal language ("the party of the first part", "hereinabove", "heretofore" etc) should be avoided.

Issued 1st July 2013

In the Court Case Number:
Sitting at [*place*]

:

The Children Act 1989. Annex to PD 36C (Revised Public Law Outline from 1st July 2013)

THE CHILDREN
[*Please add a separate sheet if more than 4 children*]

Name	**Girl/boy**	**Date of Birth**

DIRECTIONS ON ISSUE AND ALLOCATION OF PROCEEDINGS [*date*]

HHJ/DJ/AJC[name of judge] [*date*]

1. [*Name of local authority]has made an application on* [date] for [*specify Part 4 application*] supported by the following Annex[1] documents:

[ ] Social Work Chronology
[ ] Social Work Statement and genogram
[ ] The current assessments to which the Social Work Statement refers and on which the LA relies
[ ] Threshold Statement
[ ] Care Plan(s)
[ ] Allocation Proposal Form
[ ] Index of Checklist Documents

The proceedings have been referred to an assistant Justices' Clerk and a District Judge for allocation and directions upon issue and the court has considered the papers in the absence of the parties or their legal representatives

THE COURT ORDERS:-

2. The proceedings are transferred to the [***name Court]*** and listed for a **Case Management Hearing *on* [*date]* at [*time*].** ELH 1 or 1.5 or 2 hour(s) [*delete as appropriate*]. The parties and their representatives are directed to attend court by [*time*] for pre-hearing discussions.

3. [The proceedings are allocated for case management to [*name of case manager/case management judge if allocated]]*

[1] as specified in the Annex to the Application Form C110A which are to be attached to that form and filed with the court.

4. A children's guardian [(*name if available*] shall be appointed for the child[ren].

[*or*]

A children's guardian will not be allocated in time to appoint a solicitor and [*solicitor's name of firm*] is appointed as solicitor for the child[ren]
[*delete as appropriate*]

5. [The local authority having indicated it wishes to apply for an interim care order [and to remove the child(ren)], the parties are directed to discuss whether the hearing will be contested and if so the length of the hearing, and the local authority shall inform the court in writing by [time/date of the agreed or different positions of the parties.]

6. The local authority shall serve on all parties [and name of any other person] by [*time and date to be by day 2 unless court considers appropriate to direct otherwise*]
(a) The Application Form and Annex Documents filed with the court; and
(b) [any other document(s) specified by the court]

7. The local authority shall file and serve on all parties [and name of any other person] the following Annex Document(s) which have not been filed with the application [

[ ] Social Work Chronology by [*time and date*]
[ ] Social Work Statement and genogram by [*time and date*]
[ ] The current assessments to which the Social Work Statement refers and on which the LA relies by [*time and date*]
[ ] Threshold Statement by [*time and date*]
[ ] Care Plan(s) by [*time and date*]
[ ] Allocation Proposal Form by [*time and date*]
[ ] Index of Checklist Documents by [*time and date*]

8. The solicitor for the child(ren) shall arrange an Advocates' Meeting no later than 2 clear days before the Case Management Hearing

9. The local authority shall draft the Case Management Order in the prescribed form and file it with the court by [*time and date*]

10. The local authority shall file and serve its Case Summary in the form directed by the Designated Family Judge by [*time and date*]

11. The child(ren)'s solicitor shall file and serve by [*time and date*] a Case Analysis[2] document prepared by the children's guardian for use at the Case Management Hearing

[*or*]
[The children's guardian shall be in a position to present orally a Case Analysis at the First Case Management Hearing]

[2] Defined in paragraph 7 Annex to Practice Direction 36C: Pilot Practice Direction 12A Care, Supervision and other Part 4 Proceedings: Guide to case management.

[*delete as appropriate*]

12. On the basis that there is evidence of incapacity, the Official Solicitor is invited to act in these proceedings as the litigation friend on behalf of [*name*]

13. The parents shall each file and serve a Parents' Response[3] document by [*time and date prior to the Advocates' Meeting for the Case Management Hearing*]. If the parents are jointly represented, they shall instead file and serve a joint response by this time.

14. The representative of any party seeking disclosure from any agency shall inform the other parties and shall obtain any available consent[4] to such disclosure and if necessary shall file and serve an application for disclosure by [time and *date prior to the Advocates' Meeting for the Case Management Hearing*]

15. The representative of any party who intends to make an application for permission to rely on expert evidence under Part 25 shall file and serve an application by [time and *date prior to the Advocates' Meeting for the Case Management Hearing*]

16. No document other than a document specified in these directions or in accordance with the Rules or the Practice Direction shall be filed by any party without the court's permission.

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[3] Defined in paragraph 7 of Annex as 2 above

[4] For example, from parents to disclosure of their medical records, or consent from an agency to provide information without the need for a court order

In the Court [*specify if Family Drug and Alcohol Court*][Case No]
Sitting at [*place]*

The Children Act 1989
The Adoption and Children Act 2002
The Family Law Act 1996
[*Delete as appropriate*]

THE CHILDREN
Please add a separate sheet if more than 4 children

Names	Gender	D.o.b.	Placement**

[DRAFT] Case Management Order no [*sequential number in these proceedings*]

HHJ/DJ/ AJC Sitting in open court/private [*date*]

After reading the materials filed, which are described in an index/record of hearing

1. THE PARTIES

The Applicant local authority is [*name*]
The first respondent (mother) is [*name*]
The second respondent (father/father of ……) is [*name*]
The third respondent(s) is/are (the children) by their children's guardian [*name*]
The first intervener is [*state relationship to child(ren) or other party*] *is* [*name*]

2. THE REPRESENTATIVES AT THIS HEARING

The parties are represented as follows

Party/Name	Name of counsel/solicitor/advocate	Contact telephone and email address
Applicant		
Respondents: (1) (2) (3)		
Other (specify)		

And the following parties are in person

** Use the appropriate code from the attached tables

Party/Name	Contact details

The names set out in paragraph 1 are not to be disclosed in public without the permission of the court.

3. ALLOCATION

The proceedings are today/continue to be allocated to Mr(s) Justice/HHJ [*sitting as a s.9 judge*]/District Judge (Magistrates' Courts)/AJC

4. THE APPLICATION(S)

The local authority has applied for a care order/supervision order/other Part 4 order [*specify*] *today/on date*]

[*Other applications*]

The [*state party*] has applied for [ ] [*today/on date*]

5. TODAY'S HEARING

1. Today's case was listed for: [**]
2. Today's hearing has been [EFFECTIVE][CANCELLED][RE-LISTED][ADJOURNED]
3. The reason why the hearing has been adjourned/re-listed is: [**]

6. THE TIMETABLE FOR THE PROCEEDINGS

The timetable for the proceedings is 26 weeks

Or

The proceedings cannot be completed within 26 weeks, but are to be completed within [ ] weeks or by [date]

And/or

The timetable for the proceedings for one or more of the children has changed at this hearing

reason:

A period of longer than 26 weeks is required in order to resolve the proceedings justly because:[ ]

or

the timetable for the child/children require that a period of longer than 26 weeks is required because: [ ]

or

The proceedings are delayed because:[ ]

The next hearing is a [**] on [date and time] at [court] with a time estimate of [ ]

7. TIMETABLE FOR THE CHILD(REN)

The key dates and events in the Timetable for the Child(ren) are:

The Child	Event/permanent placement	Dates

** Use the appropriate code from the attached tables

8. THRESHOLD

The s.31 threshold for the making of orders is agreed/in dispute/in dispute subject to concessions which have been made. [*the threshold agreement/the threshold concessions is/are annexed to this order]*.

9. THE KEY ISSUES IN THE CASE ARE:

a)	
b)	
c)	
d)	

10. THE PARTIES' POSITIONS:

11. IDENTIFICATION OF PERSON(S) TO BE ASSESSED AS POTENTIAL ALTERNATIVE CARER(S)

The parents have identified all family members they wish to be assessed and the court has explained to them that any persons identified by them in the future may not be assessed due to the delay not being consistent with the timetable for the child.

The person(s) identified by the mother are [*name(s)*]

The person(s) identified by the father are [*name(s)*]

THE COURT ORDERS

12. EXPERTS

1. An application [was][was not] today made for the instruction of an expert.
2. The application [was][was not] granted.
3. The type of expert whose instruction was [allowed][refused] by the court [is**]
4. The date by which the report is due is:

The report of an expert is necessary to assist the court to resolve the proceedings because [ ]

Repeat if more than one expert

13. OTHER ORDERS

For example:
Transfer/allocation
Joinder of additional party/ies
Assessment of others
Consideration of whether the child(ren) should give evidence
Special measures/interpreters/disclosure
Paternity/drug/alcohol testing
Timetable for evidence to be filed including the care plan
Further case analysis
Directions for proposed concurrent placement order proceedings
Disclosure to the Independent Reviewing Officer
Contact
Making/renewing Interim care Orders/

** Use the appropriate code from the attached tables

Advocates' meetings

14. CASEOUTCOME

A [set out type of order] was made today in respect of [name of child] *Repeat for each child or state 'all' if appropriate*

15. OTHER

1. No document other than a document specified in this order or filed in accordance with the Rules or any Practice Direction shall be filed by any party without the court's permission.
2. Any application to vary this order or for any other order is to be made to the allocated judge on notice to [ ] all parties.

16. COMPLIANCE WITH DIRECTIONS

All parties must immediately inform the Court/Court Officer on *[contact telephone / e-mail]* if any party or person fails to comply with any part of this order.

Court address: for filing/communication

1. Type of Placement

Type of Placement for children	
1.	Not removed– At home
2.	Not removed– In RPaCA placement (*a residential assessment with parent)*
3.	Not removed– In community placement
4.	Removed- To kinship placement
5.	Removed- To foster care
6.	Removed- To potential adoptive placement
7.	Reunification- Assessment placement with parent
8.	Reunification- Assessment placement with kinship placement
9.	Complex needs- In a specialist placement including hospital

2. Type of Hearing

PLO Stage	
Case management Hearing (CMH)	Other - Fact Finding
Further Case Management Hearing (FCMH)	Other - Directions Review
Issues Resolution Hearing (IRH)	Other - Interim Care Hearing
Final Hearing (FH)	Other - s38(6))

3. Reasons for Adjournment

Please list the **ONE** reason which best explains why the hearing has been adjourned.

Reason for Adjourned Hearing	
Local Authority	LA1 - No/poor pre-proceedings preparation by LA, other than (core) social work assessment of the family
	LA2 - No friends/family identified before the hearing by LA
	LA3 - No/poor kinship assessments by LA
	LA4 - No expert instructed by LA
	LA5 - No/poor/late (core) social work assessment of the family by LA
	LA6 - New social work report/assessment required following a change in circumstances
	LA7 - No timetable for the child LA8 - New/alternative care plan
	LA8 – No/poor/late/new/care plan
	LA9 - Placement order proceedings delay
	LA10 - No/poor placement evidence by LA
	LA11 - No threshold document
CAFCASS	CA1 - CAFCASS not allocated/present
	CA2 - No/poor CAFCASS analysis
Lawyers	LW1 - Lawyers not instructed, present or ready, party or witness fail to attend
	LW2 - No key issue analysis
	LW3 - No/poor parental evidence
HMCTS	HM1 - No courtroom available
	HM2 - No special measures
	HM3 - Interpreter not available

** Use the appropriate code from the attached tables

Judiciary	JU1 - Lack of judicial continuity
	JU2 - Insufficient time listed or to complete hearing
LSC	LS1 - Prior authority from LSC not available
	LS2 - Other legal aid
Official Solicitor	OS1 - Official Solicitor not instructed/ready
Experts	EX1 - Late expert report/assessment/ Poor expert report/assessment
	EX2 – New expert report/assessment required following a change in circumstances
Health	HE1 - No/poor medical records etc from other agency
Crime	CR1 - Police disclosure/documents incomplete/not available
Other	OT1 - Case transferred
	OT2 - Need for an interim contested hearing
	OT3 - Other non compliance with directions
	OT4 - Consolidation with other family proceedings
	OT5 - Parallel proceedings
	OT6 - New baby/pregnancy
	OT7 - New Party joined
	OT8 - Immigration and international difficulties
	OT9 - Severe weather
	OT10 - Industrial action

4. Instruction of Expert

Please list all that apply.

Expert Code		
A – Paediatric	E – Multi-Disciplinary Assessment	Psychological Report J1 – Clinical – Child(ren) only J2 – Educational – Child(ren) only J3 – Parent(s) only J4 – Parent(s) and Child(ren)
B – Paediatric Radiologist	F – Independent Social Worker	
C – Other Medical Report	G – Paediatrician	
Family Centre Assessment (Parenting Skills): D1 – Residential D2 –Non-Residential	Psychiatric Report: H1 – Parent(s) alone H2 – Child(ren) and Parent(s) / carer(s) H3 – Psychiatric Report – Child(ren) alone	K – Other Expert Report

** Use the appropriate code from the attached tables

Care application under the revised PLO

(Populated version)

Alice Smith: Age 4

N.B. For sibling groups, use each child's picture on this page. The local authority must obtain consent if it does not have parental responsibility.

Contents page

1. C110A application form

For those submitting a court application:

- The annex documents must be submitted with the C110A application on Day 1 and should be sent electronically to Cafcass
- The checklist documents should be available for parties by Day 2 but not filed with the court
- 4 copies of this booklet need to be produced filed/served
- Each box in the template is expandable to allow for the responses by other parties to be entered below the local authority's statements

Link to the link to the C110A form:

http://hmctsformfinder.justice.gov.uk/courtfinder/forms/c110-eng.pdf

2. The order/s sought and why

2.1 <u>The order/s sought:</u> The local authority seek a Care Order and a Placement Order to enable a planned fostering for adoption placement to go ahead in Alice's best interests.

<u>Succinct summary of reasons</u> <u>with reference as appropriate to the Welfare Checklist:</u>
The local authority contends that neither of Alice's parents can meet her needs, singly or together, and that her physical, emotional and educational needs are increasingly being unmet. Her ascertainable wishes and feelings show unhappiness at home. Specialist assessments show that her development is being adversely affected on many levels, with her symptoms worsening in recent months.

2.2 <u>Previous court orders and emergency steps (includes this child, any previous children and all relevant civil and criminal orders)</u>

May 2011: 5 days s20 care at the request of Ms Smith.

November 2012: Alice taken into police protection twice after being found wandering alone several streets away from her home. On both occasions, she was returned to the care of her mother.

2.3 <u>Responses from other Parties</u>

-
-
-

3. Case details

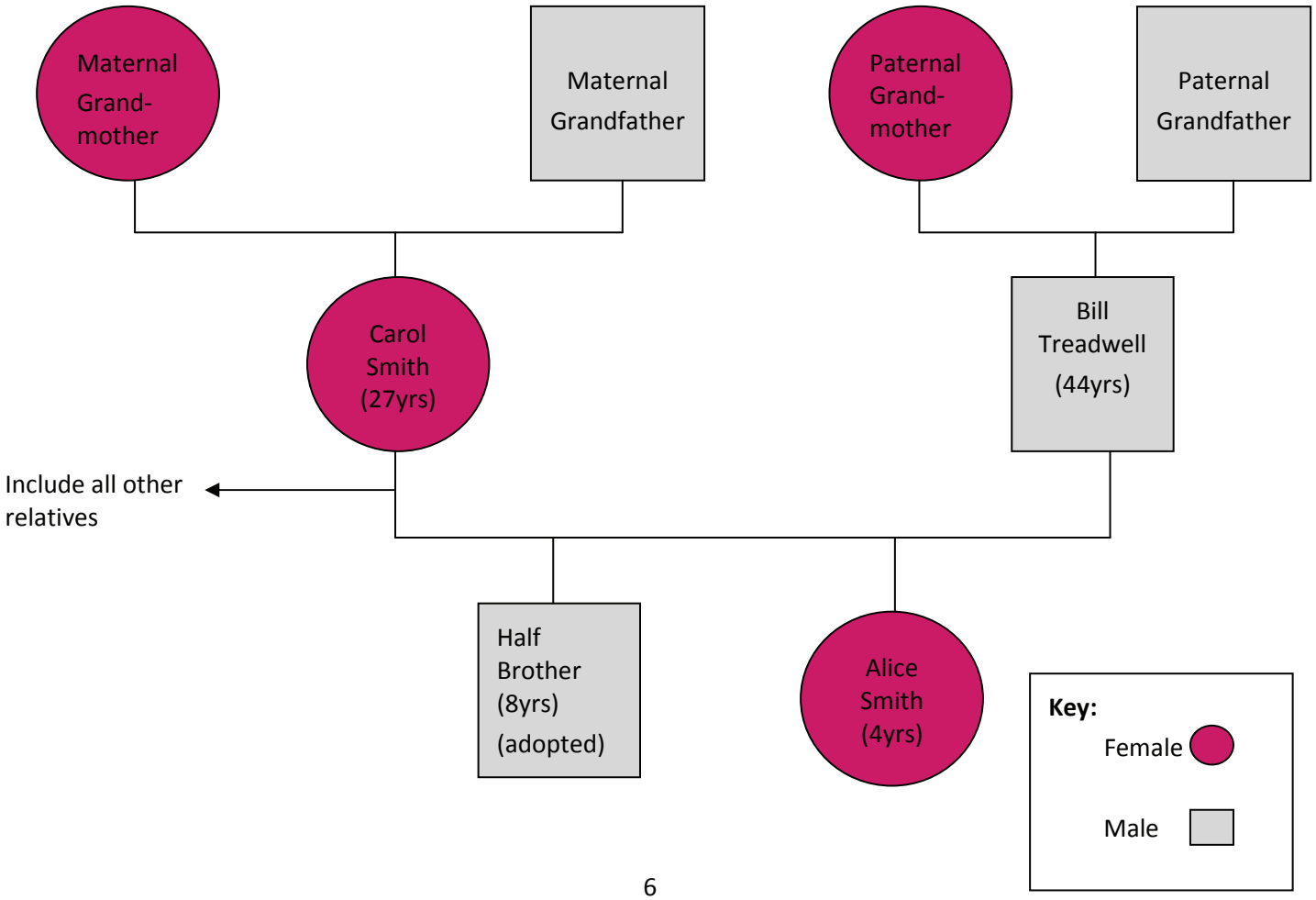
3.1 The family composition is:

(Please set out the family members' full names, their dates of birth and their current addresses)

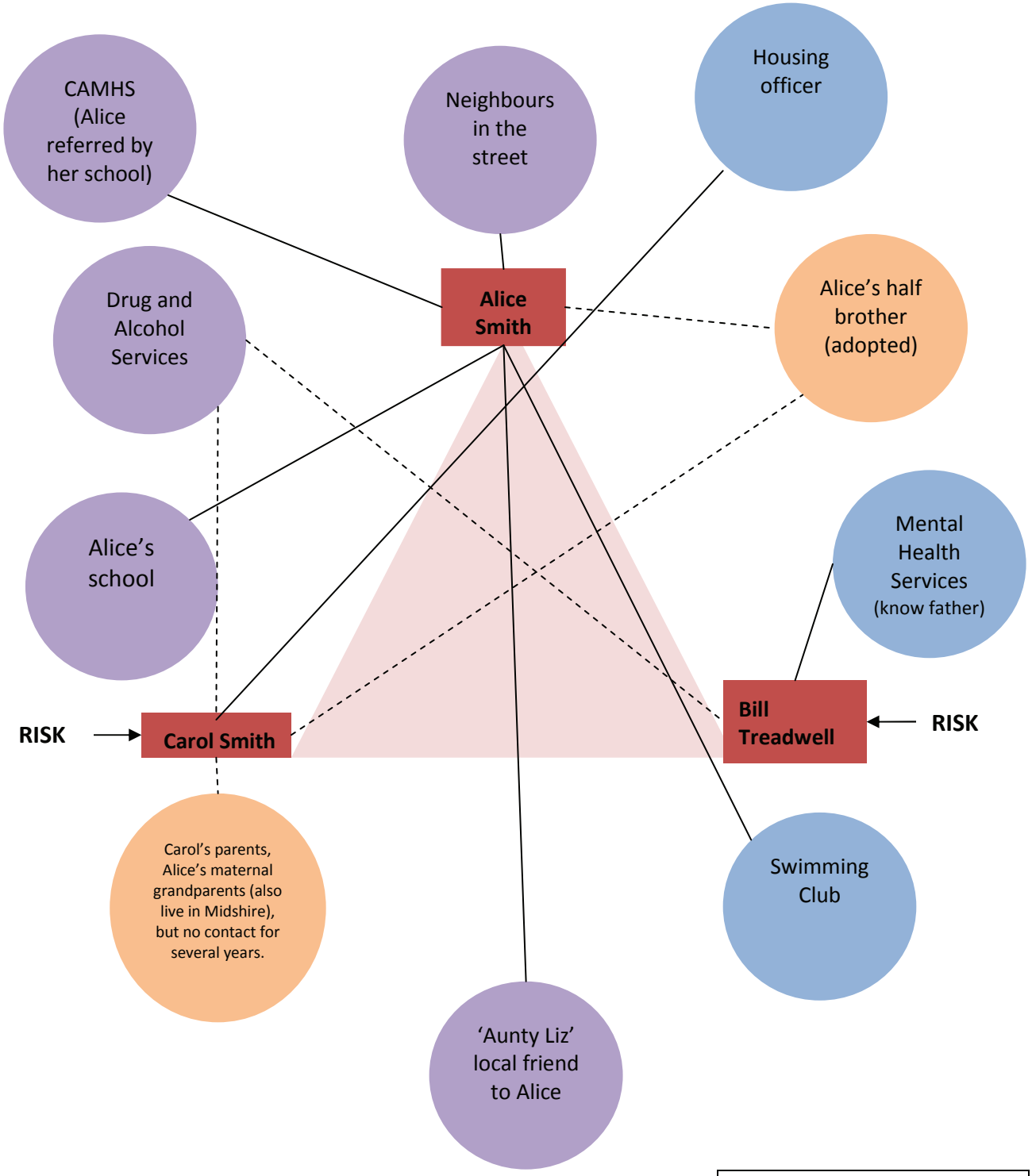
NB Should include family members and relationships, especially the primary carers and significant adults/other children

Name	Relationship	Parental Responsibility	DOB	Ethnicity	Address
Alice Smith	Subject		8/2/09 (4 yrs)	Scottish Caribbean	Midshire
Carol Smith	Mother	Yes	15/3/86 (27 yrs)	Scottish	
Bill Treadwell	Father	No	30/9/69 44 yrs	British Caribbean	
Alice's half brother	Adopted	Adopted parents	8yrs	N/A	N/A

3.2 Genogram (Include significant extended family members)



4. Ecomap (risky and protective contacts)



Key	
	Active
--------	Inactive
	Risky
	Protective
	Significant and neutral
	Significant and no contact

5. Threshold criteria and statement

NB The court may require a schedule of proposed findings if the threshold statement is contested or in certain circumstances. Set out the major issues affecting the child.

5.1 Summary of children's services involvement (cross-referenced to the chronology)

Alice has been neglected for at least the last two years due to her parent's crack addiction. This has resulted in several incidents of her being left alone, including being found three times in the street some distance from home on her own. On another occasion, her father admitted to punching her on the arms and legs during what was later diagnosed as a potential drug-induced psychotic episode. The local authority and mental health services have offered a mix of casework and crisis services, and formal child protection planning, throughout Alice's life. Professional concern has increased during recent months. The local authority thinks the current circumstances are no longer tenable for Alice and propose to move her to a fostering for adoption placement which has been identified.

5.2 Previous assessments, including any specialist assessments

November 2009: Initial assessment (attached)
March 2011: Core assessment, including an assessment of parenting capacity (attached).
2010 – ongoing: Psychiatric assessments of Mr Treadwell (2 attached).
2009-2013: Continuous social work risk analysis by 3 social workers.
2013: Child development assessment of Alice concludes she is developmentally delayed (emotional) and is not able to learn at school because of her sense of 'permanent unease' (attached)

5.3 Summary of significant harm and or likelihood of significant harm which the LA will seek to establish by evidence or concession

Alice has been exposed to risk on a number of occasions. Each of the individual occasions could have been life threatening. Her care has been poor throughout her life and the local authority assesses that the threshold of significant harm is being met in the following ways:

- Physical harm from her father, from drug-induced violence
- Physical and emotional neglect from both her parents, resulting in significant developmental delay which acts as a block on learning at school
- Physical harm from access to drugs which are not kept out of her reach
- Alice was found wandering in the street on two occasions some way from home
- Alice is increasingly out of control as a result of parental preoccupation with a lifestyle revolving around drug misuse

5.4 Any precipitating events

-
-
-

6. Chronology of significant events

DATE	EVENT/INCIDENT/SEQUENCE	SIGNIFICANCE
1960-current	Inter-generational poor parenting of both mother and father and of their parents in turn (reported by Carol Smith and Bill Treadwell).	Inter-generational poor parenting is hard to overcome.
2005	Carol Smith's first child removed from her under an EPO following allegations of sexual abuse by her partner at the time. Allegations confirmed and her partner was prosecuted and convicted. Child (boy) then subject to a Care Order and Placement Order and now adopted.	In the first set of proceedings, Carol Smith was judged as unable to protect her son.
2009	Pre-birth assessment concludes Alice should be subject to a child protection plan but could be cared for safely by her parents at home.	Baseline assessment of parenting flagged problems with drug misuse (both parents) as well as past social and personal problems individually
2009-13	Intermittent referrals with concerns about Alice expressed by professionals and neighbours. In May 2011, her mother asked for her to be looked after, following domestic violence (from Alice's father to mother (admitted)). Alice went home after 5 days. In November 2012, Alice was twice received into police protection. She told police on one occasion she had run away. In February 2013, CAMHS found Alice was experiencing significant developmental delay as a result of neglect at home.	The chronology shows that the neglect of Alice by one or both parents was continuous in its impact, even if care was better during some periods than others.

7. Child impact analysis

7.1 Assessment of child's needs, including the child's daily lived experience

Use as appropriate well-validated tools which support the analysis of child development such as a Strengths and Difficulties Questionnaire (SDQ), and/or social/emotional assessment. Ensure the assessment/s of the 'team around the child' are included.

Alice has been subject to continuous low level risk since birth, as both of her parents have consistently neglected her, depriving her of emotional security and warmth. Her attachments to both parents are disorganised and the resultant emotional insecurity is beginning to manifest itself in disturbed behaviour e.g., running away from home and being unable to concentrate and learn at school. Alice needs long-term physical emotional and psychological stability and security.

7.2 Risks to the child

The local authority seeks a planned move to a fostering for adoption placement with a view to either long-term fostering or adoption with contact with one or both parents, should assessments prove favourable. Whilst this would remove Alice from the current risks of neglect she faces, she may face unforeseen and unforeseeable emotional and psychological risks in a planned move from her parents to a permanence carer. These risks can be mitigated through the choice of carer being a positive one for Alice and through the local authority supporting Alice, her new carer and her birth parents through the transition.

7.3 Wishes and feelings

Alice expresses powerful negative views about her parents for one so young. Her views and feelings are her own and only influenced by her experience. Her lack of emotion and disorganised attachments with her parents are evident in the direct work that has been carried out with her by her social worker and by CAMHS. Plans for her have not knowingly been discussed with her, so as not to prematurely raise further anxiety for her. At present, her wishes and feelings are immediate and concrete, partly as a result of her age and partly, in the view of the local authority, because of her low expectations.

7.4 The child's welfare and development timetable, including timetabling issues in the court process

It will be in Alice's best interests for any disagreements about Court Orders, and the future placement and contact framework, either to be resolved between parents and the local authority, or resolved through negotiation during the court process. It is in Alice's interests for proceedings to be concluded as swiftly as possible and the local authority recommends a Final Hearing is set within 16 weeks of issue, with the option to move Alice on an interim basis should the need arise.

7.5 The Child or Young Person's own statement (where applicable)

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-
-

7.6 Responses from other Parties

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-
-

8. Parenting capacity

8.1 Assessment of parenting capacity to meet the child's needs, including the potential for change

Use as appropriate well-validated tools such as parenting scale and/or emotional availability scales, etc. Ensure the assessment/s of the 'team around the child' are included.

Neither parent can provide for Alice due to their chaotic lifestyle, domestic violence, misuse of drugs and alcohol and an inability to use the various offers of help and services that have been made. Neither parent, either singly or together, have completed one of the programmes offered to them identified as needed in local authority case plans and in child protection planning reviews e.g., parenting programme (2010, 2012); family support (2011 x2); drug rehab (father twice (2010 and 2013)) and mother once (2013). Both parents are now passive about the local authority's attentions and resigned that alternative care is found for Alice. They intend to 'fight' to maintain contact with her.

8.2 Analysis of why there is a gap between parenting capacity and the child's needs

Neither parent has had experience of 'good enough' parenting themselves, nor are they in touch with other friends or relatives for whom parenting is a major part of their life. Alice's mother and father have a symbiotic relationship and Alice is becoming prematurely detached as a result of growing up on her own emotionally and psychologically. Both her parents are preoccupied with their own lifestyle, their drug use and both in different ways are socially, emotionally and psychologically isolated. Their own apparent attachment problems are being transmitted to Alice. Neither parent has insight into what is happening to them or to Alice, nor is one or the other or both motivated to change, despite considerable support and encouragement from social workers and other professionals.

8.3 Outcome of assessment/s for all alternative carers

No viable alternative carer from either parent's extended family have either been put forward by one or other of Alice's parents, or have put themselves forward. Family members contacted by children's services have indicated they do not want to become involved with Bill Treadwell or Carol Smith, even to offer a secure home for Alice who is vulnerable. All contacted felt they would not be able to cope with continuing involvement with Alice's parents, and all had either cut themselves off from them, or been cut off by Bill or Carol and rejected for interfering. This confirmed the all-round isolation of the family both in the local community and in relation to their extended families. The sole relationships Carol and Bill have with adults in their sub-culture, none of whom can offer care to Alice.

8.4 Responses from other Parties

-
-
-

9. Early Permanence and Contact analysis

9.1 Where is the child to live and plans for contact (the care plan)

A fostering for adoption placement is proposed, so that the main objective of placing Alice for permanence is achieved as soon as possible. Contact is proposed on a weekly basis initially, assessing Alice's reaction to contact after each contact session. The long-term contact framework is envisaged as being six times a year, with both parents together or separately, depending on Alice's wishes and feelings. Contact will be at a neutral venue and supervised by the local authority for the first six months. Mr Treadwell wishes Alice to be placed with an ethnically matched carer if this is possible. Ms Smith's views about the proposed placement and contact framework remain unclear. Indirect contact between Alice and her half brother will be established through the local authority's adoption support service.

9.2 The contact plan

NB The contact plan must be kept under review as circumstances change.

Child	Contact with	Relationship to child	Purpose of contact	Level of support/supervision	Frequency and duration
Alice Smith	Carol Smith	Mother	- To reduce Alice's anxiety - To establish through observation the long-term level of contact needed		Weekly in transition to six times a year
Alice Smith	Bill Treadwell	Father	- To reduce Alice's anxiety - To establish through observation the long-term level of contact needed		Weekly in transition to six times a year

9.3 What is needed to support these plans and by who, including future services needed?

Alice may need a continuing service from CAMHS, which has already been organised. As yet, no further specialist services are envisaged. A customised support plan for Alice's permanence carer will be delivered once Alice has been placed and her needs in the placement have become clearer. The local authority has signed a future support guarantee with Alice's proposed carer, so that the carer has security about the support she can expect.

9.4 Responses from other Parties

-
-
-

10. Statement of procedural fairness

10.1 **How has the local authority been clear in their communications, transparency and disclosure?**
The local authority has communicated all concerns about their care of Alice to Ms Smith and Mr Treadwell, during social work visits, at child protection planning and review meetings, in the Letter Before Proceedings and in the pre-proceedings meeting. Nine formal letters have also been sent, which are attached to this application, setting out concerns in writing (two in 2010, three in 2011, two in 2012 and two in 2013.) All concerns about Alice's care have been shared immediately with both parents.

10.2 **Responses from other Parties**

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NB1 A welfare checklist analysis has been applied throughout, including where health and educational needs are significant.

NB2 This integrated document incorporates the requirements of the Initial Statement of Evidence (ISE) and other documents in the previous PLO, which do not need to be submitted separately or in addition.

11. Statement of truth, professional title, qualifications and signature

I, XXX, social worker of XXX council declare that the contents within this document are true and I make it knowing it will be placed before the court in the care proceedings in respect of Alice Smith.

Signature
Name and professional title
Dated

VIEW FROM THE PRESIDENT'S CHAMBERS (6)

The process of reform : latest developments

Sir James Munby, President of the Family Division

In my first 'View from the President's Chambers', [2013] Fam Law 548, I sketched out some of the components of the reforms we are all embarked on. In my fourth 'View', [2013] Fam Law 974, I gave an update. It is time for another.

The single Family Court

Planning for the new Family Court continues to proceed apace. There is much being done, though much yet to be done.

I am being kept informed of what is going on and am working closely with HMCTS, discussing such matters as the provision of proper recording equipment in the courts where Magistrates will be sitting (which I believe to be essential), the Case Management System, the naming of the Designated Family Centres and Hearing Centres, the headings for Family Court orders, the numbering system to be used in future for family cases (which will be largely as at present) and the design of the new Family Court seal.

Work is under way in conjunction with the Family Procedure Rules Committee on various topics which will in due course be embodied in Statutory Instruments, Rules or Practice Directions, such as the functions and powers of Justices Clerks (legal advisers), the powers of a single Magistrate, the criteria for allocating cases within the Family Court, the precise scope of the High Court's reserved jurisdiction, and the routes for appeals within and from the Family Court.

In London, discussions are continuing about the plans and ideas I set out in my fifth 'View', [2013] Fam Law 1137. I have appointed Her Honour Judge Carol Atkinson Designated Family Judge for the new Family Court in London Docklands. Formally, her appointment will be from April 2014, when it is anticipated the new court will

open. But she will be heavily involved in the meantime in the planning and organisation of the new court, its premises, judiciary and staff.

The PLO

By the first week of October 2013 all courts will have implemented the revised PLO. Early reports from those courts which have already implemented it are reassuring. Everywhere we are continuing to see further significant and very welcome reductions in the time it takes to conclude care cases. Determined steps are being taken – must be taken – to achieve early finality in that constantly reducing number of outstanding care cases which have been going on for far too long. My objectives are simple: First, that by the end of December this year there should be (with no more than, at most, a small handful of really exceptional cases) no current care case that was commenced in 2012 or earlier. Second, and again by the end of December this year, that the overwhelming bulk of care cases commenced since 1 July this year should be concluding within a maximum of 26 weeks. I believe that these objectives can be achieved. If they can be achieved, then they must be.

In July 2013 the Centre for Research on Children & Families at the University of East Anglia published 'Evaluation of the Triborough Care Proceedings Pilot', its Report for the Triborough Care Proceedings Steering Group. The Care Proceedings Pilot project was a joint initiative of the three London boroughs of Hammersmith and Fulham, Kensington and Chelsea, and Westminster, working together with the judiciary, the court services, Cafcass and other key stakeholders, which aimed to reduce unnecessary delay for children undergoing care proceedings.

During the pilot year there were 90 cases, with commencement dates between 1 April 2012 and 31 March 2013. The Report looked in detail at the 65 cases from the first nine months, which would be expected to have finished by the end of June 2013 if they had completed within the 26 week target. The principal aims of the evaluation of the pilot were to ascertain whether:

- Delay in care proceedings had been reduced, and the target duration of 26 weeks achieved;

- Judicial continuity and early involvement of children's guardians had been achieved;
- The number of hearings had reduced and fewer and more timely assessments completed;
- These changes had impacted on the quality of decision making, and how quicker timescales had affected the children and parents involved;
- The benefits of the pilot can be sustained, and what factors would promote sustainability.

Paragraph 1.3 of the Report summarised its key findings as follows:

- The Triborough pilot has been successful in achieving its key aim of reducing the length of care proceedings. The median duration of care proceedings was 27 weeks for the first nine months of the pilot, as compared to a median duration of 49 weeks in the previous year, a reduction of 45%. Excluding FDAC cases, the median duration of proceedings was 26 weeks.
- The fact that the median length of proceedings is now around 26 weeks means, of course, that half the cases are still taking longer than 26 weeks. This should not necessarily be viewed in a negative light since some case-by-case flexibility about the length of proceedings is surely necessary in the interests of children's welfare and justice. The pilot demonstrates that some flexibility can coexist with meaningful efforts to bear down on unnecessary court delay.
- Proceedings involving a single child were shorter (median 25 weeks) than those involving sibling groups (32 weeks). Proceedings resulting in a care order, with or without a concurrent placement order were shorter (median 20 weeks) than cases resulting in an SGO (26 weeks) or in the child returning or remaining at home on a supervision order, with or without a residence order (29 weeks).
- The pilot has been successful in reducing the number of court hearings. Excluding FDAC cases, the reduction was from a mean number of 5.2 hearings to mean of 3.9 (24% decrease).

- There is no evidence that the reduction in the length of care proceedings has been achieved at the expense of more delay in the pre-court period.
- While many stakeholders expressed concerns about the potential for justice to be compromised by a rigid 26 week target, no one suggested that this had actually occurred.
- The case manager role was vital to the success of the pilot, and will continue to be vital in the future.
- Commitment and leadership in all agencies (local authorities, Cafcass and the courts), and robust court management by judges and magistrates, were vital to the success of the pilot and will continue to be vital in the future.
- Dedicated court time, and the availability of guardians at the initial hearing have been important to the success of the pilot. The reduction that has achieved could not be sustained if court timetabling problems or non-availability of guardians were to hold things up. This may prove a problem in areas outside the Triborough, or in the Triborough itself in the future if numbers of proceedings were to rise.
- Working in the new way does not necessarily take more time, but it almost certainly requires more energy. This is one reason why active leadership and monitoring of workloads and outcomes continue to be essential requirements.

This is all immensely encouraging. It shows that we are on the right track and, crucially, that the 26 week deadline does *not* compromise justice.

The PLO – further work

The 'Protocol on communications between judges of the Family Court and Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal' which I referred to in my fourth 'View' was issued, as planned, by the Senior President of Tribunals and me in July 2013.

Work on the Protocol relating to the disclosure of information between the criminal justice system and the family justice system which I also referred to in my fourth

'View' is so advanced that by the time you read this it will have been finalised and, I hope, issued.

Work continues on a similar Protocol relating to disclosure between National Health Service agencies and the family justice system. Helpful discussions are taking place with the Official Solicitor which I am sure will bear fruit.

Private law

I am very conscious that the focus since I became President has, inevitably, had to be on public law and that much needs to be done in relation to private law, particularly given the impact – still difficult to quantify and assess – of the drastic changes in public funding introduced in April 2013.

Cobb J has been working valiantly and energetically behind the scenes for some time on a number of the most pressing issues that arise. He has agreed to chair the Private Law Working Group I have established. Its membership includes judges and practitioners. Its Terms of Reference are:

> To make recommendations to the President of the Family Division in relation to the resolution of Private Family Law Disputes (concerning children) in the most optimal and efficient way, building upon the President's Revised Private Law Programme (2010) and the Operating Model of the single Family Court (2013); and preparing such documents as may facilitate those recommendations.

The Working Group had its first meeting on 2 September 2013, when it drew up an action plan. It intends to send me its recommendations on 8 November 2013.

Transparency

In my fourth 'View' I set out my plans for improving transparency in the family justice system. I asked for views on the draft Guidance I had issued in July 2013. I am considering a number of responses that have already arrived but there is still time for

you to express your views. Please do so. The issues are vitally important and I do need to know what everyone is thinking.

In relation to this can I draw your attention to the judgment I handed down on 5 September 2013 in *Re J (A Child)* [2013] EWHC 2694 (Fam). You can find it on BAILII.

As I have made clear, I propose to adopt an incremental approach. The first step is the issue of Guidance on the Publication of Judgments, which I intend should take place well before the end of this year. The next step will be the issue of Guidance on the Disclosure of Documents to the Media. This also will first be issued in *draft*, for comment and discussion before it is finalised. In the meantime, however, it would much assist me to have your views on two crucially important matters: first, what classes of documents should, or should not, be made available to the media; and, second, what safeguards and restrictions should be put in place to prevent inappropriate use of documents which are disclosed. I shall welcome and value your views. They should be forwarded to my Legal Secretary, Penelope Langdon (penelope.langdon@judiciary.gsi.gov.uk).

Family Orders

I referred in my fourth 'View' to the work being undertaken by a team led by Mostyn J to provide us with a comprehensive set of orders the use of which will in due course become mandatory in the Family Court and the Family Division. They will be published in draft form later this autumn for comment and discussion before they are finalised and introduced in time for the new Family Court in April 2014.

There has been, and for this, no doubt, I am responsible, misunderstanding about the 'House Rules' which I referred to in my fourth 'View'. They are *not* rules which courts or practitioners will have to follow; *their* obligation will simply be to use the prescribed forms of order. The House Rules, akin to house style manuals used by publishers of books and newspapers, are merely internal instructions to Mostyn J's team to ensure consistency in their drafting of the prescribed forms. They may seem tedious and pedantic but can I make two points: (a) we need house rules, for internal

use, to ensure consistency and (b) they are designed to shorten orders by removing unnecessary verbiage. My view was, and remains, that it is appropriate to share the House Rules with the wider world so that you can express comments on the specifics before the draft orders are crystallised. I appreciate that there is much going on and that this may seem insignificant and even trifling. But given the time and money that is currently wasted in the process of drafting orders that could, and therefore should, be standardised, the arguments in favour of standardisation seem to me to be clear.

We are no longer living in the world of the fountain pen and biro (which still today account for far too much drafting of orders) any more than in the world of the quill pen. I intend that the standardised orders will be available to everyone electronically. The use of standard orders produced at the press of a button will obviate the need for drafts from counsel and solicitors scribbled out in the corridor.

Bundles

I shall be issuing later this autumn, for comment and discussion, a *draft* revised Practice Direction on Bundles. Building on the existing Practice Direction my intention is that it will apply in principle to all hearings, whatever, the level of judge, in the Family Court and the Family Division. I am also determined to make such amendments to the existing Practice Direction as will ensure that in the overwhelming majority of cases the bundle will contain, at most, no more than 350 pages in a single lever arch file. The key principle, as I explained in my fourth 'View', is that from now on the bundle should contain only those documents that the court needs to read or which will actually be referred to during the hearing. The existing Practice Direction says much about what must be *included* in the bundle; this needs to be balanced with more explicit reference to what is *not* to be included.

In the meantime I shall welcome and value your views on two important matters: first, whether there are any types of case or types of hearing which should be excluded from the ambit of the Practice Direction (for example, certain types of private law case or cases in which all parties are appearing in person); and, second, what classes of documents should be excluded from the bundle unless the case management judge

directs otherwise. Please forward your views to my Legal Secretary, Penelope Langdon.

Visits

By the end of July 2013 I had visited 17 care centres. By the time you read this I will have visited another 2. Visits already planned will take me to more than a further dozen by the end of the year. I intend to get to all the others as soon as possible.

Everywhere I go I am exhilarated by the enthusiasm, dedication and commitment of everyone I meet: court staff, judges, local authority social workers and lawyers, CAFCASS, Magistrates, Justices Clerks and legal advisers, and legal practitioners. It is invidious to select any for particular mention but I must mark and celebrate the cheerful enthusiasm with which court staff and circuit and district judges go about their daily work in those buildings, of which I have unhappily seen too many, where the facilities are inadequate and, in some cases, little short of scandalous.

We ask a lot of our people; surely the least we can do is to give them decent conditions in which to work. And what kind of impression do such buildings convey to litigants?

Section 5

Public Law Update –
a round up of important recent decisions

Zoe Taylor

PUBLIC LAW UPDATE
RECENT KEY AUTHORITIES: *RE B, B-S AND BEYOND*

1. This update will focus on key recent decisions relating to the following areas:
    a. **Re B***:* guidance from the Supreme Court [paragraphs 2-21];
    b. The impact of **Re B** on the public law landscape [paragraphs 22-35];
    c. **Re J (Care Proceedings: Possible Perpetrators) [2013] UKSC 9:** crossing threshold on the basis of a possibility of a possibility? [paragraphs 36-39];
    d. Withdrawing care proceedings after a fact-finding hearing and the emergency removal of a child: tips on appropriate practice [paragraphs 40-45];
    e. Whether a vulnerable child witness should give evidence [paragraphs 46-54];
    f. Test for the instruction of an expert [paragraphs 55-57];
    g. Guidance on Part 22 FPR 2010 from Mr Justice Peter Jackson: evidence [paragraphs 58-61];
    h. Injunctions: guidance on protecting a child's identity [paragraphs 62-65];
    i. Payments by local authorities to kinship and non-kinship foster carers: a recent reminder of statutory guidance [paragraphs 66-69]; and
    j. Costs orders against local authorities [paragraphs 70-73].

Re B (a child) [2013] UKSC 33 - guidance from the Supreme Court

2. The natural starting point for this update is **Re B (a child) [2013] UKSC 33**, where the Supreme Court gives guidance on threshold under s31 Children Act 1989 and the need for 'necessity' before a care plan envisaging adoption can be made. The case has impacted on public law cases and (arguably?[18]) effected the test courts are to apply in exercising their appellate functions.

The facts

3. The child the Supreme Court was concerned with had been removed from the parents at birth pursuant to an ICO.
4. The Mother had been in an abusive relationship with her step-father, had criminal convictions for dishonesty and had a history of making false allegations. She had also been diagnosed with somatisation disorder and the related 'factitious disorder'. The former involves the sufferer making multiple complaints to medical professionals of symptoms for which no adequate physical explanation can be found and the latter is a psychiatric condition involving the deliberate exaggeration or fabrication of symptoms and recitation of a false medical history.
5. On escaping from her relationship with her step-father, the Mother entered into a relationship with the Father, who had been convicted of a number of serious offences.
6. It was accepted that the Mother and Father had good contact with their daughter ("Amelia", this being the name Lady Hale attributed to the child for the purposes of the Court's judgment) and that both parents were committed to her.
7. At first instance, the judge held that the threshold criteria under s31 Children Act 1989 had been met. The judge found that, in her parents' care, there was a risk that: (i) Amelia would be presented for unnecessary medical treatment; (ii) she would copy her mother's

[18] It should be noted that when considering the test on appeal, whether the lower court was 'wrong' as opposed to 'plainly wrong', Lord Wilson queries whether 'plainly' adds anything [44].

behaviour; and (iii) she would be confused by the difference between reality and the Mother's presentation of the world. In other words, the risk to Amelia was one of future psychological/emotional harm.

8. Having satisfied himself that threshold had been crossed, the judge went on to consider the appropriate order(s) to make on disposal, concluding that Amelia's needs would best be served by the making of a care order and placement order with a view to her being adopted. The judge felt that a multi-disciplinary programme of monitoring and support would not be enough to safeguard Amelia because of the lack of cooperation the parents had exhibited towards professionals in the past and their history of dishonesty. In those circumstances, the judge felt that making a care order and an adoption order was the only way to safeguard Amelia.
9. The appeal was first considered by the Court of Appeal, who upheld the first instance decision.

The decision

10. The Supreme Court dismissed the appeal by a majority of 4:1, with Lady Hale dissenting. The Court held that the first instance judge had been entitled to conclude that threshold had been crossed and that making a care order with a view to adoption was necessary and did not amount to a violation of either the child's or the parents' rights under Article 8 ECHR. Lady Hale dissented on the basis that she considered that, if the possibility of future psychological harm was enough to cross threshold, that did not demonstrate that a care order and adoption were necessary for this child: in Lady Hale's view, it simply could not be said that 'nothing else would do' because nothing else had been attempted.

Who said what, about what main issues?

11. The Supreme Court consider four main issues before coming to its decision:
    a. Threshold under s31 Children Act 1989: the meaning of 'significant harm' and the relevance of Article 8;
    b. Relevant considerations at the welfare/disposal stage (including the relevance of Article 8);
    c. The role of the parents' characters: where does this fit in?; and
    d. The appellate function of the court when looking at the decision of the Court of Appeal: proportionality, crossing threshold and disposal.

Threshold under s31 Children Act 1989: the meaning of 'significant harm' and the relevance of Article 8

12. The Court had the following to say about the meaning of 'significant harm' under s31 Children Act 1989:
    a. For Lord Wilson [26], courts should avoid attempting to explain the meaning of 'significant';
    b. Lord Neuberger [56] did not think it was helpful to expand on 'significant' but agrees with Lady Hale that 'significant' is interrelated with likelihood of harm;
    c. Lord Kerr [109] thought that 'significant' was a judgment to be made 'on the facts found';
    d. Lord Clarke [134] agrees with Lords Wilson, Neuberger and Kerr;
    e. Lady Hale [185, 186, 188, 193(3)] outlines her view that 'significant' means 'considerable' 'noteworthy' or 'important' and that the meaning should not be set too low. She notes that 'significant' has an inverse relationship to likelihood of harm.

13. As for where Article 8 comes in at the threshold stage:
    a. Lord Wilson [29] did not think there was any interference with Article 8 when concluding that threshold had been crossed;
    b. For Lord Neuberger [62], Article 8 has no part to play at the threshold stage;
    c. Lord Kerr had a similar view [129], stating that consideration of Article 8 at the threshold stage added an 'unnecessary layer of complexity';
    d. Lord Clarke [134] again finds himself able to agree with Lords Wilson, Neuberger and Kerr. It would seem, then, that his view is that Article 8 at the threshold stage has both no role to play but is equally not interfered with...
    e. Lady Hale shares Lord Wilson's views on this subject [186]: finding that threshold has been crossed does not interfere with the parties' Article 8 rights.

Relevant considerations at the welfare/disposal stage (including the relevance of Article 8)

14. The Supreme Court also considered the relevance of Article 8 at the disposal stage:
    a. Lord Wilson [29] acknowledges that the making of a care order involves an interference with the parties' Article 8 rights;
    b. Lord Neuberger [62] notes that Article 8 comes into play when a care order is made;
    c. For Lord Kerr, Article 8 is in 'fuller flow at the disposal stage';
    d. As for Lord Clarke? He agrees with Lords Wilson, Neuberger and Kerr on this subject too [134];
    e. Lady Hale is ad idem with Lord Wilson on the subject of Article 8 here too: she observes that the making of a care order involves an interference with Article 8.
15. Having confirmed the role of Article 8 at the welfare stage of the court's enquiry, the judges go on to outline the correct approach to be applied when considering whether to sanction a care plan which will lead to the adoption of a child:
    a. Lord Wilson states that a 'high degree' of justification is required for the court to make an adoption order [34];
    b. Lord Neuberger puts it even more forcefully: an adoption order must be 'necessary' before it can be made. Put simply, the court needs to be satisfied that 'Nothing else will do' [76-78];
    c. Lord Kerr shares a similar view to Lords Wilson and Neuberger. His view too is that the test for making an adoption order should be a very strict one. He echoes Lord Neuberger's 'Nothing else will do' stance and Lord Wilson's 'high degree of justification' being needed before an adoption order can be made;
    d. Lord Clarke aligns himself more firmly with Lord Neuberger on this subject. For him, only in cases of 'necessity' will an adoption order be proportionate bearing in mind the requirements of Article 8 [135]; and
    e. Lady Hale equally adopts the 'Nothing else will do' position [145, 198].

The role of the parents' characters: where does this fit in?

16. Lord Wilson considered that the parents' character was relevant to each stage of the court's enquiry as to whether a care order should be made: both threshold and disposal [31]. Lord Neuberger certainly agrees that the parents' character has a role at the threshold stage. He notes that parents' characters affect how they parent their children, which could potentially satisfy threshold [71]. Lord Kerr comments that the parents' dishonesty and antagonism made it impossible to ensure that Amelia would not suffer harm [132]. Lord Clarke agrees with all three of the above positions [134].

17. Lady Hale disagrees – for her, threshold refers to parental care and not character [191, 193(4)].

The appellate function when looking at the decision of the Court of Appeal: proportionality, crossing threshold and disposal

18. The Supreme Court carefully go through their role as an appellate court and consider the appellant function when examining the proportionality of a lower court's decision, whether threshold has been crossed and disposal.
19. When looking at the question of proportionality, the judges had the following to say about the Court's appellate function:
    a. There was, according to Lord Wilson, no need for the appellate court to make a 'fresh' determination on the question of proportionality [35-37]. The right approach was to review the exercise as an appellate court. Lord Neuberger agrees [83-90], as does Lord Clarke [136].
    b. After commenting on the dangers of over-analysis, Lord Neuberger went further and outlined 7 categories into which an appellate judge might conclude that a first instance conclusion falls [93-94]:

> *An appellate judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right,(iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge's view is in category (iv) to (iv) and allowed it if is in category (vi) or (vii).*
>
> *As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal.*

    c. Lord Kerr and Lady Hale have a different take: they both consider that a fresh determination is necessary on the question of proportionality by the appellate court. For Lord Kerr [116-127], this is what s6 Human Rights Act 1998 requires. For Lady Hale [204-205], the duty of the trial judge is to assess the proportionality of his decision and the duty of the appellate court is to conduct the exercise afresh.
20. On the appellate function when looking at the threshold stage of a lower court's enquiry, for Lord Wilson, the issue for the appellate court was whether the decision was 'wrong' [44]. He noted the advantages of the trial judge in having heard the evidence [41-43].

Lord Neuberger agrees [91][19], as does Lord Kerr [110]. Lord Clarke is of a similar mindset that the appellate court must be satisfied that the trial judge was wrong, but he agrees with Lord Neuberger's categorisation at 93-94 [140]. Lady Hale similarly agrees that the appellate court should only interfere with the trial judge's decision at threshold stage if his or her decision was wrong [145, 203].

21. For disposal, in order to interfere with a first instance decision, the appellate function was said to require:
    a. That the decision was 'wrong' [Lord Wilson, 45-47]. Lord Neuberger also agrees [91], though it should be noted that in setting out the test on appeal he does not distinguish between the threshold and disposal stage (nor should we forget his seven categories...). Lord Clarke also agrees with this analysis [138-139]. Like Lord Neuberger, he too does not distinguish between threshold and disposal stage.
    b. Lord Kerr puts it as follows, 'The review by an appellate court is at its most benign....it should be slow to substitute its view of what is best required' [111-114].
    c. Lady Hale also agrees that an appellate court should only interfere if the first instance decision is 'wrong' [145] but adds that this involves an assessment of the proportionality of the order [205].

The impact of Re B on the public law landscape

22. The guidance given in **Re B** should be considered in the context of its examination by the Court of Appeal in five recent cases:
    a. Re V(Children) [2013] EWCA Civ 913;
    b. P (A Child) [2013] EWCA Civ 963;
    c. G (A Child) [2013] EWCA Civ 965;
    d. A (Children) [2013] EWCA Civ 1026; and
    e. Re B-S (Children) [2013] EWCA Civ 1146

Re V (Children) [2013] EWCA Civ 913: a different result pre-Re B?

23. Longmore LJ certainly seemed to think a different decision would have been reached before **Re B**. The judge observed that before **Re B** he would have let the judge's decision be, however in a post-**Re B** era where a court's decision on disposal is an evaluative question not simply a discretionary one he had to consider whether the first instance judge's decision was wrong. Longmore LJ was satisfied that it was, so he allowed the appeal.
24. The Court of Appeal was concerned with a Local Authority's appeal against a judge's decision to make only a care order and to refuse to make placement orders. The Local Authority's care plan for these two girls, aged 9 and 4, was for them to be adopted. The judge held that the two girls should remain in long-term foster care, made care orders and required the Local Authority to file revised care plans. The Court of Appeal held that the judge's decision was wrong and made both care and placement orders for the girls.
25. In reaching their decision, the Court of Appeal made the following points:
    a. The first instance judge had been wrong to conclude long-term fostering would serve the children's best interests. In reaching this decision, he had come to the view that future contact between the children and their parents would confer

[19] Note that the categories he goes on to set out in paragraphs 93-94 mainly relate to proportionality (see above)

positive benefits on the girls in light of the long-standing relationship between them. He feared that ceasing contact would create a significant risk that the girls would suffer a sense of loss. In so concluding, however, the Court of Appeal held that the judge had failed to give sufficient weight to the detrimental features of the Mother's contact with the girls. Whilst the Father's contact was positive, it was not so beneficial to the girls that it outweighed the negatives of the Mother's contact.

b. Black LJ sets out her views on the difference between the security offered by long-term fostering and that offered by adoption [95-96]:

> *The judge thought she [C, the eldest child] may have been given a rosy tinted view of adoption and not told that long term fostering could provide the same security.* ***My difficulty with that is that I do not think that fostering and adoption can, in fact, be equated in terms of what they offer by way of security.*** *I do not intend to embark on a comprehensive comparison of the two arrangements, merely to highlight some of the material differences. What I say should not be taken as a substitute for professional advice to the court from social services and/or the guardian in any case in which this is a significant issue.*
>
> *With that caveat, I make the following observations:*
>
> *(i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.*
>
> *(ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.*
>
> *(iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (section 34(1) Children Act 1989). The contact position can, of course, be regulated by alternative orders under section 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement[20]. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.*
>
> *(iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example).*

c. Black LJ makes it clear that arguments for and against both adoption and long-term fostering should be addressed specifically in the evidence/representations of the Local Authority/Guardian. Neither had done so in this case.

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[20] See, for recent consideration of contact in the context of an adoption, **MF v LB of Brent & Ors [2013] EWHC 1838 (Fam)**

P (A Child) [2013] EWCA Civ 963

26. The background to this case involved a child, "L" who was nearly four years' old, for whom the Local Authority's care plan was one of adoption. The Local Authority's concerns about the Father's ability to parent L related to domestic violence and a history of parental disagreements about contact. The Mother had moved from Devon to Nottingham with L where he had suffered physical and sexual abuse perpetrated by the Mother's boyfriend.
27. The first instance judge refused the Father's application for a psychological assessment and decided that L's best interests required a care order and a placement order to be made. The Father appealed, challenging in the main both the judge's case management decision to refuse him permission to instruct a psychologist and her substantive decision.
28. The Father's appeal was refused in relation to the challenge brought against the case management decision but allowed in respect of the judge's decision that L should be adopted:
    a. In respect of the case management decision, the Court of Appeal observed that the first instance judge had found the parenting assessment of the Father to be detailed and not one that could be subject to criticism. The judge had felt that the long-standing concerns about the Father were such that it would be some time before the Father could be considered as a carer for L and she could be '99 per cent satisfied' that a psychologist would suggest that further work was necessary, which would 'take many months if not years and that is well outside the timescales of a child of L's age' [55]. The Court noted that it is 'particularly hard' [45] for case management decisions to be appealed successfully and that it could not be said that the judge overlooked any material considerations.
    b. The judge's sanctioning of the Local Authority's care plan for L, however, was a different matter.
        i. By the time the care and placement orders had come to be made by the judge, the Father had undergone therapy to deal with his anger in relationships and he had made good progress, albeit progress that had not been tested in the community. The report prepared by the Father's therapist setting out his progress had not been sanctioned by the first instance judge and therefore neither the Court nor the parties had had any input into the instructions given to the therapist in the preparation of the document. The judge had concluded that the orders should be made as any further delay to enable the Father's progress to be tested was not justified.
        ii. The Court of Appeal found that the judge had not undertaken a proper balancing exercise when approaching the Local Authority's care plan or, if she did, then it was not apparent from her judgments [107].
        iii. It was also not clear to the Court of Appeal on what basis the judge had approached the history in the case, Black LJ felt that the judge may have been working on the premise that the Father was more violent than the evidence before her established [110].
        iv. The Court of Appeal emphasised that active steps need to be taken at the outset of proceedings to consider the factual and evidential basis of the case in line with the revised Public Law Outline. Had that been done by the Local Authority, Black LJ felt that the 'difficulties that have arisen may not have done so' [118].

G (A Child) [2013] EWCA Civ 965: application of Re B to the disposal stage and the correct test on appeal

29. The Mother sought to challenge on appeal the decision of the judge at first instance to make a final care order placing the child in long-term foster care. The Mother had conceded threshold but had argued that the child should be returned to her care, either under the auspices of a series of ICOs or under a supervision order.
30. The Mother's appeal was allowed. The Court of Appeal set aside the care order, reactivated the ICO that had existed prior to the judge handing down her judgment and ordered that there should be a re-hearing of the Local Authority's application for a care order before a different judge. The Court of Appeal reached this decision as it felt that the judge had not carried out the necessary balancing exercise. In those circumstances, the correct approach was for that evaluation to be carried out at a fresh hearing.
31. This case had reached the Court of Appeal before the Supreme Court had handed down its judgment in **Re B**, so the appeal was adjourned until the judgment was available. The Court of Appeal consider **Re B** and summarise the following key principles:
    a. There is a presumption that a child's best interests will be served by being placed with his parents where possible;
    b. The threshold stage does not of itself engage Article 8, but the disposal stage does;
    c. Long-term separation of a child from his family by adoption must be 'necessary' – nothing less than this will do. The court should contemplate why separation is necessary and must be satisfied that there is no alternative way for the child to be supported with any necessary assistance and support so that he can remain with his family. In making this enquiry, the court must carry out a global holistic evaluation of each option. If this exercise is not carried out in this way, there is a risk of bias towards the most draconian option. This evaluative process requires a balancing exercise to be carried out, weighing the positives and negatives of each option against each other so that the right option that best serves the child's interests, which is the court's paramount consideration, can be identified. McFarlane LJ notes that [28]:

> *...Re B concerned a case at the extreme end of state intervention, namely the permanent removal of a child and placement for adoption against the will of a parent. The words of Lord Neuberger [re necessity] must therefore be read with that context in mind. The determination of the present case, removal of the child to public care with limited ongoing parental contact for an indefinite period which may run for 10 years, being the remainder of his childhood, whilst being of a lower order of intervention, must, in my view, fall to be considered in like manner with the difference in the level of intervention being reflected in the application of the yardstick of proportionality and thus the evaluation of whether the proposed order and care plan are 'necessary'.*

    d. The role of the appellate court when considering a judge's determination at the welfare stage is to review the decision of the first instance court, not conduct a full re-appraisal. The court should focus on scrutinising not just the judge's exercise of discretion but on the judge's compliance with her obligation to ensure that her decision is Article 8 compatible. The correct test is whether the judge's decision was 'wrong', not 'plainly wrong'.

A (Children) [2013] EWCA Civ 1026: the correct test on appeal – no longer a place for 'plainly wrong'?

32. The proceedings involved a fact-finding hearing regarding two brothers, the youngest of whom had presented with two healing rib fractures during treatment for whooping cough at the time he was three months' old. The first instance judge was not satisfied that these injuries were non-accidental. He did not then go on to consider the question of possible perpetrators. The Local Authority appealed this decision, notwithstanding that their care plan was for the boys to be returned to the Mother's care regardless of the outcome of the appeal.
33. The Court of Appeal dismissed the appeal. The Court held that:
    a. It was open to the judge to reach the conclusion he had on the evidence. The submission advanced by the Local Authority that, post **Re B**, the correct test for the Court of Appeal to apply in carrying out its appellate function was whether the judge was 'wrong' was rejected: the test was whether the judge was 'plainly wrong'.
    b. The fact that the judge had used the word 'deliberately' when discussing the possible infliction of non-accidental injuries did not mean that the judge had misdirected himself as to the correct standard of proof and applied a higher test than the simple balance of probabilities. This was an experienced judge and the Court of Appeal found it difficult to see how a judge could adopt a mindset that he could only conclude injuries had been caused non-accidentally if he was satisfied that the injuries were positively inflicted in a pre-meditated way.
    c. The first instance judge had adequately set out his reasons for departing from the medical evidence despite the fact that he had not set out his conclusions in accordance with the schedule of allegations which, in hindsight, may have been wise. Notwithstanding the failure to set out his conclusions in accordance with the schedule, it was clear from the judgment that the judge was alive to the nature of the allegations.

Re B-S (Children) [2013] EWCA Civ 1146: an application of the principles in Re B

34. In this case, Parker J at first instance had refused to grant the Mother leave to oppose the adoption of two of her children under s47(5) Adoption and Children Act 2002. The Mother appealed this decision to the Court of Appeal. The unanimous judgment of the Court of Appeal is given by Munby P: the Court found that none of the grounds relied on by the Mother were made out and the appeal was accordingly dismissed.
35. In reaching this decision, however, the President considers the following key points:
    a. The President emphasised the draconian nature of severing family ties, noting that to do so requires the highest level of evidence. The President remarks that the comments made by the Supreme Court in **Re B** should be read alongside the principles in the Children Act 1989 and Adoption and Children Act 2002 that courts should adopt the least interventionist approach when concerned with a decision relating to a child's upbringing. Munby P repeats the point emphasised by Black LJ in **Re V (Children)** that there must be proper evidence for and against adoption before the court can consider whether or not to make such an order. Articles 6 and 8 of the European Court of Human Rights so require, and the 'sloppy practice' seen all too frequently and criticised in the past

> *...about the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption, both in the materials put before the court by local authorities and guardians and also in too many judgments... [30]*

> *...most stop. It is simply unacceptable in a forensic context where the issues are so grave and the stakes, for both child and parent, so high [40].*

b. Munby P repeated the central principle that the children's interests are the court's paramount consideration and observed that this includes being brought up by the child's natural family where possible.
c. Judgments must be adequately reasoned, the Court citing the comments made by McFarlane LJ in **Re G** above about the need for a global and holistic evaluation where all available obligations are considered before coming to a decision about a child (Munby P considering that courts are positively required to do so by their statutory obligations);
d. A court's assessment of parents' capacity to care for a child should include consideration of the support that could be offered to them to do so;
e. Munby J also considers how all this fits in with the new PLO. He states that [49]:

> *We do not envisage that proper compliance with what we are demanding, which may well impose a more onerous burden on practitioners and judges, will conflict with the requirement, soon to be imposed by statute, that care cases are to be concluded within a maximum of 26 weeks....If, despite all, the court does not have the kind of evidence we have identified, and is therefore not properly equipped to decide these issues, then an adjournment must be directed, even if this takes the case over 26 weeks. Where the proposal before the court is for non-consensual adoption, the issues are too grave, the stakes for all are too high, for the outcome to be determined by rigorous adherence to an inflexible timetable and justice thereby potentially denied.*

f. The correct test when applying s47(5) Adoption and Children Act 2002 was the 2 stage test set out in **Re P (Adoption: Leave Provisions) [2007] EWCA Civ 616:**
    i. Has there been a change of circumstances?; and, if so;
    ii. Should leave to apply be given? The Mother's prospects of successfully securing the revocation of the placement order was a relevant consideration under this limb of the test, as was giving effect to what is in the child's best interests, which is the court's paramount consideration.

   Munby J suggests that Thorpe LJ's remarks in **Re W (Adoption: Set Aside and Leave to Oppose) [2010] EWCA Civ 1535** that an application for leave under this section will be granted in only 'exceptionally rare circumstances' are no longer tenable in light of **Re B**. S47(5), in Munby P's view, was intended to afford parents a meaningful remedy[21].

g. In light of the evaluative nature of the judicial task when considering a s47(5) application, the test on appeal is the **Re B** approach of whether the trial judge was 'wrong'.

<u>Re J (Care Proceedings: Possible Perpetrators) [2013] UKSC 9: crossing threshold on the basis of a possibility of a possibility?</u>

[21] It should be noted that this concern about Thorpe LJ's comments was shared by McFarlane LJ at the permission stage of this case, reported as **Re B-S (Children) [2013] EWCA Civ 813.**

36. The issue facing the seven judges in the Supreme Court was framed by the Local Authority as follows:

> *Where a previous court has found that there is a real possibility that one or other or both of two or more carers have perpetrated significant harm on a child in his or her care, is that 'finding' a 'finding of fact' that may be relied upon in subsequent proceedings relating to only one of the potential perpetrators in support of a conclusion that there is a real possibility or likelihood of a subsequent child in a new family unit of which he or she is part suffering significant harm is it a 'finding' that must be totally ignored in the subsequent proceedings?*

In other words, can threshold be met on the basis of a possibility of a possibility[22]?

37. Earlier care proceedings had concluded that: (i) either the Mother or T-J's father had caused T-J serious injuries that led to his death and (ii) whilst the court could not make a positive finding about which parent perpetrated those injuries, at the very least the non-perpetrating parent had colluded to hide the truth. The Mother had commenced a new relationship with DJ and the Local Authority brought care proceedings in respect of the family's three children, the two oldest being the children of DJ and his former partner and the youngest being the child of the Mother and T-J's father. The Local Authority argued that threshold was crossed by relying solely on the finding that the Mother was the possible perpetrator of T-J's injuries.
38. At first instance, the High Court held that the likelihood of significant harm can only be established by reference to past facts that have been proven to the usual standard. A mere 'possibility' that the Mother might be the perpetrator was insufficient. The Court of Appeal dismissed the Local Authority's appeal but granted permission to the Supreme Court.
39. The Supreme Court unanimously dismisses the Local Authority's appeal. The main judgment of the court is given by Lady Hale, with whom her fellow judges agree, save that Lords Wilson and Sumption express disagreement on one point:
    a. Lady Hale notes that the House of Lords and Supreme Court have given guidance on the wording of s31(2) of the Children Act 1989 on six occasions. Those cases held that a prediction of future harm must be founded on facts proven on the balance of probabilities: suspicions or possibilities are not enough [49]:

    > *A finding of a real possibility that this parent harmed a child does not establish that she did. Only a finding that he has, it was, or she did, as the case may be, can be sufficient to found a predication that because it has happened in the past the same is likely to happen in the future. Care courts need to hear this message loud and clear.*

    b. The reality, says Lady Hale, is that it is rare for a Local Authority to place sole reliance on the fact that a respondent is a possible perpetrator of injuries to establish that the threshold criteria have been met. The judge notes that even when the perpetrator cannot be identified there may be a 'multitude of established facts' from which a future likelihood of harm can be established [54]. By itself, however, 'a real possibility that this parent has harmed a child in the past is not...sufficient to establish the likelihood that she will cause harm to another child in the future.' This 'multitude of established facts' in **Re J** might

[22] It should be noted that Lord Nicholls set down the test to be applied in relation to likelihood of significant harm in **Re H [1996] AC 563 [585F]** as: '*a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case.*'

have included, for instance [56], the '*(a) gross and substantial collusion expressly designed to prevent the court identifying the perpetrator; (b) failure to protect T-L; (c) deliberately keeping T-L away from health professionals in order to avoid the detection of injury.'*

c. In this case the Local Authority had not sought to rely on any other facts in relation to threshold. In those circumstances it was not fair on the whole family to allow the proceedings to continue [57].
d. Lords Wilson and Sumption disagreed with Lady Hale in one respect. Their view was that, since consigning the Mother to a pool of possible perpetrators of injuries to T-J could not constitute a factual foundation for a prediction of likely significant harm to another child in her care, logically it could not become part of that foundation simply by existing in combination with other relevant facts and circumstances.

Withdrawing care proceedings after a fact-finding hearing and the emergency removal of a child: tips on appropriate practice

40. Theis J was concerned with a little girl, E, who was nearly two years' old. E had complex medical needs that had lead to her spending the first 11 months of her life in hospital. On being discharged from the hospital she was dependent on a ventilator in her parents' home, who were supported with a comprehensive care package.
41. Concerns had arisen relating to the presentation of E's parents and their interaction with the medical professionals who were essential for E's care. A referral was made to the Local Authority on the back of these concerns, with medical professionals also raising suspicions that the parents had deliberate cut part of E's ventilation equipment (there had been a number of equipment failures also giving rise to concern).
42. A strategy meeting had been convened by the Local Authority, where the decision was made for E to be removed from her parents' care immediately. During the course of the fact-finding hearing before Theis J, the Local Authority accepted that some of the information relied on in the course of that meeting was inaccurate and had only been raised for the first time.
43. On the same day as the meeting, the parents were visited by two social workers and four police officers and E was removed from their care. Theis J describes this removal as being pursuant to an 'enforced' section 20 "agreement".
44. Care proceedings were later issued and the matter came before Theis J for a fact-finding hearing. During the course of that hearing, the Local Authority sought permission to withdraw proceedings on the basis that it was accepted that it had not been able to establish that threshold had been met.
45. Theis J granted the Local Authority leave to withdraw the proceedings. In so doing, she gave a detailed judgment of how this had arisen and makes a number of criticisms of the treatment E and her parents received:
    a. The Local Authority had failed to objectively analyse the information relied on to assess the purported risk to E.
    b. Even if the Local Authority had discharged these safeguarding duties, there had been no identification or assessment of the actual risk posed to E, nor had further enquiries been made to ascertain whether the information sought to be relied on was correct (this was in the context of an 'emergency' removal after E had been at home, without incident, in the care of her parents for 17 days). Where time permits, Theis J suggests that key information for meetings should be reduced to writing and circulated to allow parties the time to consider it.

c. The way in which E had been removed was not justified. The proper course would have been for the Local Authority to have applied for an EPO or an ICO to allow the parents time to seek legal representation, consider the Local Authority's evidence and challenge it. The threat of police protection coupled with the attendance of the police at the point of removal meant that the parents had, in reality, had no choice: the Local Authority had sought to use a s20 procedure unfairly and inappropriately to circumvent the test for emergency removal. As to whether police protection would have been appropriate, Theis J emphasised that police powers should only be used in exceptional circumstances where there is insufficient time for an EPO to be sought or where there are good reasons which relate to the child's immediate safety.
d. The criticism Theis J makes of the inappropriate use of a s20 procedure was compounded by the fact that the parents were considered to suffer from learning difficulties. No special measures had been taken by the social worker as set out by Hedley J in **Re CA (A Baby) [2012] EWHC 2190** to satisfy herself that the parents had capacity to consent to s20 accommodation and were fully informed, nor had they been advised about obtaining legal advice.
e. Cases where an allegation of fabricated or induced illness had been raised should carefully follow the 'Safeguarding Children in whom illness is fabricated or induced' 2008 protocol. The Local Authority had failed to do so in this case, leaving this issue unresolved without proper investigation or without making it clear that the Local Authority were not regarding it as a relevant consideration.
f. Theis J also levels a number of criticisms at the Local Authority for its management of the case, which she indicates compounded the confusion and the poor decision-making that characterised the case. In particular, she criticises the Local Authority for inaccurate/misleading comments in its written statements, such as the comment that the Mother had 'high functioning autism', a comment which had no evidential basis and which the expert had rejected.
g. The final main point Theis J makes relates to statements. She states that it is 'essential' that these are based on contemporaneous records, not records made months later [78]. The judge also comments on the additional obligation:

> *particularly on public authorities who are seeking orders that interfere with Article 8 rights to family life, for a balanced picture to be presented, not just the native information, or the facts cast only in a negative light.*

<u>When should vulnerable child witnesses give live evidence?</u>

46. Of real use to practitioners is the test to be applied, the way the Judge applied the test and also the statements of intent from the Bench as to the control of the proceedings whilst a vulnerable witness is giving evidence.

Re G and E (Children) (Vulnerable Witnesses) [2011] EWHC 4063 (Fam)

47. Pauffley J was concerned with public law proceedings involving an allegation brought by G that she had been sexually abused by her father. G was 17 years old at the time of the hearing and had significant learning difficulties, with her functioning assessed by experts at approximately the level of an 8 year old.
48. In considering whether G should give live evidence in the proceedings before her, Pauffley J adopted the following approach, applying the test set down by Baroness Hale in **Re W [2010] UKSC 12:**

a. Was G competent in accordance with s96(2) of the Children Act 1989 (in other words, was the Court satisfied that: (i) G understands it is her duty to speak to the truth; and (ii) she has sufficient understanding to justify her evidence being heard)?
b. If G was competent, in the exercise of the Court's discretion, should G give live evidence? This discretionary exercise involves weighing two competing considerations, namely that:
    i. G's evidence may assist the Court in determining where the truth lies; and
    ii. the process of giving evidence may damage G's welfare.

49. In light of the unanimous expert evidence regarding G's competence, Pauffley J held that the answer to (a) was yes, G was competent. In the exercise of her discretion, Pauffley J held that G should give evidence for the following reasons:
    a. G's allegation was at the heart of the court process: it was the sole basis for the Local Authority's case that threshold was met. This was not a secondary or peripheral allegation but a core one, which should be determined by hearing G and then her parents give evidence;
    b. It would probably be of considerable assistance to the Court to hear G's account challenged in cross-examination;
    c. Appropriate special measures had been suggested by experts, namely short sessions, regular breaks and careful phrased questions; and
    d. G's willingness to give evidence was central to the decision that she should do so. In the event that G was not willing to give evidence, Pauffley J made it clear that it: '*need hardly be said that there would be no question of requiring her to provide an oral account'.*

50. Pauffley J also made it quite clear that the parties and advocates should expect robust case management:

> *I would not shrink from stopping cross examination altogether if it became too onerous for G or, indeed, if the process ceased to have value. I have done so in other cases because the needs of the young person plainly required swift, decisive and radical intervention. Limiting the subject areas for questioning likewise may become necessary according to G's responses; and I would react as the needs of the situation demanded.*

51. The Court referred to the need for there to be a constant reviewing process during the course of G's evidence to assess the utility, fairness and impact of the questioning, with the court to adopt an 'inquisitorial and paternalistic' role.

Re A (A Child) (Vulnerable Witness) [2013] EWHC 1694 (Fam)

52. Pauffley J was again concerned with the need for a vulnerable witness to give evidence in this private children matter, which had been to the Supreme Court (reported as **A (A Child) [2012] UKSC 60**[23]) for consideration of this issue.
53. Mrs Justice Pauffley gave leave for Communicourt to be instructed as an intermediary to assist X in giving evidence. Pauffley J repeated the comments she had made above

[23] Lady Hale emphasised that:

> *The Court's only concern in family proceedings is to get at the truth. The object of the procedure is to enable witnesses to give their evidence in the way which best enables the Court to assess its reliability. It is certainly not to compound any abuse which may have been suffered.*

relating to the case management role of the Court, though distancing herself from her earlier description of this role being a 'paternalistic' one.

54. It should be noted in applying the guidance of the Supreme Court and **G and E** that X did not want to give evidence. Before the hearing she had written that she '*cannot do this anymore', 'cannot cope with the impact upon her studies'* and is *'no longer able to go on'*. This position was compounded by the medical evidence that, '*The potential for harm to X arising out of any evidence giving exercise is....at the most severe end of the spectrum'*.

The test for the instruction of an expert: r25.1 FPR 2010

55. The President in **Re H-L (A Child) [2013] EWCA Civ 655** gives guidance as to the meaning of 'necessary to assist the court to resolve the proceedings'. 'Necessary' was considered to mean something between 'indispensable' and 'useful', 'reasonable' or 'desirable'. The President went further and observed that 'necessary' has 'the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable'.
56. H-L was born with a rare genetic disorder, spondylocostal dysostosis, which is a condition affecting the development of the bones of the back and ribs, resulting in the vertebrae being misshapen and fused. H-L was noted to have bruising. The working diagnosis was non-accidental injury and the child was placed in foster care. The Mother applied for the instruction of a geneticist, a haematologist, and a paediatrician to provide a general overview, but only Dr Wright was instructed, an expert who expressly stated his limited experience of H-L's condition.
57. The appeal was allowed in relation to the instruction of a geneticist but dismissed in relation to the instruction of a haematologist and paediatrician. The Court noted that there was an issue as to whether: (i) H-L did have this rare genetic disorder; and (ii) a child with this condition could be more susceptible to bruising. This matter had only superficially been covered when:

> *Whether or not H-L is more prone to manifest bruising than a child whose system is uncomplicated by this genetic disorder would seem to be the central, if not the only, significant medical issue in the case. In the circumstances, it is unsatisfactory that the answer to that question is provided through the channel of Dr Wright, who quite properly and candidly, explains that it is a topic which is outside his own knowledge and experience. If the mother and those acting for her wish to challenge or seek elaboration upon that opinion during the course of the trial Dr Wright is in no position to take the matter any further. That is, in my view, a situation which potentially falls short of the requirements of ECHR, Art. 6 and the overriding objective in Rule 1.1 of FPR 2010.*

Guidance on Part 22 FPR 2010 from Mr Justice Peter Jackson: evidence

Re ML (Use of Skype Technology) [2013] EWHC 2091 (Fam) – FPR r22.3

58. This judgment records the use of Skype technology in two recent cases before Mr Justice Peter Jackson.
59. In the first, Skype was used to obtain the parents' consent to the adoption of their 11 year old girl, who had been brought to this jurisdiction from Nepal by a British couple.
    a. Cafcass had held that it is was not possible for the Guardian to make the necessary enquiries in that jurisdiction and efforts to enlist the assistance of CFAB and the British Embasssy had not produced any positive results.

b. Instead, a local lawyer was engaged by the Guardian. The English court documents were translated and sent to that lawyer, who met with the parents and interviewed them separately at his office. These interviews were observed on Skype by the Guardian, who witnessed the parents signing the consent forms. Photographs were also taken.

60. The second case was not a public law case but a leave to remove. It is mentioned in this update, however, as it is a helpful example of the use of this technology to deal with the practical problem of how the court is to hear evidence when a witness is in a remote location with limited video conference facilities.
    a. The witness in this case was in Colombia. An initial application to hear evidence over Skype was refused by Peter Jackson J for three reasons: (i) he was concerned that Skype does not lend itself to a court forum; (ii) there are practical problems in everyone seeing/hearing the evidence and the evidence being recorded; and (iii) the lack of security.
    b. The third difficulty was overcome, however, by the use of a bridging process between the witness using Skype and the ISDN system at court, which provided some protection against hacking. The cost of this bridge was a mere £150, compared with the cost of a full ISDN link of £1,200.
    c. Peter Jackson J concludes that:

> *There is clearly the possibility of using this system in hearings involving witnesses in remote locations and in reducing the high international costs associated with ISDN*

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

61. This is another of Peter Jackson J's cases. Whilst the judgment was given in the context of a fact-finding hearing in a stranded spouse case, it is mentioned here as the postscript contains useful guidance summarising the requirements of PD22A and what procedural fairness requires in proceedings where evidence needs to be obtained from non-English speakers [60]:

> *(1) An affidavit or statement by a non-English-speaking witness must be prepared in the witness's own language before being translated into English. This is implicit from Practice Direction 22A of the Family Procedure Rules 2010, paragraph 8.2 of which states that:*
>
> *Where the affidavit/statement is in a foreign language –*
>
> *(a) the party wishing to rely on it must –*
>
> *(i) have it translated; and*
>
> *(ii) must file the foreign language affidavit/statement with the court; and*
>
> *(b) the translator must sign the translation to certify that it is accurate.*
>
> *(2) There must be clarity about the process by which a statement has been created. In all cases, the statement should contain an explanation of the process by which it has been taken: for example, face-to-face, over the telephone, by Skype or based on a document written in the witness's own language.*
>
> *(3) If a solicitor has been instructed by the litigant, s/he should be fully involved in the process and should not subcontract it to the client.*
>
> *(4) If presented with a statement in English from a witness who cannot read or speak English, the solicitor should question its provenance and not simply use the document as a proof of evidence.*
>
> *(5) The witness should be spoken to wherever possible, using an interpreter, and a draft statement should be prepared in the native language for them to read and sign. If the solicitor is fluent in the foreign language then it is permissible for him/her to act in the role of the interpreter. However, this must be made clear either within the body of the statement or in a separate affidavit.*

(6) A litigant in person should where possible use a certified interpreter when preparing a witness statement.

(7) If the witness cannot read or write in their own native language, the interpreter must carefully read the statement to the witness in his/her own language and set this out in the translator's jurat or affidavit, using the words provided by Annexes 1 or 2 to the Practice Direction.

(8) Once the statement has been completed and signed in the native language, it should be translated by a certified translator who should then either sign a jurat confirming the translation or provide a short affidavit confirming that s/he has faithfully translated the statement.

(9) If a witness is to give live evidence either in person or by video-link, a copy of the original statement in the witness's own language and the English translation should be provided to them well in advance of the hearing.

(10) If a statement has been obtained and prepared abroad in compliance with the relevant country's laws, a certified translation of that statement must be filed together with the original document.

Injunctions: guidance on protecting a child's identity

62. In **Re J (A Child) [2013] EWHC 2694 (Fam)**, the President grapples with the need to both ensure transparency in the family justice system but also to protect the identity of the child.
63. A Local Authority sought an injunction in broad terms seeking to prevent the dissemination of a video about a child who was in their care, publication of the child's name and publication of the names of the professionals who had been involved in the child's care. The Local Authority was seeking this injunction until the child's 18th birthday. The child's father had published details of the case repeatedly, including uploading to the internet a covert video of the child's removal under an EPO.
64. Munby P made an injunction restraining the name of the child from being published. The judge held that it was not necessary to prohibit the Father from publishing the video, noting that the child was only a day old when it had been taken so any publication of that footage was unlikely to lead to the child's identification. The judge was, however, satisfied that the injunction aimed at protecting the child's privacy should extend beyond the duration of care proceedings envisaged in s97 Children Act 1989 in light of the history of repeated publication.
65. In reaching his decision, Munby P set out the following principles:
    a. Transparency in family justice is important, playing a role in maintaining confidence in the system. The judge notes that he is being asked to make a draconian order and acknowledge the important role of media coverage in uncovering miscarriages of justice and the importance of public debate.
    b. The judge also acknowledges the public interest in allowing a family member who finds himself before the family courts to be free to discuss his experiences of the system.
    c. The role of the court is not to exercise editorial control over media reporting.
    d. The judge also remarks on the challenges posed by technological advances, which have enabled anyone to publish anything they wish on the world wide web.
    e. Where an injunction is being sought against named defendants, the person sought to be injuncted must be amenable to the jurisdiction of the court. A person will fall into this category if the applicant can demonstrate that he or she has been effectively served in a manner permitted by the foreign country in which the defendant is present. If the applicant can demonstrate this, he will need to further demonstrate that the court should exercise its discretion to make

the injunction by putting before the court evidence as to the appropriate law and practice in the defendant's country and whether that court would be likely to enforce the injunction.

f. For contra mundum injunctions, the world wide freezing order procedure may be appropriate, where the applicant undertakes not to endorse the injunction outside the jurisdiction without the court's permission.

Payments by local authorities to kinship and non-kinship foster carers: a recent reminder of statutory guidance

66. **R (ota X) v London Borough of Tower Hamlets [2013] EWCA Civ 904** provides a useful reminder of the relevant statutory guidance that applies to Local Authorities when formulating its policies on payments to kinship and non-kinship foster carers.
67. In this case, Tower Hamlets had paid the aunt of three 'damaged and difficult' children less than they would have paid a non-kinship foster carer. At first instance, the court concluded that it was unlawful for the Local Authority to discriminate on the grounds of kinship. Tower Hamlets sought to appeal. The appeal was dismissed.
68. The Court of Appeal set out the applicable statutory guidance:
    a. S7 of the Local Authority Social Services Act 1970 obliges local authorities to act under the general guidance of the Secretary of State. By virtue of s7A 'every local authority shall exercise their social services functions in accordance with such directions as may be given to them under this section by the Secretary of State'. The Secretary of State also has power to issue guidance pursuant to section 23 of the Care Standards Act 2000.
    b. Standard 28.7 of the Fostering Services: National Minimum Standards document states that:

        Criteria for calculating fees and allowances are applied equally to all foster carers, whether the foster carer is related to the child or unrelated, or the placement is short or long term.

    c. Paragraph 5.71 of Chapter 8 of the 'Children Act 1989 Guidance and Regulations volume 4: Fostering Services' document provides that, 'Criteria for calculating [fostering] allowances must apply equally to all foster carers, whether or not they are related to the child or the placement is long or short term.'
    d. Similarly, under the 'Family and Friends Care: Statutory Guidance for Local Authorities' document paragraphs 4.48 and 4.49 provide as follows:

        Fostering services must deliver services in a way which ensures that family and friends foster carers are fully supported to care for children placed with them and are not disadvantaged as a result of their prior relationship with the child.

        Fostering allowances to foster carers must be sufficient to meet the cost to the carer of caring for the child and should be at least the minimum set annually by the Department of Education. The allowances paid by a fostering service must be calculated for family and friends foster carers on the same basis as for all other foster carers, and any variations should relate to the child's needs, the skills of the carer or some other relevant factor that is used as a criterion for all of the service's foster carers.

69. The key issue for the Court of Appeal was whether Tower Hamlets had departed from that guidance and, if so, whether that departure was for cogent, permissible reasons. The Court of Appeal concluded that it was not and noted that it could therefore not be said that the first instance court had reached the wrong decision.

Costs orders against Local Authorities

70. In **re HB v The London Borough of Croydon [2013] EWHC 1956 (Fam)**, Mr Justice Cobb made a costs order against the Local Authority on the basis of the inadequate s37 report it had prepared and filed in private proceedings.
71. Cobb J concluded that '*the clear single proposition which emerges from the civil authorities'* on the issue of awarding costs orders against third parties '*is that such an order is an 'exceptional' one'*.
72. The Court found that such an 'exceptional' order was justified in this case, however, in light of the 'extensive' failures in the report which had '*a profound effect on the conduct of the proceedings. The Local Authority has...failed fundamentally to investigate, address, or analyse the serious issues in the case raised by the father's allegations when it prepared its section 37 report...or at any time in the period which followed prior to the hearing'*.
73. It had become clear during the course of the final hearing that the social worker had not considered the 'Supplementary Guidance to Working Together to Safeguard Children: Safeguarding Children in whom illness is fabricated or induced'. This guidance was issued by the Department for Children Schools and Families ["DCSF"] in 2008 under s7 of the Local Authority Social Services Act 1970 and under s16 of the Children Act 2004. As such, local authorities are expected to have regard to the guidance and comply with it in carrying out their social services functions unless local circumstances indicate exceptional reasons justifying a variation.

John Tughan and Zoe Taylor

4 Paper Buildings

3rd October 2013

Section 6

Speakers Profiles

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Jo Delahunty QC

"Her conversational style of advocacy puts witnesses at their ease, yet conceals a rapier-like incisiveness."
"She has ‘a razor-sharp mind with a phenomenal work-rate’"
Chambers & Partners and The Legal 500

Experience

Year of Call: 1986
Year of Silk: 2006

Education

MA (Oxon) Jurisprudence

Appointments

Public Law Family Recorder (South Eastern Circuit) 2010
Bencher the Honourable Society of Middle temple 2011

Nomination News

Short listed for Jordan's Awards 2013 'Family Silk of the Year'

Short listed for Chambers and Partners 2013 'Family Silk of the Year'

Profile

Jo specializes in contentious and highly complex cases at High Court level and above involving allegations of severe child abuse. She is noted for her ‘*sharp forensic eye and extraordinary memory* ‘and her ability to ‘*dissect extremely complex medical concepts with ease’.* In a highly competitive and specialist silk field, Jo has gained a reputation for ‘formidable’ advocacy and tactical trial management. and has many recent successful reported cases to her credit and is able to move with forensic ease between highly specialized cross examination of medical experts in NAHI/ Inflicted death cases to sensitive cross examination of a child or vulnerable adult where allegations of sexual abuse arise . Jo has acted in legally significant cases in the court of appeal leading to guidance being given on the use and abuse of expert evidence. More recently Jo has been instructed on the Hillsbourgh inquest by Marcia Willis Stewart of Birnberg Peirce & Partners who represents family members of 74 of the 96 victims.

Jo specialises in cases involving:

- The death of/catastrophic injuries to a child (TRIAD cases)/Non Accidental Head Injury (NAHI)/Shaken baby allegations
- Vitamin D/Rickets/gentic disorders and congential malformations affecting a child's potential vulnerability to injury 'Al Alas/Wray' (JDQC acted for the mother) click here.
- Sexual abuse (Intergenerational/ Inter sibling/ maternal rape/ genital mutilation/ internet exploitation
- Ritualized child abuse/cultural practices
- Fabricated Induced Illnes (FII) allegations
- Diability of a child
- Cases involving cross examination of a child or vulnerable adult
- Child protection cases involving concurrent criminal prosecution for trafficking/ attempted murder/ child cruelty and neglect/ sex offences
- Relitigation/ challenge to old findings of fact based on emerging science/ fresh factual evidence.

Complex private law proceedings involving allegations of physical and emotional abuse and neglect (alcoholism/ psychiatric issues) involving transfer of residence applications are a natural corollary to her practice.

Jo also deals with adoption matters.

Jo commands a high professional reputation for;
- Forensic insight and tactical skill
- 'rapier like', highly effective, cross examination
- her 'phenomenal work rate and razor sharp mind'
- her willingness to tackle complex medical concepts and challenging scientific research
- assured negotiation skills
- pro-active client care
- a clear and frank analysis of the strengths and weaknesses of the case and the determination to achieve the best for the client

Jo has had numerous articles published in legal journals : most recently on issues arising from two cases in 2012 which attracted nationwide publicity in The broadsheets , TV and radio as well as the tabloid press : Al Alas/ Wray (The 'rickets / Vit D case) and Ben Butler case (NAHI findings over turned) For further information click here

Jo has also gained acclaim for her seminars delivered, by invitation, to Barristers and Solicitors and medical professionals in family law matters**.** Her session for Jordan's at their annual Public Law conference in 2012 was described as 'excellent' spell-binding' ' brilliant' by audience members following in the tracks of that set in her Butterworth's speech that pre ceded it 'fascinating' 'most inspiring and challenging' . Jo has spoken on joint platforms with fellow originations and speakers who are as passionate about child protection issues as she is: notably the Association of Lawyers for Children, The Criminal Bar Association and the Academy of Experts.

ARTICLES: 2012 ONWARD ONLY

L B Islington v Al Alas and Wray; the vitamin D and rickets case 'June 2012 FAM Law 659'

'What Price Justice? Experts or Treating Clinicians' July 2012 FAM Law 882

In Defence of Experts 'Counsel' August 2012

'In Defence of Experts' The TEDR (Experts and Dispute Resolver) TEDR [20120 Vol 17 No 2 24

'A Miscarriage of Justice - Corrected : the difference Expert Evidence can make to outcome' Nov 2012 Fam Law 1344

'Relitigation in Family Cases: the emerging law and practice' Jan 2013 Fam Law 40

SEMINARS

2010

ALC Annual Conference Nov 2010 'The Child as a Witness: Whose Right is it Anyway'

Grand Stand Seminar Park Lane Plowden Leeds 24.3.10 'Children Giving Evidence: Where the Unwary Tread'

2011

Jordan's Annual Public Law Update 15.3.11 'Children in Care Proceedings : putting the new law into context : RE W explained and explored'

"excellent", "engaging", "excellent delivery-engaging-excellent notes" " spoke without notes for her full session: excellent delivery and informative content"

Grandstand Seminar Park Lane Plowden: York. 22.9.2011 'The Child in the Witness Box: preparation for trial and cross examination: Practical Guide' Speaking with Prof Martin Conway on 'Children and Memories'

Leicestershire and Rutland Family Justice Council Annual Conference' on 18.11.11
Panel Debate on a panel with HHJ Lea, Prof Judith Masson with guest speaker King J

2012

Middle Temple inaugural Women's Forum launch: 6th March
"brilliant" "inspirational"

Butterworth Public Child Care Law Conference. Annual Public Law update 26.6.12
"Fascinating" "Most inspiring and challenging" "Delivery was so impressive! Will impact my practice on NAI" "Excellent as always"
'Brilliant/re-balancing material."

ALC and CBA: joint seminar 4.7.12 "Child injury and Expert Evidence; the Lessons of Al Alas" Chaired by Martha Cover: Chair of ALC

Speaking with Mike Turner QC and Anya Lewis (leading and junior counsel for Chana Al Alas in the criminal trial and JDQC and Kate Purkiss (leading and junior counsel for Chana Al Alas in the care trial)

Jordan's; Annual Child Care Conference 20.9.12:
"excellent" "Brilliant - should have had more time" "Informative and well-delivered" "Spellbinding'

"It was a genuine pleasure to hear Jo Delahunty QC (who is like the most charming intelligent surgical scalpel you will ever meet) speak on the Al Alas Wray case as she was leading counsel for one of the parents, and so had a wealth of useful insights and tactics to put forward."

FLBA: autumn series lectures Oct 2013 'Expert and Medical Evidence in Child Protections Cases: A Practical Guide'

"Formidable" "inspiring"

Park Lane Plowden Grandstand Seminar: York 18th.10, 12, speaking on platform with Dr Willie Reardon: Consultant Geneticist.

2013

17th April 2013:

Middle temple women's forum hosted a session designed to encourage women to expand their career horizons by taking judicial office and Jo Delahunty QC was on the discussion panel along with The Rt Hon Lady Justice Black DBE, The Hon Mr Justice Coleridge,Judge Siobhan McGrath, HHJ Rosalind Coe QQ, Martin Forde QC and Rachel Langdale QC

Forthcoming:
8th May. Experts Forum: The Academy of Experts; 3 Gray's Inn Square: Speaker: 'The Value of an Expert '

14th May: Butterworth's Annual Child Law Conference 'De Bunking the myth: 'Parents don't win care cases'

Professional Memberships

Family Law Bar Association
Association of Lawyers for Children
Association of Women Barristers
FLBA National committee member 2010 - and is the FLBA chair of Fees sub committee 2012 -
The Middle Temple Women's Forum (steering committee)
Centre for Child and Family Reform (CCFLR) committee 2012 -
Jo is a Patron of AMEND (The Association for Multiple Endocrine Disorders

Inquest

Recommendations

'the decision of the children's solicitor and junior counsel to instruct Miss Delahunty QC was, in my view, both wise and responsible ' per Lord Justice McFarlane Re A (2012) EWCA Civ 1477

Directories

Jo Delahunty QC has 'a phenomenal brain, and great forensic skill'.
Recommended as a Leading Family Silk in the area of Children Law
Legal 500 2013 Top Tier

The "absolutely brilliant" Jo Delahunty QC is a children law expert who deals with cases involving issues such as catastrophic injury, sexual abuse and ritualized abuse. She is reputed to be particularly strong in cases with daunting medical aspects, with sources noting that "she dissects extremely complex medical concepts with ease."
Recommended as a Leading Silk in Chambers and Partners 2013
(Band 1)

Jo Delahunty QC, who has 'a sharp forensic eye and an extraordinary memory', recently acted in the high-profile cases of Re E (Children) and LB of Islington v Al Alas and Wray.

Recommended as a Leading Silk in children's law in Legal 500 2012

The "absolutely superb" Jo Delahunty QC is another at the set to handle the most complex children cases, often involving sexual assault and complex medical issues. She has in the last twelve months handled a number of non-accidental injury matters.
Recommended as a Leading Silk in Chambers and Partners 2012

Jo Delahunty QC is much admired for public children work. "Her conversational style of advocacy puts witnesses at their ease, yet conceals a rapier-like incisiveness."
Recommended as a Leading Silk in Chambers and Partners 2011

Jo Delahunty QC has ‘a razor-sharp mind with a phenomenal work-rate'
Recommended as a Leading Silk in children's law in Legal 500 2011

Jo Delahunty QC is "young, dynamic and making waves in every case she gets involved in."
Recommended as a Leading Silk in Chambers and Partners 2010

The set was recently bolstered by the arrival of Jo Delahunty QC. Delahunty has particular prowess advising on complex care cases, particularly where there are allegations of abuse.

Recommended as a leading Silk in The Legal 500 2010

Recommended as a Leading Family Silk in the Legal Experts 2010

Jo Delahunty QC applies a "relaxed, straightforward and no-nonsense" attitude to her work and can often be seen acting in complex care proceedings.
Recommended as a Leading Silk in Chambers and Partners 2009

Jo Delahunty QC has expertise in complex care proceedings including the death of, or catastrophic injuries to children.

Recommended as a Leading Family Silk in The Legal 500 2009

Recommended as a Leading Family Silk in the Legal Experts 2009

Jo Delahunty QC most frequently represents parents in public law care proceedings. She also acted for alleged perpetrators in sex abuse cases who were themselves minors, thus subject to the Children's Act. "I find her a challenging opponent and admire her very much for it," commented one opposing counsel.
Recommended as a Leading Silk in Chambers and Partners 2008

Jo Delahunty QC has particular expertise in care proceedings and child protection issues. Peers note that she is an "exceptionally well-prepared lawyer who is ready on paper to destroy your case." In court, she "fights hard, yet always maintains her focus on the child."
Recommended as a Leading Silk in Chambers and Partners 2007

Practice areas

- Private Law
- Public Law

Dispute resolution

- Mediation

Awards

Cases

London Borough of Sutton v Grey & Butler
[2012] EWHC 2604 (Fam), [2013] 1 FLR 833 [2012] EWHC 2763 (Fam), [2013] 1 FLR 914

LB of Islington v Al Alas and Wray (2012)
[2012] 2 FLR 1239; [2012] EWHC 865 (Fam)

Re M (A Child) (2012)
[2012] 2 FLR 121; [2012] Fam Law 511;[2012] EWCA Civ 165

K (Children) [2012]
[2012] 2 FLR 745; EWHC Case No. LS09C05566

A London Borough v O and Others [2011]

2011 EWHC 2754 (Fam)

A County Council (Applicant) v (1) K (2) C (3) T (By the Child's Guardian HT) (Respondents) & (1) CAFCASS (2) Anonymous Referrer (3) T (4) Nagacro (Interveners) (2011)
[2011] EWHC 1672 (Fam)

A Local Authority v S (2009)
[2009] EWHC 2115 (Fam); (2010) 1 FLR 1560

X Local Authority v N J & 6 Ors (2008)
(2008) 2 FLR 1389; [2008] EWHC 1484 (Fam)

Re B (Children) (2008)
[2008] UKHL 35; (2008) 3 WLR 1 : (2008) 4 All ER 1 : (2008) 2 FLR 141 : (2009) 1 AC 11 : Times, June 12, 2008

(1) Haringey London Borough Council (2) Hackney London Borough Council v MRS S & 7 Ors(2006)
[2006] EWHC 2001 (Fam)

Re X Sub Nom Barnet LBC v Y (2006)
(2006) 2 FLR 998

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Dorothea Gartland

Dorothea Gartland possesses 'considerable intellectual acumen, and is extremely thorough'. Legal 500

Experience
Year of Call: 2004

Education
Cambridge University MA Modern Languages
CPE London Metropolitan
BVC ICSL

Languages
French and German

Appointments
Management committee of GALOP
2013 Independent Adjudicator Legal Aid Agency

Profile
Dorothea specialises in the law relating to children. She is hard working and a committed advocate.

In 2009 Dorothea won the ALC ‘Outstanding newcomer in the field of Children Law’.

Professional Memberships
Family Law Bar Association
Association of Lawyers for Children
Inner Temple
Affiliate Member of Resolution

Directories

Recommended as a Leading Junior in the area of Child Law
Legal 500 **2013**

Dorothea Gartland possesses ‘considerable intellectual acumen, and is extremely thorough’.
Recommended as a Leading Junior in the area of Child Law in the Legal 500 **2012**

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

Dispute resolution

- Collaborative Lawyer
- Mediation

Direct Access

- Direct Access

Cases

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

LA v (1) X (2) T (3) R (Respondents) & (1) DJ (2) PJ & SJ (Interveners) (2011)
[2012] 2 FLR 456 : [2012] Fam Law 392; [2011] EWHC 3401 (Fam)

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David Bedingfield

Licensed in both the USA and the UK, David Bedingfield has developed a speciality involving international movement of children. He has also published extensively both in the United Kingdom and in the United States.

Experience
Year of Call: 1991

Education
BA
Juris Doctor (Emory University, Atlanta)

Appointments
Recorder 2009

Profile
David Bedingfield has developed a speciality in cases involving children. He has published extensively, both in the UK and the US, and his book '*The Child In Need: Children, the State and the Law*' was described by reviewers in the legal press as "invaluable to teachers of child care law," and "an essential purchase for all children law specialists". His book "Advocacy in Family Proceedings" (Family Law 2005) was "Highly recommended" by the New Law Journal. The second edition of this book was published in February 2013. From July (2013) Family Law: ". . . immense value, . . . significantly revised and updated from the first edition. The author weaves into his narrative a review of the literature on advocacy and how judicial tribunals make their decisions, together with anecdotes and direct quotations from members of the judiciary, to provide practical guidance on all aspects of advocacy in family law."

His practice now includes representation of local authorities, parents or guardians in complex public law cases, and representation of parents and local authorities in cases involving international issues. He also often advises in matters involving media coverage of children, including children involved in public law cases. He often appears in judicial review applications in cases where local authority duties to children are at issue. He also lectures regularly on advocacy techniques and the international movement of children.

Professional Memberships
Family Law Bar Association
State Bar of Georgia (Called 1983)

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

Dispute resolution
- Early Neutral Evaluator

Cases

Re A (Children) [2010]
[2010] EWCA Civ 1490

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

R (on the Application of Raines) v Orange Grove Foster Care Agency Ltd (2006)
[2006] EWHC 1887 (Admin)

Re V : Re L (Minors) (Sexual Abuse: Disclosure) (1998)
(1999) 1 WLR 299 : (1999) 1 FLR 267 : Times, October 9, 1998

Re H (A Minor) (Application to remove from jurisdiction) (1998)
(1998) FLR 848

Re V : Re L (Minors) (Sexual Abuse: Disclosure) (1997)
AC0791197

L v London Borough of Bexley (1996)
(1996) 2 FLR 595

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Paul Hepher

Paul is a specialist child law advocate who, with twenty years experience, brings to his cases a highly approachable style combined with a determined and forceful manner in court.

Experience

Year of Call: 1994

Education

MA (Hons) Oxon
Whitgift School, Merton College, Oxford, Gray's Inn Karmel scholar

Profile

Paul's expertise lies in acting for parents, children, vulnerable adults and local authorities. He is also instructed by the Official Solicitor and Cafcass Legal. He has acted as Advocate to the Court of Appeal. He is qualified as a Direct Access Lawyer.

Private children law
Paul's practice focuses on acting for parents who are often locked into fraught and highly contentious residence and contact disputes, specialising in Domestic and International relocation cases. He recently appeared for the Applicant in the case of:

Re TC and JC (Children: Relocation) [2013] EWHC 292 (Fam)

http://www.familylawweek.co.uk/site.aspx?i=ed112080

His particular skills lie in conducting cross examination of parties and experts in intractable and alienated parent cases involving serious allegations of emotional, physical or sexual abuse.

International movement of children
Paul regularly appears in the High Court instructed in child abduction matters and cases concerned with the international movement of children, Hague and non Hague, Inherent Jurisdiction, Wardship, and Brussels IIR.

Public law & Court of Protection
Across the wide sphere of public law, Paul acts for parents, grandparents, competent children, Guardians and Local Authorities. He has built up a practice with a focus on medical cases involving allegations of non accidental injury, including infant deaths and near fatal incidents. He acts frequently in cases with mental health issues. He has acted in a number of cases involving allegations of fabricated or induced illness. His public law practice takes him into the Court of Protection where he represents private individuals and public bodies, drawing from his wealth of experience within the parallel best interests jurisdiction.

He has expertise in adoption and special guardianship, with a focus on Human Rights' arguments. He has mounted and resisted applications for revocation of Placement Orders and Adoption Orders, appearing this year in the High Court case of Re AW (a child: Application to revoke Placement Order: Leave to oppose Adoption).

Paul continues to present lectures and seminars on topics across the spectrum of family law.

Professional Memberships

- Bar pro bono unit
- Family Law Bar Association

Practice areas

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

Direct Access

- Direct Access

Cases

Re TC and JC (Children: Relocation) (2013)
[2013] EWHC 292 (Fam)

Re B (Children) (2009)
[2009] EWCA Civ 1499

Re C (A Child) (2009)
[2010] 1 FLR 774 : [2009] Fam Law 1127 : [2009] EWCA Civ 955

Re R (A Child) (2009)
[2010] 1 FLR 509; [2009] EWCA Civ 445

Re J (A Child) (2007)
[2007] EWCA Civ 906; (2008) 1 FLR 369

Re K & H (Children) (2006)
[2007] EWCA Civ 1898

Re S (Children) : Re E (A Child) (2006)

Re S (Children) : Re E (A Child) (2006)
[2007] 1 FLR 482; [2006] EWCA Civ 1190

Re A (Contact: Witness Protection Scheme) (2005)
[2006] 2 FLR 551

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

Re M & B (Children) (2000)
[2001] 1 FCR 116

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Cyrus Larizadeh

Cyrus Larizadeh offers a 'meticulous approach' and is 'well respected by judges'.
Legal 500

Experience
Year of Call: 1992

Education
BA (Kent)
Dip Droit Francais (Bordeaux)
Cyrus was educated at Harrow School, the University of Kent and the University of Bordeaux
Rothschild Scholarship (Harrow)
Hallett Prize for Law (Kent)

Languages
French, Persian

Profile
Cyrus' main area of practice is complex care proceedings involving sexual abuse and non-accidental injury, acting for local authorities, parents and children, S38(6) Children Act 1989 Assessments, media injunctions relating to children, private law children and care standards tribunal advocacy.

He is a contributor to the *Family Law Journal* and was a tutor in law at Middlesex University from 1993 to 1997. He regularly lectures in family law to various groups and does witness training workshops for Social Services and experts for the Royal Society of Medicine.

Professional Memberships
Family Law Bar Association
Inner Temple

Directories
Private and public children law specialist Cyrus Larizadeh is commended for his "excellent courtroom manner." His recent matters have included a number of cases arising from sexual, physical and emotional abuse.

Recommended as Leading Family Junior in Chambers and Partners **2013**

Recomended as a Leading Junior in the area of Children law
The Legal 500 **2013**

The ‘meticulous and excellent’ Cyrus Larizadeh - has ‘in-depth knowledge of all aspects of children law, and specialist knowledge of cases involving sex offences or allegations of sexual abuse’.
Recommended as a Leading Junior in the Legal 500 **2012**

Cyrus Larizadeh handles public law children matters. His cases often involve non-accidental injury and sexual abuse.

Recommended as Leading Family Junior in Chambers and Partners **2012**

Recommended as a Leading Junior in the Legal 500 **2011**

Cyrus Larizadeh excels at care cases involving non-accidental injury and complex medical evidence.
Recommended as a Leading Family Junior in Chambers & Partners **2011**

Cyrus Larizadeh offers a 'meticulous approach' and is 'well respected by judges'.
Recommended as a Leading Junior in the Legal 500 **2010**

Cyrus Larizadeh is a good all-rounder who is "conscientious, thorough and knowledgeable."
Recommended as a Leading Family Junior in Chambers & Partners **2010**

A "terrific lawyer" who is enthusiastic and knowledgable about his work," Cyrus Larizadeh earns the respect of both peers and clients. Complex care proceedings form the mainstay of his practice, with a particular emphasis on matters involving sexual abuse and non-accidental injury.
Recommended as a Leading Family Junior in the area of Children in Chambers & Partners **2009**

Cyrus Larizadeh makes his debut in the tables this year, having stood out from the crowd in protracted cases concerning care proceedings. “Working at an incredible level of detail and completely on top of the papers,” observers report that he is also “very good on his feet.”
Recommended as a Leading Family Junior in the area of Children in Chambers & Partners **2008**

Practice areas

- Private Law
- Public Law

Cases

Re A (A Child) (Mental Health of Mother)
[2001] 1 FCR 577

Re X (A Child) (Injunctions Restraining Publication)
[2001] 1 FCR 541

Re C (Family Assistance Order)
[1996] 1 FLR 424

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Zoe Taylor

Experience
Year of Call: 2011

Qualifications
BA (e) Hons (Cantab) in Law
Diplôme universitaire d'études juridiques françaises – Mention Bien (University Degree in French Legal Studies, 1st)
Kaplan Law School Advocacy Scholar 2010-2011
Inner Temple Exhibition Award 20120
Inner Temple Allan Levy QC Award 2010-2011

Education
University of Cambridge (Pembroke College)
Université de Poitiers, France (ERASMUS Exchange)
Kaplan Law School, London (Bar Professional Training Course)

Languages
French
German (Basic)

Profile
Zoe is building a practice in all areas of family law. She joined chambers after successfully completing a varied pupillage under the supervision of Mark Jarman, Joy Brereton and Nicholas Fairbank, where she gained experience in chambers' practice areas.

Prior to commencing pupillage, Zoe worked in the Youth, Education & Community Care and Strategic Litigation Departments of a children's charity, Just for Kids Law, which provides legal advice, support and representation to young people who find themselves in difficulty. She has also volunteered as a teaching assistant in a school for boys aged 10-16 with social, emotional and behavioural difficulties.

In her spare time, Zoe enjoys cooking, baking, reading and walking.

Professional Memberships
Family Law Bar Association
Inner Temple

Practice areas

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

Section 7

Members List

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Barristers

4 Paper Buildings has an ‘unrivalled collection of senior and junior barristers in the field. Predominantly known for its children work, but also has some ’really excellent people for matrimonial finance cases’. Legal 500 2011

Barristers

Alex Verdan QC
Call: 1987 | Silk: 2006
Head of Chambers

Jonathan Cohen QC
Call: 1974 | Silk: 1997

Baroness Scotland QC
Call: 1977 | Silk: 1991

Henry Setright QC
Call: 1979 | Silk: 2001

Marcus Scott-Manderson QC
Call: 1980 | Silk: 2006

Kate Branigan QC
Call: 1985 | Silk: 2006

Jo Delahunty QC
Call: 1986 | Silk: 2006

Michael Sternberg QC
Call: 1975 | Silk: 2008

Catherine Wood QC
Call: 1985 | Silk: 2011

Rex Howling QC
Call: 1991 | Silk: 2011

Teertha Gupta QC
Call: 1990 | Silk: 2012

David Williams QC
Call: 1990 | Silk: 2013

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 Hepher
Call: 1994

Cliona Papazian
Call: 1994

Judith Murray
Call: 1994

Ruth Kirby
Call: 1994

Sarah Lewis
Call: 1995

Nicholas Fairbank
Call: 1996

James Copley
Call: 1997

Justine Johnston
Call: 1997

Oliver Jones
Call: 1998

Lucy Cheetham
Call: 1999

Hassan Khan
Call: 1999

Cleo Perry
Call: 2000

Harry Gates
Call: 2001

Rebecca Foulkes
Call: 2001

Katie Wood
Call: 2001

Rhiannon Lloyd
Call: 2002

Kate Van Rol
Call: 2002

Ceri White
Call: 2002

Matthew Persson
Call: 2003

Dorothea Gartland
Call: 2004

Samantha Woodham
Call: 2006

Laura Morley
Call: 2006

Nicola Wallace
Call: 2006

Michael Gration
Call: 2007

Jacqueline Renton
Call: 2007

Andrew Powell
Call: 2008

Henry Clayton
Call: 2007

Sophie Connors
Call: 2009

Michael Edwards
Call: 2010

Harry Nosworthy
Call: 2010

Rachel Chisholm
Call: 2010

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