Radicalisation and the Family Courts

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Over the last 5 years the family courts have increasingly been required to wrestle with the most fundamental of questions: when does the state have the right to interfere in family life on the basis of the views – however unpalatable – of some family members, or their interest in exploring, viewing and reading material which others might find abhorrent? It is clear from the judges of these cases in the High Court, to whom such cases are reserved, that there is an acute awareness of the inherent difficulties and novel elements of this work and its place in society:

> 'Here, the type of harm I have been asked to evaluate is a different facet of vulnerability for children than that which the courts have had to deal with in the past.' Hayden J in *London Borough of Tower Hamlets v M and Others* [2015] EWHC 869 (Fam), [2015] 2 FLR 1431 at [57]

> 'Cases of this kind can raise the particular problem to which I drew attention in Re X (Children) (No 3) [2015] EWHC 3651 (Fam), para96: "People may be otherwise very good parents (in the sense in which society generally would use the phrase) while yet being driven by fanaticism, whether religious or political, to expose their children to what most would think to be plain, obvious and very great significant harm. There are, after all, well-attested cases of seemingly good parents exposing their children to ISIS-related materials or even taking their children to ISIS-controlled Syria." ' Munby P in *Re Y (Children) (No 3)* [2016] EWHC 503 (Fam), [2017] 1 FLR 1103 at [22]

Unsurprisingly, the nature of the problems facing local authorities and other agencies is evolving – what was initially, in its most obvious form, a need to protect children from being taken to Syria, an inherently dangerous war zone, now includes the challenge of how to deal with families and children who are returning from the geographically defunct 'Caliphate' (in some cases the children are not returning, as they were born in Syria of British parent(s)). The conundrum of evaluating risk from the transmission of ideas and information to children (aside from imminent travel to an obviously dangerous area) remains as difficult as ever.

Background

The starting point for anyone dealing with such cases continues to be the guidance issued by Sir James Munby, at the time President of the Family Division: *Radicalisation Cases in the Family Courts* (8 July 2015):

> '7. Judges hearing cases falling within the description in paragraph 1 above will wish to be alert to:
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> (a) the need to protect the Article 6 rights of all the parties;
> (b) the fact that much of the information gathered by the police and other agencies will not be relevant to the issues before the court;
> (c) the fact that some of the information gathered by the police and other agencies is highly sensitive and such that its disclosure may damage the public interest or even put lives at risk;
> (d) the need to avoid inappropriately wide or inadequately defined

requests for disclosure of information or documents by the police or other agencies;

(e) the need to avoid seeking disclosure from the police or other agencies of information or material which may be subject to PII, or the disclosure of which might compromise ongoing investigations, damage the public interest or put lives at risk, unless the judge is satisfied that such disclosure is "necessary to enable the court to resolve the proceedings justly" within the meaning given to those words when used in, for example, sections 32(5) and 38(7A) of the Children Act 1989 and section 13(6) of the Children and Families Act 2014;

(f) the need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court by the police or other agencies;

(g) the need to consider any PII issues and whether there is a need for a closed hearing or use of a special advocate;

(h) the need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings or (ii) any transcripts;

(i) the need to ensure that the operational requirements of the police and other agencies are not inadvertently compromised or inhibited either because a child is a ward of court or because of any order made by the court;

(j) the assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert counsel.

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

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

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

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

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

13. In the same way, the police and other agencies will wish to be alert to

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

(This guidance is incorporated in the nine-point advice given by Hayden J in *Tower Hamlets v M* (above) at [18]).

What is obvious from this guidance is that radicalisation cases were regarded from the start as presenting procedural and evidential complexities unlike the vast majority of other public law family proceedings. What was also clear, and has become increasingly so, is that such cases, possibly more than most other family proceedings, have to be seen in a wider societal and political context.

Politics and populism

The issues raised by radicalisation and the responses to them reflect the wider debates and divisions in society – racial, religious and cultural identity, views as to the desirability of a heterogenous society, immigration and views of 'the other' both within and outside the UK. As recent research has shown, although predominantly associated with Islamist extremism, the 'problem' of radicalisation increasingly includes the threat posed by far-right extremism.[1]

There is an obvious risk, reflected in some of the mainstream broadcast and publishing media and on social media, of conflating Muslims and Islamist extremism.[2] The growing sense of a pervasive 'Islamophobia' has obvious repercussions for the attempts to work with different communities and to encourage families who may be seen to be vulnerable to extremist influences to engage with professionals and agencies whose aim is to identify and reduce such risks. In some cases, it has been the perceived lack of engagement by families that has tipped the balance into the issuing of family proceedings.

Unique challenges

A useful starting point for practitioners thinking about basic definitions is set out by Hayden J in *London Borough of Tower Hamlets v B (No 2)* [2016] EWHC 1707 Fam, [2016] 2 FLR 887 [25]–[27]:

> 'I have used terms such as 'extremism and radicalisation'. These words are now, sadly, so much a part of contemporary life they scarcely need definition. That said it is important to avoid ambiguity, radicalisation is defined in the July 2015 Revised 'Prevent Duty' Guidance for England and Wales: Guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism:
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> "'Radicalisation' refers to the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups"
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> 26. Holman J settled upon a similar definition in Re M [2014] EWHC 667 (Fam) at para 23.
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> 27. The Channel Duty Guidance Protecting Vulnerable People From Being Drawn Into Terrorism: Statutory

1 The most recent figures for referrals to Prevent, the government's counter-extremism programme, show that 20% of these relate to the far-right. Overall, the number of people flagged to Prevent rose by 20% to more than 7,300 in 2017–18 – see 'Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018' – Home Office Statistical bulletin 31/18, 13 December 2018

2 See the comments of Russell J in a private law matter in which she was concerned that the findings sought had equated adherence to Islam with Islamic extremist – 'I emphasise this, extremism, or radicalisation, is a sensitive subject and there must be no suggestion that the courts would accept or tolerate any suggestion that adherents of the Islamic Faith, or any other faith, are, ipso facto, supporters of extremism' (*Re A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism)* [2016] EWFC 40, [2016] 2 FLR 977 para [119])

Guidance For Channel Panel Members and Partners of Local Panels [2015] defines 'extremism' in this way:

> "'Extremism' is vocal or active opposition to fundamental British Values, including democracy, the rule of law, individual liberty, and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas. Terrorist groups very often draw on extremist ideas developed by extremist organisations"'[3]

However, the courts have stressed that despite the unusual nature of the circumstances of such cases, the tried and tested skills in child protection remain the foundation for the work of professionals.

> 'Once again, this court finds it necessary to reiterate that only open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter agency cooperation is going to provide the kind of protection that I am satisfied that the children subject to these applications truly require.' Hayden J, *Tower Hamlets v M* at [58]

The particular challenges for lawyers may be seen as falling into three broad categories:

- disclosure – its nature and extent;
- proof and evaluating risk; and
- welfare decisions, including the use of specialists/experts.

Disclosure

As the previous President's Guidance[4] stresses, it is vital that there is effective liaison between agencies to achieve necessary and proportionate disclosure of information into family proceedings bearing in mind that, 'some of the information gathered by the police and other agencies is highly sensitive and such that its disclosure may damage the public interest or even put lives at risk'.

In the cases where the material sought and likely to be relevant is of a particularly sensitive nature, and the police and/or Security Services seek to assert Public Interest Immunity ('PII') over all or some of the information, a special procedure is available, as described by Cobb J in Re R (Closed Material Procedure: Special Advocates: Funding) [2017] EWHC 1793 (Fam), [2018] 1 FLR 460 [1]–[2], [16]–[17]:[5]

> '1. It is a first principle of fairness that each party to a judicial process shall have an opportunity to answer by evidence and argument any adverse material which the tribunal may take into account when forming its opinion (see Lord Mustill in *D v NSPCC* [1995] 2 FLR 687). The closed material procedure operates to ensure, to the fullest extent achievable, that this cardinal principle is observed even when the material in question, including that which attracts Public Interest Immunity, is highly sensitive.
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> 2. Where such sensitive material is placed before the court, and requires to be examined and/or tested on behalf of the parties to whom it cannot be disclosed, the Court may invite the Attorney General to appoint a Special Advocate, a security cleared lawyer, to represent their interests (note the formula for the appointment of special Advocates in the civil context: per section 9(1)/(2) of the Justice and Security Act 2013). Special Advocates are appointed by the Attorney General through the Special Advocates' Support Office ("SASO"), which is part of the Government Legal Department.'

3 For a fuller exposition of these terms see the helpful treatment in *A Local Authority v HB and Others* [2017] EWHC 1437 (Fam), [2018] 1 FLR 625 paras [71]–[75].

4 Sir James Munby, President of the Family Division: Radicalisation Cases in the Family Courts (8 July 2015).

5 See also the judgment of Pauffley J in *Re C (A Child) (Application for Public Interest Immunity)* [2017] EWHC 692 (Fam), [2017] 2 FLR 1342 which deals with an application by the Secretary of State for the Home Department for PII – this included consideration of the procedural step involving OPEN and CLOSED sessions in determining the application.

'16. It is only reasonably exceptionally that a family court will consider it appropriate to hold closed material hearings and invite the appointment of Special Advocates: see McFarlane J (as he then was) in *Re T (Wardship: Impact of Police Intelligence)* [2009] EWHC 2440 (Fam) (Re T). This point was emphasised by Sir Nicholas Wall P, in describing the closed material procedures (similar to those engaged here) as "a matter of last, as opposed to first resort" (see *A Chief Constable v YK, RB, ZS, SI, AK, MH (Sub nom Re A (Forced Marriage: Special Advocates)* [2010] EWHC Fam 2438, [2011] 1 FLR 1493 [92]: (*Re A (Forced Marriage: Special Advocates)*)). Separately, and more recently still, Baroness Hale supported this approach, describing as "very powerful" the arguments against using a closed material procedure in family cases ("an inroad into the normal principles of a fair trial") in her judgment in *re A (A Child) (Family Proceedings: Disclosure of Information)* [2012] UKSC 60 [2013] 2 AC 66 at [34]. Quite apart from any other consideration, while it is recognised to be a "valuable procedure" in certain limited circumstances, it is also clearly an "imperfect" one (see respectively Lord Bingham at [35], and Lord Hoffman at [54] in Secretary of State for the Home *Department v MB* [2007] UKHL 46, [2008] 1 AC 440, [2007] 3 WLR 681).

17. Currently, there are no family procedural rules equivalent to Part 82 of the Civil Procedure Rules 1998 ("CPR") dealing with these situations in family cases; Part 82 was inserted into the CPR in 2013, at the time of the implementation of the Justice and Security Act 2013 to deal with Closed Material Procedure issues. Nonetheless, procedures have been adapted in the family court to replicate as appropriate the arrangements for a closed material process, to achieve fairness, and ensure the protection of the Article 6 rights of the parties. The principal advice available to the family court is that referred to in Pauffley J's order (see [9](iii) above), namely the 2015 President's Guidance on the "Role of the Attorney General in appointing Advocates to the Court or special Advocates in Family Cases".'

The issue in this case was how the Special Advocate should be funded. Cobb J concluded [28]:

> 'In the absence of clear or authoritative steer from statute, guidance or otherwise, and relying therefore on the arguments marshalled before me, I have reached the conclusion that I should direct the agency which holds the sensitive material, namely the Police, to fund the Special Advocate for the father in this case.'

As highlighted in the President's Guidance above, there is an expectation of reciprocity in the interaction between safeguarding agencies. The approach to be taken on an application for onward disclosure from family proceedings was re-iterated by MacDonald J in *Re X, Y and Z (Disclosure to the Security Service)* [2016] EWHC 2400 (Fam). This case dealt with an application by the Metropolitan Police Service ('MPS') to disclose documents in family proceedings to the Security Service. Permission had previously been given for the local authority to disclose documents to the MPS, subject to a number of conditions, including preventing onward disclosure and ensuring that no information is placed in the public domain that might lead to the identification of family members or the subject child.

The court noted that when deciding whether to permit disclosure of documents and the terms of such permission, requires consideration of the factors listed in *Re EC (Disclosure of Material)* [1996] 2 FLR 725. It was further noted that the protection outlined in s 98(2) of the Children Act 1989 was to encourage people to tell the truth in cases concerning children. However, the protection provided by s 98(2) is not absolute.

Further, when undertaking the balancing exercise, the court must have in mind all

relevant human rights, in particular Arts 6 and 8 of the ECHR – Art 8(2) expressly recognised that an interference in the right to respect for private life may be necessary and proportionate for in the interest of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of rights and freedoms of others. Detection and prevention of terrorism is clearly important in securing each of the goals in Art 8(2). Finally, it is necessary to consider the previous President's guidance entitled *Radicalisation Cases in the Family Courts*.

It was recognised that there is a tension between the confidentiality of family proceedings and the public interest in ensuring effective operation of police and intelligence agencies engaged in counter-terrorism. The onward disclosure of information to the Security Service has the potential to have an impact upon the child's welfare both positively and negatively. In the event of information being disclosed outside the Security Service, the risk of confidential information reaching the public domain would be heightened, with potentially deleterious consequences for the child's long-term welfare.

The court in this case decided that mother's and child's Art 8 rights were clearly engaged but concluded it was necessary to interfere with their Art 8 rights in the circumstances.

In the event that the Security Service applied to permit external disclosure, the application could be made ex parte in the first instance, provided appropriate reasons were provided and consideration could then be given as to using a closed procedure using special advocates if appropriate.

Proof and evaluating risk

A particularly useful exposition of the matters to be taken into account in radicalisation cases is provided in *A Local Authority v HB and Others* [2017] EWHC 1437 (Fam), [2018] 1 FLR 625 MacDonald J considered a case in which the Local Authority alleged that the mother, whose care of her young children was otherwise exemplary, was part of a family network of ISIS extremists and sympathisers and had attempted to travel to Syria to support her husband who was in Syria (and was believed later to have been killed there). Mother denied the allegations. The judge emphasised that the fundamental legal principles to be applied when determining applications of this nature do not change in cases involving alleged risks of radicalisation, extremist beliefs or risk of removal to Syria:

(i) In cases of alleged extremist beliefs or ideology, alleged risk of radicalisation and alleged risk of removal to a war zone, the burden of proving the facts pleaded rests with the local authority on the balance of probabilities. There is no requirement on a parent to prove the contrary. Where a respondent parent seeks to prove an alternative explanation for a given course of conduct, failure to prove that alternative explanation does not of itself establish the local authority's case (*The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948 at 955–6).

(ii) The burden of proof is the simple balance of probabilities. The inherent probability or improbability of an event is a matter to be taken into account when deciding whether that event occurred (*Re B* [2008] UKHL 35 at [15]). There is no room for a finding by the court that something might have happened (Re B at [2]). The legal concept of proof on the balance of probabilities must be applied with "common sense" (*The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd*).

(iii) Findings of fact must be based on evidence, not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide

context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).

(iv) The court looks at 'the broad canvas' of the evidence before it, taking into account a wide range of matters including the credibility of the witnesses and inferences that can properly be drawn from the evidence, and considering the evidence in its totality. The court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]).

(v) The evidence of the parents/carers is of utmost importance: it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them (see *Gestmin SGPS SA v Credit Suise (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)).

(vi) The court must bear in mind that a witness may tell lies in the course of an investigation and the hearing, but be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas* [1982] QB 720).

(vii) With respect to the welfare decision before the court under Part IV of the Children Act 1989, the court must be satisfied that the threshold criteria set out in s 31(2) of the Children Act 1989 are made out and have regard to s 1 of the 1989 Act, including the stipulation that the child's welfare is the court's paramount consideration. In proceedings under the inherent jurisdiction of the High Court, the court must be satisfied that the order sought is in the child's best interests. The child's welfare is the court's paramount consideration.

In the context of cases of this type, where suspicion may find 'an easier foothold', it is important to remember that suspicion is not enough (*Re X (Children) (No 3)* [2015] EWHC 3651 (Fam), [2017] 1 FLR 172). The court must not guess or infer what the evidence might have been (*Re C, D and E (Children) (Radicalisation: Fact-Finding)* [2016] EWHC 3087 (Fam)).

The judge decided that the Local Authority had not proved its case, despite the suspicions raised. In attempting to prove that Mother shared her brother's extremist views, the Local Authority had risked 'descending into "guilt by association" '. Mr Justice MacDonald concluded that whilst Islamist extremism and radicalisation exist as a 'brutal and pernicious fact in our society', the court must hold fast to the 'cardinal precepts of fairness, impartiality and due process that unpin the rule of law in our liberal democracy'.

The possible pitfalls of Local Authority intervention and assessment are exemplified in *A Local Authority v X, Y and Z (Permission to Withdraw)* [2017] EWHC 3741 (Fam), [2018] 2 FLR 1121. The judge criticised the Local Authority for having initially approached the case by setting out, ' an alleged generic pattern of behaviour exhibited by a set of families who are said to share common characteristics with this family, and then works hard to make this family fit that pattern, even though, on the local authority's own evidence, in several respects it does not comfortably do so. This results in an analysis that fails to reflect all aspects of the family's presentation and one which lacks nuance'.

There appeared to have been some benefit from the involvement of an expert in radicalisation, in the area of identifying mainstream Muslim practices and interpretations and providing some insights into the likely impact of the parents' alleged conduct upon the children. It was clear that the judge was not convinced that the expert

had sufficiently challenged the parents in his assessment. The court also had before it assessments by the social worker and the Guardian which concurred with the expert that there was no evidence that the children had been radicalised.

The nature of the assessment, required the mother to discuss with the children details of ISIS of which they were previously unaware:

> 'This raises at least the unfortunate possibility that the first time the children were exposed in detail to the significance and aims of ISIS was as a result of the social worker seeking to establish whether the children were at risk of radicalisation.' [42]

Welfare decisions

One of the major challenges facing the family courts is how, having identified risks, to facilitate the provision of a safe or safe-enough environment, in some cases involving reparative work.[6]

In the normal course of public law family cases, welfare decisions are informed by the evidence of the parties, the social workers and Children's guardian and sometimes experts who the court decides are necessary to provide specialist advice, eg medical or psychological, as to the appropriate placement, contact and therapeutic arrangements for the children. The place of experts in radicalisation is much less clear and has met a variety of responses[7]. In terms of evaluation risk, Knowles J was explicit regarding her approach in A Local Authority v A Mother and others [2018] EWHC 2056 (Fam) [16]:

> 'I refused an application by the mother for an expert risk assessment of her. I was unpersuaded of the credentials of the expert to be instructed and, more pertinently, I took the view that the assessment of risk in the particular circumstances of this case was one which I, rather than an expert, was best placed to undertake.'

In the same case, the court evaluated evidence of the mother's ongoing specialist therapeutic work, aimed at understanding her vulnerability to 'enter a more radicalised state of mind and a tendency towards feeling depending on her faith to make sense of her experiences and identity':

> 'Additionally, the mother was receiving support via the Home Office's Desistance and Disengagement Programme [DDP] and had been meeting with an intervention provider since late March 2018. The DDP is a program which has been developed to assist individuals who are already engaged in terrorism or who it is suspected have engaged in terrorism to disengage and reintegrate safely back into society. As a returner from Syria, the mother met the threshold to receive support via the programme. Reports on the mother's engagement with the DDP were made available to the local authority, the parties and the Court.'[18]

An example of the court instructing a number of experts to inform welfare decisions is provided by *A Local Authority v M and Others* [2017] EWHC 2851 (Fam), [2018] 2 FLR 875 – this was described as one of the first cases so far heard where it was found that at least three of the young children had been severely radicalised by their mother (who was at the time of the hearing in prison). The experts included:

A Channel worker[8] – 'an educated experienced Islamic scholar' who used the Police Vulnerability Assessment tool to

6 The notion of 'de-radicalisation' was specifically eschewed by one judge:
6 'I make no apology for repeating that the court's objective was not to 'de-radicalise' B [the child in question], which rather repels me as a concept, but to offer her the space and the stimulation to open her mind to alternative possibilities.' Hayden J in The London Borough of Tower Hamlets v B [2016] EWHC 1707 (Fam) at [142].
7 See the criticisms of a self-styled specialist by Mr Justice Hayden in *London Borough of Tower Hamlets v B (No 2)* [2016] EWHC 1707 Fam, [2016] 2 FLR 887
8 A government programme, 'which focuses on providing support at an early stage to people who are identified as being vulnerable to being drawn into terrorism' [Channel guidance – GOV.UK, 23 April 2015]

assess the children. She concluded that the children were no longer radicalised – the Court disagreed. It however agreed the recommended programme of support and safeguards, including;

> 'i) access to appropriate ideological guidance;
> ii) mainstream schooling;
> iii) preferably being with their father (about which she had strong views, considering that if they did not go home their vulnerability to radicalisation would increase);
> iv) outside financial support and guidance.'[22]

> 'Professor Silke and Dr Brown – [they] gave evidence together (as they had before Hayden J) in LB of *Tower Hamlets v B (No2)* [2016] EWHC 1707 (Fam). They offer very considerable core expertise in this area. In the context of radicalisation, they were positive and optimistic about the prospect of the reunification of the children with their father.'[9]

> 'Professor Bashir, Consultant Child Neuropsychiatrist – agreed with Professor Silke and Dr Brown's interpretations. He has significant experience working in Pakistan and with severely radicalised children (e.g. failed suicide bombers). He applied that expertise from the most extreme and dire of circumstances to the situation that affects these children. He displayed a very human, balanced and realistic perspective of the father and the children . . .he concluded that the children were much more likely to rekindle or develop extreme and antisocial views in foster care, more so if that care was unsuccessful or even broke down. Like the previous witnesses he also brought together the personality and perspective of the father, who needed to become more assertive, and the children, with proactive support and advice; endorsing the proposal of regular access to religious scholarship, family support, of course schooling, and outside activities, and social work parenting support and guidance. Work was needed with the children on the role of their mother, but the father did not need therapy.'

> '27. Professor Bashir advised that a roadmap was required. His balanced approach, sympathetic to the needs of these children was enhanced by his strong cultural understanding, which gave his evidence an even greater substance.'[10]

Importantly in the welfare consideration in this case the court found the allocated social worker to be, 'a really impressive individual, not just possessing a sensitive, cultural understanding, but having the considerable advantage of being informed, interested, humane and demonstrating a really balanced appreciation of the many layers of this complex case.'[11] This illustrates the successful synthesis of the complementary work of case workers and court-approved experts to assist the court in making practical and sustainable welfare decisions.

In a number of cases the courts have endorsed a suite of protective measures, including at an interim stage, to enable children to stay with/return to their families in the context of concerns about radicalisation. In a recent case in which I acted for a parent, the court sanctioned the following list of interim protective measures to allow the children to return home from foster care.

(a) Continued surrender of their passports
(b) Orders forbidding the seeking/issuing of any new travel documentation
(c) Electronic Tagging
(d) Monitoring software for all the family's electronic devices
(e) Direct monitoring of the family's electronic devices
(f) Announced and unannounced visits to the home

9 Ibid [25]
10 Ibid [26]–[27]
11 Ibid [35]

(g) Full access to the children at home and/or at school

(h) Undertakings not to remove the children from the jurisdiction and to remain living where they are.

(i) Full parental engagement in multi-disciplinary procedures.

Conclusions

The starting point for practitioners continues to be a commitment to fundamental principles:

> '6. Every person in this jurisdiction has the inalienable right to freedom of thought, conscience and religion: the freedom to believe whatever one wishes, to be able to express those beliefs, to manifest them in every aspect of life, including to associate with others who hold similar beliefs; additionally, self-evidently, the right to bring up their children within those beliefs and the right not to be treated less favourably than others because of those beliefs. Those rights have long been recognised in our society and are enshrined in our law (Arts 8, 9, 10 and 11 of the European Convention of Human Rights and enacted in the Human Rights Act of 1998). This case, in common with other similar ones, confronts not just behaviours but, as I recorded earlier, whether and in what circumstances the religiously motivated views of parents are so harmful to their children that the state should intervene to protect the child. All families are free to bring up their children as they see fit, provided of course, that within a wide ambit they do not cause them harm. But the question in this and in other cases is under what circumstances might the parents' religious views and activities result in harm to the children's physical and emotional health and well-being.
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> 7. The Government's Prevent Strategy and the radicalisation of some parents and of their children has brought this issue very much to the fore; it challenges the tolerance and neutrality between different religions and perspectives, in particular denying the opportunity to individuals to prevent hatred (and thus extremism). It goes to the very roots of democratic and jealously guarded freedoms. Self-evidently the State cannot place limitations on beliefs that are held by a private individual. It can, however, place limitations on the manifestation of those beliefs if that limitation is a proportionate means of achieving a legitimate aim, which in these circumstances would be protecting public order, health, morals, freedoms or rights of others, generally or individually.'

The tension between private beliefs and child protection lies at the very heart of this case.[12]

Compared with the situation a few years ago, when personal experience of such cases revealed a widespread lack of confidence in social workers and guardians in approaching such cases with confidence, the increasing experience and reporting of such cases appears to be helping to bridge the gap between research/specialist advice and everyday child protection practice.

Whilst there remains a lack of consensus about the best way to consider and tackle these matters[13] the increasing experience of professionals, including the Courts, in dealing with such cases over the last half decade, is providing an increasingly reassuring foundation for lawyers and child protection professionals to approach these cases with rigour, balance and humanity.

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12 The observations of Newton J in paragraphs 6 and 7 of *A Local Authority v M* [2016] EWHC 1599 (Fam), [2017] 1 FLR 1389, cited with approval by Knowles J in *A Local Authority v A Mother and others (fact-finding)* [2018] EWHC 2054 (Fam) [9].

13 The government's own Prevent Agenda to combat radicalisation continues to attract criticism, including from academics challenging its methodological underpinnings. In early 2018 the Muslim Council of Britain approved workshops under 'Safe and Secure' an alternative to Prevent which is intended to encourage the engagement of Muslim communities who regard the existing government scheme as stigmatising.