



PUMP COURT
CHAMBERS

Children Law Update
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Fact-finding hearings

- **A (A Child) (Fact-Finding: Head Injury) [2024] EWCA Civ 327 –**
It is incumbent on the Judge to consider the “*totality of evidence*” at a FFH, including the possibility of the harm being caused by an “accident”, and the evidence of and about the parents.
- **Re W (A Child) (Inflicted Injury) (Delay) [2024] EWCA Civ 418**
– The Judge erred in analysing the medical evidence in “*closed off compartments*”, without considering the “*whole evidential picture*” including the individual facts relating to the child, and the credibility of the parents.

Transparency

- **Transparency Reporting Pilot**

- Scheme extended to a further 16 locations in January 2024. Not yet operating in Kent but likely to do so in the near future (now in CFC, West London & East London).
- Pilot will extend to include public and private law cases before magistrates in all 19 current pilot areas from Monday 4 November 2024
- The [updated guidance](#), and other resources, can be found on the [Tig website](#) and judiciary website
- The pilot scheme for the reporting of financial remedy proceedings will extend to include the Royal Courts of Justice from Monday 11 November 2024.

- **Legal starting point**

- S. 12 Administration of Justice Act 1960 and s. 97 Children Act 1989 places ‘considerable restrictions’ on the publication of information from family proceedings.

Transparency

- **Hannah Summers & Anor v Kristopher Paul Arthur White & Ors [2024] EWFC 182**
– The court found that public interests demand that the father’s name, and that he is a member of the Armed Forces was disclosed following findings made in private law proceedings. that when making an application for permission to publicise names of parties, the applicant should provide a schedule of the information or type of information that is proposed to be published.
- **Re T (Children: Publication of Judgment) [2024] EWCA Civ 697** – The court overturned an order to publish the Judgment in private law proceedings not in an anonymised form, as it *“did not assist the public”*.
- **G v S (FLA 1996/Publicity) [2024] EWFC 231 (B)** – The court found that s. 12 did not apply in this case (but could apply in other cases under the FLA 1996). It was determined that the respondent's Article 8 rights outweighed the applicant's rights under Article 10 and the wider public interest in publication, and that the application should be refused.

- **M (A Child), In the Matter Of [2024] EWCA Civ 1000** – Importance of the court considering all welfare options holistically. The court required to evaluate pros and cons of long-term fostering versus adoption once dismissed option of M returning to mother’s care, as these were the options before the court.
- **Care Proceedings: Future Risk [2024] EWFC 246 (B)** – Reminder of the test for considering future harm when considering a care plan at home.
 - (1) What is the type of harm that might arise?
 - (2) What is the likelihood of it arising?
 - (3) What consequences would there be for the child if it arose
 - (4) What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did?
- THEN: a welfare analysis follows placing the factor of ‘future harm’ alongside the other relevant matters.

- **Re Z (Prohibition On Cross-Examination: No QLR) [2024] EWFC 22 (09 February 2024)**
 - Decision of Sir Andrew McFarlane P that gives useful guidance on what the court should consider when a direction to appoint a QLR has been made but no QLR obtained
 - *The lodestar for a judge, magistrate or legal adviser who takes on the task of asking questions on behalf of an unrepresented litigant in these circumstances must be fairness. In every case a fairness should require the court to be very open with the parties as to the process that is going to be adopted by explaining what is to happen, step by step, at the start in short straight forward terms. The court should explain that it is taking on the role of asking questions in order for the hearing to proceed in the absence of a QLR, and where there is no other satisfactory alternative. In this judgment I have deliberately avoided describing the process of the court asking questions as 'cross-examination', and I suggest that courts should also refer to it as the court 'asking questions that the other party wishes to have asked', or a similar phrase (rather than using the phrase 'cross-examination'). [35]*

- **E, F And G (Interim Child Arrangements) [2024] EWCA Civ 874 (24 July 2024) –**
Ground of appeal relating to the decision to adjourn due to a lack of QLR dismissed on the basis that this was a case management decision, and the judge had not erred in principle. The complexity of the issues was such that it would be better, if possible, for the questioning of the mother to be conducted by a lawyer representing the father rather than the court.
- **AXA v BYB (QLR: Financial Remedies) [2023] EWFC 251 (B) (18 December 2023) –**
Useful reminder of the ‘scope’ of a QLRs duties – and matters falling outside their remit:
 - Taking instructions (as opposed to eliciting information from a party); asserting client confidentiality; representing the party within proceedings beyond conducting a cross-examination on "the essence" of the party's case which "may have significant impact"; negotiating with another lawyer "on behalf of" the party whose case they will be putting; making closing submissions; and drafting court orders.

- **Re H [2024] EWHC 1191 (Fam)** – Reminder that an interim care order or care order with placement at home is not a form of “*imprisonment with constant watching of the parents*” in the context of a parent seeking to take a child on an overseas holiday.
- **H and J (Placement Orders) [2024] EWCA Civ 429 - Sibling ties, and conditions of placement orders** – The court reiterated that when analysing the impact of severing a sibling group each case will be assessed on its individual merits and the trial judge is best placed to assess those matters. The Judge must consider such relationships where they exist, the likelihood of their continuing and the value to the child if they do.

Interim contact

- **E, F And G (Interim Child Arrangements) [2024] EWCA Civ 874 (24 July 2024)** – The court at first instance determined that contact could progress from supervised to unsupervised pending a listed FFH, despite this course of action not being recommended by Cafcass. The appeal was successful in relation to a decision for unsupervised contact prior to an FFH, but unsuccessful in appealing against an adjournment due to lack of a QLR. The court found that the judge’s decision at first instance was unsustainable and contrary to PD 12J.
- **Re T & O (Appeal: Fair Hearings: Delegation of Judicial Functions) [2024] EWHC 2236 (Fam) (29 August 2024)** – Case involving a long history of contested proceedings where an order for unsupervised contact was made subject to a ‘positive’ s. 7 report by an ISW. That decision was overturned following a successful appeal by the Mother, where it was held that the decision was flawed owing to lack of opportunity for the Mother to challenge the evidence and the court’s delegation of the decision to an ISW.

Procedure on Appeal

- **W & Ors (Implementation of Adoption Plan Pending Appeal) [2024] EWCA Civ 837** – Guidance on LA procedure following placement orders being made and pending an appeal including:
 - The local authority should take no steps to implement a placement order and care plan for adoption until after the expiry of the 21-day period for filing a notice of appeal against the order;
 - If the 21-day appeal period has passed and no appeal notice has been filed, the LA should inform the other parties that it intends to take steps to implement the care plan, and the onus is then on any party wishing to appeal to file appeal urgently and seek stay of order;
 - LA should contact Civil Appeals Office if concerned about delay between the appeal notice being served and prior to permission to appeal hearing;
 - If a stay has been granted and direction for no further steps to be taken, any step taken in breach of such a direction is manifestly unlawful and prima facie a contempt of court;

Parental Responsibility

- Applications for PR brought by stepparents
- **A v M & Ors [2024] EWHC 2020 (Fam)** - Hayden J summarises the law on acquisition of parental responsibility for stepparents, reciting the statutory framework and line of case authority, including the so-called *Re H* factors ([13]-[23]). The case is a helpful reminder of the principles applicable to acquisition of PR. The application for PR in this case was not supported by the Children's Guardian, however the judge granted PR with respect to the younger child (10) but not the older child (14).

General Procedure / practice

London Borough of Enfield v E (Unconscionable Delay) [2024] EWFC 183 – Court noted the “*manifest and wholly unconscionable delay*” in the case and reiterated the prejudicial impact on the child of delay. Reminder of case management duties.

- **A view from the President’s Chambers – July 2024**
- **Family Justice Board - Public Law Priorities by 31 March 2025**
 - No open public law case longer than 100 weeks;
 - Average timeliness for care and supervision cases 32 weeks;
 - At least 81% of all new cases to be completed in 26 weeks.

General Procedure / practice

- **Re O (Care Proceedings) [2024] EWCA Civ 696** - Ruling the mother out as a potential carer at the case management hearing when the evidence was part-heard, mother was a vulnerable party and had not made any representations on the issue was *sufficiently serious to potentially lead to an injustice*. Appeal allowed on the basis of a procedural irregularity.
- **Re D (Children: Interim Care Order: Hair Strand Testing) [2024] EWCA Civ 498** – Failure of the court to consider potential anomalies in testing for alcohol and substances.

- Specifically, costs on appeal
- **Re O (Appeal: Costs) [2024] EWHC 1163 (Fam) (17 May 2024)** – A useful reminder of the court’s approach to costs in children cases:
 - (Re-)Affirmation that the general practice concerning costs orders in family proceedings involving children is that there is no order for costs in the absence of “reprehensible behaviour or an unreasonable stance”
 - Certainly not an application of the ‘clean sheet’ rule
 - It is not enough to displace the general rule if the court is dealing with an appeal instead of a first instance trial (cites *Re S (A Child)* [2015] UKSC 20)
 - Litigation conduct is/remains the prevailing focus of the court – *not* conduct in relation to the child/children



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