



# PRIVATE CHILDREN LAW UPDATE

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# CONTRIBUTORS



CERI WHITE

Ceri acts for parents and children in all areas of private children law, representing parties at all levels, including at appeal. She frequently advises outside of Court when parties are considering whether to bring proceedings or otherwise negotiating with their ex-partner. Ceri's practice covers the full gamut of private work, including disputes over child arrangements, international relocation, parental responsibility restrictions, schooling decisions, and consideration of the impact of Gillick competency on parental decision making

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RALPH MARNHAM

Ralph specialises in children law proceedings and is regularly instructed in complex private law cases, representing parents, children and grandparents. He frequently acts in cases involving relocation, allegations of parental alienation, intractable hostility and domestic violence. Ralph is also particularly interested in the developing area of surrogacy law, and representing parties on applications for parental orders.

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EMMA SPRUCE

Recently returning to work following a period of parental leave, Emma's busy practice covers all aspects of private family law and she is regularly instructed in both the financial and children aspects arising from a relationship breakdown enabling clients to have the benefit of wraparound representation. She is repeatedly instructed in difficult children matters, often involving serious allegations of sexual abuse, violence and parental alienation, as well as cases with a long history of intractable or repeat litigation. Emma has been described in the legal directories as a 'Brilliant Advocate' who makes excellent 'excellent judgment calls'.

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SUSANNAH BURLEY

Susannah accepts instructions in every aspect of chambers practice areas, with a specific interest in private law proceedings. She is regularly instructed in complex cases, appearing for parents, interveners and for the subject child(ren) at all stages of proceedings, including fact finding hearings, final hearings and enforcement.

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# EDITORS



## MANI SINGH BASI

Mani is a specialist in cases that have an international element relating to child abduction. Mani deals with cases concerning applications for summary return under the Hague Convention 1980, the recognition and enforcement of foreign orders relating to the Hague Convention 1996, applications concerning wardship / the inherent jurisdiction and forced marriage. Mani is known for his experience in 'stranded spouse' cases and is the author of 'A Practical Guide to Stranded Spouses in Family Law' which is available for purchase here. He also co-authored an article in The Times about this topic. Further, Mani has published a book in respect of 'A Practical Guide to Exercising the Inherent Jurisdiction' which can be purchased here.

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## MIRIAM BEST

Miriam appears in the High Court in child abduction matters and represents parents in applications for leave to remove to Hague and non-Hague Convention countries. Miriam appeared in *PG v PR* [2018] EWFC 85 where she represented the respondent father in an application for the summary return of a child to Portugal. Miriam also appeared in *SZ v DG & PG v LG* [2020] EWHC 881 (Fam) seeking permission to make an Article 21 application whilst a Section 91(14) order was in place against her client. She has also represented parties in committal applications following non-compliance with passport orders.

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# Family Justice Council Guidance on Alienating Behaviours

1. In December 2024, the Family Justice Council published its new "[Guidance on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour](#)".
2. The purpose of the guidance is to provide a clear and consistent approach to such allegations in the Family Court. It is intended to be of assistance at whatever stage of proceedings the issue of Alienating Behaviour is considered.

## Case Management

3. The guidance note on case management is substantial, setting out the process the court should follow at each stage of proceedings. The document contains a useful flow-chart, mapping the litigation journey where Alienating Behaviours are alleged. This sets out the blueprint for how the court should case manage the matter at all stages.
4. As per Re C (Parental Alienation: instruction of Expert)<sup>1</sup>, it is outlined that a court would need to be satisfied that three elements have been established before it could find that Alienating Behaviours have occurred:
  1. The child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer; and
  2. The reluctance, resistance or refusal is not consequent on the actions of that parent towards the child or the other parent, which may therefore be an appropriate justified rejection by the child or is not caused by any other factor such as the child's alignment affinity or attachment; and

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<sup>1</sup> [2023] EWHC 345 (Fam), §103

3. The other parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's reluctance, resistance or refusal to engage in a relationship with the parent.
  
5. The court will also need to be mindful that while allegations of Alienating Behaviours are often raised in private law children cases, findings of fact are relatively rare. It is recognised that such allegations are often raised in response to allegations of domestic abuse. Alienating Behaviours will seldom be found in cases where findings of domestic abuse are made, which have resulted in a child's appropriate justified rejection, in protective behaviours, or a trauma response on the part of the victim parent.
  
6. In this section, the guidance details the case progression of private law cases where there are allegations of Alienating Behaviours. In triaging such cases, the Legal Advisor or Judge considering an initial application will need to contemplate the nature, seriousness and complexity of the issues raised in deciding upon allocation. Where it appears, after careful consideration, that all three elements of Alienating Behaviours exist, the case must be transferred for case management and determination by a Judge. If the matter is allocated to the magistrates in the first instance, allocation must be kept under review at each stage of proceedings. Case management must also be reviewed where allegations are made at a later stage in proceedings and the elements are evidenced.
  
7. At a first hearing, the court must endeavour to understand the essence of the parties' positions. The court must ask itself whether the three Re C elements are evidenced. In some instances, a court may direct Cafcass or a Social Worker to meet with the subject child/children (for instance by directing a Section 7

report). While Cafcass have a number of practitioner tools to assist them, they are not arbiters of fact. It is a judicial function to determine the factual issues in respect of Alienating Behaviours.

8. The court must also consider whether it is both necessary and proportionate to hold a separate Fact-Finding Hearing to determine the allegations of Alienating Behaviours and any competing allegations of domestic abuse. The court must of course remain mindful of the timing the allegations of alienation occurred and be sure that these are not being made simply as a response to allegations of domestic abuse.
9. If the Court directs a Fact-Finding Hearing, it is incumbent on the parent alleging Alienating Behaviours to discharge the burden of establishing that such behaviour has occurred and that this behaviour has led to the reluctance, resistance or refusal of contact.
10. Where there are cross-allegations of domestic abuse, the court's deliberations should begin with the allegations of abuse and then review any alleged Alienating Behaviours through that lens. The court must also be wary of making default findings. Just because a parent has failed to establish allegations of domestic abuse or the allegations are determined to be false, this does not in and of itself constitute Alienating Behaviours unless there is evidence that the child has been manipulated into an unjustified reluctance, resistance or refusal to engage with the other parent.
11. Where findings are made (whether of domestic abuse or Alienating Behaviours) the court will be required to consider whether further evidence is needed for the court to conduct its welfare evaluation. However, the court

must not direct the instruction of an expert unless such evidence is necessary and proportionate to the issues.

### The Voice of the Child

12. It is highlighted that allegations of Alienating Behaviours can impact on how a child's wishes and feelings are considered. If a child faces repeated questioning and feels their account is being disbelieved, this can undermine efforts to promote their wellbeing and trust in professionals. Care must be taken by professionals not to dismiss the voice of the child in the absence of compelling evidence to show that psychological manipulation has impacted on their capacity to freely express their wishes.

### Welfare Decisions where Findings of Alienating Behaviour Have been Made

13. A finding that a parent has acted in a way to alienate a child will usually only be one part of the factual matrix and should not automatically trigger a change of residence. The court must carefully examine the welfare ramifications for each child if considering a transfer of residence. The fact that a child's relationship with one parent has been disrupted by the behaviours of the other is just one factor to be weighed in the balance of determining the child's overall welfare.

14. The court may find it helpful to direct statements from the parents following any fact-finding judgment to establish the parents' level of insight and willingness to engage in work to address their behaviours and the resultant impact.

15. The court may also wish to consider whether to appoint a rule 16.4 Guardian in light of any findings. The Guardian's analysis may be able to consider



external interventions which could be of assistance to the children and parents.

16. In respect of interim measures, the court has a number of available options to consider to assist in re-establishing the relationship between an alienated child and the parent. The court may wish to consult with Cafcass or the Local Authority as to programmes that could be offered to support families.

17. In some cases, it might be appropriate for the court to direct a global psychological assessment of the family to consider the dynamics and functioning. However, additional expert evidence may not always be necessary and proportionate. When considering the ambit of any expert assessment, the court should bear in mind the nature, duration and impact of the disruption in the relationship against the wider factual matrix to ensure that any assessment is both balanced and comprehensive. The court must also remain mindful of the child's timetable and the need to manage the court process, avoiding delay in making final decisions.

18. The court should avoid making orders transferring a child's residence as a sanction for a parent's refusal to help restore the disrupted relationship. It is imperative the court consider the consequences for a child's welfare in making any decisions as to transfer of care. Non-compliance with a court order is not, in and of itself, a reason for a transfer of residence. Welfare remains the paramount consideration.

19. If the court is asked to consider any psychological or psychotherapeutic interventions, it is crucial to avoid further harm being caused by the intervention or treatment. Any such intervention must be tailored to the

individual family, cognisant of the factual matrix of the case and recommended by a suitably qualified registered psychologist with the requisite training and expertise.

20. The guidance also provides a non-exhaustive list of issues that may need to be considered when the court applies the welfare checklist to the individual circumstances of the case.

*Wishes and feelings of the child*

- Although likely to reflect a desire for the status quo, opportunities for the child to express their wishes and feelings may offer indications of the viability of reparative work to re-establish the relationship between the child and their parent.

*Physical, emotional and educational needs*

- The child's future relationship with the non-resident parent if there is only indirect contact.
- The impact of a total cessation of contact both direct and indirect.
- The impact of continuity or change of schooling/educational arrangements will often need to be considered.
- The practical and physical arrangements for care of the child during and after any change of residence.
- The role and/or form of any therapeutic support for the family.

*The likely effect on the child of any change in their circumstances*

- The impact of different contact arrangements for siblings or possible separation from siblings.

- The impact of separation from the current parent with care.
- Contact plans for any new family configuration.
- If a change of residence will lead to a child being brought up with a different culture, faith, first language or in a very different environment, particular thought should be given to the impact of that, how they could be supported with that transition and their identity needs met.

*Any harm the child has suffered or is at risk of suffering*

- The risk of harm to the child from exposure to continuing Alienating Behaviours (and disruption to the relationship with one parent).
- The risk of harm to the child from disruption of their current living arrangements.
- The risk of harm to the child of disruption of their relationship with their current parent with care and siblings.
- Impact of placement with a parent with whom they have had a limited or disrupted relationship (potentially comparable to a child being moved to a stranger placement/foster care).
- Risk of breakdown of any changed living arrangements for the child.

*How capable each parent (and any other person in relation to whom the court considers the question to be relevant) is of meeting the child's needs*

- The quality of care generally provided to the child by the current parent with care. • \_The potential for deterioration in the mental health of either parent consequent on the court's order.
- In the case of contemplated transfer of residence, the quality of care likely to be provided by the other parent.

*The range of the powers available to the court in the proceedings in question*

- Whether the status quo could be maintained, and if so how.
- Whether contact with members of the wider family of the alienated parent could ameliorate the harm.
- Whether the child's placement should be changed and if so where they should be placed.
- Whether bridging options would assist where there is no current relationship between the child and alienated parent.
- What contingency planning might be put in place.

21. Where a change of residence is contemplated, the Guardian may make a recommendation about whether it is appropriate and/or practical. Neither the Guardian, nor Cafcass are in a position to assist with the mechanics of such a move. In some cases it may be appropriate for the Guardian to make a referral to the Local Authority to assist by providing a bridging placement for the child to stabilise prior to a change of residence and/or build a relationship with the alienated parent.

22. The court must keep its decision under careful review, consistent with the child's welfare and a potentially changing landscape. It may also be appropriate for the court to provide a short summary of its judgment in child-friendly language or in a letter to the child, to assist the child in understanding the decision made in relation to them.

#### Understanding Reluctance, Resistance, Refusal and Psychological Manipulation

23. It is noted that when parents separate, children may experience a wide range of emotions, including anger/resentment directed towards one parent whom they perceive to be at fault. This resistance may include a range of behaviours. It is important to recognise that there will be situations where there is no

obvious cause or reason that can be identified for a child demonstrating RRR, but the absence of this does not in isolation evidence parental manipulation.

24. It is well established that some parents do manipulate their children, for example by manipulating children to make false allegations or reinforcing loyalty and rejection with emotional warmth or the withdrawal of it. Where findings of Alienating Behaviour have been made, understanding the parent's capacity to change such behaviour, with or without support, may require the assistance of an appropriately qualified and registered psychological expert.

#### The Use of Experts

25. It is clear, within the guidance, that it is inappropriate for experts to be asked to undertake a fact-finding exercise or determination of Alienating Behaviours. The timing of expert evidence is important. It is at the welfare stage, when the presence of such behaviours has been identified, that it may be necessary to have expert evidence from a psychologist expert.

26. Determining an appropriate psychologist expert should be done in accordance with the FJC/British Psychological Society guidance for psychologist expert witnesses. Such assessments should not be undertaken by academic psychologists or researchers in the field of alienation. Rather, the complexity of these cases is likely to call for a HCPC-registered expert with expertise in assessing both adults and children.

27. There is an inherent risk of confirmatory bias if instructions and assessments are framed solely in terms of allegations of Alienating Behaviours. Instructions should be such that they encompass a holistic psychological assessment of the

parents and children. The Law Society has helpfully provided template letters of instruction and sample questions.

28. Assessments of children should focus on their cognitive, educational, social and behavioural development and comment on any harm which the children may have suffered. They should also advise on the support services/intervention that could be put in place to promote the child's welfare.

29. Assessments of adults should focus on a parent's psychological and intellectual functioning, past and present relationships, the impact of substance misuse, mental health or personality difficulties and the impact of such on their parenting capacity. They should comment on a parent's ability to prioritise the child's needs above their own, their understanding, insight and acknowledgement of any findings made, as well as their capacity to change or engage in work to promote the child's welfare.

30. The court must be alive to the need to avoid conflicts of interest and should be especially cautious when asked to consider assessment and treatment packages offered by the same or linked providers.

### Conclusion

31. In summary, the guidance provides a robust framework within which the court will consider Alienating Behaviours and serves as a tool to ensure that such serious and polarising allegations are carefully case managed. There is a cautionary tone running through the guidance that such allegations should be taken seriously and rigorously scrutinised in light of the inherent complexities that arise in cases where alleged Alienating Behaviours are in issue.

## A wider use of Section 8 orders

32. Specific Issue Orders have a wider range of uses than is often supposed and the recent case of [Re N \[2024\] EWFC 141](#)<sup>2</sup> highlights their function where children are gifted (or inherit) foreign property. Here, the parents applied jointly for a Specific Issue Order under s8 of the Children Act 1989. Unusually, there were no respondents to the application. The applicant father was seeking to gift the child a share of his property in Switzerland. The child was habitually resident in England. Under Swiss law, by reference to Article 8(1) of Council Regulation (EC) No 2201/2003, a court order from the jurisdiction where the child is habitually resident was required to allow the parents to exercise their PR to accept the gift of property on the child's behalf.

33. The matter was originally heard in the CFC but transferred to Peel J in the High Court, who had heard the earlier cases of [Re AC \[2020\] EWFC 90](#) and [Re B \[2022\] EWFC 7](#). It was argued on the parents' behalf that the principles established in these cases applied here, albeit on somewhat different facts. The High Court agreed that the relevant legal principles and procedure were as set out in the two earlier cases. These had dealt with receipt of property overseas on behalf of a minor in circumstances where a parent had died and forced heirship laws applied. By contrast, this case concerned an inter vivos gift from a parent to their child.

34. The High Court confirmed that the receipt of a gift of property is covered by s3(1-3) of the Children Act, just as accepting inheritance falls within s3. The application fell "*squarely within the exercise of parental responsibility*" and that

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<sup>2</sup> Ceri White of 4PB appeared on behalf of the applicants.

despite factual differences, the legal requirements were the same as in Re AC and Re B.

35. The procedure for such applications was set out clearly in Re B and, again, it was confirmed that it was that procedure that should be followed where property was being gifted as opposed to inherited. By implication, therefore, the Court confirmed that such cases did not need to be heard in the High Court and could be allocated to a District or Circuit Judge.

36. These cases require meticulous preparation and adherence to the clearly set out procedure and requirements in Re B. If done properly from the start, however, only one hearing should be required to obtain the Order.



## Changing a child's given name

37. In [Re C \(A Child\) \(Change of given name\) \[2024\] EWCA Civ 1582](#)<sup>3</sup>, the Court of Appeal overturned a decision which dismissed an application made by the mother of a child "C" to change the child's given name to one commonly used by either gender.

### Background

38. The application came before the court in the context of bitter litigation between the parents in relation to their three children. A shared care arrangement had continued since 2016, whereby the children spent alternate weeks with each of their parents and the holidays divided equally.

39. Whilst gender identity had been at the "heart of the case" when the application was first made by the father, as he had sought orders which included a prohibited steps orders preventing gender related medical treatment and the disclosure of C's medical records, those issues had fallen away during the course of proceedings. As the Judge put it: *"the case now effectively involves one issue: whether the court should make a specific issue order under section 8 Children Act 1989 giving approval or permission to the change of a young person's name"*.

40. At the time of the hearing, C was aged 15 years and had used their given name for the past three years. The change in name was supported by C, the mother, the Guardian and opposed by the father.

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<sup>3</sup> Mani Singh Basi and Alexandra Halliday of 4PB appeared pro bono for the second respondent father.

41. The Judge at first instance refused the application to change C's given name. He accepted that C felt strongly about the change of name, but he considered that there would be a clear detriment from any official sanction of that change, and viewed the name issue as linked to both C's "*current issues with his male gender*" and the dispute between their parents.

### The Appeal

42. The appeal was made by the Guardian and supported by the mother. The grounds were summarised as follows:

- (i) the Judge erred in his application of the welfare checklist by applying it in a negative rather than a holistic way;
- (ii) the Judge failed to give sufficient weight to the fact that C had been using the name for three years and instead put disproportionate weight on a hypothetical acceptance that the gender related issues might be a phase; and
- (iii) the Judge failed to apply and consider Article 8 ECHR.

43. The Court of Appeal allowed the appeal (with King LJ giving the lead judgment) and found that:

- The principles to be applied are the same regardless of whether the proposed name change relates to a given name or a surname. This is now settled law.
- The court set out the formalities which relate to a name change, noting that:
  - o Any person over 16 with capacity could change their name by deed poll but that such a deed poll would result in an unenrolled change of name;

- In this case because of the child arrangements order in place, C would not be able to change their surname without consent of their parents or leave of the court until they turned 18; and
  - They could not enrol the deed poll without the consent of both parents.
- The Judge had erred in linking the issue of C's name exclusively to their gender identity. A proper application of the welfare checklist would have allowed the specific issue order given that C had a very clear wish to change their name, had been using this name for 3 years and was about to turn 16 years of age.
- The Judge should have set the undoubted welfare benefits of making the order against his reluctance to endorse C's non-binary status.
- The Article 8 rights of a young person of this age in respect of a change of name will generally outweigh the Article 8 rights of a parent.
- It was wrong for the Judge to elect not to refer to C by their chosen gender-neutral name in court. As far as the Equal Treatment Bench Book applied to trans people the guidance applies across the board as *"many people now choose to use neutral pronouns regardless of their gender identity and the courts should equally respect their choice."*

## Final orders at interim hearings

44. In [Re A, B and C \(Child Arrangements: Final Order at Dispute Resolution Appointment\) \[2025\] EWCA Civ 55](#)<sup>4</sup>, Baker LJ upheld a decision at first instance to finalise proceedings at a Dispute Resolution Appointment, emphasising the court's discretion to make final orders, and the importance of case management and the welfare of the children.

### The Background

45. The proceedings concerned the parties' three daughters, aged 7, 9 and 11. The parents married in Ireland and subsequently moved to England. In 2018 the parties' relationship broke down and the father filed an application for a child arrangements order seeking primary care of the children and a prohibited steps order against the mother preventing her removing the children from the jurisdiction. The mother responded by making an application for a specific issue order permitting her to relocate to Ireland. An ISW was directed to provide a report and in the course of her enquiries she spoke to the youngest child who was aged 5 at the time. The ISW recommended shared care and that the children should remain in England.

46. A contested final hearing took place before Deputy District Judge O'Leary in September 2019. At the hearing, the mother withdrew her relocation application and the court made a shared care order. Nine months later, the mother filed a further application and during those second proceedings the mother filed a second application for relocation. A second ISW report was ordered which recommended that the mother's application be refused. In June 2021, a three-day final hearing took place before Recorder Trowell QC (as he

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<sup>4</sup> Deirdre Fottrell KC of 4PB appeared on behalf of the respondent.

then was), and at the end of that hearing the mother's application was refused, with minor amendments made to the existing order, the court noting that the mother tended to blame the father and diminish his role with the children.

47. In February 2023, the mother filed further applications relating to disclosure to school, variation of the order and a further section 7 report. Directions were given for the parties to file statements and Cafcass safeguarding letters were also filed. The matter was listed for a DRA before DDJ O'Leary who dismissed the mother's applications and made a s.91(14) order, prohibiting the mother from making further applications for three years.

48. On 15 May 2024, the mother was granted permissions to appeal by HHJ Harris. The appeal hearing took place before HHJ Robertson who upheld the first instance decision and found that there was no material change in the circumstances that warranted further investigation.

### The Appeal

49. The mother then appealed to the Court of Appeal, with permission granted by Baker LJ on the following five grounds:

1. The Judge had erred in summarily dismissing the mother's application and not directing a further s.7 report;
2. The Judge had placed no or limited weight on ascertaining the children's wishes and feelings;
3. The Judge's approach in summarily dismissing the mother's case deprived her of a proper opportunity in answering her case;
4. The Judge was wrong in refusing to allow disclosure of relevant extracts of the 2019 and 2021 orders to the children's schools;
5. The Judge erred in making a s.91(14) order.

50. The Court of Appeal dismissed the mother's appeal:

- **Summary dismissal of the mother's application [§43-51].** The court emphasised the importance of case management and the Judge's discretion to determine whether further investigation was required. The court considered a number of authorities and concluded that the first instance Judge had considered extensive written evidence and that it was well within her discretion to dismiss the mother's applications and determine that no further investigation was required.
- **Limited weight on wishes and feelings [§52-7].** As the issue was a narrow one regarding division of time, further intervention with the children could be seen as harmful and the DDJ was entitled to conclude that a further report was not necessary.
- **No opportunity to answer case [§53-6].** The DDJ was not starting from scratch and there had been two previous final hearings, her observations about the mother were based on previous findings and evidence. The Judge was entitled not to proceed to a full contested hearing on evidence.
- **Refusal to allow disclosure to school [§58].** As the relevant recital to the order was no longer agreed by the parties, the Judge was correct not to allow disclosure.
- **S.91(14) order [§59-60].** The discretion aligned with the law as set out in PD12B and Re A (A Child) (Supervised Contact) (s91(14) Children Act 1989 Orders) [2021] EWCA Civ 1749.

- The court also clarified that observations made by HHJ Harris when granting permission to appeal should not carry weight when considering a full appeal. The appellate court's focus should always be on the arguments and evidence presented at the appeal hearing **[\$62]**.

## Transparency in the family courts

### [Tickle & Anor v The BBC & Ors \[2025\] EWCA Civ 42](#)<sup>5</sup>

51. This judgment concerning the publication of the names of Judges deciding particular cases in the past, comes in the midst of wider (public) calls for transparency in the Family Court. This case, which has sparked much interest and debate, concerned an appeal by a group of journalists against a specific element of the order of Williams J. In permitting the press to see and publish numerous documents from the historic care and private law proceedings relating to Sara Shariff, the Judge included a prohibition on the media from naming the Judges (and other professionals) who had been involved in the historic proceedings. Importantly, no party had invited the court to make such an order.

52. The appeal was allowed: the Court of Appeal determined that press be permitted to publish the names of the historic Judges, providing 7 days before any such publication to enable HMCTS to put in place measures to protect the Judges from any potential harm once their names were released.

53. Williams J's decision was overturned on the first ground of appeal: the Judge had no jurisdictional foundation for making the anonymity order. No party had suggested, as part of the applications for transparency, that the Judge's names

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<sup>5</sup> Chris Barnes and James Nottage appeared on behalf of Louise Tickle and Hannah Summers (the journalists)

Deirdre Fottrell KC appeared on behalf of Surrey County Council (the Local Authority)  
Cyrus Larizadeh KC and Clarissa Wigoder appeared on behalf of Urfan Sharif (the father)  
Joy Brereton KC and Amean Elgadhly appeared on behalf of Beinash Batool (the step-mother)  
Alex Verdan KC and Rebecca Foulkes appeared for the children U, V, W, X, Y and Z, through the Children's Guardian (the Guardian)



remain anonymous. The order was therefore made of Williams J's own motion. The judgment considered two potential jurisdictional routes open to the Judge (albeit neither were explicitly traversed in his judgment): an injunction pursuant to Section 37 or alternatively Section 6 Human Rights Act 1998. The Court of Appeal deprecated the Judge's deployment of his own experience to assess any risk facing the Judges who oversaw the proceedings involving Sara and determined that the lack of evidence before the Judge coupled with the fact that no party had sought the order he made, that there was no jurisdictional foundation in the first instance.

54. The appeal judgment clarifies that he is *'not saying that it would never be possible for section 6 of the HRA to allow, or even require, a court to consider, even conceivably of its own motion, making an anonymisation order relating to judges'* – it is envisioned that such an application would require (i) evidence being available as to the risks to the Judges in question (ii) satisfaction of the court that those risks could not be adequately addressed by other security means and (iii) the court would have to conclude that the risks were so grave that, exceptionally, they provided a justification for overriding the fundamental principle of open justice.

55. As the appeal was allowed pursuant to the lack of jurisdiction the second and third ground of the appeal became academic. The Court of Appeal makes clear that it would have allowed the appeal under those subsequent arguments in any event. Accordingly, the Court of Appeal held that the decision was irregular on account of the fact that the Judge did not ask for submissions and evidence prior to making his decision.

56. Finally, in relation to the third ground of appeal 'inappropriate bias against or unfairness towards the media', the Court of Appeal determined that the Judge 'undoubtedly' behaved unfairly towards the journalists calling into reference the following examples of the Judge's use of his own experience of the media to assess the risk to the Judges:

- At paragraph 60 of his judgment, Williams J made a sarcastic remark ("*thank goodness that journalists don't have to operate as the courts do and hear both sides before delivering their verdict!*") about Channel 4's Dispatches programme which the Court of Appeal denoted as being 'unwarranted';
- At paragraph 59, Williams J prayed-in-aid the example of the press reporting of the murders of Alice da Silva Aguiar, Bebe King and Elsie Dot Stancombe and went onto exemplify how an extract from a judgment can be readily contrasted (as inaccurate) with the Headline of a newspaper article once reported.

57. The following further points of note were identified and traversed in the judgment:

- The requirement of open justice: the Court determined that the principles of open justice as in a Civil law context are equally applicable in family proceedings such that the statutory limitations in section 12 of the AJA 1960 and section 97 do not displace the open justice principle of create any separate 'shielded justice' environment. The principle can be summarised as follows '*Justice must be done between the parties. The public must be able to enter any court to see that justice is being done in that court, by a tribunal conscientiously doing its best to do justice according to law. For that reason, every judge sitting in judgment is on trial. So it should be, and any exceptions to the principle must be closely limited. In reality very few citizens can scrutinise the judicial process: that scrutiny is performed by the media, whether*

*newspapers or television, acting on behalf of the body of citizens. Without the commitment of an independent media the operation of the principle of open justice would be irremediably diminished*<sup>6</sup>,

- The special position of Judges: the authorities that concern the anonymisation of other professionals such as social workers and experts are not directly applicable to Judges whom, should be considered as individuals appointed to fulfil a crucial public office, and whose duty it is to sit in public. In accepting office, all Judges will or should be aware that it is the expectation, because public scrutiny of Judges and the justice process is essential to the rule of law.

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<sup>6</sup> Per Lord Judge CJ in *R (on the application of Mohamed) v. Secretary of State for Foreign & Commonwealth Affairs* [\[2010\] EWCA Civ 65](#) at [38]

## An ethical dilemma: Counsel's conduct

58. In [F v M & Anor \[2024\] EWHC 3190 \(Fam\)](#), the High Court examined critical aspects of professional conduct, particularly focusing on the duties of confidentiality and disclosure that legal representatives owe to their clients and others.
59. The case involved an appeal by the father against a decision permitting the mother to relocate internationally with their child. Father argued there has been serious procedural irregularity by virtue of the conduct of the mother's counsel. She had previously met father socially, had conversed with him about the case and discussed representing him, both at that social event and in a later telephone call. Father indicated he had sent her the papers and claimed she had agreed to represent him but then he heard nothing further. When he attended a directions appointment some months later, he was shocked to find her representing mother. M's counsel's recollection of the extent of the contact with father differed when asked.
60. Father indicated that he raised his concerns with the Judge at the directions hearing, who allegedly asked mother whether she was aware of her counsel having previously met father and whether she had any concerns about it. The Appeal court notes that if this was the full extent of the enquiry *"it failed to identify the central danger. The point was not whether M was content for [counsel] to represent her but whether F was"*. Father was, at the time, a litigant in person.
61. By the time of the final hearing, the father assumed that his misgivings were not shared by the Court and did not raise them again. The unfortunate Recorder who heard the trial was therefore entirely unaware of the history.

62. The Court concluded that it did not need to determine the differences in account between father and mother's counsel, there being sufficient common ground that father had asked her to represent him, she had responded requesting a copy of the bundle and indicating that she would send a client care letter and it being accepted that the bundle was sent to her by father (there being dispute as to whether it was read).

63. The Court was clear that it is the perception or risk of unfairness that is as important as actual unfairness. The Judge pointed to the Bar Code of Conduct (Rule C21) which indicated instructions must not be accepted if, inter alia:

*"(4) There is a real risk that information confidential to another former or existing client or any other person to whom you owe duties of confidence may be relevant to the matter, such that if obliged to maintain confidentiality, you could not act in the best interests of the prospective client and the former...person to whom you own that duty does not give informed consent to disclosure of that confidential information (emphasis added)"*

*"(10) There is a real prospect that you are not going to be able to maintain your independence".*

64. The Court made reference to principles in *Re A v B plc* [2003] QB 195 (a duty of confidence will arise *"whenever the party subject to the duty is in a situation where he either knows or ought to know that the other person can reasonably expect his privacy to be protected"*, para 11(ix)) and *R v Winston Smith* [1975] Cr App R 128 (where a pupil barrister had seen a Defendant's proof of evidence and sat in on a conference, only to attend the trial and sit behind prosecution counsel. Despite it being accepted no information was divulged, the appeal

against conviction was allowed as it was *“impossible to say that, in the circumstances, justice was seen to be done”*).

65. The Court concluded that father did not have to establish a particularised breach of confidentiality: justice has not only to be done but be seen to be done. Father plainly considered that a professional relationship had been created with counsel prior to her representing mother – his complaint to the Judge at directions being a clear indication of his perception of his professional relationship with Counsel. There was an appearance or risk of unfairness: *“In this sphere, the bar is set high and for good reason. The integrity of the Court process must be inviolable”*.

66. While this case has somewhat extraordinary facts, most lawyers no doubt conceding that having discussed the case with one party and having had them send you the bundle at your specific request, would inevitably preclude you from acting for the other side, it does raise some important and interesting principles. There is great emphasis on father’s perception of unfairness: how far does this go in reality? If in different circumstances, father had a clear *perception* of unfairness but, in reality, there was no *actual* unfairness, could counsel have still acted? It is also unusual that this issue was not raised with the trial Judge at all but was the basis of a successful appeal.

67. On another note, this is also yet another case which shows lamentable delays in the family justice system: the original application for leave to remove having been made in April 2021 and the final hearing of the matter not taking place until September 2024.

## Costs in Children Act cases

68. [E \(Children: Costs\) \[2025\] EWCA Civ 183](#) concerned the thorny issue of costs in Children cases. The Court of Appeal considered the father's appeal against the decision not to award him his costs following a fact-finding hearing which considered the parties' cross allegations, described in the judgment as 'the upmost serious allegations'.

69. After the separation, the parents made allegations of domestic abuse against each other. The mother alleged physical abuse, coercive and controlling behaviour, emotional abuse and rape. The father alleged physical abuse, coercive and controlling behaviour and emotional abuse. By April/May 2022 the mother was making allegations that the father had physically and sexually abused A and B and, to a more limited degree, C and that he enabled other men to sexually abuse A and B as part of a "sex-ring". The father alleged that the mother was making up these allegations in order to alienate the children from him.

70. The Judge, Leslie Samuels KC, heard the fact-finding hearing over 6 days. His findings were mixed. He made a series of findings against the father in relation to his abuse perpetrated to the mother; that he was aggressive and threatening, that he pressured the mother for sex. He found that neither parent had made a sufficient effort to protect the children from their marital discord but that the mother has behaved in an alienating way towards the children by expressing an ongoing pattern of negative attitudes about the father. Importantly, the Judge found that the mother's allegations of rape and sexual abuse of the children were not proved.

71. The father argued that the mother's conduct, in pursuing the sexual allegations (allegations of rape of herself and sexual abuse of the children, leading to the father's cross allegation of alienation) amounted to reprehensible or unreasonable litigation conduct.

72. The appeal was allowed.

73. The judgment reiterates the position on the law and the following reminder succinctly sets the legal background:

*"There is a general practice of not awarding costs against a party in family proceedings concerning children, but the court retains a discretion to do so in exceptional circumstances. These include cases in which a party has been guilty of reprehensible or unreasonable behaviour in relation to the proceedings. This practice applies equally in public law and private law proceedings, and irrespective of whether a party is legally aided. Nor is there any difference in principle between fact-finding hearings and other hearings. The court can make costs orders at any time: FPR 28.1."*

74. The court held that the lower judge ought to have recognised that there was *'no equivalence between the sexual allegations involving the children and the other allegations, and secondly, that those allegations had completed transformed the proceedings, leading to extraordinary delay and hugely increased costs'*. For example, the mother's pursuit of the sexual allegations in relation to the children directly led to the adjournment of an earlier fact-finding hearing.

75. The judgment should not be taken as a greenlight for seeking costs where allegations are simply not proven. The court explicitly states that the father's argument that costs should be awarded because the mother failed to prove



that he raped her failed. In essence, where there are a host of allegations, including cross allegations, and it becomes clear that a certain tranche of the allegations has a transformative impact on the proceedings, and where it is found that those allegations were pursued in an unreasonable manner, costs can be ordered.

76. The Court of Appeal noted that the Judge had placed too much weight on the mother's motivation. He found that the mother had convinced herself that her allegations were true. To this end, courts should not make an assessment of whether a party themselves considers their conduct to be reprehensible or unreasonable but making its own objective assessment.

77. The mother was herself legally aided, owing to the fact that she was a complainant of domestic abuse. The following issues fell beyond the scope of the appeal hearing:

- an assessment of the father's costs;
- consideration of the amount it would be reasonable for the mother to pay under section 26 of LAPSO; and
- whether the father could recover costs from The Lord Chancellor in light of the Civil Legal Aid (Costs) Regulations 2013).



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## CONTACT

4PB

6th Floor,  
St Martin's Court,  
10 Paternoster Row,  
London, EC4M 7HP  
T: 0207 427 5200

[www.4pb.com](http://www.4pb.com)  
[clerks@4pb.com](mailto:clerks@4pb.com)  
[@4PBFamilyLaw](https://www.instagram.com/4PBFamilyLaw)