

# Public Law Update 2023

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# Parents with Learning Disabilities

- Re H (Parents With Learning Difficulties: Risk of Harm)[2023]  
EWCA Civ 59
- s.1(3)(e) CA 1989 and s.1(4)(e) ACA 2002 require the court to take into account any harm which the child is at risk of suffering, not is **possibly** at risk of suffering ... any considered harm had to be established on the basis of proven fact
- It is unacceptable for a local authority to press for a plan of adoption because they are unable or unwilling to support the child in living at home - provision of support is a recognised requirement for parents with LD under the Care Act.

# Anonymity of SW's

- Tickle v Herefordshire County Council & Ors [2022] EWHC 1017 (Fam) – In that case no justification for anonymity – Abassi affirmed (and that bar not met in this case)
- And RRO - B, R & G (a Child) [2022] EWHC 320 (Fam) – refusal of application to prohibit publication of name of deceased child and their parents

# Post-Mortem delays

- Re G (Child Post-Mortem Report: Delays) [2022] EWFC 55
  - Court cannot wait ‘passively’ given delays in post-mortem reports
  - Court must explore ‘alternative strategies (is a fact-find truly required, can alternate medical evidence be used

# Placement orders

- exploration of all realistic options - CV (A Child)(Placement Order)  
[2022] EWCA Civ 930
  - LB Newham v Mother, Father & V [2023] EWFC 60 – when making a Placement Order, transcript is required

- P, Re (A Child: Fair Hearing) [2023] EWCA Civ 215
  - Court of Appeal rejects claim by mother Family Court should not have made placement order after her lawyers withdrew at advanced stage
- Floodgates seen and quickly shut - Somerset County Council v NHS Somerset Clinical Commissioning Group & Ors [2022] EWFC 31
- LB Newham v Mother, Father & V [2023] EWFC 60 – for leave to oppose – change need not be unforeseen

- Cumberland Council v The Mother & Ors [2023] EWFC 51 (03 April 2023)
  - Judgment setting out best practice to avoid delay in care proceedings arising from the late identification of potential carers for a child who may otherwise be placed for adoption

# Fact-Finding Hearing

- New approach following the President's 'Views'?
- Recent case re telephone disclosure/third parties- H-W (Care Proceedings: Further Fact-Finding Hearing) [2023] EWCA Civ 149
- Should there even be a fact finding hearing - Derbyshire County Council v AA & Ors [2022] EWHC 3404 (Fam) and Barnsley Metropolitan District Council v VW and Others [2022] EWFC 83
- Judge not just referring to a general statement of the law, but the application of it to the facts - Re A (Children) (Pool of Perpetrators) [2022] EWCA Civ 1248
- Admissibility and weight of a foreign conviction- W-A (Children: Foreign Conviction) [2022] EWCA Civ 1118
- Fairness and J going beyond findings sought by local authority- L (Fact-Finding Hearing: Fairness) [2022] EWCA Civ 169



- New orders pro forma – 12/22
- *Manchester City Council v P (Refusal of Restrictions on Mobile Phone) (Rev1) [2023] EWHC 133 (Fam)* – aka The Manchester case, decision by MacDonald J
- Local authority asking, 16yo, subject full Care Order, DOLS, 3:1 supervision at all times, physical restraint, supervision, etc. local authority sought renewal to include removal/restrictions on phone, laptop, access to social media due to risks
- Only relates to physical liberty/restrictions, s5(1) ECHR
- s33(3)(b) Children Act 1989 - While a care order is in force with respect to a child, the local authority designated by the order shall—
  - (a) have parental responsibility for the child; and
  - (b) have the power (subject to the following provisions of this section) to determine the extent to which [F1—
    - (i) a parent, guardian or special guardian of the child; or
    - (ii) a person who by virtue of section 4A has parental responsibility for the child, may meet his parental responsibility for him.

- The restrictions as to P's mobile phone and other devices do not act to deprive P of her physical liberty, but rather act to restrict her communication, so as to ensure her physical and emotional safety. As a result, the restrictions on the use of P's devices for which the local authority sought authorisation did not, in Macdonald J's judgment, by themselves constitute an objective component of confinement of P in a particular restricted place for a not negligible length of time – Storck Test
- Bespoke placements when no other options available - Re J (Deprivation of Liberty – Hospital) [2022] EWHC 2687 (Fam) – Mr Justice Poole, 13yo with complex needs, ICO in favour of Manchester cc, self-harming, detained under MHA, police protected, overdosed, pretty awful timetable of harm from May-July, not Gillick competent, unregistered placement, remained at hospital with local authority putting in support

- Lack of suitable placements - *Blackpool Borough Council v HT (A Minor) & Ors [2022] EWHC 1480 (Fam)*
  - MacDonald J decision, child subject to ICO, unregistered placements, unit applying for Ofsted registration, local authority saying NHS, NHS saying behavioural basis, doesn't meet threshold, NHS joined as party, the difficulty in seeking to distinguish between psychiatric illness and the psychological impact of trauma, looked at access assessments for Tier 4 CAMHS service and extremely limited power of Court to intervene in such decisions re access assessments
  - the acute lack of appropriate resources, for children assessed as not meeting the relevant criteria for detention under MHA 1983 but requiring therapeutic care within a restrictive environment for acute behavioural and emotional issues arising from past trauma, creates tension between LAs and the NHS.
  - Placement authorised even though sub optimal as keeping C safe in the broadest sense of the word

- Bring in timely way or face costs consequences, and don't assume DOLS will be granted - *NHS Trust v ST (refusal of Deprivation of Liberty Order) [2022] EWHC 719 (Fam)*
  - Another decision by Mr Justice MacDonald
  - Refused to authority as current situation was described as brutal and abusive, comprehensively failed by Manchester cc
  - 14yo with complex needs
  - 6:1 support at school, father delivered her to hospital as family could not cope, locking themselves in their rooms at night and her in the dining room. Hospital applied for DOLS.
  - Supervision 4:1 basis by local authority. Physical restraint, inappropriate restraint, tranquilised on numerous occasions.
  - No DOLS applied for for a month.
  - Made ICO and refused DOLS.

- Not just short term- Re S (A Child) & Re W (A Child) (s20 Accommodation) [2023] EWCA Civ 1 - CoA decision, King LJ giving lead judgment
- S, 9 in residential unit, W, 15 in foster care. threshold met, beyond parental control. Court made Care Orders. Appealed. Appeal allowed.
- No stat limit on how long a child can be in s20 accommodation.
- A local authority cannot provide accommodation under section 20 if any person with parental responsibility, who can provide or arrange for accommodation to be provided for a child, objects (s 20(7) CA 1989).
- By agreeing to the accommodation of their child under section 20, a parent is delegating parental responsibility to make day-to-day decisions to the local authority.

## S20 continued

- Any person with parental responsibility may remove a child at any time from the accommodation (s 20(8) CA 1989).
- If there is a child arrangements order naming a person with whom a child is to live and that person agrees to the child being accommodated under section 20, no other person with parental responsibility may object or remove the child (s 20(9) CA 1989).
- Re H-W children 2022 UKSC 1451 – Care Order only if least interventionist order possible
- Williams v London Borough of Hackney 2018 UKSC 37
- PLWG best practice on s20 – agreed at outset and regular reviews
- Decision of Munby P in Re N (children) (adoption: jurisdiction) 2015 EWCA Civ 1112 – contributed to decline of the appropriate use of s20

- Re P (Appeal-Forced Marriage Protection Order-Jurisdiction) [2023] EWHC 195 (Fam) –
- Decision of Knowles J
- Appeal by DJ to refuse to make a fmpo where ptbp not British or in the jurisdiction, but respondent was
- Forced Marriage (Civil Protection) Act 2007 is the relevant act
- PTP does not need to be in the jurisdiction as long as one of the parties is hab res in the jurisdiction
- Not many reported decisions but Court considered imp points of public policy

# Adoption and notification of fathers

■ *Re M (Adoption: Notification of Birth Father) [2023] EWFC 17*

- Decision of HHJ Vincent sitting as a deputy hcj
- Review of A, B, C Adoption: notification of fathers and relatives, 2020 EWCA Civ 41
- Child placed with prospective adopters
- Application under part 19 fpr 2010
- Mother relinquished child
- Social workers told mother it was her right to withhold information about father – wrong!
- Prospective adopters were joined as intervenors
- Court said father should be notified
- Post script – local authority undertook extensive searches, using an enquiry agent, genealogical research company, digital forensics expert, unable to identify father. Court said had taken all reasonable steps. Mother could not be compelled to reveal his identity. Delay inimical to child’s welfare. No requirement for local authority to notify him.



# Adoption and notification of fathers

- I have recently concluded a case, which should be published in due course, re mother raised allegations of honour based violence, and her mental health, paternity of one of the father's not being known, being a one night stand, the other child was conceived as a product of rape by an extended family member, and the Court determined in those circumstances that father should not be notified.
- *P, Re (A Child: Fair Hearing) [2023] EWCA Civ* - Court of Appeal – LJ Lewison, Jackson and King rejected claim by mother Family Court should not have made placement order after her lawyers withdrew at advanced stage, whilst she was in the middle of giving her evidence as they had become professionally embarrassed. The mother applied for an adjournment to get legal representation. She had the assistance of a lay advocate. Most of the XX had been done. She was running the same case as father.

# Adoption and notification of fathers

- *M (a child: leave to oppose adoption) [2023] EWCA Civ 404* – CoA granted local authority's appeal against permission to mother to oppose an adoption order. child placed with adopters. Ran through test. Noteworthy part is duty on local authority to provide transcripts of judgments, unless written judgment/agreed note, for all cases involving the making of a placement order or care order.