

4 PAPER BUILDINGS

Radicalism Cases in the Family Courts

3CPD

SRA– BTM/CHLS

BSB - 1010

Thursday 7th May 2016

CHAIR:

Jo Delahunty QC

SPEAKERS:

Jo Delahunty QC

Sam King

Paul Hepher

Ruth Kirby

Chris Barnes



4 Paper Buildings

1. How to use the High Court's Inherent Jurisdiction

Ruth Kirby

2. Publicity and the Press

Paul Hepher

3. Case Management & Lessons learnt from the Court arena

**Jo Delahunty QC
and Christopher Barnes**

4. Speaker Profiles

5. Members of Chambers



Section 1

How to use the High Court's Inherent Jurisdiction

Ruth Kirby

Radicalisation: understanding how the family courts can help

Ruth Kirby, Barrister & Mediator,
4 Paper Buildings

Agenda

- Defining radicalisation in the family court
- Using wardship and the Inherent Jurisdiction

Why we are here...

"a new facet of child protection"

"a different facet of vulnerability for children than that which the courts have had to deal in the past"

Tower Hamlets London BC v M & Ors [2015] EWHC 869 (Fam),
Hayden J

"we are here in the realm of unknown unknowns" *Re X and Y*
[2015] EWHC 2265 (Fam), Munby P

Radicalisation in the family court

Holman J

“negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism”

BUT NOT

“a set of Muslim beliefs and practices ..being strongly instilled in these children (which) cannot be regarded as in any way objectionable or inappropriate”

Where are the orders made?

- High Court
- The work they do
- Inherent Jurisdiction, wardship



Why the High Court?

“The family court system, particularly the Family Division is, and always has been, in my view, in the vanguard of change in life and society” – Hayden J in LBTH v M

Munby P



Mr Justice Hayden



Mr Justice Newton



Three categories in which Fam Div will help

- Children planning to go to or being
groomed to go to Syria
- Children's parents planning to take them
to Syria
- Children at risk of being radicalised and
becoming involved in terrorism and
extremism in UK

What is the Inherent Jurisdiction?

- Theoretically unlimited jurisdiction
- In practice endlessly versatile
- Calibre of Judge

What can help?

- Tipstaff orders
 - passport order
 - location order
 - collection order

Richard Cheeseley 0207 9476713
tipstaffrcj@hmcts.gsi.gov.uk

How can we help?

- Disclosure orders
 - Home Office
 - HMRC
 - National Health Records
 - Government Departments
 - Schools

How can we help?

- Disclosure from family court proceedings
- Disclosure from criminal court proceedings

How can we help?

- Reporting restriction orders (RROs)
 - move towards publicity and transparency
 - exceptions allowed
 - if want RRO, need notice and draft order to court (and Press)
 - PA at the RCJ:
Brianfarmer@pressassociation.com

Remember....

- Cogent evidence will secure orders even without notice
- Full and frank disclosure with cogent evidence





Section 2

Publicity and the Press

Paul Hepher

PUBLICITY AND THE PRESS

Public Law Update: Radicalisation Cases in the Family Courts

INTRODUCTION

1. Radicalisation cases, as a broad category, involve the interplay of family life and terrorism. Where that involves the movement of children to Syria or neighbouring countries with the intention of those children involving themselves, or being involved with so called Islamic State, it is all too understandable that the media is likely to show a profound interest in the facts of such cases. For the public at large they are likely to represent unusual and sensational stories. The media, with some justification, might claim that the public has a right to know what is happening in these cases.
2. On occasion the parties may welcome publicity. An applicant Local Authority may need the help of the press in locating parents and children. Respondents in proceedings may wish for the opportunity to disseminate their particular message or cause to the public at large, regardless of the impact upon any young children. Often however publicity that leads to the identification of the children will bring with it at the same time a significant intrusion into the private and family life of the children involved, and the prospect that that publicity itself will put those children at real risk of significant harm.
3. Any applicant coming to court on such a case will need at the outset to consider these issues, and whether or not reporting restrictions will be required. A review of this position may be prompted during the course of the case. Once joined, the

Respondents are likely to have a view. All will need to consider upon the handing down of any judgment the extent to which, if at all, and with what level of redaction and/or anonymisation that judgment should be published.

4. Hayden J, within his 9-point guidance (set out at para 18 of his judgment in **London Borough of Tower Hamlets v M and Others [2015] EWHC 869 (Fam), [2015] 2 FLR 1431**) when outlining the core principles that apply when issuing proceedings, at point 7 stated:

Recognising that there will be urgency to these applications, careful attention, in advance of the hearing, should be given to the framework of reporting restrictions required to protect the child from publicity. In this exercise, it should be remembered that some of the families involved may already have excited a degree of press coverage. Indeed, they may, on occasion, have sought it out. There is a risk that identification of the children might be revealed by piecing together information already in the public domain, i.e. the 'jigsaw effect'. As, in paragraph 1 above, and for similar reasons, the restrictions contended for should be drafted before coming to court;

5. As cited by **Keehan J in Birmingham CC v Riaz & Others [2014] EWHC 4247 (Fam), [2015] 2 FLR 763 at para 60**, in relation to how the press might report information from court proceedings, the President said in *Re J (Reporting Restriction: Internet: Video)* [2013] EWHC 2694 (Fam), [2014] 1 FLR 523, at [37]–[40]:

'[37] It is not the role of the judge to seek to exercise any kind of editorial control over the manner in which the media reports information which it is entitled to publish. As I explained in *Re Roddy (A child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 2 FLR 949, para [89]:

"A judge can assess what is lawful or unlawful, a judge in the Family Division may be called on to assess whether some publication is sufficiently harmful to a child as to warrant preventing it. But judges are not arbiters of taste or decency ... It is not the function of the judges to legitimise 'responsible' reporting whilst censoring what some are pleased to call 'irresponsible' reporting ... And as the Strasbourg jurisprudence establishes (see *Harris v Harris; Attorney-General v Harris* [2001] 2 FLR 895, at [373]), the freedom of expression secured by Art 10 is applicable not only to information or ideas that are favourably received, or regarded as inoffensive, but also to those that

offend, shock or disturb the state or any section of the community. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. It is not for the court to substitute its own views for those of the press as to what technique of reporting should be adopted by journalists. Article 10 entitles journalists to adopt a particular form of presentation intended to ensure a particularly telling effect on the average reader. As Neill LJ recognised [in *Re W (Wardship: Publication of Information)* [1992] 1 FLR 99] a tabloid newspaper is entitled to tell the story in a manner which will engage the interest of its readers and the general public."

[40] The publicist – I speak generally, not of the present case – may be an unprincipled charlatan seeking to manipulate public opinion by feeding it tendentious account of the proceedings. But freedom of speech is not something to be awarded to those who are thought deserving and denied to those who are thought undeserving. As Lord Oliver of Aylmerton robustly observed in *Attorney-General v Guardian Newspapers Ltd* [1987] 1 WLR 1248, 1320:

"the liberty of the press is essential to the nature of a free state. The price that we pay is that that liberty may be and sometimes is harnessed to the carriage of liars and charlatans, but that cannot be avoided if the liberty is to be preserved."

The remedy, to repeat, is publicity for the truth which lies concealed behind the unfounded complaints, "more speech, not enforced silence".'

6. The aim of this paper is to set out the legal principles at play, with some practical guidance, and then to consider how in recent case law those principles have been applied, and to what effect.

LEGAL PRINCIPLES

7. I shall take in turn:
 - a. The need for greater transparency in the Family Court,
 - b. The attendance of the media at hearings, and
 - c. The making of Reporting Restriction Orders.

Transparency in the Family Courts

8. **The President's practice guidance of 16 January 2014 at [2014] 1 FLR 733, entitled "Transparency in the Family Courts: Publication of Judgments"** sets out the ongoing changes that are intended. It reads:

The purpose of this Guidance

1 This Guidance (together with similar Guidance issued at the same time for the Court of Protection) is intended to bring about an immediate and significant change in practice in relation to the publication of judgments in family courts and the Court of Protection.

2 In both courts there is a need for greater transparency in order to improve public understanding of the court process and confidence in the court system. At present too few judgments are made available to the public, which has a legitimate interest in being able to read what is being done by the judges in its name. The Guidance will have the effect of increasing the number of judgments available for publication (even if they will often need to be published in appropriately anonymised form).

3 In July 2011 Sir Nicholas Wall P issued, jointly with Bob Satchwell, Executive Director of the Society of Editors, a paper, *The Family Courts: Media Access & Reporting* (Media Access & Reporting), setting out a statement of the current state of the law. In their preface they recognised that the debate on increased transparency and public confidence in the family courts would move forward and that future consideration of this difficult and sensitive area would need to include the questions of access to and reporting of proceedings by the media, whilst maintaining the privacy of the families involved. The paper is to be found at:

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/family-courts-media-july2011.pdf>

4 In April 2013 I issued a statement, *View from the President's Chambers: the Process of Reform*, [2013] Fam Law 548, in which I identified transparency as one of the three strands in the reforms which the family justice system is currently undergoing. I said:

'I am determined to take steps to improve access to and reporting of family proceedings. I am determined that the new Family Court should not be saddled, as the family courts are at present, with the charge that we are a system of secret and unaccountable justice. Work, commenced by my predecessor, is well underway. I hope to be in a position to make important announcements in the near future.'

The President went on to consider the legal framework from para 9:

9 The effect of section 12 of the Administration of Justice Act 1960 is that it is a contempt of court to publish a judgment in a family court case involving children unless either the judgment has been delivered in public or, where delivered in private, the judge has authorised publication. In the latter case, the judge normally gives permission for the judgment to be published on condition that the published version protects the anonymity of the children and members of their family.

10 In every case the terms on which publication is permitted are a matter for the judge and will be set out by the judge in a rubric at the start of the judgment.

11 The normal terms as described in paragraph 9 may be appropriate in a case where no-one wishes to discuss the proceedings otherwise than anonymously. But they may be inappropriate, for example, where parents who have been exonerated in care proceedings wish to discuss their experiences in public, identifying themselves and making use of the judgment. Equally, they may be inappropriate in cases where findings have been made against a person and someone else contends and/or the judge concludes that it is in the public interest for that person to be identified in any published version of the judgment.

12 If any party wishes to identify himself or herself, or any other party or person, as being a person referred to in any published version of the judgment, their remedy is to seek an order of the court and a suitable modification of the rubric: *Media Access & Reporting*, para 82; *Re RB (Adult) (No 4)* [2011] EWHC 3017 (Fam), [2012] 1 FLR 466, paras [17], [19].

13 Nothing in this Guidance affects the exercise by the judge in any particular case of whatever powers would otherwise be available to regulate the publication of material relating to the proceedings. For example, where a judgment is likely to be used in a way that would defeat the purpose of any anonymisation, it is open to the judge to refuse to publish the judgment or to make an order restricting its use.

Guidance

14 This Guidance takes effect from 3 February 2014. It applies

- (i) in the family courts (and in due course in the Family Court), to judgments delivered by Circuit Judges, High Court Judges and persons sitting as judges of the High Court; and
- (ii) to all judgments delivered by High Court Judges (and persons sitting as judges of the High Court) exercising the inherent jurisdiction to make orders in respect of children and incapacitated or vulnerable adults.

15 The following paragraphs of this Guidance distinguish between two classes of judgment:

- (i) those that the judge *must* ordinarily allow to be published (paragraphs 16 and 17); and
- (ii) those that *may* be published (paragraph 18).

16 Permission to publish a judgment should always be given whenever the judge concludes that publication would be in the public interest and whether or not a request has been made by a party or the media.

17 Where a judgment relates to matters set out in Schedule 1 or 2 below and a written judgment already exists in a publishable form or the judge has already ordered that the judgment be transcribed, the starting point is that permission should be given for the judgment to be published unless there are compelling reasons why the judgment should not be published.

Schedule 1

In the family courts (and in due course in the Family Court), including in proceedings under the inherent jurisdiction of the High Court relating to children, judgments arising from:

(i) a substantial contested fact-finding hearing at which serious allegations, for example allegations of significant physical, emotional or sexual harm, have been determined;

(ii) the making or refusal of a final care order or supervision order under Part 4 of the Children Act 1989, or any order for the discharge of any such order, except where the order is made with the consent of all participating parties;

(iii) the making or refusal of a placement order or adoption order under the Adoption and Children Act 2002, or any order for the discharge of any such order, except where the order is made with the consent of all participating parties;

(iv) the making or refusal of any declaration or order authorising a deprivation of liberty, including an order for a secure accommodation order under section 25 of the Children Act 1989;

(v) any application for an order involving the giving or withholding of serious medical treatment;

(vi) any application for an order involving a restraint on publication of information relating to the proceedings.

18 In all other cases, the starting point is that permission may be given for the judgment to be published whenever a party or an accredited member of the

media applies for an order permitting publication, and the judge concludes that permission for the judgment to be published should be given.

19 In deciding whether and if so when to publish a judgment, the judge shall have regard to all the circumstances, the rights arising under any relevant provision of the European Convention on Human Rights, including Articles 6 (right to a fair hearing), 8 (respect for private and family life) and 10 (freedom of expression), and the effect of publication upon any current or potential criminal proceedings.

20 In all cases where a judge gives permission for a judgment to be published:

(i) public authorities and expert witnesses should be named in the judgment approved for publication, unless there are compelling reasons why they should not be so named;

(ii) the children who are the subject of the proceedings in the family courts, and other members of their family, and the person who is the subject of proceedings under the inherent jurisdiction of the High Court relating to incapacitated or vulnerable adults, and other members of their family, should not normally be named in the judgment approved for publication unless the judge otherwise orders;

(iii) anonymity in the judgment as published should not normally extend beyond protecting the privacy of the children and adults who are the subject of the proceedings and other members of their families, unless there are compelling reasons to do so.

21 Unless the judgment is already in anonymised form or the judge otherwise orders, any necessary anonymisation of the judgment shall be carried out, in the case of judgments being published pursuant to paragraphs 16 and 17 above, by the solicitor for the applicant in the proceedings and, in the case of a judgment being published pursuant to paragraph 18 above, by the solicitor for the party or person applying for publication of the judgment. The anonymised version of the judgment must be submitted to the judge within a period specified by the judge for approval. The version approved for publication will contain such rubric as the judge specifies. Unless the rubric specified by the judge provides expressly to the contrary every published judgment shall be deemed to contain the following rubric:

'This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.'

22 The judge will need to consider who should be ordered to bear the cost of transcribing the judgment. Unless the judge otherwise orders:

(i) in cases falling under paragraph 16 the cost of transcribing the judgment is to be at public expense;

(ii) subject to (i), in cases falling under paragraph 17 the cost of transcribing the judgment shall be borne equally by the parties to the proceedings;

(iii) in cases falling under paragraph 18, the cost of transcribing the judgment shall be borne by the party or person applying for publication of the judgment.

23 In all cases where permission is given for a judgment to be published, the version of the judgment approved for publication shall be made available, upon payment of any appropriate charge that may be required, to any person who requests a copy. Where a judgment to which paragraph 16 or 17 applies is approved for publication, it shall as soon as reasonably practicable be placed by the court on the BAILII website. Where a judgment to which paragraph 18 applies is approved for publication, the judge shall consider whether it should be placed on the BAILII website and, if so, it shall as soon as reasonably practicable be placed by the court on the BAILII website.

9. The Guidance applies to judgments handed down in radicalisation cases, as judgments delivered by High Court Judges sitting in the Family Court (para 14(i))

and/or delivered by High Court Judges exercising the inherent jurisdiction to make orders in respect of children (para 14(ii)).

10. Where the judgment arises from a substantial contested fact finding hearing at which serious allegations have been determined, and a written judgment exists in a publishable form, the starting point is for permission to be given for publication unless there are compelling reasons against this (para 17 & Schedule 1(i)). Many judgments in radicalisation cases are likely to fall within this category.

Media attendance

11. Media attendance at hearings is governed by **Rule 27.11 of the Family Procedure Rules 2010**:

27.11 Attendance at private hearings

(1) This rule applies when proceedings are held in private, except in relation to –

(a) hearings conducted for the purpose of judicially assisted conciliation or negotiation;

(b) proceedings to which the following provisions apply –

(i) Part 13 (proceedings under section 54 of the Human Fertilisation and Embryology Act 2008);

(ii) Part 14 (procedure for applications in adoption, placement and related proceedings); and

(iii) any proceedings identified in a practice direction as being excepted from this rule.

(2) When this rule applies, no person shall be present during any hearing other than –

- (a) an officer of the court;
- (b) a party to the proceedings;
- (c) a litigation friend for any party, or legal representative instructed to act on that party's behalf;
- (d) an officer of the service or Welsh family proceedings officer;
- (e) a witness;
- (f) duly accredited representatives of news gathering and reporting organisations; and
- (g) any other person whom the court permits to be present.

(3) At any stage of the proceedings the court may direct that persons within paragraph (2)(f) shall not attend the proceedings or any part of them, where satisfied that –

- (a) this is necessary –
 - (i) in the interests of any child concerned in, or connected with, the proceedings;
 - (ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
 - (iii) for the orderly conduct of the proceedings; or

(b) justice will otherwise be impeded or prejudiced.

(4) The court may exercise the power in paragraph (3) of its own initiative or pursuant to representations made by any of the persons listed in paragraph (5), and in either case having given to any person within paragraph (2)(f) who is in attendance an opportunity to make representations.

(5) At any stage of the proceedings, the following persons may make representations to the court regarding restricting the attendance of persons within paragraph (2)(f) in accordance with paragraph (3) –

- (a) a party to the proceedings;
- (b) any witness in the proceedings;
- (c) where appointed, any children's guardian;
- (d) where appointed, an officer of the service or Welsh family proceedings officer, on behalf of the child the subject of the proceedings;
- (e) the child, if of sufficient age and understanding.

(6) This rule does not affect any power of the court to direct that witnesses shall be excluded until they are called for examination.

(7) In this rule "duly accredited" refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor.

12. FPR PD27B and the President's Guidance in Relation to Applications Consequent Upon the Attendance of the Media in Family Proceedings (issued 22 April 2009) provides further guidance, inter alia, that the court should specifically identify whether the risk arising of the media presence can be adequately addressed by exclusion of media representatives from a part only of such hearing (para 5.2 of FPR PD27B).

Reporting Restriction Orders

13. An application for a reporting restriction order is governed by **the articles of the European Convention** that are engaged (often articles 8 and article 10), **Practice Direction 12 I of the Family Procedure Rules 2010 and the Practice Note: Applications for Reporting Restrictions Orders (18th March 2005) [2005] 2 FLR 111**. The practice direction refers to the practice note and that practice note remains good practice in such applications.

14. **Article 10 of the European Convention** states:

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

15. **Article 8 of the European Convention** states:

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

16. The **2005 practice note at [2005] 2 FLR 111** states:

[1] This Note sets out recommended practice in relation to any application in the Family Division founded on European Convention rights (European Convention for the Protection of Human Rights and Fundamental Freedoms 1950) for an order which restricts freedom of expression. It is issued in conjunction with the *President's Practice Direction (Applications for Reporting Restriction Orders)* 18 March 2005, [2005] 2 FLR 120 and is subject to decisions of the courts. It applies directly to any proceedings in which the Children and Family Court Advisory and Support Service (CAFCASS) or the Official Solicitor represent a child or incapacitated adult, and follows discussions between the Official Solicitor, the Deputy Director of Legal Services CAFCASS, and representatives of media interests.

[2] *Statutory Provisions*

An application founded on Convention rights need only be made where statutory provisions cannot provide adequate protection. Relevant provisions are Administration of Justice Act 1960, s 12(1); Children and Young Persons Act 1933, s 39; Contempt of Court Act 1981, s 11; Children Act 1989, s 8 (prohibited steps order preventing disclosure of information by parental figure) and s 97(2). While the *President's Practice Direction* is not aimed at applications under these provisions, s 12(2) of the Human Rights Act 1998 applies to any application for relief which might affect the exercise of the Convention right to freedom of expression and the procedures set out in this Note, including the arrangements for advance notification, can be used to secure compliance with this section in relation to any such application under these provisions.

An order founded on Convention rights may be required, for example, because:

- the need for protection is not linked to particular court proceedings;
- the statutory provisions do not prevent publication of all kinds of information;
- an injunction is needed to prevent approaches to family, doctors or carers.

[3] *Application and Evidence*

The application may be a freestanding claim brought under the Part 8 procedure in the Civil Procedure Rules 1998 or it may be made

within existing proceedings to which either the CPR or Family Proceedings Rules 1991 apply. It may be appropriate to seek a direction under CPR r 39.2(4), where it applies, that the identity of a party or witness should not be disclosed, and for documents to be drafted identifying individuals by initials.

The applicant should prepare (a) the application/claim form (b) a witness statement justifying the need for an order (c) any legal submissions (d) a draft order and (e) an explanatory note.

Model Forms of Order and an example of an explanatory note are attached to this Practice Note and can be downloaded from the websites of either the Official Solicitor (www.offsol.demon.co.uk) or CAFCASS (www.cafcass.gov.uk).

In the rare event that it is not possible to draft such documentation in the time available before the hearing, the court is likely to require the applicant to file a statement at the earliest opportunity, setting out the information placed orally before the court.

Subject to any contrary direction of the court, this material should be made available on request to any person who is affected by the order: see *Kelly v British Broadcasting Corporation* [2001] Fam 59, [2001] 1 FLR 197.

[4] *Service of Application*

As required by the *President's Practice Direction*, advance notice should normally be given to the national media via the Press Association's CopyDirect service. Applicants should first telephone CopyDirect (tel no 0870 837 6429). Documentation should be sent either by fax (fax no 0870 837 6429) or to the email address provided by CopyDirect. CopyDirect will be responsible for notifying the individual media organisations. In the case of an application against the world at large this is sufficient service for the purposes of advance notice. The website – <http://www.medialawyer.press.net/courtapplications> gives details of the organisations represented and instructions for service of the application. Unless there is a particular reason not to do so, copies of all the documents referred to above should be served. If there is a reason for not serving some or all of the documents (or parts of them), the applicant should ensure sufficient detail is given to enable the media to make an informed decision as to whether it wishes to attend or be legally represented.

The CopyDirect service does not extend to local or regional media or magazines. If service of the application on any specific organisation or person not covered is required it should be effected directly. The

Official Solicitor and CAFCASS Legal hold lists of contact details for many national and some regional news organisations, and these are posted on their websites.

[5] *The hearing*

Any application invoking Convention rights will involve a balancing of rights under Art 8 (right to respect for private and family life) and Art 10 (freedom of expression). There is no automatic precedence as between these Articles, and both are subject to qualification where (among other considerations) the rights of others are engaged. Section 12(4) of the Act requires the court to have particular regard to the importance of freedom of expression. It must also have regard to the extent to which material has or is about to become available to the public, the extent of the public interest in such material being published and the terms of any relevant privacy code (such as those of the Press Complaints Commission).

The court's approach is laid down in *Re S (Identification: Restrictions on Publication)* [2003] EWCA Civ 963, [2004] Fam 43, [2003] 2 FLR 1253 and *Re S (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 FLR 591 and *Campbell v MGN Ltd* [2004] UKHL 22, [2004] UKHRR 648. Guidance on the application of s 12(3) is now also provided in *Cream Holdings Limited and Others v Banerjee and Another* [2004] UKHL 44, [2005] 1 AC 253.

[6] *Scope of Order*

Persons protected

The aim should be to protect the child or incapacitated adult, rather than to confer anonymity on other individuals or organisations. However, the order may include restrictions on identifying or approaching specified family members, carers, doctors or organisations in cases where the absence of such restriction is likely to prejudice their ability to care for the child or patient, or where identification of such persons might lead to identification of the child or patient and defeat the purpose of the order. In cases where the court receives expert evidence the identity of the experts (as opposed to treating clinicians) is not normally subject to restriction.

Identifying persons protected

Once an order has been made, the details of those protected by the order should normally be contained in the Schedule. In exceptional cases (for example *Leeds Teaching Hospital NHS Trust v A and B* [2003] EWHC 259

[2005] 2 FLR 114 (QB), [2003] 1 FLR 1091) where it is not appropriate for details to be given, a description by reference to the facts of the case should be contained in the Schedule to enable those reading the order to identify whether a person is likely to be the subject of the order.

Information already in the public domain

Orders will not usually prohibit publication of material which is already in the public domain, other than in exceptional cases such as *Venables v News Group Newspapers Ltd and Others; Thompson v News Group Newspapers Ltd and Others* [2001] Fam 430, [2001] 2 WLR 1038, [2001] 1 FLR 791.

Duration of Order

Orders should last for no longer than is necessary to achieve the purpose for which they are made. The maximum extent of an order in a child case will usually be the child's 18th birthday. In the case of an incapacitated adult the order will normally end on death. In some cases a later date may be necessary, to protect safety or welfare, or the anonymity of other children who are named in the order and who are still under age, or to maintain the anonymity of doctors or carers after the death of a patient. see for example:

–*Re C (Adult Patient: Publicity)* [1996] 2 FLR 251;

–*Venables v News Group Newspapers Ltd and Others; Thompson v News Group Newspapers Ltd and Others* [2001] Fam 430, [2001] 2 WLR 1038, [2001] 1 FLR 791;

–*X (A Woman formerly known as Mary Bell) and Another v O'Brien and Others* [2003] EWHC QB 1101, [2003] 2 FCR 686.

Service of Orders

Service of orders should be effected in the usual way, ie by fax or by post. Contact details for the national press and broadcasters can be found at <http://www.medialawyer.press.net/courtapplications>.

[8] *Undertakings in damages*

The court will consider whether it is appropriate to require an applicant to give such an undertaking in an individual case, particularly when an order is made without notice, and will bear in mind the applicant's capacity to fulfil any such undertaking.

[9] *Explanatory notes*

It is helpful if applications and orders are accompanied by an explanatory note, from which persons served can readily understand the nature of the case. In any case where notice of an application has not been given, the explanatory note should explain why.

[10] *Advice and assistance*

Applicants or respondents are welcome to consult:

Deputy Director CAFCASS Legal Services and Special Casework 8 floor, Wyndham House,

South Quay Plaza, London E14 9SH DX: 42691 Isle of Dogs

Telephone: 020 7510 7080 Fax: 020 7510 7104 Email: legal@cafcass.govuk Website: www.cafcass.govuk

Official Solicitor 81 Chancery Lane London WC2A 1D Telephone: 020 7911 7127 Fax: 020 7911 7105 Email: inquiries@offsol.gsi.govuk

Website: www.offsol.demon.co.uk

Mike Hinchliffe

Deputy Director of Legal Services, CAFCASS

Laurence Oates

Official Solicitor

17. The model order attached to the practice note appears in this form:

IN THE HIGH COURT OF JUSTICE Case Number:

FAMILY DIVISION

[PRINCIPAL REGISTRY]

BEFORE [JUDGE] IN PRIVATE

IN THE MATTER OF THE COURT'S INHERENT JURISDICTION

BETWEEN

[]

and

[]

REPORTING RESTRICTION ORDER

IMPORTANT

If you disobey this order you may be found guilty of contempt of court and may be sent to prison or be fined or have your assets seized. You should read the order carefully and are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge the order.

EXPLANATION

A On [date] the Court considered an application for a reporting restriction order.

B The following persons and/or organisations were represented before the Court:

[describe parties and their advocates]

C The Court read the following documents: *[list the documents]* and/or

The Court directed the [Applicant/Claimant] to file a statement no later than *[date]* setting out the information presented to the court at the hearing.

and/or

The Court directed that copies of the attached Explanatory Note and *[list any other documents]* be made available by the [Applicant/Claimant] to any person affected by this Order.

[D *In a case where an undertaking in damages is required by the Court:*

The applicant gave an undertaking that if the Court later finds that this Order was obtained as a result of any deliberate or careless misrepresentation by the applicant, and that this has caused loss to any person served with the Order, and that that person should be compensated, the applicant will comply with any order the Court may make.]

E *In the case of an order made without notice:*

This order was made without notice to those affected by it, the Court having considered section 12(2) Human Rights Act 1998 and being satisfied (i) that the [Applicant/Claimant] has taken all practicable steps to notify persons affected and/or (ii) that there are compelling reasons for notice not being given, namely: *[set out the Court's reasons for making the order without notice]*

[F *In the case of an application by a local authority:*

The Court granted permission to the applicant to apply for the exercise of the Court's inherent jurisdiction]

ORDER

1. Duration

Subject to any different order made in the meantime, this order shall have effect

[in the case of an adult] during the lifetime of the [Defendant], whose details are set out in Schedule 1 to this order.

[*in the case of a child*] until [date], the 18 birthday of the child whose details are set out in Schedule 1 to this order ('the Child').

2. *Who is bound*

This order binds all persons and all companies (whether acting by their directors, employees or agents or in any other way) who know that the order has been made.

3. *Publishing restrictions*

This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, sound or television broadcast or cable or satellite programme service of:

(a) the name and address of

- (i) the [Defendant/Child];
- (ii) [*in the case of a child*] the Child's parents ('the parents'), whose details are set out in Schedule 2 to this order;
- (iii) any individual having day-to-day care of or medical responsibility for the [Defendant/Child] ('a carer'), whose details are set out in Schedule 3 to this Order;
- (iv) any residential home or hospital, or other establishment in which the [Defendant/Child] is residing or being treated ('an establishment');

(b) any picture being or including a picture of either the [Defendant/Child], a carer or an establishment;

(c) any other particulars or information relating to the [Defendant/Child];

IF, BUT ONLY IF, such publication is likely to lead to the identification of the [Defendant/ Child] as being [*set out the feature of the situation which has led to the granting of the order*].

4. No publication of the text or a summary of this order (except for service of the order under paragraph 7 below) shall include any of the matters referred to in paragraph 3 above.

[5. *Restriction on seeking information*

This Order prohibits any person from seeking any information relating to the [Defendant/Child] [or the parents] or a carer from any of the following:

- (a) the [Defendant/Child];
- [(b) the parents];
- (c) a carer;
- (d) the staff or residents of an establishment.]

6. What is not restricted by this Order

Nothing in this Order shall prevent any person from:

- (a) publishing information relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication.
- (b) seeking or publishing information which is not restricted by paragraph 3 above.
- (c) inquiring whether a person or place falls within paragraph 3(a) above.
- (d) seeking information relating to the [Defendant/Child] while acting in a manner authorised by statute or by any court in England and Wales.
- (e) seeking information from the responsible solicitor acting for any of the parties or any appointed press officer, whose details are set out in Schedule 4 to this order.
- (f) seeking or receiving information from anyone who before the making of this order had previously approached that person with the purpose of volunteering information (but this paragraph will not make lawful the provision or receipt of private information which would otherwise be unlawful).
- (g) publishing information which before the service on that person of this order was already in the public domain in England and Wales as a result of publication by another person in any newspaper, magazine, sound or television broadcast or cable or satellite programme service, or on the internet website of a media organisation operating within England and Wales.

7. Service

Copies of this Order endorsed with a notice warning of the consequences of disobedience shall be served by the [Applicant/Claimant] (and may be served by any other party to the proceedings)

(a) by service on such newspaper and sound or television broadcasting or cable or satellite or programme services as they think fit, by fax or first class post addressed to the editor (in the case of a newspaper) or senior news editor (in the case of a broadcasting or cable or satellite programme service) or website administrator (in the case of an internet website) and/or to their respective legal departments; and/or

(b) on such other persons as the parties may think fit, by personal service.

8. Further applications about this Order

The parties and any person affected by any of the restrictions in paragraphs 3–5 above may make application to vary or discharge it to a judge of the High Court on not less than *[48 hours]* notice to the parties.

SCHEDULE 1

[The [Defendant/Child]'s Full Name:

Born:

Address:]

or

[Information enabling those affected by order to identify the Defendant/Child]

SCHEDULE 2

[Similar details of parents]

SCHEDULE 3

[Similar details of carers or other persons protected]

SCHEDULE 4

[Contact details of responsible solicitor and/or press officer]

Date of Order:[]

18. The principles to be considered on application of a reporting restriction application were summarised by the President in *Re J (Reporting Restriction: Internet: Video)* [\[2014\] 1 FLR 523](#):

"What may be called the 'automatic restraints' on the publication of information relating to proceedings under the Children Act 1989 are to be found in s 97 of that Act and s 12 of the Administration of Justice Act 1960. Section 97 prohibits the publication of 'material which is intended, or likely, to identify' the child. But this prohibition comes to an end once the proceedings have been concluded: *Clayton v Clayton* [\[2006\] EWCA Civ 878](#), [\[2006\] Fam 83](#), [\[2006\] 3 WLR 599](#), [\[2007\] 1 FLR 11](#), [\[2007\] UKHRR 264](#). Section 12 does not protect the identity of anyone involved in the proceedings, not even the child: see *Re B (A Child) (Disclosure)* [\[2004\] EWHC 411 \(Fam\)](#), [\[2004\] 2 FLR 142](#), para [82], *A v Ward* [\[2010\] EWHC 16](#), [\[2010\] 1 FLR 1497](#), para [79], *Re X and Others (Children) (Morgan and Others Intervening)* [\[2011\] EWHC 1157 \(Fam\)](#), [\[2012\] 1 WLR 182](#), sub nom *Re X, Y and Z (Expert Witness)* [\[2011\] 2 FLR 1437](#), para [32]. So, just as in the case of experts, there is no statutory protection for the identity of either a local authority or its social workers.

The court has power both to relax and to add to the 'automatic restraints'. In exercising this jurisdiction the court must conduct the 'balancing exercise' described in *Re S (Identification: Restrictions on Publication)* [\[2004\] UKHL 47](#), [\[2005\] 1 AC 593](#), [\[2004\] 3 WLR 1129](#), [\[2005\] 1 FLR 591](#), [\[2005\] UKHRR 129](#), and in *A Local Authority v W, L, W, T and R (by the Children's Guardian)* [\[2005\] EWHC 1564 \(Fam\)](#), [\[2006\] 1 FLR 1](#). This necessitates what Lord Steyn in *Re S (Identification: Restrictions on Publication)*, para [17], called 'an intense focus on the comparative importance of the specific rights being claimed in the individual case'. There are, typically, a number of competing interests engaged, protected by Arts 6, 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention). I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in *Re B (A Child) (Disclosure)* [\[2004\] EWHC 411 \(Fam\)](#), [\[2004\] 2 FLR 142](#), at para [93], and in *Re Webster; Norfolk County Council v Webster and Others* [\[2006\] EWHC 2733 \(Fam\)](#), [\[2007\] 1 FLR 1146](#), [\[2007\] EMLR 199](#), at para [80]. As Lord Steyn pointed out in *Re S (Identification: Restrictions on Publication)*, para [25], it is 'necessary to measure the nature of the impact ... on the child' of what is in prospect. Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: *ZH (Tanzania) v Secretary of State for the Home Department* [\[2011\] UKSC 4](#), [\[2011\] 2 WLR 148](#), [\[2011\] 1 FLR 2170](#), para [33]."

19. The court must also take into account the extent to which the information is already in the public domain (c.f. **section 12(4)(a)(ii) of the Human Rights Act**

1998). This principle pre-dates the Human Rights Act 1998. In *A-G v Guardian Newspapers (No 2)* [\[1990\] AC 109](#) Lord Goff of Chievely observed that:

'once [information] has entered what is usually called the public domain (which means no more than the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it.'

APPLICATION IN RECENT CASES

20. An impression gleaned across the bar is of a varied approach to the level of transparency afforded radicalization cases. Whilst each case is fact specific, it would also seem that different judges may take somewhat differing approaches to the level of publicity allowed, some permitting members of the press to attend much of a hearing, and then allowing publication, on specific terms, of judgment, recognising the genuine public interest in the issues arising and need for scrutiny, with others taking a far more closed approach to what undoubtedly remain highly sensitive cases.

Anti-tipping off order

21. In the matter of **M (Children) [2015] EWHC 1433 (Fam) 2015 WL 2370065** the President was concerned with a case involving careful management of the media, wherein much of the detail of the case was already in the public domain. The parents of four young children (ranging from 20 months to 7 years), Asif Malik and Sara Kiran left home on 7 April 2015 with the children, caught vividly on CCTV camera leaving the UK from Dover, to travel across Europe by public transport, as it transpired, into Turkey where they were detained by the Turkish authorities.

22. The Police had initially made use of the media to appeal for information of the whereabouts of the family. They had been concerned that the family were intent on travelling to Syria.
23. The Turkish authorities arranged for the family to be flown to Moldova. Slough Borough Council, in co-operation with the Police and Foreign and Commonwealth Office, sort swiftly to take steps to ensure the safety of the children, by virtue of wardship orders being made and provision for the family to be kept in Turkey. In a sequence of hearings, orders were made to this effect, with requests directed to the Turkish and Moldovan authorities. The President permitted the Press Association's reporter, Mr Brian Farmer, to be present during the substantive hearing, albeit he imposed a reporting restriction order (RRO) to have effect unless and until further direction was given.
24. The orders took effect with the result that the family returned to the UK. The President agreed with Mr Farmer that a succinct statement, in agreed terms, should be released to the media with this announcement, albeit the RRO otherwise continued. A full judgment followed within a fortnight, lifting the RRO.
25. The President distinguished the order he had made, namely a RRO made for a short period of time to ensure that the purpose of the order is not frustrated through publicity, and thereby what he described as an anti-tipping off order, as against an RRO contra mundum, which would have permitted the story to be published, though only in anonymised form.
26. The President saw that what was required in this particular case was prohibition of publication or disclosure of the facts of the current proceedings and orders made for a short period to ensure the orders were not frustrated. He specifically cited the Report of the Committee on Super-Injunctions published in May 2011, with reference to paras 2.20-2.21:

"2.20 A non-disclosure or anti-tipping-off order prohibits the publication or disclosure of the fact of the proceedings, and any order, made for a short period to ensure that the purpose of the order is not frustrated through publicity. Such an order contains what can be characterised as the super-injunction element. Examples of such orders in the context of civil proceedings are, for instance, search orders ... and freezing injunctions. In such cases, temporary secrecy is essential in order to ensure that alleged wrongdoers are not tipped-off to the order's existence, which would then enable them to frustrate its primary purpose. As Lord Judge CJ put it, where, for instance, 'a defendant is committing fraud, and you believe that he has a number of associates, an order preventing him from reporting the fact that an injunction (that is to say a freezing injunction) [is] issued against him . . . because without it, he would be able to inform his dishonest colleagues, and they would immediately take steps to hide away assets. Once the order is served, and by their very nature such orders are served as soon as practicable, and its purpose carried into effect, the secrecy provisions lapse.

2.21 In the context of family justice, non-disclosure orders are a well-established means to prevent tipping-off in proceedings concerning the location of missing children. Again, tipping-off in such cases would frustrate the purpose of such proceedings. Temporary secrecy via non-disclosure of the fact of proceedings and the order is thus an essential feature of the proper administration of justice in such cases."

27. A careful balance was achieved however in that nothing in the RRO made restricted in any way the repetition of material already in the public domain before the proceedings commenced, nor the continuing reporting of the story of how the parents and children went to Turkey. The RRO was discharged once its purpose had been fulfilled.

28. The President set out his reasons for the subsequent publication of the judgment setting out what had occurred, without anonymisation, at para 25 of his judgment:

- i) First, in a case that had already attracted media attention it was important that the public should know what had happened, and why.
- ii) Secondly, it is important that the public should be able to understand, and I trust appreciate, just how quickly, effectively and flexibly the family courts are able to respond, if need be outside normal court hours, in urgent cases and where events may, as here, be changing 'on the ground' very rapidly but far away. There is always,

every minute of every day and night throughout the year, a judge of the Family Division on duty, 'out of hours', to deal with cases so urgent that they cannot wait. This case, I believe, shows the system working well. The court became involved in the early morning of Tuesday 5 May. The children had returned to this country by the middle of the afternoon of Thursday 7 May. For another example of the family court system working as it should and reacting promptly to rapidly changing circumstances see *Re Ashya King (A Child)* [2014] EWHC 2964 (Fam).

29. In **Birmingham CC v Riaz and Others** [2014] EWHC 4247 (Fam), [2015] 2 FLR 763, (Riaz 1), Keehan J looked in some detail at the powers afforded the court under its use of the inherent jurisdiction to make Reporting Restriction Orders (RROs). He cited the provisions contained within FPR 2010, PD12D, which at para 1.2(a) specifically includes, as an injunction which can be made for the child's protection, an order to restrain publicity. He then conducted a useful review of the law relating to the granting or refusal of applications for RROs, with an emphasis on the balance to be achieved between Articles 8 and 10 of the European Convention on Human Rights, and at Section 12(4) of the Human Rights Act 1998, the provision for particular regard to the importance of the Convention right to freedom of expression.
30. This case involved the protection sought, by way of RROs, by a group of men who had been found to have sexually exploited a vulnerable 17 year old girl. Keehan J refused to grant the RROs in favour of the men. He observed that the orders sought were of a draconian and wide ranging nature which demanded more than the speculative nature of the evidence offered and mere fact that the press may report the matter sensationally or inappropriately, to justify them. He went on however to continue the interim RRO in respect of the girl until her 18th birthday. He observed at para 128 of his judgment that "the courts have rarely and only in the most extreme circumstances granted lifelong anonymity in family and civil proceedings". Keehan J directed however that the matter return for further consideration before the girl turned 18.

31. This he did, handing down judgment in June 2015, in **Birmingham CC v Riaz and Others [2015] EWHC 1857 (Fam), (Riaz 2)**. On revisiting the question Keehan J concluded that the balance between the competing Article 8 rights of the girl and article 10 rights of the press and broadcast media fell in favour of granting the lifelong RRO the girl sought. It must be noted that this decision was fact specific to this victim of child sexual exploitation.

32. The Judge was however at pains to accept the high importance accorded to the general principle of open justice. Of particular note at paras 10 to 12 he provided that:

10. I was referred to the case of JXMX v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96 by Ms Meyer QC, on behalf of the local authority, and by Mr Forbes, on behalf of AB. In that case the Court of Appeal said that it was appropriate to make an anonymity order in respect of the children and protected parties who were parties to civil proceedings for the purposes of settlement approval hearings held in public.

11. Giving the judgment of the court, Moore-Bick LJ said:

"17. The identities of the parties are an integral part of civil proceedings and the principle of open justice requires that they be available to anyone who may wish to attend the proceedings or who wishes to provide or receive a report of them. Inevitably, therefore, any order which prevents or restricts publication of a party's name or other information which may enable him to be identified involves derogation from the principle of open justice and the right to freedom of expression. Whenever the court is asked to make an order of that kind, therefore, it is necessary to consider carefully whether a derogation of any kind is strictly necessary, and if so what is the minimum required for that purpose. The approach is the same whether the question be viewed through the lens of the common law or that of the European Convention on Human Rights, in particular articles 6, 8 and 10. As to the latter, see **In re Guardian News and Media Ltd [2010] UKSC 1**, [2010] 2 A.C. 697 at paragraphs 43-52. In **JIH v News Group Newspapers Ltd [2011] EWCA Civ 42**, [2011] 1 W.L.R. 1645 this court provided guidance on the manner in which applications for injunctions to prevent publication of private information should be approached. The case did not concern an application for approval of a settlement involving a child or protected party, but the making of an anonymity order in the context of an attempt to prevent publication of personal information. To that extent there are obvious differences between that case and the present, but in paragraph 21 of his judgment Lord Neuberger M.R. identified the following principles which are of general application and therefore of direct relevance to applications of the present kind:

- (i) an order for anonymity should not be made simply because the parties consent to it;
- (ii) the court should consider carefully whether some restriction on publication is necessary at all, and, if it is, whether adequate protection can be provided by a less extensive order than that which is sought;
- (iii) if the application is made on the basis that publication would infringe the rights of the party himself or members of his family under article 8 of the Convention, it must consider whether there is sufficient general, public interest in publishing a report of the proceedings which identifies the party concerned to justify any resulting curtailment of his right and his family's right to respect for their private and family life."

12. He continued:

"26. In paragraph 13 of his judgment Tugendhat J. observed that advocates commonly address the question as simply one of balancing the demands of privacy and freedom of expression. He rejected that analysis, however, holding that the true question for decision is whether it is necessary for the court to grant a derogation from open justice and thus from the rights of the public at large. In our view he was right to do so and he was also right to hold that the absence of any objection from the defendant or the media does not relieve the court of the duty to consider whether derogation from the principle of open justice is necessary.

CONCLUSION

33. It seems unlikely, at least in the short term, that press interest in this category of proceedings will decline. If transparency in the family courts is indeed further to increase, so too will the pressure brought to bear to permit further reporting of judgments in radicalization cases, and an opening up to the media of the details of those cases.

Paul Hopher
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8 May 2016



Section 3

**Case Management and lessons learnt from the Court
Arena**

**Jo Delahunty QC
&
Christopher Barnes**

Radicalisation: Safeguarding & the Family Courts

4.5.16

Public Law Update: Radicalisation Cases in the Family Courts

Jo Delahunty QC and Chris Barnes

4 Paper Buildings

Public Law Update: Radicalisation Cases in the Family Courts

Introduction

34. Before the early months of 2015 the impact of radicalisation and extremism were unfamiliar issues in the family courts. Other agencies – both Police and state – have been grappling with the issues which arise as they impact on national security and are addressed through the criminal courts.

35. By way of definition of ‘radicalisation’ in the Family Division we are assisted the view of Holman J in **Re M (Children) [2014] EWHC 667 (Fam)** : a case arising in a private-law context where an allegation that the father was “*negatively influencing [the eldest son] with radical fundamentalist thought, which is associated with terrorism*” led the local authority (who had prepared a positive section 37 report previously) to issue proceedings:¹

"Radicalising" is a vague and non-specific word which different people may use to mean different things. There is quite a lot of material in this case to the effect

¹ Paragraph 23

that the elder of these children are committed Muslims who like to attend, and do attend, at a mosque and wish to display religious observance. This nation and our culture are tolerant of religious diversity, and there can be no objection whatsoever to any child being exposed, often quite intensively, to the religious practices and observance of the child's parent or parents. If and insofar as what is meant in this case by "radicalising" means no more than that a set of Muslim beliefs and practices is being strongly instilled in these children that cannot be regarded as in any way objectionable or inappropriate. On the other hand, if by "radicalising" is meant, as appears in paragraph 12 of the draft addendum report that I have already quoted, "negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism" then clearly that is a very different matter altogether. If any child is being indoctrinated or infected with thoughts involving the possibility of "terrorism" or, indeed, hatred for their native country, which is England, or another religion, such as Christianity which is the religion of their grandparents and now, again, their mother, then that is potentially very abusive indeed and of the utmost gravity.

36. This presentation will consider the guidance issued in October 2015 by the President of the Family Division, review the relevant case law and examine the practicalities arising in proceedings where radicalisation is an alleged issue.

President's Guidance

37. Once uncommon, cases involving allegations of radicalisation are regularly coming before the Family Court. An early view on this development was provided by Hayden J.²

The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family. Here, the type of harm I have been asked to evaluate is a different facet of vulnerability for children than that which the courts have had to deal with in the past.

38. The increasing frequency with which such cases arose led to the President of the Family Division, Sir James Munby, issuing a guidance document "*Radicalisation Cases in the Family Court*" on 8th October 2015.³

² ***London Borough of Tower Hamlets v M & Others [2015] EWHC 869 (Fam)*** paragraph 57

The Recent months have seen increasing numbers of children cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or are at risk of being involved in terrorist activities either in this country or abroad.

39. Its interesting to note the different "*categories*" which are emerging as the types of case coming before the family court:

- a. Children planning or attempting to Syria;
- b. Parents planning or attempting to travel to Syria with their children;
- c. Children at risk of being radicalised (within the home or by outside influences); and
- d. Children being directly engaged in radicalising action/ promoting extremist beliefs within the UK

40. Prior to the Presidents Guidance being issued, many cases were initiated under the inherent jurisdiction and were, necessarily, in the High Court but others had commenced at public – or private – cases in the Family Court. That will happen no longer. The Guidance is clear on the issue of allocation:⁴

*Given the complexities of these cases, I have decided that, for the time being at least, **all** cases falling within the description in paragraph 1 above are to be heard by High Court Judges of the Family Division. For the purpose of this Guidance the expression High Court Judge of the Family Division does not include a judge or other person authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981.*⁵

41. Some children may be made subject to Police Protection where the usual considerations apply:

- a. For a maximum of 72-hours;

³ <https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf>

⁴ Paragraph 4

⁵ Paragraph 6 of the guidance provides that in *exceptional* circumstances cases may be heard for the DFJ or a *judge* authorized to sit as a High Court Judge with the permission of the President of the Family Division Liaison Judge

- b. Requires "*reasonable cause to believe the child is likely to suffer significant harm*";
- c. Responsibilities set out in sections 46(3) and (4) Children Act 1989.

42. Otherwise the options are set out at paragraph 3 of the Guidance:

Only a local authority can start care proceedings (see section 31(1) of the Children Act 1989 – the police powers are set out in section 46). However, any person with a proper interest in the welfare of a child can start proceedings under the inherent jurisdiction or apply to make a child a ward of court. Usually, in cases falling within the description in paragraph 1 above, it will be the local authority which starts proceedings under the inherent jurisdiction or applies to make a child a ward of court, and the court would not expect the police (who have other priorities and responsibilities) to do so. There is, however, no reason why in a case where it seems to the police to be necessary to do so, the police should not start such proceedings for the purposes, for example, of making a child a ward of court, obtaining an injunction to prevent the child travelling abroad, obtaining a passport order, or obtaining a Tipstaff location or collection order.

43. Though these cases present "*a different facet of vulnerability*" for the family courts to determine, long established principles apply:

- a. "*The importance of coordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved, simply cannot be overstated. An ongoing dialogue in which each party respects, and I make no apology for repeating the word respect, the contribution of the other, is most likely to achieve good and informed decision making*";⁶
- b. "*What, however, is clear is that the conventional safeguarding principles will still afford the best protection. Once again, this court finds it necessary to reiterate that only open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter agency cooperation is going to provide the kind of protection that I am satisfied that the children subject to these applications truly require*";⁷
- c. "*This is a two-way process. The court can expect to continue to receive the assistance it has hitherto been given in these cases by the police and by other agencies. But there must be reciprocity*".⁸

44. Critically important for all practitioners to be aware of are the fundamental protections afforded by Articles 6 and 8 and 10 :

⁶ **London Borough of Tower Hamlets v M & Others [2015]** paragraph 18(ix)

⁷ **London Borough of Tower Hamlets v M & Others [2015]** paragraph 58

⁸ **Radicalisation Cases in the Family Court**, guidance, paragraph 11

- a. Crucial that the process affords protection to the Article 6 rights of all parties;
- b. On Article 8 note the President's observations in ***Re A (A Child)* [2015] EWFC 11** that "*[t]he mere fact, if fact it be, that the father was a member, probably only for a short time, of the EDL is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly "immoral" aspects of the father's behaviour. I refer again to what was said in In re B, both by Lord Wilson of Culworth JSC and by Baroness Hale of Richmond JSC. Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings*
- c. Article 10: the right to freedom of expression ; not oft cited in the reports but one that underpins any approach to such cases we suggest

Case Law Review

45. As at 8th October 2015 The President's Guidance (attached) set out the list of the published decisions in this area to which we have added those post dating his document :

Re Y (A Minor: Wardship) [2015] EWHC 2098 (FAM) (17th March 2015)

46. Decision of Hayden J on the first occasion on which wardship was utilised to address the risk of radicalisation. In this instance to a young man from an extraordinary family with two brothers killed in Syria, another injured and an uncle previously detained in Guantanamo Bay Detention Centre:

- a. No fool proof way to prevent travel but the most effective is to remove the passport;
- b. A ward may not be removed from England and Wales without the Court's permission;
- c. Balance in favour of protecting Y "*from himself*".

London Borough of Tower Hamlets v M & Others [2015] EWHC 869 (FAM) (27th March 2015)

47. Judgment arising from *ex parte* applications where the Judge permitted the naming of the school attended by a number of the children making the children wards and making a number of passport orders:

- a. Nine-point guidance provided for cases concerning radicalisation;
- b. Need for "*searching*", "*sceptical*" and "*thorough*" risk assessment in respect of "*potentially vulnerable children*".

Re Y (A Minor: Wardship) [2015] EWHC 2099 (FAM) (23rd April 2015)

48. The return of the earlier application regarding Y which led to the continuation of "*light touch intervention*":

- a. Wardship noted to have "*a flexibility to it that enables it to make interventions into the lives of children which can, when required, have a lightness of touch, and equally when required can have very draconian reach indeed, for after all it removes parental responsibility from either parent or local authority and places it in the hands of the High Court judge*";
- b. Assessment of risk: "*Risk does not exist as a concept in a vacuum. Sometimes a small risk of some very serious consequence is an unacceptable risk. Sometimes by contrast a significant risk of something with really rather minor consequences may be acceptable. Here it seems to me is the classic case of a high risk of very serious harm. It is important not to lose sight of the fact that two brothers have already died in this war*";

Re M (Children) [2015] EWHC 1433 (FAM) (20th May 2015)

49. The President's decision to ward 4 young children of a family where the parents alleged attempt to travel to Syria had received significant media attention:

- a. Recognition of the *parens patriae* duty as a jurisdictional basis where the children were British citizens;
- b. Use of anti-tipping-off order as against *contra mundum* Reporting Restriction Order (with helpful summary of the wording of a Model Order) but exclusion of media was *not* required;
- c. Helpful precedent for an order requiring liaison with authorities in another state;
- d. Highlights the availability of swift consideration even out-of-hours.

Re Z [2015] EWHC 2350 (4th June 2015)

50. The granting of an *ex parte* injunction in circumstances where a girl had made plans or attempted to travel on two occasions and where present concerns included travel to Syria or forced marriage:

- a. Highlights challenge on working with radicalised teenager where parents and child not consistent, open and honest;
- b. Police would have had standing to seek orders;
- c. Transcript of hearing directed with redactions for security reasons.

Re X (Children); Re Y (Children) [2015] EWHC 2265 (FAM) (30th July 2015)

51. Two linked cases before the President where the "*fundamental issue in each case relates to the degree of risk of the parents seeking to remove the children and take them to Syria*":

- a. Border controls are not fool proof with two principle methods of avoiding them to use a false passport or a clandestine departure;
- b. Availability of radio-frequency monitoring or GPS monitoring as alternative systems (and reference to earlier tagging guidance);
- c. Despite opposition of local authorities and guardians, and despite "*some*" risk of successful flight the package of restriction was sufficient to allow the children to be returned home.

Re X (Children); Re Y (Children) (No. 2) [2015] EWHC 2358 (FAM) (4th August 2015)

52. Addendum judgment considering the use of tagging to address risk of flight:

- a. The President considered GPS tagging to provide a greater (and in these cases necessary) amelioration of the risk;
- b. The use of GPS tagging had not been foreseen in the drafting of the protocol in place between HMCTS and NOMS to allow tagging in family cases;
- c. The MoJ agreed to facilitate – and meet the costs – of GPS tagging in the specific case without prejudice to its position in any other cases.

London Borough of Tower Hamlets v B [2015] EWHC 2491 (21st August 2015)

53. Judgment concerning the interim removal of a girl of 16 who had previously attempted to travel to Syria and been made a ward in circumstances where radicalising material was subsequently reported by the Police to have been found on the devices of family members:

- a. Difficulties of effective protective action where access to a family home may be restricted;
- b. Comparator to sexual abuse;
- c. Tagging not capable of addressing risk of psychological and emotional harm from exposure to radicalising material;
- d. Issues of honest, open working where material exists relating to the concealment of extremist views.

Subsequent key authorities

Re M (Children) (No. 2) [2015] EWHC 2933 (FAM) (20th October 2015)

54. Final disposal in the case of Re M where children had been returned from an alleged attempt by their parents to travel to Syria:

- a. The parents were reported to have cooperated with no immediate concerns expressed about the welfare of the children;

- b. The intervention of the state had acted as a wake-up call and there was no reason to remove the children.

Re X (Children) (No 3) [2015] EWHC 3651 (FAM) (16 Dec 2015)

55. In **Re X (Children) (No. 3) [2015] EWHC 3651 (Fam)** a number of important and well established principles were set out by the President at paragraphs 20 – 24 which are of particular relevance to this case including those drawn from the decision of Baker J in **Re L and M [2013] EWHC 1569**, namely that;

- i. Its is for the local authority to prove its case
- ii. Findings of fact must be based on evidence and the inferences which can properly be drawn from evidence and not on suspicion or speculation
- iii. The court must take into account all the evidence and consider each piece of it in the context of all the other evidence
- iv. The evidence of the parents is of the utmost importance
- v. Witnesses may lie during investigations and do so for many reasons but it does not follow that if a parent is lying about one matter that they are lying about everything.
- vi. There mere fact that a parent was a member of an extremist group whose policies and beliefs are immoral is not without more a basis for care proceedings.

23 Re Y no 3 (2016) EWHC 503 (FAM) delivered on 7.3.16, published on 5.4.16. In this case the family were "*detained by Turkish military authorities ... within a zone of military control near the border with Syria and ... probably within sight of the border*" – whilst this history raised considerable suspicions about the parents' intentions, sufficient to institute proceedings , the President found the evidence when tested to be insufficiently cogent to prove the facts required to satisfy him that the family had formed and acted on an intent to live in Syria under IS rule thus placing their children at risk of really serious harm. The ability (or more precisely inability) of the local authority to establish that the parents adhered to an extreme of radical ideology was of central importance. On the facts of Re Y threshold was not proven.

24 The President made plain in both Re X and Re Y, whilst expressing concern as to the honesty of the explanations and accounts given, that it is not for the parents in such cases to prove anything: whether establishing that they did not intend to travel to Syria

or had some legitimate reason for travelling (to Turkey or elsewhere). Ultimately in **Y (Children)** the President was driven to the conclusion that it was "*improbable – in my judgment, inexplicable – that any of these parents should ever have wished to put their children in the kind of very serious danger that re-location to Syria would inevitably entail*". Notwithstanding the proven lies told by family members and the "*intriguing*" (often unanswered) questions raised by the local authority, and the residual suspicion that lingered, the President found that the local authorities in both Re X and Re Y had been unable to prove its case. On the basis of the binary system this must result in a 'nil' return: suspicion is not enough and a matter not proven has a forensic value of zero.

25 *Leicester City Council v T [2016] EWFC 20 Keehan J : welfare hearing : delivered on 28.1.16 published on 4.5.16*

On the 29 July 2015 the mother was arrested at Birmingham Airport on a flight to Munich. The mother's initial account was that she and the children were taking a holiday to see their father in Munich from where they were to travel to France. Information however located in the mother's luggage showed an itinerary which contradicted this. Found in the mother's luggage, hidden in a Paracetamol tablet packet, were telephone numbers which, having been analysed by the police, were found to be Turkish and Indian numbers, one of which had been called some 234 times, that being the number of AS who is suspected to be fighting in Syria with the Islamic State. An initial examination of the mother's mobile phone provided the police with sufficient evidence to arrest her with one message reading, "Are you going for good?". The phone also contained images of children with firearms, and wearing balaclavas, bearing the emblem of "Islamic State of Iraq" and the emblem commonly known as "ISIS". The children were immediately removed from the care of their mother under a Police Protection Order. They were then placed in foster care pursuant to section 20 accommodation. They then moved to the care of the grandparents where they remained. When the police made a search of the mother's home it was the view of the police and the social worker who later visited that the home had in effect been abandoned. The mother had destroyed or disposed of many items relating to the children, but she had with her their birth certificates and her marriage certificate. She had made plans to sell her car to her brother. Various electronic devices were found in bin bags at the property, along with another of the mother's mobile phones. Those devices, along with the mother's mobile phone, were examined. The results of those examinations indicated that the mother had been in conversation with a large number of people known to be linked to Islamic State.

One particular individual, known as SAJ, is known to be a prominent member of Islamic State. Keehan J formed the view that the mother was lying throughout almost the entirety of her evidence. As Keehan J explained:

' I was left in no doubt that the mother intended to travel to Syria with or without the father. The mother had been in contact with Jihadists, in particular SAJ, solely for the purposes of going to Syria. I found that it was plain that if the mother had succeeded in her attempts to enter Syria, and in particular to join Islamic State, the children would have been put at extreme risk of very, very significant harm, if not death. She had been provided with funds by persons unknown. I concluded that I was bound to draw the inference that the money found in the mother's possession had come from Jihadist supporters.'

Keehan J made the findings as sought by the LA that

- (1), in July 2015 it was the children's mother's intentions to go to a war zone in Syria controlled by Islamic State with the children and for all of them to remain there on a permanent basis;
- (2), the intention to cross into Syria was driven by religion ideology and placed the children at risk of suffering significant harm and probable radicalisation, including the real possibility of the children being drawn into the war, and being placed at risk of death;
- (3) the parents' relationship was characterised by domestic abuse and the mother intended to spend time with both the children and the father together, placing them at risk of ongoing exposure to domestic abuse and a risk of emotional harm.

Disposal was resolved largely by agreement by the children remaining with the maternal grandparents

- 26 Thus, to date, we have a limited published library. As a consequence practitioners, to date, with the exception of the Keehan J reference to his decision in August 15, have no publicly available judgments to consider where threshold has been crossed based on travel, or the risk thereof, fueled by radicalist ideology.

That is not to be read as indicating that no other such cases have been so determined.
We know they have, we just can't talk about them –yet!

Practicalities

27. We advise any advocate focuses on these core issues that may be encountered in bringing proceedings in a case in this area and in managing any suspected risk :
- a.** Hayden J's 9-point guidance;
 - b.** Police cooperation and disclosure;
 - c.** Press, reporting restrictions and publicity;
 - d.** Tagging.

Hayden J's 9-point guidance

28. In dealing with an urgent, without notice application, Hayden J provided useful guidance which should be borne in mind when issuing proceedings:

- i. The lawyers should take care to draft, at very least in outline, the scope and ambit of the orders they seek and in respect of whom they seek it. This should be undertaken before coming to court. That will not only expedite the subsequent service of the orders on those concerned, it is also a crucial forensic discipline, compelling the lawyers to think in a properly focused manner about the specific orders they seek;*
- ii. Thought should be given, from the very outset, as to how quickly the case can be restored on notice. This is the essential requisite of fairness in the process, now buttressed by article 6 of the European Convention on Human Rights;*
- iii. Even though these cases will, of necessity, be brought before the court in circumstances of urgency, they nonetheless require the instruction of senior and experienced lawyers. The issues have profound consequences, not limited to the individuals concerned, and will frequently require a delicate balancing of competing and potentially conflicting rights and interests;*
- iv. All involved must recognise that in this particular process it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations, but it must be recognised that the decision the court is being asked to take can only be arrived at against an informed*

understanding of that wider canvas. It is essential that the court be provided with that material in appropriate detail;

- v. *It will never be satisfactory, in applications of this kind, merely to offer verbal assurance, through counsel or any other individual, that the police, security forces or those involved in counter terrorism, are aware of and support the application. There must in future always be 'hard' evidence, i.e. evidence which is cogent and coherent, placed before the court and capable of being subject to appropriate scrutiny. The format of the evidence may vary from case to case. It may require a police presence in court. There may be the need for police/counter terrorism officers to be represented, written and sworn statements may sometimes suffice. On occasion evidence may be received by secure telephone or video link;*
- vi. *Justified interference with the article 8 rights of a minor will always require public scrutiny at some stage in the process. In both cases this week, the press attended. It was only necessary for them to withdraw on one occasion, at the request of a very senior police officer present in court, supported by the local authority. The request was made because sensitive issues of policy and national security arose. Transparency, that is to say the attendance of accredited press officials in court, remains the presumption here, as it now is in all aspects of the work of the family justice system;*
- vii. *Recognising that there will be urgency to these applications, careful attention, in advance of the hearing, should be given to the framework of reporting restrictions required to protect the child from publicity. In this exercise, it should be remembered that some of the families involved may already have excited a degree of press coverage. Indeed, they may, on occasion, have sought it out. There is a risk that identification of the children might be revealed by piecing together information already in the public domain, i.e. the 'jigsaw effect'. As, in paragraph 1 above, and for similar reasons, the restrictions contended for should be drafted before coming to court;*
- viii. *Though it may appear trite to say so, an evaluation of the reporting restrictions, as I have been reminded by the press this morning, should always have at the forefront of the exercise the reality that publicity is not confined to the conventional or recognised media outlets, but extends, with inevitably greater challenges, to the wide range of social media likely to be the primary sources of information for these children, their peers and those with whom they interact more generally;*
- ix. *The importance of coordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved, simply cannot be overstated. An ongoing dialogue in which each party respects and I make no apology for repeating the word respect, the*

contribution of the other, is most likely to achieve good and informed decision making.

Police cooperation and disclosure

29. Given the nature of the issues, involved close coordination with Police – and possibly counter terrorism security services – is likely to be critical. It is for this reason that it features so prominently in the President’s guidance.

The police and other agencies recognise the point made by Hayden J that “in this particular process it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations.” The police and other agencies also recognise the point made by Bodey J that “it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities ... or other public bodies.” But subject to those qualifications, it is important that the family justice system works together in cooperation with the criminal justice system to achieve the proper administration of justice in both jurisdictions, for the interests of the child are not the sole consideration. So the family courts should extend all proper assistance to those involved in the criminal justice system, for example, by disclosing materials from the family court proceedings into the criminal process.⁹

30. Disclosure is likely to be of considerable importance but also an area which requires significant care. As the President’s guidance notes:

- a. Much of the information gathered by the police and other agencies will not be relevant to the issues before the court;
- b. Some of the information gathered by the police and other agencies is highly sensitive and such that its disclosure may damage the public interest or even put lives at risk;
- c. There is the need to avoid inappropriately wide or inadequately defined requests for disclosure of information or documents by the police or other agencies;
- d. The need to avoid seeking disclosure from the police or other agencies of information or material which may be subject to PII, or the disclosure of which might compromise on-going investigations, damage the public interest or put lives at risk, *unless* the judge is satisfied that such

⁹ *Ibid* paragraph 12

disclosure is "*necessary to enable the court to resolve the proceedings justly*" within the meaning given to those words when used in, for example, sections 32(5) and 38(7A) of the Children Act 1989 and section 13(6) of the Children and Families Act 2014;

- e. The need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court⁵ by the police or other agencies;
- f. The need to consider any PII issues and whether there is a *need* for a closed hearing or use of a special advocate;
- g. The need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings or (ii) any transcripts;
- h. The need to ensure that the operational requirements of the police and other agencies are not inadvertently compromised or inhibited either because a child is a ward of court or because of any order made by the court;
- i. The assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert counsel.

31. This is an area where dialogue is of assistance to all parties and to the court to allow orders for disclosure to be precisely targeted or, where possible, to proceed by consent without the need to PII hearings.

32. Establishing a basis on which information is shared between the Police and local authority is also critical to ensuring child protection can take place effectively and with proper regard for the need for fairness in the process.

Press, reporting restrictions and publicity

33. The nature of the subject matter of proceedings and the fact that they will – almost always – be heard in the High Court means that the issues of reporting

and publicity are likely to feature prominently. There has been considerable media interest in a number of the reported proceedings and additional hearings and cases where the press have attended and been permitted to report.

34. It is not inconceivable that there may be an child focused interest in seeking publicity (ie : to locate a family or child suspected of leaving the jurisdiction) but, in general terms, the focus is likely to be on restricting unhelpful publicity or interference in the private lives of the children and families involved in proceedings. As always there is a balance in that seeking to put in place restrictions (given the need to put the press on notice and serve them with orders) can often lead to increased press interest and scrutiny. There can be scope for dialogue to produce results without the need for contested applications.

35. Many Judges of the High Court have shown considerable willingness to have the press present and to permit reporting given the novelty of the issue and the need for public scrutiny. There tends to be a high degree of confidence in the members of the accredited press who are regularly in attendance at the RCJ.

36. **Article 10:**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

37. **Section 12(4) Human Rights Act 1998:**

The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appear to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become available to the public, or (ii) it is, or would be,, in the public interest for the material to be published, [and] (b) any relevant privacy code.

38. Keehan J provided a helpful review of Reporting Restriction Orders in **Birmingham City Council v Sarfraz Riaz and Others [2015] EWHC 1857 (Fam)** and noted the following:

10. *I was referred to the case of JXMX v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96 by Ms Meyer QC, on behalf of the local authority, and by Mr Forbes , on behalf of AB. In that case the Court of Appeal said that it was appropriate to make an anonymity order in respect of the children and protected parties who were parties to civil proceedings for the purposes of settlement approval hearings held in public.*

11. *Giving the judgment of the court, Moore-Bick LJ said:*

*"17. The identities of the parties are an integral part of civil proceedings and the principle of open justice requires that they be available to anyone who may wish to attend the proceedings or who wishes to provide or receive a report of them. Inevitably, therefore, any order which prevents or restricts publication of a party's name or other information which may enable him to be identified involves derogation from the principle of open justice and the right to freedom of expression. Whenever the court is asked to make an order of that kind, therefore, it is necessary to consider carefully whether a derogation of any kind is strictly necessary, and if so what is the minimum required for that purpose. The approach is the same whether the question be viewed through the lens of the common law or that of the European Convention on Human Rights, in particular articles 6, 8 and 10. As to the latter, see **In re Guardian News and Media Ltd [2010] UKSC 1**, [2010 2 A.C. 697 at paragraphs 43-52. In **JIH v News Group Newspapers Ltd [2011] EWCA Civ 42**, [2011] 1 W.L.R. 1645 this court provided guidance on the manner in which applications for injunctions to prevent publication of private information should be approached. The case did not concern an application for approval of a settlement involving a child or protected party, but the making of an anonymity order in the context of an attempt to prevent publication of personal information. To that extent there are obvious differences between that case and the present, but in paragraph 21 of his judgment Lord Neuberger M.R. identified the following principles which are of general application and therefore of direct relevance to applications of the present kind:*

(i) an order for anonymity should not be made simply because the parties consent to it;

(ii) the court should consider carefully whether some restriction on publication is necessary at all, and, if it is, whether adequate protection can be provided by a less extensive order than that which is sought;

(iii) if the application is made on the basis that publication would infringe the rights of the party himself or members of his family under article 8 of the Convention, it must consider whether there is sufficient general, public interest in publishing a report of the proceedings which identifies the party concerned to justify any resulting curtailment of his right and his family's right to respect for their private and family life."

12. He continued:

"26. In paragraph 13 of his judgment Tugendhat J. observed that advocates commonly address the question as simply one of balancing the demands of privacy and freedom of expression. He rejected that analysis, however, holding that the true question for decision is whether it is necessary for the court to grant a derogation from open justice and thus from the rights of the public at large. In our view he was right to do so and he was also right to hold that the absence of any objection from the defendant or the media does not relieve the court of the duty to consider whether derogation from the principle of open justice is necessary.

39. The judgment of ***Riaz (No. 2)*** should be treated with care as much in the arena of lifelong reporting restrictions as ***Riaz (No.1)***¹⁰ is in relation to the use of the inherent jurisdiction to address issues of child sexual exploitation.¹¹ Note the reporting from August:

"[Mr Justice] Hayden ordered that the identity of the girl must remain secret at least until she is 18, so that she can finish her childhood and complete her education in peace. He refused to grant her a life-long anonymity order, but said the issue could be reconsidered before she turned 18."¹²

40. In an appropriate case an order to prevent tipping off (by restricting the publication of even an anonymised story) is available. In every instance an application for reporting restriction is likely to be given detailed consideration even where all parties consent to (or indeed actively support) the making of an order.

¹⁰ ***Birmingham City Council v Sarfraz Riaz and Others*** [2014] EWHC 4247 (Fam)

¹¹ See Hayden J's refusal in ***London Borough of Red bridge v SNA*** [2015] EWHC 2140 (Fam)

¹² <http://www.theguardian.com/uk-news/2015/aug/18/bethnal-green-academy-pupils-passport-held-risk-travelling-syria>

Tagging

41. Though being used in a different context tagging, to prevent the removal of a child from the jurisdiction, is not new. In both **Re C (Abduction: interim Directions: Accommodation by a LA) [2003] EWHC 3065 (Fam)** and **Re A (Family Proceedings: Electronic tagging) [2009] EWHC 710 (Fam)** tagging was used pursuant to **section 5 of Child Abduction and Custody Act 1985** to allow reunification with a parent where a threat of abduction was alleged to exist.
42. Guidance was issued on Tagging or Electronic Monitoring in the Family Courts in 2010 and was reissued in 2015. The reissued guidance is quoted by the President in **Re X (Children); Re Y (Children) [2015] EWHC 2265 (FAM) (30th July 2015)**. Notably this guidance is only concerned with Radio Frequency tagging and curfew monitoring and there is a considerable difference between GPS and RF tagging (see further below) .
43. The Ministry of Justice sought to make submissions having received notice that the President was considering the need for GPS tagging. The MoJ's submissions were premised on the basis that the court cannot order it to provide tagging and asserts that the MoJ and National Offender Management Service (NOMS) had not foreseen the expansion of tagging in family cases from Radio Frequency to GPS tagging.
44. The jurisdiction of the Court to direct the MOJ to provide GPS tagging is, as yet, undetermined. Similarly, though the MoJ has consented to meet the costs in specifics instances it has done so without conceding the general principle. No one (the MoJ or the local Authority) wants a case to go against them and to set a precedent. At least one case has discreetly avoided litigation so as to avoid a determination that could affect the entente *cordiale* between the MoJ and the Family Division.

45. Whilst thus far the MoJ has (on a case-by-case basis and for a period) met the costs of GPS tagging there remains a distinct possibility that a local authority would be required to meet the costs of provision of the system as a consequence of their obligation to take steps to ensure that a child remains with their parents and that the plan of least family intervention is adopted as being in the child's best interest whilst also being compatible with the families Article 8 Rights.

GPS v RF

46. The difference between the two systems is significant: Radio Frequency tagging is designed to monitor compliance against a curfew order. The equipment will monitor whether a person is in a specified place or not between curfew hours defined in the order. GPS monitoring will do all of this but will also monitor a subject's movements and whereabouts whilst outside the residence. It is possible to set "Exclusion" and "Inclusion" zones such that can generate alerts if the tagged person enters a forbidden area (such as an airport or ferry terminus) or leaves an area where they are ordered to remain.

47. The difference in availability and use of GPS v RF tags is even starker. There are presently approximately 1400 Radio Frequency devices in use against just 16 GPS tags. One cannot assume a GPS tag will be made available, or , if it is, for how long the family case will have use of it.

48. In practice it is worth noting that the MoJ holds exclusive contracts with two providers of GPS tags, one of which is EMS (Per Capita). Those providers cannot act with an order from the Courts *and* the direction of the MoJ. They also require a protocol to be agreed for GPS with details of any inclusion and exclusion requirements and the notification details in the event of any violations.

49. In any event and in every case where tagging is contemplated there is a need to obtain consent from the parent, or parents, being made subject to the order and to give early notice to the MoJ.

50. If the discussions proceed past stage 1 and 2 above, the next stage is to draw up a document called a 'Protocol' to ensure an appropriate response to non-compliance events. A sample is attached to this lecture handout.

Note:

- a. The Police would be the first point of contact in the event of a non-compliance event – but they need a 24 hour point of contact in the LA legal department to inform what then happens.
- b. The tag provider will inform the designated Police contact of the details of any non-compliance and it is then for the Police to decide on the appropriate response in the first instance but there will be liaison with the LA; this is not a criminal matter, it is not a breach of a probation order, the officers who respond to the breach will not know, necessarily, what to do in terms of the parents and children involved. This will not be a Police Protection Order scenario as the family will be within proceedings. Hence the LA has to be informed and ready to give informed advice upon any suspected breach
- c. Hence why a designated contact person and number is required for the "*responsible agency*" (in this instance the local authority) to receive non-compliance reports from the monitoring company in order to take decisions regarding the response to the breach (i.e. no action/return to court). The contact has tended to be the local authority solicitor;
- d. A non-compliance event could relate to (i) tampering or attempting to tamper with the tag, (ii) failure to abide by curfew requirements or (iii) entry into an exclusion zone;
- e. Protocols can be updated at any time to respond to emerging requirements and are bespoke for each case. The information required includes photographs of the subjects, details of special requirements (i.e.

interpreters), a list of significant addresses and maps marked with inclusion and exclusion zones;

- f. The precise terms of the Protocol are confidential from the subjects to the order and the provider will create a response grid for each alert type based on the precise terms agreed.

50. The difficulty of putting in place the practical arrangements for the Protocol to be implemented is not to be underestimated. The administrative burden on the LA legal department is a high one and would not have been in the contemplation of the provider or employee when their department was set up. A 24 hour duty service is not enough. The Protocol requires a 24 hour contact point in the legal department who is familiar with the case and that person requires a 24 hour point of contact with an informed and senior member of the social work team to obtain instructions from when telling the police what care plan the LA intend to adopt upon a suspected breach being detected: where is the child? where should the child be placed? When are the LA returning to court? Who is to be notified? What is the evidence of breach? What risk arises and from whom? Where is the information received and analysis of it evidenced?

Conclusion

51. Judges have sought to stress that in considering cases of radicalisation "*conventional safeguarding principles will still afford the best protection*"¹³ and in many respects the challenges faced in such cases are also conventional: ie)

- a. transparency,
- b. the challenges of running and responding to a case which is occurring in parallel with criminal investigations,
- c. the focus on a properly evidenced threshold

But 'conventional' does not make them 'straightforward'. Far from it. Cases such as these fall to be litigated before High Court Judges with senior counsel opposing you with arguments heard in court against a back drop of considerable press interest and where the court must balance either a risk of the very highest

¹³ Hayden J in ***Tower Hamlets London BC v M & Ors*** [2015] EWHC 869 (Fam) cited in ***London Borough of Tower Hamlets v B***

order or of a great injustice being perpetrated against a family unfairly stigmatized for their legitimate religious beliefs. As has been said in one case recently '*one must be careful not to punish piety*'

Tips from the courtroom

- Be familiar with The Presidents Guidance and Hayden's 9 point principles
- Do your drafting in advance when it comes to orders and have your contact lists to hand for points of contact to practically implement the orders you seek (tipstaff/ press distribution/ notification channels)
- Know your judicial tribunal : they will have more experience of these cases than you and expectations of counsel are high
- Don't under estimate the importance of dialogue with parallel teams/ disciplines: whether they be the Counter terrorism Unit, ground force police, the tipstaff, social services, fellow advocates.
- Be prepared for the unexpected

Jo Delahunty QC & Chris Barnes

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Appendices

1. ***Radicalisation Cases in the Family Courts***, guidance issued on 8th October 2015.
2. ***Sample tagging Protocol***



PRESIDENT OF THE
FAMILY DIVISION

RADICALISATION CASES IN THE FAMILY COURTS

**Guidance issued by Sir James Munby President of the Family Division
on 8 October 2015**

1 Recent months have seen increasing numbers of children cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or are at risk of being involved in terrorist activities either in this country or abroad.

2 Most of these cases have been brought under the inherent jurisdiction, where the children have been made wards of court.¹ Such cases are necessarily in the High Court. Others have been care cases commenced in the Family Court. Some cases have started out under the inherent jurisdiction but then become care cases.

3 Only a local authority can start care proceedings (see section 31(1) of the Children Act 1989 – the police powers are set out in section 46). However, *any* person with a proper interest in the welfare of a child can start proceedings under the inherent jurisdiction or apply to make a child a ward of court.² Usually, in cases falling within the description in paragraph 1 above, it will be the local authority which starts proceedings under the inherent jurisdiction or applies to make a child a ward of court, and the court would not expect the police (who have other priorities and responsibilities) to do so. There is, however, no reason why in a case where it seems to the police to be necessary to do so, the police should not start such proceedings for the purposes, for example, of making a child a ward of court, obtaining an injunction to prevent the child travelling abroad, obtaining a passport order, or obtaining a Tipstaff location or collection order.

4 Given the complexities of these cases, I have decided that, for the time being at least, *all* cases falling within the description in paragraph 1 above are to be heard by High Court Judges of the Family Division. For the purpose of this Guidance the expression High Court Judge of the Family Division does *not* include a judge or other person authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981.

5 Where a case falling within the description in paragraph 1 above is issued in the Family Court, or where a case issued in the Family Court becomes a case falling within the description in paragraph 1 above, then:

- (a) the Designated Family Judge must be notified immediately;

¹ For the jurisdiction to make a child who is a British subject a ward of court even if the child is abroad, see *Re M (Children)* [2015] EWHC 1433 (Fam) and *Re B (A Child) (Habitual Residence) (Inherent Jurisdiction)* [2015] EWCA Civ 886.

² *In re D (A Minor) (Wardship: Sterilisation)* [1976] Fam 185.

- (b) the Designated Family Judge must immediately notify the Family Division Liaison Judge (who should liaise with the President of the Family Division); and
- (c) urgent steps must be taken, in consultation with the Family Division Liaison Judge, to allocate the case to a High Court Judge of the Family Division.

6 In exceptional circumstances a case falling within the description in paragraph 1 above may be heard by a Designated Family Judge, or a *judge* authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981, but *only if* this has previously been authorised *in relation to that particular case* by the President of the Family Division or the Family Division Liaison Judge. Such permission will *not* normally be given in any case:

- (a) raising PII issues;
- (b) requiring a closed hearing or use of a special advocate; or
- (c) where electronic tagging is proposed.³

7 Judges hearing cases falling within the description in paragraph 1 above will wish to be alert to:

- (a) the need to protect the Article 6 rights of all the parties;⁴
- (b) the fact that much of the information gathered by the police and other agencies will not be relevant to the issues before the court;
- (c) the fact that some of the information gathered by the police and other agencies is highly sensitive and such that its disclosure may damage the public interest or even put lives at risk;
- (d) the need to avoid inappropriately wide or inadequately defined requests for disclosure of information or documents by the police or other agencies;
- (e) the need to avoid seeking disclosure from the police or other agencies of information or material which may be subject to PII, or the disclosure of which might compromise ongoing investigations, damage the public interest or put lives at risk, *unless* the judge is satisfied that such disclosure is “*necessary to enable the court to resolve the proceedings justly*” within the meaning given to those words when used in, for example, sections 32(5) and 38(7A) of the Children Act 1989 and section 13(6) of the Children and Families Act 2014;
- (f) the need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court⁵ by the police or other agencies;⁶

³ For electronic tagging in family cases see *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam).

⁴ For the latest authority on this see the decision of the Court of Appeal in *Kiani v The Secretary of State for the Home Department* [2015] EWCA Civ 776.

⁵ In especially sensitive cases it may be appropriate for such materials to be delivered direct to the judge (via the judge’s clerk or otherwise as the judge may direct) rather than to the court office.

- (g) the need to consider any PII issues and whether there is a *need* for a closed hearing or use of a special advocate;⁷
- (h) the need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings⁸ or (ii) any transcripts;⁹
- (i) the need to ensure that the operational requirements of the police and other agencies are not inadvertently compromised or inhibited either because a child is a ward of court or because of any order made by the court;¹⁰
- (j) the assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert counsel.

8 Judges hearing cases falling within the description in paragraph 1 above will also wish to consider whether in any particular case there is a *need* (i) to exclude the media, or (ii) to make a reporting restriction order, or (iii) to make an ‘anti-tipping-off’ order (for instance when making an order for disclosure against a third party).¹¹ The media should be excluded only as a last resort and if there is reason to believe that the situation cannot be adequately protected by a reporting restriction order or ‘anti-tipping-off’ order.¹²

9 Advocates appearing in cases falling within the description in paragraph 1 above need to be alert to and be prepared to argue the issues that may arise, including those referred to in paragraphs 7 and 8 above.

10 I draw attention to what Hayden J has said¹³ about “The importance of coordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved” and the need for “open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter-agency

⁶ For example, by placing such materials in a sealed envelope clearly marked on the outside by such words as “In accordance with an order made by Mr(s) Justice [name] on [date] THIS ENVELOPE MUST NOT BE OPENED BY ANYONE unless authorised by a written order from Mr(s) Justice [name] or the President of the Family Division” which is kept in a safe with limited access. In especially sensitive cases, the materials (and all copies) should be returned to the police or other agency subject to an undertaking to return them if so ordered by the trial judge or the President of the Family Division.

⁷ As to which see *Re T (Wardship: Impact of Police Intelligence)* [2009] EWHC 2440 (Fam), [2010] 1 FLR 1048, and *A Chief Constable v YK* [2010] EWHC 2438 (Fam), [2011] 1 FLR 1493.

⁸ Judges will wish to be alert to the need to consider special arrangements for recording the proceedings, especially where there is a ‘master’ recording system covering all the courts in a building.

⁹ In especially sensitive cases the judge may think it appropriate to direct that the transcript is to be prepared not by the usual transcribers but only by a special security-cleared transcriber.

¹⁰ Examples of forms of order designed to guard against this can be found in the orders set out in the judgments in *Re M (Children)* [2015] EWHC 1433 (Fam) (see the second recital to the order set out in para 22) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam) (see the sixth recital to the order set out in para 13). It may be appropriate to make an order providing, for the avoidance of doubt, that the fact that the child is a ward of court, or otherwise the subject of proceedings, does not, of itself, require the police or other agencies to disclose the existence of live investigations, especially if the investigation is covert.

¹¹ As to all of which see *Re M (Children)* [2015] EWHC 1433 (Fam).

¹² See *Re M (Children)* [2015] EWHC 1433 (Fam), paras 15-16.

¹³ *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), paras 18(ix) and 58.

cooperation” if children in such cases are to be provided with the kind of protection they require.

11 This is a two-way process. The court can expect to continue to receive the assistance it has hitherto been given in these cases by the police and by other agencies. But there must be reciprocity.

12 The police and other agencies recognise the point made by Hayden J¹⁴ that “in this particular process it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations.” The police and other agencies also recognise the point made by Bodey J¹⁵ that “it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities ... or other public bodies.” But subject to those qualifications, it is important that the family justice system works together in cooperation with the criminal justice system to achieve the proper administration of justice in *both* jurisdictions, for the interests of the child are not the sole consideration. So the family courts should extend all proper assistance to those involved in the criminal justice system, for example, by disclosing materials from the family court proceedings into the criminal process.¹⁶

13 In the same way, the police and other agencies will wish to be alert to the need of the court for early access to information, for example, information derived from examination of seized electronic equipment, *so far as such information is relevant to the issues in the family proceedings*. Accordingly, the court should be careful to identify with as much precision as possible in any order directed to the police or other agencies: the issues which arise in the family proceedings; the types of information it seeks; and the timetable set by the court for the family proceedings.

14 I attach a list in chronological order of relevant judgments which are publicly available on the BAILII website:

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam) (17 March 2015 – Hayden J)
Tower Hamlets v M and ors [2015] EWHC 869 (Fam) (27 March 2015 – Hayden J)
Re Y (A Minor: Wardship) [2015] EWHC 2099 (Fam) (23 April 2015 – Hayden J)
Re M (Children) [2015] EWHC 1433 (Fam) (20 May 2015 – Munby P)
Re Z [2015] EWHC 2350 (4 June 2015 – Hayden J)
Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam) (30 July 2015 – Munby P)
Re X (Children); Re Y (Children) (No 2) [2015] EWHC 2358 (Fam) (04 August 2015 – Munby P)
London Borough of Tower Hamlets v B [2015] EWHC 2491 (21 August 2015 – Hayden J)

15 This Guidance will be reviewed from time to time.

James Munby
President of the Family Division

8 October 2015

¹⁴ *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), para 18(iv).

¹⁵ *Y v Z* [2014] EWHC 650 (Fam), para 30.

¹⁶ See *Re X (Children)* [2007] EWHC 1719 (Fam), [2008] 1 FLR 589, para 43, and *Re X (Disclosure for Purposes of Criminal Proceedings)* [2008] EWHC 242, (Fam) [2008] 2 FLR 944, para 32.

Example Protocol

Please complete and send to emccspecialcase@uk.ems.com

Name of Special Case:	
Tracking System Unique Case Number:	Case (number to be allocated by EMS)
Police Operational Code Name:	n/a
Subject Name:	
Subject Date of Birth:	
Subject Address:	
Subject's Tel. Number: (Approved premises or personal)	
Monitoring Company Name & Address:	EMS, PO Box 170, Urmston, Manchester M41 7XZ
Responsible Police Officer & Offender Manager Contact Details:	<p>Contact the below in the event of a breach / Incident:</p> <p><u>To be immediately informed of any non-compliance event on 24/7 basis:</u></p> <p><i>Police force contact</i></p> <p><u>Breach information sent to:</u></p> <p><i>Local authority contact (eg solicitor in the case)</i></p>
Context of Electronic monitoring:	This protocol has been prepared for the above named person who will be subject to electronic monitoring, as operated by EMS under provisions of the XX Order.
Conditions affecting Electronic Monitoring:	<p><i>This section sets out the details of the Order as it pertains to the electronic monitoring including but not limited to:</i></p> <ul style="list-style-type: none"> - <i>curfew address</i> - <i>curfew times</i> - <i>any exclusion / inclusion zones</i> - <i>end date of EM order if known</i>
Language /Interpreter details:	

Example Protocol

Please complete and send to emccspecialcase@uk.ems.com

Health Issues:	
Monitoring Type:	<div style="display: flex; justify-content: space-between; align-items: flex-start;"> GPS tag only GPS tag & HMU(s) V </div> <p><i>It is recommended that if a curfew is given, that an Home Monitoring Unit is installed as this is the best way to monitor a curfew</i></p>
Overnight Residence Schedule:	<p>The individual must remain in their residence between the following hours:</p> <p><i>le 2pm to 4pm and 7pm to 7.00 am</i></p>
Exclusion/Exclusion areas	
	<p>Add Standard Zones (airports, ports and train stations)</p> <p>YES NO</p>
Telephone Reporting arrangements:	<i>n/a</i>
Other Conditions:	As stated in the XX order
Electronic Monitoring Team Section contact:	<i>NOMS</i>



Section 4

Speakers Profiles

Jo Delahunty QC

“She is deservedly pre-eminent. She has a brilliant mind, and is one of the few who is as good a fearsome cross-examiner as she is arguing the law in the Supreme Court.” “She is very detailed in her approach and has an immaculate knowledge of the papers.”

Chambers & Partners 2015 – Band 1

Experience

Year of Call: 1986

Year of Silk: 2006

Practice Areas

- Private Children Law
- Public Children Law

Dispute Resolution

- Mediation

Awards



Education

MA (Oxon) Jurisprudence

Appointments

Public Law Family Recorder (South Eastern Circuit) 2009

Benchers the Honorable Society of Middle Temple 2011

Profile

Jo specializes in contentious and highly complex cases at High Court level and above involving:

- The death of/catastrophic injuries to a child
- Non Accidental Head Injury (NAHI)/ Shaken baby allegations (TRIAD cases)
- Vitamin D/Rickets/genetic disorders and congenital malformations which can mimic child abuse



- ISIS cases: alleged radicalisation of children/ risk of flight to Syria
- Sexual abuse (Intergenerational/ Inter sibling/ maternal rape/ genital mutilation/ internet exploitation)
- Ritualized child abuse/cultural practices such as Kndoki
- Child protection cases involving concurrent criminal prosecution for terrorist offences / trafficking/ attempted murder/ child cruelty and neglect/ sex offences
- Fabricated Induced Illness (FII) allegations
- Parents with disabilities (with a particular interest in learning disabilities)
- right of and services for a disabled child within care proceedings
- Cases involving cross examination of a child or vulnerable adult
- Re-litigation/challenge to historic findings of abuse based on emerging science/ fresh factual evidence.

Alongside her practice in the Family Division ,Jo Delahunty QC worked alongside Mike Mansfield QC and Barristers from Garden Court Chambers and Doughty Street to represent 77 families at the Hillsborough inquests . On 26.4.16 the longest running Inquest in English legal history came to an end and the jury found that the 96 victims of the disaster who died on 15.4.89 were unlawfully killed and that no fan behaviour caused or contributed to the deaths . Jo Delahunty QC was responsible for leading the team on behalf of 77 families that successfully exposed the failures of the South Yorkshire Ambulance Service to respond to the disaster and the jury found that those failings were so fundamental that they led to or caused loss of life . This had been an area previously unexplored for 27 years because of the original coroners contentious decision to impose a 3.15' cut off point for enquiry. To [read more](#)

Complex private law proceedings involving allegations of physical a, sexual and emotional abuse and neglect (alcoholism/ psychiatric issues) involving transfer of residence applications and contact disputes are a natural corollary to her practice.

Jo was Finalist Family Silk 2014 by The Legal 500

Jo was Winner of Jordan's Family Silk 2013

Jo was Finalist of Chambers and Partners Silk 2013

She is has been ranked as a 'Top Ranked Silk' by Chambers and Partners in successive editions including the most current

She has been named a 'Top Tier 'Leading Silk by The Legal 500 in successive editions including the most current

According to her competitors, Jo 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. She has many successful reported cases to her credit and is able to move with ease between highly specialized cross examination of medical experts to sensitive cross examination of a child or vulnerable adult where allegations of sexual abuse arise.

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 to challenge 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 and has also gained acclaim for her seminars delivered to Barristers, Solicitors, social work and medical professionals on family law matters. Jo has spoken on joint platforms with 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.

Publications and Teaching

Jo is a sought after speaker at medico/legal family conference for her insights into how to deal with legally and factually challenging cases involving complex medical evidence and emerging science as well as how to manage the cross examination of vulnerable witnesses such as children or adults with a learning disability in court.

Jo was invited to speak alongside Charles Farr, Director –General Counter Terrorism Unit, academics and professionals from Prevent, social work and National Terrorism Unit officers in London, November 2015 on the subject of ‘Radicalisation; Safeguarding and the Family Courts’ .

Jo headlined a conference in Leeds in January 2016 alongside the academic Dr Gordon Clubb, lecturer in International Security and Chair of the Terrorism and Political Violence Association on the ‘Risks of Radicalisation’.

Jo is chairing and speaking at the forthcoming 4PB Radicalisation in the Family Courts Seminar.

She has been invited to speak at the annual Jordans Family conference on the 4th October 2016 delivering a talk on Radicalisation in the family courts.

Jo is regularly invited to speak at professional gatherings: such as the Annual Public Law Conference for Butterworth in June 2013 where the audience variously described her as ‘fantastic, a speaker who reminded us why we did it’; ‘Superb-engaging, interesting, entertaining’; ‘Inspiring and re-energising’; ‘Superb speaker-very engaging’; ‘Sparkling’ .She regularly delivers seminars for Jordans and chaired the annual NAGALRO conference in Sept 2013.

Jo is regularly invited to write for specialist legal journals – and has a series of articles for Jordans Family law published in their journal and on line throughout 2016 on issues arising from the Radicalism cases that are confronting family practitioners and the Family Division. Click here for [part one](#) and here for [part two](#)

Previous articles published have sought to explain the ramifications of emerging research on child hood disease and suspected child abuse such as :

‘The Vitamin D and Rickets case: LB Islington v Al Alas’, June 2012 Family Law 659;

‘What Price Justice: Experts or Treating Clinicians’ July FAM Law 882;

‘In Defence of Experts’ Counsel August 1012 and TEDR (The Experts and Dispute Resolver) (2012) Vol 17 no 2, 24;

A miscarriage of Justice corrected: the difference Expert Evidence can make to outcome ‘(Nov 2012 FAM Law 1344;

‘Re-litigation in Family Cases: the emerging law and practice’ Jan 2012 Fam Law 40

Memberships

Inquest

Association of Lawyers for Children

Association of Women Barristers

Family Law Bar Association

FLBA National committee member 2010 – 13

FLBA chair of Fees sub committee 2012 – 13

The Middle Temple Women's Forum (steering committee)

Centre for Child and Family Reform (CCFLR) committee 2012 – present

Patron of AMEND (The Association for Multiple Endocrine Disorders)

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

A dedicated children lawyer who focuses on difficult public law matters and care proceedings concerning allegations of sexual and emotional abuse. Also handles cases involving the death of children.

Expertise: "A first port of call for care work," "she is extremely hard-working, knowledgeable and very committed to the client that she represents. Jo is a very tactical and effective advocate, who is good to observe and learn from."

Chambers & Partners 2015

Band 1.

A formidable advocate, and fascinating to watch and learn from.

Legal 500 2015 Top Tier

A masterful tactician and a brilliantly passionate advocate.

Legal 500 2014 Top Tier

Specialises in children law. She has handled some complex and often controversial disputes involving child death, and ritualised and sexual abuse.

Expertise: "Superb. She has one of the sharpest brains I know, and is very forensic and tactical."

"Exceptional. She works incredibly hard, is excellent at cross-examination and great at presenting a case at court."

Recent work: Delahunty represented a teenage mother who was falsely accused of inflicting multiple fractures to a newborn baby, killing him by shaking/impact. The case involved cross-examining 40 medics and 16 experts.

Chambers & Partners 2014

Band 1

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.

Cases

06/02/2013	Re A (A Child) (Costs) (2013)	Jo Delahunty QC	[2013] EWCA Civ 43
29/01/2013	Re A and B (Children) [2013]	Jo Delahunty QC	[2013] EWHC B22 (Fam)
16/11/2012	Re A (A Child) (2012)	Jo Delahunty QC	[2012] EWCA Civ 1477
16/11/2012	Re A (A Child) [2012]	Jo Delahunty QC	[2012] EWCA Civ 1477
19/04/2012	Islington London Borough Council v (1) Chana Al-Alas (2) Rohan Wray (3) Jayda Faith Al -Alas Wray (By Her Children's Guardian Dorothy Pottinger) (2012)	Jo Delahunty QC	[2012] EWHC 865 (Fam); [2012] 2 FLR 1239 : (2012) 128 BMLR 1 : [2012] Fam Law 943
19/01/2012	Re M (A Child) (2012)	Jo Delahunty QC Joanne Brown	[2012] EWCA Civ 165: [2012] 2 FLR 121 : [2012] Fam Law 511
14/12/2011	K (Children) [2012]	Jo Delahunty QC	[2012] 2 FLR 745; EWHC Case No. LS09C05566
11/11/2011	A London Borough v O and Others [2011]	Alex Verdan QC Jo Delahunty QC	2011 EWHC 2754 (Fam)
04/07/2011	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)	Jo Delahunty QC	[2011] EWHC 1672 (Fam)
18/05/2011	Kent County Council (Respondent) v (1) A Mother (2) F (3) X (A Minor) (4) Y (A Minor) (5) Z (A Minor) (6) IR (Applicants) (2011)	Jo Delahunty QC	[2011] EWHC 1267 (Fam): [2011] 2 FLR 1088 : [2011] Fam Law 933 : (2011) 108(26) LSG 18
03/03/2011	Kent County Council (Applicant) v (1) A Mother (2) F (3) X, Y, Z (Children) (Respondents) & IR (Intervener) (2011)	Jo Delahunty QC	[2011] EWHC 402 (Fam)
19/02/2010	Re (1) X (2) Y (3) Z (Care Proceedings: Costs) (2010)	Jo Delahunty QC	[2011] 1 FLR 1045 : [2010] Fam Law 800
08/05/2009	A Local Authority v S (2009)	Jo Delahunty QC Alison Grief QC Rob Littlewood	[2009] EWHC 2115 (Fam); (2010) 1 FLR 1560
24/06/2008	X Local Authority v N J & 6 Ors (2008)	Jo Delahunty QC Alistair G Perkins	(2008) 2 FLR 1389; [2008] EWHC 1484 (Fam)
11/06/2008	Re B (Children) (2008)	Jo Delahunty QC Alison Grief QC	[2008] UKHL 35; (2008) 3 WLR 1 : (2008) 4 All ER 1 : (2008) 2 FLR 141 : (2009) 1 AC 11 : Times, June 12, 2008

25/07/2006	(1) Haringey London Borough Council (2) Hackney London Borough Council v MRS S & 7 Ors(2006)	Jo Delahunty QC	[2006] EWHC 2001 (Fam)
14/04/2006	Re X Sub Nom Barnet LBC v Y (2006)	Jo Delahunty QC	(2006) 2 FLR 998

Sam King

“She holds enormous gravitas in court and is a superb advocate.” “She’s extremely good, very energetic, committed and knowledgeable about the law.”

Chambers & Partners 2016 – Band 1

Experience

Year of Call: 1990

Practice Areas

- Court of Protection - Vulnerable Adult
- International Children Law
- Private Children Law
- Public Children Law

Direct Access

Direct Access

Awards



Education

BA (Cantab)

MA (Law) Selwyn College, Cambridge University

Qualified for admission to the New York Bar 1989

Profile

Sam’s main area of practice is in children’s law. She is regularly instructed in both private and public law cases. She represents all parties in complex cases involving allegations of sexual abuse or where there are psycho-sexual factors in issue, non-accidental injury, psychiatric ill-health, intractable contact cases and where shared residence is in issue. Sam’s practice increasingly reflects her interest in the law relating to surrogacy, reproductive technologies and co-parenting arrangements.

She also appears in leave to remove applications and domestic and international adoption cases and is a member of chambers’ international movement of children group. Sam has an interest in forced marriage and the children’s law cases which arise in that context.

Sam often gives lectures and seminars to lawyers and other professionals. Her lectures include talks on the subject of evidence gathering in respect of sexual abuse (LexisNexis), recent developments in the



area of private law (LexisNexis), adoption and placement orders (4pb and Family Law Week). She has recently given seminars on routes to parenthood under the HFEA 2008 (Resolutions London) and in respect of international adoption and surrogacy.

Memberships

Middle Temple
FLBA

Directories

Highly regarded for her willingness to take on the most challenging cases in both the public and private children law sphere. She has particular expertise in cases with complex medical issues and those concerning alternative family structures.

Strengths: "She holds enormous gravitas in court and is a superb advocate." "She's extremely good, very energetic, committed and knowledgeable about the law."

Chambers & Partners - Band 1

'A first-class advocate.'

The Legal 500 2015

Tackles a broad range of public and private law children work, including cases involving complex issues of surrogacy, non-accidental injury and the examination of complicated matters of medical evidence.

Expertise: "She has a confident and reassuring manner." "She has a wonderful hands-on approach to cases, and is a joy to work with."

Chambers & Partners - Band 1

Sam King - 'A delight to work with, and a formidable advocate.'

The Legal 500 2014

Draws much praise for her work in complex care cases, including those matters concerning sexual abuse and parents/children with mental health problems.

Expertise: "Outstanding. She's a brilliant advocate, who is incredibly bright and good at handling clients. She is just your dream counsel."

Chambers & Partners 2014

Ranked in Band 1

Sam King Provides 'clear and focused advice'.

Recommended as a Leading Family Junior in the area of Children Law
Legal 500 2013

The "incisive and pragmatic" Samantha King has a tremendous reputation in children law matters involving care and medical dimensions. Sources suggest that she is a "very accomplished practitioner" who can "make a hopeless case appear to have merit."

Recommended as a Leading Family Junior in Chambers and Partners 2013 (Ranked Band 1)

Sam King, who is 'pre-eminent in the field of public law'.

The Legal 500 2012

Outstanding performer, Samantha King, who handles a wide range of children matters, both public and

private. Sources describe her as a “very smart and impressive advocate who is passionate, experienced and tenacious.”

Recommended as a Leading Family Junior in Chambers and Partners 2012 (Ranked Band 1)

Sam King is ‘outstanding’.

The Legal 500 2011

Samantha King represents the full range of parties in public children law. She is praised for her “solid understanding of medical detail and her intuitive feel for strategy.”

Recommended as a Leading Family Junior Chambers and Partners **2011** (Ranked Band 1)

Samantha King, who frequently acts for local authorities in care cases.

Recommended as a Leading Family Junior Chambers and Partners **2010**

Sam King is ‘outstanding’, ‘especially in public law’.

The Legal 500 2010

Samantha King has been around the block in relation to both private and public law children cases, and is recognised for her exemplary work in care proceedings.

Recommended as a Leading Family Junior in the area of Children – Chambers and Partners **2009**

Chambers and Partners say Sam is “experienced and extremely competent” in child care cases. “Really getting into the papers” and “good with difficult clients,” she also has an interest in international child abduction matters.

Cases

02/09/2015	G (Children) (2015)	Sam King	AC9601870
10/03/2015	MG and JG v JF [2015]	Sam King	[2015] EWHC 564 (Fam)
13/01/2015	Re S (A Child) (Habitual Residence & Child’s Objections) (Brazil) (2015)	Henry Setright QC Sam King	[2015] EWCA Civ 2
04/09/2014	AVH v (1) SI (2) SIV (By Her Guardian Judith Bennett-Hernandez) (2014)	Sam King	[2014] EWHC 2938 (Fam)
15/08/2014	P v (1) D (2) X (3) Y (4) Z (2014)	Teertha Gupta QC Sam King Hassan Khan Andrew Powell	[2014] EWHC 2355 (Fam)
06/02/2014	Re P (Findings of Fact) (2014)	Sam King	[2014] EWCA Civ 89
07/08/2013	IA (A Child) [2013]	Jane Rayson Sam King	[2013] EWHC 2499 (Fam)
05/07/2013	M (2013)	Sam King Matthew Persson	2013 EWHC 1901 (Fam)

05/07/2013	Hertfordshire County Council v H [2013]	Alex Verdan QC Sam King	[2013] EWHC 4049 (Fam)
05/05/2013	Re C (A Child) [2013]	Sam King	[2013] EWHC 2413 (Fam)
31/01/2013	Re G (A Minor); Re Z (A Minor) [2013] EWHC 134 (Fam)	Sam King	[2013] EWHC 134 (Fam)
12/12/2012	W (A Child) [2012]	Sam King	[2012] EWCA Civ 1828
01/12/2010	T v T (2010)	Alex Verdan QC Sam King	[2010] EWCA Civ 1366
02/02/1999	Re D-R (Adult: Contact) (1999)	Sam King	(1999) 1 FLR 1161 : Times, February 8, 1999
19/11/1997	Re M (A Minor) (Adoption or Residence Order) (1997)	Sam King	(1998) 1 FLR 570
21/07/1993	Re G (Minors) (Interim Care Order) (1993)	Sam King	(1993) 2 FCR 557 : (1993) Fam Law 672 : Times, August 2, 1993

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

Practice Areas

- Court of Protection - Vulnerable Adult
- International Children Law
- Private Children Law
- Public Children Law

Direct Access

Direct Access

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)

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.

Memberships

- Bar pro bono unit
- Family Law Bar Association

Cases

29/01/2015	M (Children) [2014]	Paul Hephher	[2014] EWCA Civ 1753
19/08/2014	Re M-D (A Child) (2014)	Paul Hephher Michael Gration	[2014] EWCA Civ 1363
14/02/2014	SMD v LMD [2014]	Paul Hephher	[2014] EWHC 302 (Fam)
31/01/2014	Harrow v Afzal [2014]	Mark Jarman Paul Hephher	[2014] EWHC 303 (Fam)
16/01/2014	SMD v LMD [2013]	Paul Hephher	[2013] EWHC 4611 (Fam)
16/08/2013	AW (A Child – Application to Revoke Placement Order – Leave to Oppose Adoption) [2013]	Paul Hephher	[2013] EWHC 2967 (Fam)
21/02/2013	Re TC and JC (Children: Relocation) (2013)	Paul Hephher	[2013] EWHC 292 (Fam)
17/12/2009	Re B (Children) (2009)	Jonathan Cohen QC Rob Littlewood Paul Hephher	[2009] EWCA Civ 1499
03/08/2009	Re C (A Child) (2009)	Paul Hephher	[2010] 1 FLR 774 : [2009] Fam Law 1127 : [2009] EWCA Civ 955
17/07/2007	Re J (A Child) (2007)	Paul Hephher	[2007] EWCA Civ 906; (2008) 1 FLR 369
20/12/2006	Re K & H (Children) (2006)	Paul Hephher	[2007] EWCA Civ 1898

18/08/2006	Re S (Children) : Re E (A Child) (2006)	Paul Hepher	
18/08/2006	Re S (Children) : Re E (A Child) (2006)	Paul Hepher	[2007] 1 FLR 482; [2006] EWCA Civ 1190
07/10/2005	Re A (Contact: Witness Protection Scheme) (2005)	Paul Hepher	[2006] 2 FLR 551
29/11/2000	Re G (Care Proceedings: Spilt Trials)	Jonathan Cohen QC Catherine Wood QC Paul Hepher	[2001] 1 FLR 872

Ruth Kirby

Experience

Year of Call: 1994

Practice Areas

- Court of Protection - Vulnerable Adult
- Financial Remedies
- International Children Law
- Private Children Law
- Public Children Law

Dispute Resolution

- Collaborative Law
- Mediation

Direct Access

Direct Access

Education

University College Cork, Ireland BCL
London School of Economics, LLM Employment and Personal Injuries
London Metropolitan University, CPE Constitutional and Land Law
Inns of Court School of Law, BL
BL (Irl) Kings Inns, Dublin 2004.
Qualified Collaborative Lawyer
Qualified Family and Commercial Mediator

Languages

Working knowledge of French and Irish

Profile

Ruth has practised exclusively in family law for 15 years, the bulk of her practice now being in the Family Division, including Court of Protection work. She is fully committed to each client whether they are direct access, privately paying parents resisting applications for leave to remove or publicly funded parents or local authorities in care proceedings. Avoiding court proceedings for clients is a particular skill, complemented by her dispute resolution skills.

Ruth is a Family Law practitioner, dealing with all aspects of private and public family law including care proceedings and adoption; domestic and international abduction.

Having dual jurisdictional qualifications, she also acts as an expert witness in Irish Family Law and has rights of audience before the Irish courts.



Ruth has lectured in commercial and academic institutes as well as in house chambers' seminars and for the Family Law Bar Association. Her academic lecturing has included 5 years as a part time lecturer in human rights law at the University of London.

Ruth worked for 3 years with Industrial Relations Services as a legal journalist specialising in Employment and Health & Safety Law

Ruth has contributed to Sky News on family law and practice related topics and has participated in training DVDs made by Legal Network TV. She wrote the article "Treatment of same sex couples in English Family Law" Family Law May 2007.

Outside of work Ruth enjoys tennis, spinning, film, wine, music, family and watching rugby.

Memberships

Affiliate Member of Resolution

FLBA

ALC

Cases

27/01/2015	Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal) [2015]	Christopher Hames QC Ruth Kirby Dorothea Gartland	[2015] EWCA Civ 26
02/04/2013	SK v (1) HD (2) SD (3) UD (4) MD (5) FD (2013)	Ruth Kirby Hassan Khan	[2013] EWHC 796 (Fam); [2014] Fam Law 22
28/11/2011	J v J (Relinquishment of Jurisdiction) (2011)	Henry Setright QC Ruth Kirby Michael Gratton	[2012] 1 FLR 1259 : [2012] Fam Law 399; [2011] EWHC 3255 (Fam)
13/10/2011	C (Care: Contact)	Ruth Kirby Michael Edwards	[2012] 2 FCR 325; [2011] EWCA Civ 1774
21/06/2011	A v P (Habitual Residence)	Ruth Kirby	[2012] 1 FLR 125; [2011] EWHC 1530 (Fam)
25/05/2010	Re J (A Child) (2010)	Ruth Kirby	[2010] EWCA Civ 946
10/07/2009	Re C (Children) (2009)	Ruth Kirby	[2009] EWCA Civ 959; (2010) 1 FLR 895
18/05/2009	Re Stedman [2009]	Ruth Kirby	[2009] EWHC 935 (Fam); [2009] 2 FLR 852
11/02/2009	Re H (Abduction) [2009]	Teertha Gupta QC Mark Jarman Ruth Kirby	[2009] 2 FLR 1513; [2009] EWHC 1735 (Fam)

31/07/2006	Susan Wilkinson V (1) Celia Kitzinger (2) Attorney-General (Respondents) & Lord Chancellor (Intervener) (2006)	Ruth Kirby	[2006] EWHC 2022 (Fam); (2007) 1 FLR 295 : (2006) HRLR 36 : (2007) UKHRR 164 : Times, August 21, 2006
27/02/2006	Re U (Care Proceedings: Criminal Conviction: Refusal to give Evidence) (2006)	Ruth Kirby	[2006] EWHC 372 (Fam); (2006) 2 FLR 690
16/12/2005	Re K sub nom A Local Authority v N & Ors (2005)	Ruth Kirby	[2005] EWHC 2956 (Fam); (2007) 1 FLR 399
21/09/2004	Re S (Children) (2004)	Ruth Kirby	[2004] EWCA Civ 1397; (2005) 1 FLR 469

Chris Barnes

Experience

Year of Call: 2008

Practice Areas

- Court of Protection - Vulnerable Adult
- International Children Law
- Private Children Law
- Public Children Law

Direct Access

Direct Access

Education

St John's College, Cambridge (2003-6)

City University (2006/7)

Inns of Court School of Law (2007/8)

MA (Cantab) History

GDL

BVC

Profile

Chris specialises in proceedings relating to children whether public, private or international. He is regularly instructed by local authorities, parents, guardians and other interested parties at all levels including the Family Court, High Court and Court of Appeal.

Chris is particularly well regarded for his work in public law care proceedings and has experience of cases involving sexual abuse and serious inflicted injury acting in his own right and as a led Junior.

Chris is always aware of the sensitive nature of proceedings relating to children and whilst he is a tenacious advocate he ensures that his clients – whether parents or professionals – are calmly advised, supported and represented through the litigation process.

Chris has experience of public and private law proceedings with an international dimension and has recently acted for a Local Authority in applications under wardship to prevent travel to Syria. He is interested in novel applications of established remedies and is able to accommodate the demands of urgent applications and provide advice rapidly where required.

Chris has lectured extensively on the impact of Re B and Re B-S and has a particular interest in contentious applications relating to adoption, the revocation of placement order or discharge of care orders. He has recently acted for a parent resisting a contested adoption order application having set aside care and placement orders out of time in the Court of Appeal.



Chris undertakes work for the Bar Pro Bono unit and is committed to ensuring that where his clients may be more vulnerable – by virtue of language, disability or geographical location – are properly protected and represented before the Court.

Away from work Chris is a dedicated runner and is running the London Marathon this year raising fund for St John Ambulance, you can donate to his [just giving page here](#). He helped set up a local Junior parkrun and is himself a committed [parkrunner](#)

Memberships

Honourable Society of Gray's Inn
Family Law Bar Association
Association of Lawyers for Children

Recommendations

"All the legal teams in these proceedings have worked tirelessly to ensure this hearing has remained effective. The challenges caused by the volume of disclosure and the management of ensuring only what was relevant was in the court bundle have been considerable... The local authority are to be commended for taking the necessary steps to ensure sufficient resources were available to manage this case. The court is particularly grateful to Miss Taylor and Mr Barnes for their part in the considerable logistical arrangements of this case." – Judgment from a High Court Judge following a lengthy fact-finding concerning the death of a child acting as a second Junior for the Local Authority

"The parties have all been ably represented. I understand that those who represent Mother only had funding for this final hearing confirmed last week. I am bound to say that I have been greatly assisted by counsel for Mother, whose penetrating cross examination enabled the court to hear the full detail of the Local Authority's difficulties in a way that might not otherwise have been achieved." – Judgment from a Circuit Judge following a final hearing representing a mother seeking the discharge of a care order

Cases

03/03/2016	Re JL and AO 2016	Henry Setright QC Chris Barnes	[2016] EWHC 440 (Fam)
27/08/2015	London Borough of Tower Hamlets v B [2015]	Chris Barnes	[2015] EWHC 2491 (Fam)
22/07/2015	Re W (Adoption Application: Reunification with Family of Origin) [2015]	Chris Barnes	[2015] EWHC 2039 (Fam)
02/07/2015	Re R (A Child) (2015)	Henry Setright QC Sally Bradley Chris Barnes	[2015] EWCA Civ 674
11/06/2015	Re H (Children) (2015)	Kate Branigan QC Chris Barnes	[2015] EWCA Civ 583
27/03/2015	Tower Hamlets London Borough Council v M & Others (2015)	Chris Barnes	[2015] EWHC 869 (Fam)
19/03/2015	SR (A Child: Habitual Residence) [2015]	Henry Setright QC Sally Bradley Chris Barnes	[2015] EWHC 742 (Fam)

03/12/2014	X (Discharge of Care Order)	Chris Barnes	[2014] EWFC B217
20/06/2014	Local Authority 1 & Others v AF (Mother) & Others [2014]	Sally Bradley Chris Barnes	[2014] EWHC 2042 (Fam)



Section 5

Members of 4 Paper Buildings

Barristers

4 Paper Buildings is 'one of the best family law sets', and one of the few chambers in London that has real strength in depth in children law as well as family finance work. It is also adept at handling cases with an International dimension, and Court of Protection work, meaning 'there is a good barrister available for all types of family disputes'. The Legal 500, 2014

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



Kate Branigan QC
Call: 1985 | Silk: 2006



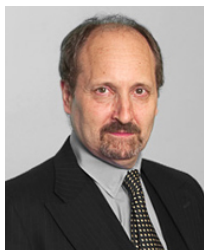
Henry Setright QC
Call: 1979 | Silk: 2001



Marcus Scott-Manderson QC
Call: 1980 | Silk: 2006



Jo Delahunty QC
Call: 1986 | Silk: 2006



Michael Sternberg QC
Call: 1975 | Silk: 2008



Catherine Wood QC
Call: 1985 | Silk: 2011



Rex Howling QC
Call: 1991 | Silk: 2011



Teertha Gupta QC
Call: 1990 | Silk: 2012



David Williams QC
Call: 1990 | Silk: 2013



Charles Hale QC
Call: 1992 | Silk: 2014



Christopher Hames QC
Call: 1987 | Silk: 2015



Alison Grief QC
Call: 1990 | Silk: 2015



John Tughan QC
Call: 1991 | Silk: 2015



Cyrus Larizadeh QC
Call: 1992 | Silk: 2016



Brian Jubb
Call: 1971



Alistair G Perkins
Call: 1986



Amanda Barrington-Smyth
Call: 1972



Robin Barda
Call: 1975



Dermot Main Thompson
Call: 1977



Jane Rayson
Call: 1982



Mark Johnstone
Call: 1984



Elizabeth Coleman
Call: 1985



Stephen Lyon
Call: 1987



James Shaw
Call: 1988



Mark Jarman
Call: 1988



Sally Bradley
Call: 1989



Barbara Mills
Call: 1990



Joy Brereton
Call: 1990



Joanne Brown
Call: 1990



Sam King
Call: 1990



David Bedingfield
Call: 1991



Michael Simon
Call: 1992



Justin Ageros
Call: 1993



Rob Littlewood
Call: 1993



Paul Hepher
Call: 1994



Cliona Papazian
Call: 1994



Justine Johnston
Call: 1997



Judith Murray
Call: 1994



Ruth Kirby
Call: 1994



Sarah Lewis
Call: 1995



Nicholas Fairbank
Call: 1996



James Copley
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



Kate Van Rol
Call: 2002



Katie Wood
Call: 2001



Rhiannon Lloyd
Call: 2002



Ceri White
Call: 2002



Matthew Persson
Call: 2003



Dorothea Gartland
Call: 2004



Francesca Dowse
Call: 2004



Greg Davies
Call: 2005



Samantha Woodham
Call: 2006



Laura Morley
Call: 2006



Nicola Wallace
Call: 2006



Michael Gratton
Call: 2007



Jacqueline Renton
Call: 2007



Henry Clayton
Call: 2007



Andrew Powell
Call: 2008



Chris Barnes
Call: 2008



Sophie Connors
Call: 2009



Michael Edwards
Call: 2010



Harry Nosworthy
Call: 2010



Rachel Chisholm
Call: 2010



Jonathan Evans
Call: 2010



Julia Townend
Call: 2011



Zoe Taylor
Call: 2011



Indu Kumar
Call: 2012