

Private Law Update – 19 June 2025

Section 37

[Re E \(Section 37 Direction\)](#) [2025] EWCA Civ 470, Court of Appeal, 16 April 2025

Headline: Section 37 Directions and s38 ICOs can only be in relation to subject children

Baker LJ set out the question at the start of the judgment:

The appeal turns on the interpretation of sections 37(1) and 38(1)(b) of the Act. Section 37(1) provides:

“Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child’s circumstances.”

After a thorough review of the relevant legal framework, Baker LJ held that the making of a s37 direction in relation to non-subject children was inappropriate (though he left open whether there may be ‘relevant’ children in FLA proceedings, and he set out what should have happened:

“It is, of course, right that effective child protection requires untrammelled cooperation between all agencies. For that reason, where a judge in the course of proceedings becomes aware of circumstances which suggest that a child may be at risk of significant harm, he or she will consider taking appropriate steps to notify the relevant local authority. The judge here was rightly concerned about the three other children in the house. He was understandably anxious to know what steps the local authority was taking about them. Having considered representations from the parties to the proceedings, he would have been justified in allowing the disclosure of information from these proceedings to the social work team involved with the three children. But he was not, in my view, entitled in these proceedings to direct the local authority to carry out an investigation of the circumstances of the three children or to make them subject to interim orders under section 38.”

Intermediaries

[M \(A Child: Intermediaries\)](#) [2025] EWCA Civ 440, Court of Appeal, 10 April 2025

Headline: Test for appointment of Intermediary is not ‘rarity’ etc, it is simple application of PD3A and necessity

This case was as to a decision to decline appointment of an Intermediary. The Court of Appeal in essence overturned recent High Court commentary on the use of Intermediaries and said the following by way of summary (at paragraph 7):

“In deciding whether and, if so, for what purpose to approve the appointment of an intermediary:

(1) The court will exercise its judgement within the framework of Part 3A of the Family Procedure Rules 2010 ('the FPR') and Practice Direction 3AA. These provisions are not complex, and they require very little elaboration. Their relevant parts appear in the Annex below. By following them, the court will steer a path between the evils of procedural unfairness to a vulnerable person on the one hand, and waste of public resources on the other.

(2) The test for the appointment of an intermediary for any aspect of proceedings is that it is necessary to achieve a fair hearing. Decisions are person-specific and task-specific, and the introduction of other tests upsets the balance struck by the FPR and may draw attention away from the circumstances of the individual case.

(3) Efficient case management will assist sound decision-making in this area. There must be early identification of vulnerability where it exists. Intermediaries are not experts, but applications for intermediary support should be approached with similar procedural discipline. Different considerations may apply to different elements of the proceedings, and the court should normally require an application notice and/or a draft order that specifies the exact extent of the requested assistance.

(4) Correctly understood, the court's powers are wide enough to permit it to authorise intermediary assistance for legal meetings outside the court building. However, support that is necessary in the courtroom may be unnecessary in a less pressured setting. Accordingly, the court should give separate consideration to any application of that kind.

(5) The Family Court is accustomed to using checklists when making procedural and substantive decisions. The mandatory checklist in FPR rule 3A.7 is an essential reference point to ensure that the factors relevant both to the individual and to the proceedings are taken into account. The weight to be given to them is a matter for the court, making a broad and practical assessment.

(6) An application for an intermediary must have an evidential basis. This will commonly take the form of a cognitive report and, if authorised, an intermediary assessment. Other evidence may come from the social worker or the Children's Guardian. The court can also take account of submissions on behalf of the vulnerable person, and from the other parties, as they may have their own perspectives on the overall fairness of the proceedings. This reflects the collaborative nature of the task of identifying and making adjustments for vulnerability. Whatever the evidence and submissions, it is for the court, and not others, to decide what is necessary to achieve a fair hearing in the individual case.

(7) When considering whether an intermediary is necessary, the court will consider other available participation directions. In some cases they will be effective to secure fairness, so that an intermediary is unnecessary, or only necessary for a particular occasion, while in other cases they will not. The court is entitled to expect specialist family lawyers to have a good level of understanding of the needs of vulnerable individuals in proceedings and an ability to adapt their communication style. It will consider what can reasonably be expected of the advocates, and in particular of the vulnerable party's advocate in the individual case, bearing in mind that professional continuity may not be guaranteed. Intermediaries should clearly not be appointed on a 'just in case' basis, or because it might make life easier for the court, but equally advocates should not be required to stray beyond their reasonable professional competence to make up for the absence of an intermediary where one is necessary.

(8) The rules provide that the reasons for a decision to approve or refuse participation directions for a vulnerable person must be recorded in the order. That can be done very briefly, and it is a further useful discipline.

(9) The approach described should ensure that intermediaries are reliably appointed whenever they are necessary, but not otherwise.”

All Judges should then have received an e-mail on the date of hand-down from the President noting that:

“As a result, courts should no longer rely upon paragraphs 8, 10 and 12 of the Practice Guidance ‘The Use of Intermediaries, Lay Advocates and Cognitive Assessments in the Family Court’ issued on 25 January 2025.”

Costs

[Re E \(Children: Costs\)](#) [2025] EWCA Civ 183, Court of Appeal, 27 February 2025

Headline: No distinction between costs in Fact-Finds and Other Hearings

The Court stated:

“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”.

Of note, the Court did also state:

“I also reject Mr Davis's submission that a different approach should be taken where an application is made in an acrimonious case against a legally aided party

as a gateway to seeking recovery against the Lord Chancellor. This is said to be justified because in such cases the three common justifications for the 'no order' approach are absent: not depleting family funds, not deterring parties from putting forward their cases, and not increasing acrimony. Again, there is no advantage in creating a nebulous special category when the court, acting on ordinary principles, is well able to make any costs order that meets the interests of justice in individual cases”.

Dispute Resolution (including NCDR)

[Re A, B And C \(Child Arrangements: Final Order At Dispute Resolution Appointment\)](#)
[2025] EWCA Civ 55, Court of Appeal, 31/1/25

Headline: You can conclude at DRA ... and there's not res judicata

The Court of Appeal reinforced the possibility of conclusion at DRA, stating:

“It is well recognised that litigation about children following the breakdown of their parents' relationship often exacerbates the harm they have suffered as a result of that breakdown. Strenuous efforts are devoted to encouraging parents to resolve such disputes without resorting to the court. These efforts continue after proceedings have started. A crucial stage is the DRA. The purpose of a DRA is to try to resolve the issues without a contested final hearing. Within the Family Procedure Rules, Practice Direction 12B, paragraph 19(3) requires the court at the DRA to "identify the key issues (if any) to be determined and the extent to which those issues can be resolved or narrowed at the DRA" and to "consider whether the DRA can be used as a final hearing".

Even where the parties are unable to reach an agreement, the court has the power to bring the proceedings to an end if satisfied that such a course is consistent with the welfare of the children, which under s.1 of the 1989 Act is the paramount consideration whenever the court is determining any question about the children's upbringing...”

Continuing, it was stated:

“At a DRA, when deciding whether or not there should be a further investigation and full hearing, a judge has to assess the information put before her. Pragmatically, that cannot be confined to agreed evidence. When deciding whether it is in the interests of the child to authorise a full court investigation or to conclude the proceedings at the DRA, the court is not obliged to disregard any piece of contested evidence and only take into account matters that are agreed between the parties. That would undermine the court's powers to control and conduct proceedings in accordance with the paramountcy of the child's welfare. The judge has to consider the information put before her, recognise that it is not necessarily the complete picture and in some respects contested, and come to a view as to whether a full court investigation is necessary and proportionate. Where the judge concludes that such an investigation is neither necessary nor proportionate, she will often proceed on a basis that in some respects is not accepted by all the parties and has not been the subject of findings.

Of course, there is a limit to the circumstances in which a court can properly and fairly proceed in that way. It will turn on the details of the contested issues and the proposed outcome. At one extreme, for example, where a party is alleging that the other parent has sexually abused the child and that as a result all contact should be supervised, it will be difficult if not impossible for the court to make a final order without making formal findings about the allegations. But where the proposal is for a less radical adjustment of the child arrangements order, it will often be open to the court to reach a conclusion without a fully contested hearing. This is a decision which can largely be left to the skill and experience of the family judge without appellate interference”.

Re X (Financial Remedy: Non-Court Dispute Resolution) [2024] EWHC 538 (Fam),
Lieven J, 8/3/24

Headline: NCDR will encourage negotiation

Lieven J gives judgment about FPR changes which came into effect on 29/4/24 to ‘encourage’ parties in all types of proceedings (finance and children) to seek to negotiate.

Relevant extracts of the judgment are (emphasis added):

“1. The adversarial court process is not always suited to the resolution of family disputes. These are often best resolved by discussion and agreement outside of the court arena, as long as that process can be managed safely and appropriately.

2. This short ruling is being given today not because the parties are opposed to the course I have invited them to take but because **I consider it might be helpful for those involved in family proceedings, whether concerning money or children, to understand the court's expectation that a serious effort must be made to resolve their differences before they issue court proceedings and, thereafter, at any stage of the proceedings where this might be appropriate. Furthermore, I want to signal that, at all stages of the proceedings, the court will be active in considering whether non-court dispute resolution is suitable. Changes to the Family Procedure Rules 2010 ("the FPR") which are due to come into effect on 29 April 2024 will give an added impetus to the court's duty in this regard.**

...

7. Rule 3.3.(1) of the FPR mandates the court with a duty to consider if non-court dispute resolution is appropriate at every stage in proceedings (my emphasis). When considering whether non-court dispute resolution is appropriate, rule 3.3.(2) states that the court must take into account whether (a) a MIAM (a family mediation information and assessment meeting) took place; (b) whether a valid MIAM exemption was claimed or mediator's exemption was confirmed; and (c) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process. Rule 3.4.1(a) states that, where appropriate, the court may direct that proceedings or a hearing in the proceedings be adjourned for a specified period in order to enable the parties to obtain information and advice about, and consider using, non-court dispute resolution. Rule 3.4(1)(b) states that adjournment for a specified period may also be

appropriate where the parties agree to participate in non-court dispute resolution. The court may make such directions on application of the parties or of its own initiative.

8. All the above rules are to be read in the context of the court's overriding objective to deal with cases justly having regard to any welfare issues (rule 1.1(1)). Rule 1.1(2) states that dealing with a case justly includes, as far as practicable, the saving of expense and the allocation of an appropriate share of the court's resources. The court also has a duty of active case management (rule 1.4(1)), amongst which is encouraging parties to use a non-court dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure (rule 1.4(2)(f)), and helping the parties to settle the whole or part of the case (rule 1.4(2)(g)).

9. The FPR does not, at present, give the court power to require parties to engage in non-court dispute resolution. **Rule changes on 29 April 2024 will promote the court's ability to encourage parties in financial remedy and children proceedings to use natural gaps in the proceedings' timetable for the purpose of non-court dispute resolution or to adjourn the proceedings, if necessary, to encourage the parties to try non-court dispute resolution.** Amendments to the costs sanctions the court can impose in financial remedy proceedings will take into account conduct relating to a failure either to attend a MIAM or to attend non-court dispute resolution.

10. These rule changes in family proceedings have resonance within the wider litigation landscape in civil proceedings. The court's general powers to compel parties in civil proceedings to engage in non-court dispute resolution was highlighted by the case of *Churchill v Merthyr Tydfil County Borough Council and Others* [2023] EWCA Civ 1416 (29 November 2023) ("*Churchill v Merthyr Tydfil*").

11. The Court of Appeal was constituted of the Lady Chief Justice of England and Wales, Sir Geoffrey Vos, Master of the Rolls, and Lord Justice Birss, the deputy head of civil justice. The issue in *Churchill v Merthyr Tydfil* was whether the court could order the parties to court proceedings to engage in a non-court-based dispute resolution process, and, if so, in what circumstances it should do so.

12. I note that there has been considerable debate as to whether the Civil Procedure Rules ("the CPR") contain a specific power to oblige litigants to use non-court dispute resolution against their will. The case of *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 decided there was no such power, Dyson LJ stating that, to oblige truly unwilling parties to mediate, would be to impose an unacceptable obstacle on their right of access to court. However, in *Churchill v Merthyr Tydfil*, the Court of Appeal concluded that the dicta of Dyson LJ were not a necessary part of the reasoning that led to the decision in *Halsey* and were therefore obiter [see paragraphs 18-19].

13. Following extensive review of domestic and international case law, the Court of Appeal held that the court had the power to compel parties in civil proceedings to engage in non-court dispute resolution and/or stay proceedings to allow for non-court dispute resolution to take place. How a court should exercise its discretion to compel the parties was set out by the Court of Appeal in paragraph 65:

The court should only stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.

14. Drawing on the submissions made by the Bar Council, the Court of Appeal listed in paragraph 61 of *Churchill and Merthyr Tydfil* a variety of matters which the Bar Council suggested that a court may wish to take into account when determining whether or not to exercise its discretion to compel parties to engage in non-court dispute resolution. However, the Court of Appeal ultimately concluded that it would be undesirable to endorse such a checklist for judges to operate, as the judiciary was well equipped to decide how to bring about a fair, speedy and cost-effective solution to disputes in accordance with the overriding objective.

15. It may be thought that the decision in *Churchill v Merthyr Tydfil* is of limited relevance to family proceedings. To make that assumption is unwise. The active case management powers of the CPR mirror the active case management powers in the FPR almost word for word and both the civil and the family court have a long-established right to control their own processes. The settling of cases quickly supports the accessibility, fairness and efficiency of the civil, and I emphasise, the family justice system. As Sir Geoffrey Vos, MR stated in paragraph 59 of *Churchill v Merthyr Tydfil*:

"...even with initially unwilling parties, mediation can often be successful. Mediation, early neutral evaluation and other means of non-court based dispute resolution are, in general terms, cheaper and quicker than court-based solutions. Whether the court should order or facilitate any particular method ... is a matter for the court's discretion, to which many factors will be relevant."

16. Though the FPR rule changes due on 29 April 2024 do not go as far as compelling parties to proceedings to engage in non-court dispute resolution, the agreement of the parties to an adjournment for that purpose will no longer be required. Instead, the family court may – where the timetabling of the proceedings allows sufficient time for these steps to be taken – "encourage" the parties to obtain information and advice about and consider using non-court dispute resolution and "undertake non-court dispute resolution" (rule 3.4(1A) with effect from 29 April 2024). The accompanying Practice Direction 3A has been amended and makes clear that the court may also use its powers to adjourn proceedings to encourage the use of non-court dispute resolution (rule 4.1).

...

17. Non-court dispute resolution is particularly apposite for the resolution of family disputes, whether involving children or finances. Litigation is so often corrosive of trust and scars those who may need to collaborate and co-operate in future to parent children. Furthermore, family resources should not be expended to the betterment of lawyers, however able they are, when, with a proper appreciation of its benefits, the parties' disputes can and should be resolved via non-court dispute resolution. Going forward, parties to financial remedy and private law children proceedings can expect – at each stage of the proceedings – the court to keep under active review whether non-court dispute resolution is

suitable in order to resolve the proceedings. Where this can be done safely, the court is very likely to think this process appropriate especially where the parties and their legal representatives have not engaged meaningfully in any form of non-court dispute resolution before issuing proceedings...”

NB: [Family mediation voucher scheme](#): On 29 January 2025, the Family Mediation Council announced that the Ministry of Justice has extended the scheme to March 2026.

[F v J & Ors \[2024\]](#) EWHC 2802 (Fam), Trowell J, 24 October 2024

Headline: A lovely call to reach agreement in future

“73. I ask the parties to remember that this contact order is meant to be a base line. I hope that there will be such further and other contact as can be agreed. You must all know that what is best for L will change over time. What you can each manage will change over time. Whether you reach agreement by mediation, therapy, or traditional English repression of past problems, does not bother me. What does bother me is that this litigious start to L's life should be over. He is special to all of you. Make your relationships work so he benefits.”

Risk

[Re L-G \(Children: Risk Assessment\)](#) [2025] EWCA Civ 60, Court of Appeal, 31 January 2025

Headline: Risk Assessments should be set out clearly

Comment of the Court of Appeal:

“The judge referred to *Re F (A Child: Placement Order: Proportionality)* [2018] EWCA Civ 2761, [2018] All ER (D) 94 (Dec), in which I proposed that in assessing a risk of future harm, the court should ask itself a series of questions:

- (1) What is the type of harm that may arise?
- (2) What is the likelihood of it arising?
- (3) What would be the severity of the consequences for the child if it arose?
- (4) Can the chances of harm happening be reduced or the consequences be mitigated?”

Change of Name

[C \(A Child\)\(Change Of Given Name\)](#) [2024] EWCA Civ 1582, Court of Appeal, 18 December 2024

Headline: The test for forenames and surnames is the same

The Court of Appeal made clear:

“It follows that the principles to be applied to change of name cases are the same regardless of whether the proposed name change relates to a given name or to a

surname. That this is the case is now settled law and, as was observed by Cobb J in *Re C (Change of Forename: Child in Care)* [2023] EWHC 2813 (Fam), (*Re C* 2023) at [27] (viii), "Forenames hold the same importance as surnames and the same principles should apply in considering and resolving any issue relating to a forename and a surname."

The High Court has twice recently considered the issues relating to a change of the given name of a child in care. In *Re C* 2023, Cobb J was considering a local authority's application to change the name of a male infant child in care. The mother had given the baby a name more usually recognised to be a female name. In *Re BC (Child in Care: Change of Forename and Surname)* [2024] EWHC 1639 (Fam) (*Re BC*) Poole J was considering an application of a 15 year old young person who was in care and wished to change both her names in order to remove any remaining connection she may have had with her abusive father.

In *Re BC*, Poole J helpfully and clearly set out at [20] the formalities which relate to changing one's name. He quoted the judgment of Ormrod LJ in *D v B (otherwise D) (Surname: Birth Registration)* [1979] Fam 38; [1979] 1 All ER 92 in which he explained that there are no regulations governing the execution of deeds poll.

Ormrod LJ was referring to the fact that the regulations only apply to the enrolment of such deeds. See <https://www.gov.uk/change-name-deed-poll/make-an-adult-deed-poll> which sets out that any person over 16 with capacity can change their name (given and /or surname) by deed poll which should be evidenced by two witnesses who are not related to him or her and who are each over 18. Such a deed poll will result in an unenrolled change of name.

The Enrolment of Deeds (Change of Name) Regulations 1994 ("the 1994 Regulations") govern the enrolment of deeds evidencing a change of name. By Reg.8(4) of the 1994 Regulations, in order to enrol a deed poll where a child is over 16 but under 18, the deed poll must be consented to by everyone having parental responsibility and endorsed with the child's consent.

The purpose of enrolment Ormrod LJ said, is "only evidential and formal to provide proof of the name change to those organisations who require it."

In this case it was noted:

"It follows that from February 2025 when they reach 16 years:

- i) C could change their given name by unenrolled deed poll (Government website); but
- ii) Unlike a 16 year old unconstrained by a child arrangements order, they could not change their surname without the consent of their parents or the leave of the court (s.91(10A) CA 1989); and
- iii) They could not enrol the deed poll without the consent of both parents (Reg. 8(4) 1994 Regulations).

Poole J considered in *Re BC* why a distinction is made as between young people subject to CA 1989 orders and those who are not. At para.[30] he explained that the distinction between those young people subject to a CA 1989 order and those who are not may be justified by the very fact that such orders have been made, a fact which indicates that there may well be conflict and differing views as to the welfare imperatives in relation to the child in question as between the various people who have parental responsibility. The distinction between children subject

to court orders and those who are not can, he said, "be seen as a protection of the Art 8 rights of those with parental responsibility for the child." He went on:

"30.....In contrast, it is accepted procedure for a 16 or 17 year old who is not subject to a relevant CA 1989 order to change their forename and/or surname by deed poll without the consent of any person with parental responsibility. That acceptance seems to recognise that in this context the Article 8 rights of the young person always outweigh the Article 8 rights of anyone with parental responsibility. 16 and 17 year olds are presumed to have capacity to decide to change their names.

31. Hence, whilst the potential conflicts between those exercising parental responsibility for a child in care might be the justification for requiring the court's leave to change a child's names, that justification does not appear to be regarded as material when a child of 16 or 17 who is not subject to a relevant CA 1989 order seeks to change their name. Similarly, although the authorities to which I have referred stress the significance of name changes for a child, a child of 16 or 17 years who is not subject to a relevant order can change their forenames and surnames by unenrolled deed poll by doing no more than making a witnessed declaration."

Also of note were the comments of the Court of Appeal as to use of pronouns:

"The judge gave his decision to refuse the application to make a specific issue order permitting the change of C's given name in a short reserved judgment.

The judge noted that C prefers the gender neutral pronoun, but said that he would not do so in the judgment because "the question of gender identity is at the heart of this case and to use anything other than the biologically appropriate 'he' risks giving the appearance of pre-judging the issues".

I do not agree with this approach for two reasons:

i) Whilst gender identity was undoubtedly at the "heart of the case" when the application was first made by the father at the time prior to the Cass report when he was seeking orders which included a prohibited steps orders preventing gender related medical treatment and the disclosure of C's medical records, that was no longer the case. There was therefore no question of the granting of the order pre-judging "the issues". Whilst the decision in respect of C's given name was to be made in the context of C identifying as non-binary and their change of name came about as part of their confirmation of their non-binary status, in reality the sole remaining live issue to be determined by the court was whether the given name which had been used for all purposes for a period in excess of three years by this young person, then aged 15 years 4 months, should now be given the legal recognition they greatly desired. Whilst C wished to change their surname, their absolute priority was to have their given name formalised.

ii) The new edition of the Equal Treatment Bench Book (ETBB) was published in July 2024. Chapter 12 relates to Trans People. Para.19 says as follows:

"It should be possible to work on the basis of a person's chosen gender identity and their preferred name/pronouns, "he/she or they", for most

court and tribunal purposes, regardless of whether they have obtained legal recognition of their sex/gender by way of a GRC...."

C is a party in these proceedings through their Children's Guardian. The Guardian has been clear that C's preferred name is [C] and preferred pronouns are they/them. That choice should in my judgment be respected. I should say for completeness that whilst this advice is found in the chapter on trans people in the ETBB, it applies equally across the board. Many people now choose to use neutral pronouns regardless of their gender identity and the courts should equally respect their choice..."

Judgments

[Re F \(a Minor\) \(Permission to appeal\)](#) [2025] EWHC 638 (Fam), Hayden J, 17 March 2025

Headline: Make sure e-mailed judgments are listed

Hayden J set out issues which arose as to permission to appeal, particularly where judgments are e-mailed:

"Since March 2020, the start of the COVID-19 pandemic, reserved judgments in the Family Courts and in the Court of Protection have, in most cases, been handed down remotely in accordance with a "Covid Protocol". The practice has worked well and is now so embedded that it is been retained, notwithstanding that the Courts have resumed routine sitting in attended hearings. However, there has been some confusion as to the point at which the decision (to be appealed) is actually made, see FPR 30.3(3), para. 7 above. The regime, as discussed above, is both clear and understandable, but it is, as I have foreshadowed, one with which some practitioners and judges have become unfamiliar.

It is, I hope, helpful to reiterate what is required:

An oral hand-down or ex-tempore judgment:

- For the purposes of an application for permission to appeal to a first instance judge, the decision to be appealed is made either at the time of the oral hand-down or the date on which the judge adjourns the permission application to be heard. After that point, the first instance judge has no further jurisdiction and recourse must be had to the Appellate Court.
- If no permission application is made at the decision hearing and, accordingly, there has been no adjournment, the lower court has no further jurisdiction and cannot consider any retrospective application for permission to appeal.

A reserved judgment, handed down either in court or electronically:

- A judge who has written a reserved judgment will, ordinarily, circulate the draft of the judgment to the parties. This will be to afford the opportunity, most particularly where the parties are represented, for corrections, amendments, anonymisation and compliance with Transparency Orders, et cetera.

- The judge will and ought to set a deadline for response, indicating that following consideration of any suggested amendments, the perfected judgment will be handed down. In the majority of cases, this will be an electronic hand-down and thus not require the attendance of the parties.
- When the judge has perfected the draft, he or she must communicate to the parties the date on which the judgment will be handed down. This will afford them further opportunity to consider or indicate whether they wish to appeal.
- In the event that an application is to be made, the judge will either provide that the hand-down hearing should be attended, so that the application may be made, or set a separate date for the application to be heard. It is also possible that an application for permission may be made in writing, where the judge agrees. Again, this may be either at the hand-down date or the adjourned date.
- In *McDonald v Rose* (supra), the Court of Appeal emphasised that adjournments should not be necessary in the generality of cases. In contemporary practice, as I have referred to above, this has even greater force. The judgment will have effectively been pre-circulated in draft and ordinarily that will provide sufficient time for the parties to decide, prior to the hand-down hearing, both whether they wish to seek permission to appeal and to formulate grounds and such supporting submissions as may be necessary. Adjourning the application will inevitably serve to increase delay and generate a risk of some procedural complication. But, as the Court of Appeal accepted, "it will nevertheless sometimes be justified".
- To reiterate, for the purposes of FPR 30.3(3), the 'decision to be appealed' date is either the date of hand-down, if no application is made, or the date on which the application for permission to appeal is determined.
- Notice of hand-down of reserved judgment must be given in the daily Cause List. The following wording is likely to be helpful:
"This judgment will be handed down remotely by circulation to the parties or their representatives by email."
- Where appropriate, the following should be added:
"...and released to the National Archives. A copy of the judgment in final form as handed down should be available on the National Archives website shortly thereafter."

In order to achieve clarity, when the perfected judgment is sent to the parties, it seems sensible to include the following:

"I attach the judgment in this case by way of hand-down, which will be deemed to have occurred at [time] on [day, date, month, year]."

Compliance with the above should avoid any ambiguity as to when a judgment was handed down and, accordingly, clarify when a first instance judge may hear an application for permission to appeal their own decision.

A trap for the unwary.

Whenever a party seeks an adjournment of the decision hearing to consider whether to make an application for permission to appeal or to prepare for it, they should also seek an extension of time (see *McDonald v Rose* para. 21(5)). The Court of Appeal was very clear that, even though a decision hearing may be adjourned, the 21 days (within which an appeal must be filed, in accordance with the FPR) run from the date the decision was formally announced and not the date that the formal order recording the decision was issued. Underhill LJ regarded this as "uncontroversial" and considered that it "should be known to any practitioner, though experience shows it is often overlooked".

[Citation of judgments – President’s Guidance on Citation of Authorities: Judgments of Circuit Judges and District Judges – 24 February 2025](#)

Headline: DJ / CJ judgments are not citable unless certified

[M v F & Anor](#) [2025] EWHC 801 (Fam), Harris J, 2 April 2025

Headline: Publication of Case Details

For brevity, the case is not cut and pasted here, but if you are dealing with an application for permission to publish details of a case, this is ESSENTIAL reading.

Declarations of Parentage & PR

[Re A Child \(Application for a declaration of non-parentage post adoption\)](#) [2025] EWFC 109, HHJ Burrows (s9), 14 April 2025

Headline: The court can still make Declarations in such circumstances, but would it be in the child’s interests?

[Re A & B \(Declaration of Non-Parentage\)](#) [2025] EWFC 41, Cobb J, 4 March 2025

Headline: Considerations when deciding whether to determine a Declaration of Parentage

The court stated:

38. Having weighed the arguments outlined above, I am satisfied that I should not refuse to determine Mr J's application (section 55A(5) FLA 1986). As I have made clear, I could only do so if I were to consider that the determination of the application would "not be in the best interests of" A and/or B. In this case, I have approached the jurisdictional gateway issue by considering four key issues:

- i) The children's ascertainable views about the application;
- ii) Whether there is evidence that the mere fact of considering the application would be likely to be harmful to the children;

- iii) Whether the application, if granted, would be likely to have such deleterious consequences for the children that I should not even proceed to determine it;
 - iv) How determination of the application fits with the *Article 8* ECHR rights of the individual members of the family.
- 39. (i) *The children's views*: A and B have expressed slightly different views about the application, but neither of them appear to feel particularly strongly about it. I read Mrs Odze's report as indicating that A was more or less indifferent to whether the application proceeds; B perhaps more strongly expressed her disapproval. Both children appeared to adopt a moralistic approach; in A's view, "if you were a legal parent in the first place, you should remain a legal father"; B observed that "he signed all these papers, why would he suddenly change his mind?".
- 40. (ii) *The fact of the application*: There is no suggestion in the evidence that by merely considering Mr J's application the children would be harmed. This case has none of the features of the type of case discussed by Black LJ in *Re S* (i.e., threatened suicide of the subject child, child the product of rape, child placed for adoption: see §20 above). B's articulated sense of rejection by Mr J is, it seems to me, more firmly rooted in Mr J's lack of personal engagement with her over many years, than in his wish to achieve correlation of his actual and legal status. I am persuaded by Mrs Odze's view that both children are 'resilient', that the application will have "minimal" impact on them, and that their "psychological wellbeing" will not be adversely affected by my determining this application given the emotional security which they both enjoy in their current family unit.
- 41. (iii) *Application if granted, deleterious consequences*: So I have looked at whether the application, if granted, would be likely to have such deleterious consequences for the children that I should not even proceed to determine it.
- 42. In this respect, I recognise that there would indeed be negative financial implications for the children if this application were ultimately granted. Although Mr J has no legal liability financially to maintain them as a non-parent, the fact is that he has maintained them throughout their childhoods thus far, and his maintenance obligations would fall away. I accept that this will be likely to have some detrimental impact on the children.
- 43. But that is only one factor. A declaration that Mr J is not in law the father of A and B would reflect clearly and definitively the legal position which the children have known and understood as a matter of fact for many years. I repeat what I said in *Re Ms L; Re Ms M (Declaration of Parentage)* [2022] EWFC 38 (citing Sir James Munby P in *In the matter of HFEA 2008 (Cases A,B,C,D,E,F,G and H Declaration of Parentage)* [2015] EWHC 2602 (Fam)) that there can be no more important question – emotionally, psychologically, socially and legally – than 'who is my parent?'. This declaration would lay to rest any misapprehension that Mr J is the children's father; the current situation, in which he is legally recognised as their father, is a fiction.
- 44. Moreover, in general terms, clarification as to A and B's legal parentage should promote their true identity under Arts 7 and 8 of the United Nations Convention on the Rights of the Child 1989 (the UNCRC); this will, in my judgment, be to

their benefit throughout childhood and adulthood. Specifically, the mother will no longer be required to obtain formal consents from Mr J in relation to formal processes such as passport renewal. As MacDonald J said in *M v S* at [40]:

"The child's long-term interests may also be better served not just by his knowing the truth about parentage but also by the fact that the adults involved will be able to plan their future lives in light of the true situation (see *Re E (A Minor) (Child Support: Blood Tests)* [1994] 2 FLR 548)".

45. Therefore I am satisfied that if this application were to be granted it would not have such deleterious consequences for the children that I should not even determine it.
46. (iv) *Human Rights*: Linked to the argument based on 'identity' which I have discussed at §44 above, I am satisfied that formal recognition of the child's true legal parentage is a fundamental aspect of the child's identity within *Article 8* of the ECHR; on these facts, this point cuts both ways – the children seek not to have their family life (as they know it) interfered with, but their private and family life must surely represent their *true* identity. Had I been of the view that it is *not* in the interests of the children to determine this application, this would have directly cut across the father's *Article 8* rights (see MacDonald J above in *MS v RS* cited at §22 above). That would of course have been a permissible outcome if I had found it to be necessary and proportionate to achieve the aim of protecting the children's best interests. However, this is not the case here; by determining the application, I am satisfied that I am able in large measure to respect the *Article 8* rights of each of the family, albeit in different ways.
47. I turn then to the application on its merits.
48. The route to the declaration sought by Mr J is clearly marked by statute, and frankly leads in only one direction. Given that (i) Mr J and the mother were not married at the time of A and B's conception; (ii) that the conception took place otherwise than in a clinic licensed in the UK; and (iii) that the conception was achieved using sperm which was not that of Mr J, section 28(3) does not treat Mr J as A and B's father. The fact that Mr J was erroneously registered as the children's father on their birth certificates does not itself confer legal parentage on him. That is the simple and definitive conclusion to be drawn on these facts and I shall make the declaration accordingly.
49. For completeness, I can confirm that there is no public policy reason for not granting this application".

[KL v BA](#) [2025] EWHC 102 (Fam), DHCJ Powell, 27 January 2025

Headline: The debate as to removal of 'wrongful' PR continues

DHCJ Powell determined that Parental Responsibility is Void Ab Initio for a Non-Biological Father mistakenly named on Birth Certificate.

NB: This is different to other first instance decisions:

- *Re D (A Child)* [2014] EWCA: Emphasised the welfare of the child as paramount when considering the removal of PR.

- RQ v PA [2018] EWFC 68 (Theis J) & Re G [2018] EWHC 3360 (Fam) (Williams J): Suggested that PR does not apply if the individual is not the biological father.
- Re [SB \[2022\] EWFC 111](#) & Re SB (No.2) [2023] EWFC 58 B (HHJ Case): HHJ Case argued that parental responsibility (PR) is not void ab initio and requires a welfare analysis before removal. She highlighted the importance of the term 'person' in s.4(2A) of the Children Act 1989, which asserts that a person with PR ceases to have it only through a court order. HHJ Case noted that 'person' was deliberately used instead of 'father' to include those wrongly named on birth certificates, allowing non-biological fathers to retain PR unless a court decides otherwise. [§36-42].
- Re [C \[2023\] 3 WLR 1 \(HHJ Moradifar\)](#): Concluded that PR is not void ab initio but did not require a welfare analysis for removal.

Progression of Contact

[E, F And G \(Interim Child Arrangements\)](#) [2024] EWCA Civ 874, Court of Appeal, 24/7/24

Headline: Progression to unsupervised before a Fact-Find was not warranted taking account of PD12J

Supported Contact was in place pending a Fact-Find. CAFCASS noted the children were happy to progress to unsupervised, but CAFCASS did not recommend this prior to a Fact-Find. The Fact-Find was adjourned for want of a QLR. In the interim the Judge ordered progression to unsupervised (daytime only) Contact, noting supported had gone "at least reasonably well", and unsupervised could be tested in the interim. Mother appealed.

The Court of Appeal noted the Judge had referred to PD12J, though the Judge had commented in submissions 'CAFCASS are very risk averse these days'. The Court of Appeal disagreed with progression without a Fact-Find having taken place (emphasis added):

"38. I understand that the judge was motivated by a wish to move things forward in the light of the children's expressed wishes and feelings. But **his reasoning was inconsistent with Practice Direction 12J in general and paragraph 25 of the Practice Direction in particular. His observation that "the testing-out which would have been undertaken following findings ... has already occurred" was mistaken, as was his perception that unsupervised time ahead of the fact-finding hearing would bring the advantage that "it can be tested under the umbrella of existing court proceedings". The notion that any relaxation in contact which might follow findings can somehow be tested out before the fact-finding hearing is contrary to paragraph 25 of the Practice Direction.** In any event, it is by no means clear that any "testing out" of contact would be undertaken after findings along the lines of the mother's serious allegations. There is a strong likelihood that there would be no expansion of contact after such findings without a further assessment of the father and the completion of work recommended therein.

39. Paragraph 25 of the Cafcass officer's report was no more than a restatement of the policy underpinning the Practice Direction. The court had previously decided that a fact-finding hearing on the allegations of domestic abuse and the risk of female genital mutilation is necessary before decisions about child arrangements are made. In those circumstances, it is incontrovertible that the extent to which it is safe and in the children's best interests for contact to progress in line with their wishes and feelings remains dependent on whatever findings are made. The judge was wrong to express doubt about this.

40. **The judge's assertion that "the time has come, on any view of the facts, to move to unsupervised time" (my emphasis) is unsustainable. The mother and the children have made serious allegations against the father.** If they are found to be true, there is plainly an ongoing risk to the mother and the children. In those circumstances, there will be strong arguments against moving to unsupervised contact before a thorough assessment of the father and the completion of recommended work. **The judge's assertions that unsupervised contact "is what [the children] need", that "they will not come to any harm", and that "it creates no unmanageable risk for the children" are equally unsustainable at this stage before the fact-finding hearing has taken place.** His observation in dismissing the application for permission to appeal that it could not be said that the risk was unmanageable because, "even if those aspects of domestic abuse which the mother alleged were correct, it did not mean that the contact should be [supervised]" is plainly contrary to paragraph 25 of the Practice Direction and in my view irrational. **Unless and until the court has considered the allegations of abuse, the extent of the risk is unknown and thus unmanageable unless contact is supervised.**

41. For my part, I would not endorse the judge's observation in the course of submissions that "Cafcass are very risk averse these days...".

[T & O, Re \(Appeal: Fair Hearings: Delegation of Judicial Functions\)](#) [2024] EWHC 2236 (Fam) (29/8/24)

Headline: Interim Contact must be considered via PD12J with opportunity to challenge alleged change and without delegation of decisions to Social Workers

There was a long litigation history with Father making many applications with supervised Contact only ordered and a 91(14) being granted until he made change by way of accepting past serious findings among other things. Father applied stating change had occurred and at a without notice hearing he was granted permission to apply (though it was noted on appeal this was procedurally irregular and an on notice permission hearing should then have followed).

On a CVP hearing with both litigants in person, the Mother stated she did not believe Father had made change, however the Judge ordered an ISW (who had been supervising Contact) should file a s7 report as to the question of unsupervised Contact, and if it was positive, unsupervised Contact should then begin, with a further Report leading to Final Hearing.

Mother appealed and Henke J permitted the appeal on the basis there had been procedural error, ruling:

- The way in which the matter had been dealt with had not allowed the Mother to mount a 'substantive challenge to the evidence which she did not accept', in circumstances where the evidence of future risk of harm was in dispute. Henke J stated given the significance of a move from supervised to unsupervised and the need for application of s1 factors 'through the prism of Practice Direction 12J [which] would have included consideration of any risk of harm to the children and any impact of the change in contact arrangements upon them directly and indirectly through the impact on the Appellant, their mother with whom they live', the matter should have been set down for a hearing on evidence. The Judge found the lack of mechanism for such a challenge to be considered was unfair;
- Proceeding in that manner without the opportunity for evidence to be challenged failed to have regard to paragraph 35 of Practice Direction 12J (relating to ensuring any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child);
- The Judge wrongly 'delegated her judicial function to the Independent Social Worker', in ordering the ISW Assessment to be the mechanism for determining a move from supervised to unsupervised contact;
- Ordering the ISW to act in that manner when they did not have a copy of the case papers, had limited knowledge of the case and the nature of the Mother's challenge to Father's alleged change, and their role had previously solely been a contact supervisor.

[AA v BA](#) [2024] EWHC 2233 (Fam), Sir Jonathan Cohen, 15/8/24)

Headline: Where there are findings, take them into account and utilise PD12J

First Instance Judge had made serious findings and urged Father to evidence change. However, when matter came back before court 5 months later change had not been evidenced however the Judge pressed for Contact. On appeal it was held this had been in error and had insufficiently taken account of PD12J.

[M \(Children: Contact In Prison\)](#) [2024] EWCA Civ 1104, Court of Appeal, 24/9/24

Headline: Full assessment of welfare and PD12J factors is essential

The case concerned two children aged 12 and 10 by the time of the appeal. Their parents were married but separated, and Father had commenced a relationship with Ms V. After separation the mother and children left the home but returned for a period, during which time the Father raped the Mother twice, in August 2019. This matter was reported to the Police and Father continued to have contact until his criminal trial in April 2024 at which he was convicted. Father was bailed pending sentence, but did not have contact during this period as he refused to have supervised Contact. Father was then sentenced to 12 years imprisonment in June 2024, the Pre-Sentence Report stating he showed no insight into his offending behaviour. The Father does not accept his conviction and is appealing, and retains support from his partner, Ms V.

On 2 July 2024 Lieven J dealt with the Father's application for contact, in which he sought phone and video contact twice a week, and direct contact once a month, with the children being brought by Ms V. He also asked the court to order independent contact with Ms V and her family. It was accepted that Father and the children had a strong relationship and that they know Ms V and her family well. The Guardian and her solicitor had met with the children, who had stated they would like to see their father, albeit it is stated they have a limited understanding of why he is in prison and what prison is like.

The Guardian recommended written contact only, as she:

'... did not consider it appropriate for the mother to be ordered to take the children to see someone who was guilty of significant offences against her. She considered the children's views to be of the utmost importance, but the impact on the mother as the victim and primary carer could not be ignored. Similarly, she did not support contact with either the father or Ms V being unsupervised as (based on previous instances of court orders being disregarded) she was not convinced that they could be trusted in what they would tell the children about the offences or about their mother ... The Guardian recognised that this recommendation was not in accordance with the children's wishes, but she considered that they had adapted to the lack of direct contact over the past months...'

Lieven J dealt with the matter within a one hour remote hearing, without oral evidence. Within recitals the court noted the concerns of the mother and Guardian as to the impact of face to face and telephone contact, and that this was a 'highly sensitive situation', but also acknowledged the wishes and feelings of the children. There was also recognition by Father that 'at times of frustration he may have said things to the children that exposed them to inappropriate comments about the proceedings, to and in front of the children'.

The Court of Appeal record that Lieven J ordered that mother make the children available to spend time with the father:

- "(1) for a one-off visit in prison facilitated and supported by the Guardian and her solicitor on 13th August 2024 for up to 2 hours;
- (2) for visits to prison three times a year for four hours, accompanied by Ms V, with the children being handed over to her at a public car park for that purpose; and
- (3) for telephone contact once a month for 30 minutes.

The judge also made a section 91(14) order for a year, but gave the Guardian liberty to apply in relation to subsequent visits if the one-off visit proved (in the Judge's word) disastrous".

There was no transcript of judgment, however the note of judgment available to the Court of Appeal showed Lieven J's concern with taking into account the voice of the child, but also the court 'not being a party to coercive and controlling behaviours'.

The appeal was supported by the Guardian, with submissions in support of the appeal including that the Judge had not referred to the welfare checklist or PD12J, and nor did she consider the impact of the father's offences, or the order, on the mother. The Father

sought to uphold the decision of Lieven J, though stated any one-off visit should be supervised by Ms V rather than the Guardian and her solicitor.

Giving the lead judgment in the Court of Appeal, Peter Jackson LJ identified the four 'relevant welfare checklist elements' as being the children's ascertainable wishes and feelings, the children's emotional needs, risk to the children of emotional harm and the capability of each of the parents to meet the children's needs. He continued that the checklist was 'supplemented' by PD12J and specific attention was drawn to paragraphs 36 and 37.

Peter Jackson LJ went on to indicate that the appeal must be allowed, stating:

"The Judge was right to consider this a difficult case. The issue of the father's contact required careful consideration and, almost certainly, the resolution of disputed issues, such as what effect the father's behaviour has had on the mother, what impact an order for contact would have on her ability to parent the children in the way they now need, and whether meetings with the father and Ms V would by one means or another expose the children to a damaging conflict of loyalties. The Judge stated her conclusion, but she said very little to support it. She did not take into account or adequately evaluate:

- (1) The fact that the father has been convicted of domestic abuse of a most harmful kind, a finding which binds the Family Court.
- (2) The impact of the rapes and of the order on the mother, as required by PD12J.
- (3) The significance of the father's unrepentant attitude since conviction as a measure of his ability, and that of Ms V, to meet the children's needs.
- (4) The weight that was properly due to the children's wishes in the light of their limited understanding of the family situation and their apparently settled state.
- (5) The balance between their need for contact with their father and their need for continuity of secure care by their mother.
- (6) The potential for unsupervised contact to unsettle the children and harm their relationship with their mother by exposing them to conflicting narratives.
- (7) The appropriateness of Ms V being the facilitator of contact, given her identity of views with the father.
- (8) The practicality of telephone contact being supervised.
- (9) The justification within the evidence for rejecting the expert assessment of the Guardian.

A decision about contact needed to take account of all these matters, and any others arising under the welfare checklist and PD12J. That did not happen, with the gravity of the father's offending being overlooked, and priority being given to a limited assessment of the children's wishes and the Judge's own perception of their need for contact".

[TM v TF](#) [2024] EWHC 2786 (Fam), Cusworth J, 12/9/24

Headline: Despite serious findings, Contact and progression can be possible

[V v V & Anor](#) [2025] EWHC 945 (Fam), Peel J, 16 April 2025

Headline: Be cautious as to interim Contact when listing a Fact-Find

"Today is the hearing of an appeal by M against an order by ... on 24 March 2025 whereby he determined that, notwithstanding his decision on that date to list a fact finding hearing in respect of allegations of domestic abuse by M against F, staying contact arrangements between Amy and F, which had been ordered by the court by agreement in September 2024, should in the interim stand undisturbed. Permission to Appeal was given by Harrison J on 3 April 2025 and listed urgently before me.

...

Domestic abuse is a vile, indefensible scourge in our society. The findings made by the court against F in 2021, albeit within Family Law Act proceedings rather than Children Act proceedings, are very grave indeed. M's allegations of continuing abusive behaviour since then are cause for concern, and have to be seen in the light of the 2021 findings. The impact on M has yet to be fully established, but potentially severe. The impact on Amy, who has clearly witnessed conflict between her parents, may be damaging to a high degree. It is right to note also that F makes allegations against M which are, if proven, serious in terms of the impact on Amy. None of this should be underestimated. The question is whether these matters require the court to limit contact until they have been fully inquired into at the fact finding stage, and then at the welfare stage when the court will consider the risks to Amy.

My task relates solely to interim contact. The fact finding is for another day; so too the welfare hearing which will follow. The wider issues are not before me. The parties must understand that what I say in this judgment should not in any way bind or influence judges who come to this case later.

I acknowledge that this experienced Recorder was familiar with the case having conducted the Family Law Act hearing in 2021. It seems reasonable to me to assume that he had in mind the relevant provisions of the Domestic Abuse Act 2021 and PD12J. This was, it seems to me, a finely balanced decision. In the end, I conclude that his order maintaining overnight contact tipped to the wrong side of the balancing scales.

His judgment on the issue of whether to hold a fact finding hearing referred to the impact on a child of witnessing domestic abuse, as has been the case here: s3 of the Domestic Abuse Act 2021 resonates. At para 12, he referred to the allegation of F turning Amy against M which, if proven, could be "insidious". At para 14 he said that M's allegations "go to the root of the safety of the contact regime". At para 15 he said that if M's allegations are proven "then Amy is at risk" from F, and that if F is right then she is at risk from M. The risks either way are psychological and emotional rather than physical. Having identified the potential risks to Amy if the fact finding determines that M is correct, it seems to me that he did not fully follow through to consider whether in those circumstances interim staying contact could be safely managed. That is particularly so given the history of very serious findings made in 2021.

F makes the valid point that overnight contact was agreed by M in September 2024, but at that time no court had decided that a fact finding hearing should take place. Everything changed on 24 March 2025 when the judge decided that a fact

finding hearing was necessary. The judge's concern that Amy might not understand the reason for removing the overnight contact was a valid consideration, but had to be viewed in the context of a decision to direct a fact finding hearing. It seems to me that in the circumstances, contact needed to be reviewed on an interim basis. Had the judge decided not to hold a fact finding hearing, the position would have been different, but the decision to embark upon fact finding inevitably leads to a review of the appropriateness and safety of interim contact. In my judgment, the gravity of the allegations, and potential impact on Amy, was such that it was unsafe to continue with overnight contact. In my judgment, the Guardian's recommendation at the hearing was the appropriate, balanced way forward. I conclude that the judge, who gave this case anxious consideration, ultimately was wrong and should have provided for more limited contact on an interim basis. I will allow the appeal, discharge the overnight staying contact and instead provide for unsupervised contact as follows:

- i) After school on alternate Tuesdays until 6pm.
- ii) On alternate Saturdays from 9.15am-3.15pm.”

Guidance

Writing to Children

[Toolkit for judges writing to children](#) – February 2025

Headline: Required reading!

[Mother v Father](#) [2024] EWFC 252 (B), HHJ Suh, 14/8/24

Headline: The latest example of a heart-felt letter to a child

[Tom v M and F](#) [2024] EWFC 313 (B), HHJ Muzaffer, 22/10/24

Headline: Rather than a letter, a simplified judgment – another approach – also an application by a Child

Tom, aged 13, applied for permission to make an application that he live with his Father and to move Schools.

There had been a long history of litigation with cases in 2013, 2015 and 2016 resulting in roughly equal division of Tom's time between his Mother and Father. In 2019 in further litigation Tom, who was then 10, had stated that he wanted to live with his Father and to move schools. The Court however felt Tom should continue to spend broadly equal time with his Parents and remain at his then school.

Further litigation took place in 2022 around which Secondary School Tom should attend, and again, Tom expressed a wish to live with his Father, which was considered. The Court however ordered Tom attend the School preferred by his Mother and following this

decision being made the Parents agreed the previous arrangement (sharing time broadly equally), should continue.

Within this application Tom filed a Statement expressing unhappiness living with his Mother and to live with Father, spending instead just alternate weekends and a few hours on a weekday evening with his Mother. Tom also wished to attend the Secondary School which had been put forward previously by his Father. Tom stated he did not feel his wishes had been taken into account previously.

Tom's Solicitor filed a Statement indicating in her opinion Tom had sufficient understanding to make the application. This was not agreed by the Mother, who felt if the application was refused things would be ok with a little time. Tom's Father supported the application whilst the Guardian did not, being worried what it would do to the relationship between Tom and his Mother.

The Court considered Tom's understanding and found that he lacked sufficient understanding to make the application as he:

1. Did not understand the long term impact of what he wants on the relationship that he has with both his mother and Anna (his sister).
2. Was unable to put forward clear reasons as to why there needs to be such a significant change to both the time he spends with his parents and his schooling;
3. Did not understand the extent of harm and upset that he might be caused through being in a court battle with his mum and dad.

7. In light of the lengthy history of litigation the Court then made an order pursuant to s91(14) (preventing further applications without permission of the Court) until Tom turns 16.

8. Interesting legal points to note are (judgment paragraph numbers in [square brackets]):

- a) That Tom was appointed a r16.4 Guardian, but the Court exercised its discretion to exclude Tom from the hearing pursuant to FPR r.12.14(3) and r.27.4(1) [24-25];
- b) That the only relevant Practice Direction as to allocation of such matters is 30 years old, Practice Direction (Applications by Children: Leave) [1993] 1 WLR 313, and this suggests High Court allocation, such that the matter was in fact re-issued in the High Court and then released [29-30];
- c) That an application by a child is exempt from the requirement for attendance at a MIAM, however there was discussion of potential mediation in any event [31-32];
- d) Whilst a Court may only grant permission to apply pursuant to s10(8) if it is satisfied a child has sufficient understanding, even if they do, there is still a discretion for the Court [38-39];
- e) There is a helpful survey of the authorities as to assessing whether a child has sufficient understanding [41-45] and addressing 'all the circumstances in the case, including the prospects of success' [46-47] and the Court then framed it's analysis of Tom's understanding utilising the decision of Williams J in CS v SBH & Others [2019] EWHC 634 (Fam) at paragraph 65) [82-107];

- f) The Court considered the need for expert evidence as to Tom by way eg of Psychological Assessment [51-54], noted [53] that ‘per In Re C (A Child) (Child Ability to Instruct Solicitor), it is typically a matter for the solicitor whether a child has the ability to instruct, and expert evidence is not usually required’, and further in in the judgment the Judge noted [64] the Family Justice Council guidance in April 2022, ‘Guidance on Assessing Childs Competence to Instruct a Solicitor’.

[FJC guidance on Neurodiversity in the Family Law System](#) – January 2025

Headline: Required Reading

[Cafcass Domestic Abuse Practice Policy](#) (as amended)

Headline (author’s take): This is for CAFCASS, but judges must make their own decisions

[FJC Guidance on Alienating Behaviours](#)

Headline: It’s all about Alienating Behaviours and their impact – no syndrome, and determining them is a judicial function

[FJC Guidance on Covert Recordings](#)

Headline: Don’t do it! But if it’s been done – see the Guidance!

RACHEL CHAN & MARK CHALONER
42BR
19/6/25