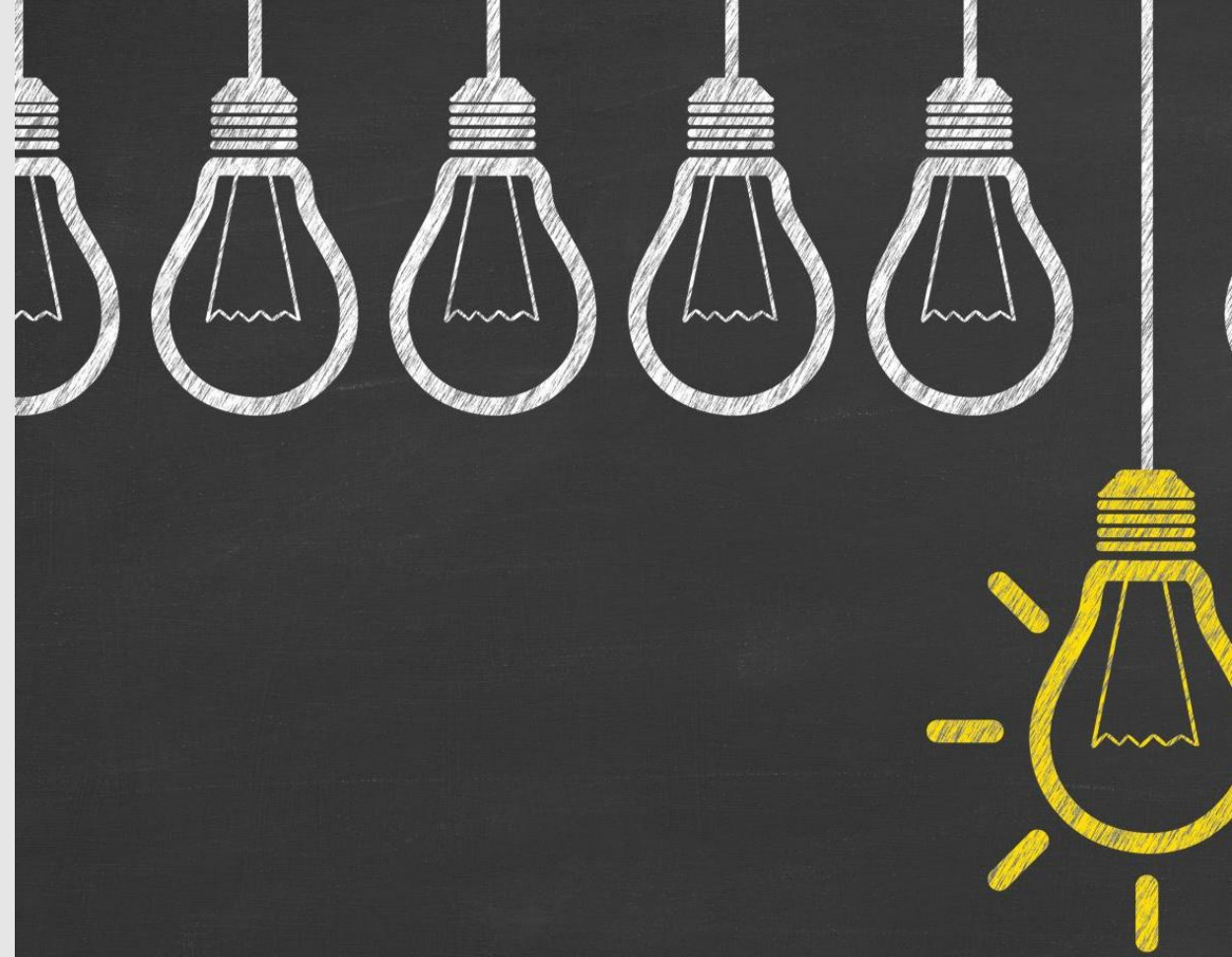


Latest Developments in Private Law Children Work

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What we are going to try to cover:

- Alienating behaviours
- Tracking devices
- Relocation
- Interim contact and procedural irregularity
- Discharging without notice Part 4 Family Law Act 1996 orders
- Dismissal of private law proceedings at directions hearing.
- Duration of section 91(14) orders
- Parental Order or Adoption and legal advice
- Who loses parental responsibility or cannot gain parental responsibility
- Costs

Family Justice Council Guidance on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour

December 2024

§10 of guidance:

A court would ... need to be satisfied that three elements are established before it could conclude that Alienating Behaviours had occurred:

- 1) the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer; and
- 2) the reluctance, resistance or refusal is not consequent on the actions of that parent towards the child or the other parent, which may therefore be an appropriate justified rejection by the child (AJR – Appropriate justified rejection), or is not caused by any other factor such as the child's alignment, affinity or attachment (AAA – reasons why a child may favour one parent over the other); and
- 3) the other parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's reluctance, resistance or refusal to engage in a relationship with that parent.

Why is it important to be so prescriptive in the drafting Court Application?

§31 of the Guidance:

- Where, after careful analysis of the information provided to the court in the documents, it appears that all three elements of Alienating Behaviours (described above and below) may be present, the case must be transferred for case management and determination by a Judge.

Re Y (Experts and Alienating Behaviour: The Modern Approach) [2026] EWFC 38:

- At §40 of the judgment, McFarlane P endorses the FJC guidance and says [§42]: Element (ii) in paragraph 10 requires the court being satisfied that a child's reluctance, resistance or refusal is not the result of (a) the actions of the estranged parent towards the child or other parent, or (b) the typical emotional response of a child attaching, feeling affinity towards or aligning with one parent as opposed to the other, rather than the result of psychological manipulation of the child by that parent.

- At §43: Paragraph 18 is in direct terms concerning cases of domestic abuse: 'Given the relative impact of domestic abuse, the harms that flow from it and the importance of protecting children, Alienating Behaviours will not be found in cases where findings of domestic abuse are made which have resulted in a child's appropriate justified rejection (AJR), or in protective behaviours (PB) or a traumatic response on the part of the victim parent.'
- At §45: The factual matrix around allegations of alienating behaviour is a matter for the court alone; it is not a matter for expert psychological evidence. Any findings of fact once made will then, but only then, be important material for an expert or CAFCASS officer tasked with advising the court on issues of welfare.

- §76: “One additional observation on process can be made. Those in the position of the mother in the present case may have a choice as to which procedural avenue should be used in an attempt to bring their case back to court in order to challenge findings of alienating behaviour made some years earlier. Whilst applying for permission to appeal, and an extension of time for doing so, is one option, it will in many cases not be the most appropriate.....
- §77: ...”it would seem that the better course is likely to be for those seeking to challenge such a finding to go back to the first instance court either under FPR 2010, Part 18, or to apply for past findings to be reopened as part of a substantive application to discharge or vary existing orders”.

Re A Mother (Appeal: Alienating Behaviours: Fair Procedure) [2026] EWHC 783

- Mr Justice Poole
- At a finding of fact hearing on the appellant mother's allegations of abuse against the father, the Recorder ("the Judge") not only dismissed her allegations but also found her to have fabricated them and to be guilty of 'parental alienation' in respect of both the parents' twin children, P and Q. The mother appeals the findings on three grounds.

In his skeleton argument in support of the appeal, Mr Eaton for the appellant mother divided ground one into two elements:

(a) Procedural unfairness: the Judge made a preliminary decision not to try the father's allegations of alienating behaviour but then made findings against the mother of 'parental alienation'.

(b) The finding of 'parental alienation' was substantively wrong because, having recognised and purported to adopt the three stage approach first set out by the Family Justice Council Guidance, December 2024, the Judge failed to apply that guidance and/or made findings which were unsustainable given the evidence.

§37 – “Alienating behaviours are a form of abuse. If it is alleged and the court considers that a fact-finding hearing is required then the allegation should be set out and the evidence in support identified. An inference cannot be drawn from a finding that allegations of abuse by parent 1 are not proved, or even that they have been fabricated by parent 2, that parent 2 is, without more, guilty of alienating behaviour. The burden of proof of an allegation of alienating behaviour lies with the person making the allegation and the court has to consider whether, on all the evidence, the allegation is proved.”

§39 – “The court should adopt the three stage enquiry set out in the FJC Guidance and by Sir Andrew McFarlane in Re Y (above). Whilst the judgment under consideration pre-dated Re Y, the Judge had the benefit of, and purported to adopt, the FJC Guidance.”

§41 – “The Judge made a preliminary determination not to hear the father’s allegations. He thereby took the allegation of alienating behaviour off the agenda for the hearing. His observation that in determining the mother’s allegations he would deal with the general issue of why the allegations had come up “which might feed into parental alienation” was not a determination that he was going to decide whether the mother had been guilty of alienating behaviour at the hearing. Hence, the mother was not on notice that she faced a potential finding of alienating behaviour at the hearing. It breached her article 6 right to a fair hearing and natural justice to then make a finding against her of “parental alienation”. The finding of parental alienation was unjust for procedural irregularity and must be set aside.”

- Poole J also found that the Recorder had not addressed the 3-stage test set out in the FJC guidance so had made “substantial errors in making his finding that the mother had been guilty of parental alienation” [§42]

Tracking Devices

- Forgery of digital evidence in the family court is now a significant problem.
- WhatsApp exchanges can be faked by logging into any of a number of websites.
- AI is used to manipulate photos and documentation.
- Ring door bells and internal cameras are used to monitor the family in the home and to log when they leave and enter.
- Recording devices can be concealed in clothing, bags or toys to monitor movements
- The use of the “Find My” and other covert apps on a smart phone can track ex-partners and children

Re BM (Tracking Devices) [2025] EWFC 290

- Decision of HHJ Sharpe sitting as a Circuit Judge so not to be cited as authority.
- “the children’s foster carers found stitched into a bag which had been given to one of the children by their parents a small device manufactured by the same company that made a mobile phone M was then using. It was swiftly established to be a tracking device. Concerned at this finding other items previously given to the children by their parents were now searched and two further devices were found, each in a toy given to a child some weeks previously and each concealed by being sewn into the toy.”

- It was my view ... that it was difficult to see any basis upon which children in foster care might be located and tracked by parents for positive reasons. Locating the children through the use of tracking devices only suggested that the parents wanted to know where the children were either to destabilise a placement or to terminate it by snatching the children at a convenient point, for example in a park or area where easy access and a swift getaway could be arranged. Whilst I accepted that a less insidious reason might have been a cause for their deployment it was difficult to identify a good reason for hiding a tracker.”
- F denied knowing about the trackers and denied placing them. M accepted she did it without F’s knowledge
- Both parents said the phones they used at the time had been sold or had been factory reset

- “In my judgement that question can be answered unequivocally. I do not believe what the parents tell me and I reject their evidence, not just when it conflicts with other evidence before me but when it does not too. In my judgement the decision to use tracking devices was a parental decision and one in which F was a full participant. In fact I am inclined to the view that F was probably the driver behind what has turned out to be a disastrous diversion from the progress the case had been making.”

Even in the twenty-first century and when dealing with technology beyond the ken of judicial thinking older than a decade or so, the old tools of the court still serve it well. In *Re TG Sir James Munby P* set out the following:

“There are some principles that ring down the centuries, and the efficacy of the adversarial process is one of them. It is over 600 years since Hankford J is reported as having said in 1409 (YB 11 Hen 4, Mich fo 37) that:

"Home ne scaveroit de quel metal un campane fuit, si ceo ne fuit bien batu, quasi dicerit, le ley per bon disputacion serra bien conus [one does not know of what metal a bell was made if it has not been well hit, in other words, by good disputation will the law be well known]."

In a world inconceivable to Hankford J and in a forensic context he would find baffling, the point remains as true today as then, and it surely applies as much to the facts as to the law.

42. Sir William Hankford delivered his judgment at the start of the fifteenth century. What the Family Court looks like and what problems it is dealing with 600 years forward in the twentieth century are equally inconceivable to me but it must be hoped that a rigorous forensic process will be as useful then as it was to Hankford J and has proved so for me.

Re: S-O (CHILDREN) (Relocation and Prohibited Steps Order)
[2026] EWCA Civ 998:

§82 – “:In Re F (A Child) (International Relocation Case) [2015] EWCA Civ 882, [2017] 1 FLR 979, McFarlane LJ (as he then was) reiterated, at [48], what is required when the court is undertaking the “welfare balancing exercise”. It is an exercise: “in which each and every relevant factor relating to a child’s welfare is weighed, one against the other, to determine which of a range of options best meets the requirement to afford paramount consideration to the welfare of the child.”

§83 - All the judge said was that; “Refusal of relocation would mean this arrangement [i.e. the existing arrangements] continues indefinitely”, adding later:

“How those arrangements are going to take place ... needs to be a matter for another day, given the lack of alternative proposals put forward by the mother in the event that I ... dismissed her application. It may be that she will be able to make some change to her arrangements in terms of the amount of time she works overseas. It may be that she does not and the court will need to look at the live with and spend time arrangements now that I have provided this judgment in respect of the removal application. ”

§84 - “With all due respect to the judge, this was not a sufficient consideration of the options available for C as part of the welfare balancing analysis. Fundamentally, there is no analysis of any option other than relocation. The judge did not consider the positives and negatives of the existing arrangements continuing which would then need to be compared with the positives and negatives of relocation. This was not a matter for another day but needed to be determined at the same time and as part of the overall welfare analysis.”

§89 – “contrary to the judge’s summary, the mother’s case in respect of her allegations of domestic abuse did not rely solely “on her own account”. She relied on the evidence from the nanny and her grandmother. In addition, the ISW’s evidence, in particular in her first addendum report, contained independent evidence from others. Secondly, the judge’s analysis of why F2 might have lied about the previous findings was based, at least in part, on speculation.”

- §93 – ‘There is no evidence which supports the conclusion that there is a sufficient risk that the mother would keep S in State A during a contact visit as to justify preventing him from visiting her there. F1’s case in support of the PSO when it was made in August 2025 had been that the mother might seek to “attempt to achieve [relocation] unilaterally” if her application was refused.... The position had fundamentally changed by the final hearing because the mother had agreed that S would remain living here.”
- §94 ‘....There is again, no evidence to suggest that the mother would act in a way that was so contrary to S’s welfare. Indeed, all the evidence is to the contrary effect.”

Re C (Interim Contact: Procedural Irregularity [2026] EWHC 1854

Keehan J – a good case as it states the obvious but addresses something that happens more regularly than the senior judiciary might think.

Granted a stay of paragraph 5 of the order made by HHJ George, which provided for interim contact to take place between the mother and the child supervised no more than once a fortnight, no less than once a month, until the final hearing of the matter.

There were four grounds of appeal relied on by the father:

- a. the judge was wrong to order interim contact at a frequency which was not in the child's best interests, and failed to undertake a full welfare analysis;
- b. the learned judge was wrong to base her decision on the need to gather evidence ahead of the final hearing when the test in law is welfare;
- c. it was procedurally irregular for the learned judge not to give a judgment, and she failed to give adequate reasons for her decision; and finally

d. it was procedurally irregular for the learned judge to depart from the professional recommendations of Cafcass, existing expert opinions, and a previous judicial decision not to make a contact order without giving reasons for doing so.

§19 – “Both the mother and the father, and indeed the child, were entitled to know clearly the basis upon which that decision had been made. It is agreed the learned judge gave no judgment and did not at the hearing, when announcing the order, give reasons for that decision, however short. Moreover, in the order of 23 February, no reasons are set out for the contact that had been ordered at paragraph 5 of the order, and indeed the recitals which appear at the end of that order are silent on the issue of the interim contact.

- §20 - The Court of Appeal has made clear on numerous occasions, most recently in the case of *Re D (Threshold Findings and Final Orders at IRH)* [2025] EWCA Civ 1362, that it is incumbent upon a judge to give reasons for their decision.
- Where reasons are not given, it is not for an appellate court to complete, in the words of Peter Jackson LJ, "the puzzle" and to fill in the gaps. Similarly so, where no reasons have been given, it is not for counsel to seek clarification of a judgment which has not been given."

M v F [2026] EWHC 1768

Trowell J – again, a judgment that states the obvious but on something that happens very often.

- Without notice PSO and NMO made by a DJ
- 3 weeks later F issued a C2 and made counter allegations
- Return date came before HHJ Robertson. She discharged the NMO but made directions for the filing of evidence of a fact-finding in the children proceedings
- Appeal before High Court – substantive grounds were (i) The judge was wrong to determine there was no future risk of molestation and (ii) the judge was wrong to accept an agreement not to attend the home offered by the Respondent was sufficient protection for the Appellant [section 46(3A) FLA 1996].

- Trowell J rejected the submission that on a return date the Judge should not make a different order to that made at the without notice hearing but at §24:
- “I conclude that it was not open to the judge, without hearing evidence from the parties, to say that the risk was situational and had now passed. I recognise that what the judge was trying to do was to take the heat out of the situation. Laudable though that aim is, it is to manifestly over-credit hope against caution without the benefit of evidence.”

- §26 – “As to the fourth ground, namely the acceptance of an agreement in lieu of an order. The argument is made with force given pursuant to section 46(3)(a) of the Family Law Act 1996, that the judge had to consider whether an order was necessary. Given her conclusion that the molestation was just about separation, she could say no order was necessary. However, where, as I do here, I consider that conclusion was wrong, I also consider that the fourth ground is made out.”

R v P (Appeal: Dismissal of Private Law Proceedings at Directions Hearing [2026] EWHC 2215

- Harrison J – 23-page judgment.
- The father appealed the judge's decision to terminate his application for contact with G at a one-hour directions hearing which followed a fact-finding hearing, making an order which limited him to indirect contact and imposing a restriction on the making of further applications pursuant to section 91(14) of the Children Act 1989.
- It was common ground that, in an appropriate case, the power to do so exists, as was reaffirmed by the Court of Appeal in Re A, B and C (Child Arrangements: Final Order At Dispute Resolution Appointment) [2025] EWCA Civ 55, where Baker LJ considered the court's ability to make a non-consensual order at a Dispute Resolution Appointment ('DRA') and summarised the position at [44] as follows:

“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”

and at §55:

- “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.
- “This is a decision which can largely be left to the skill and experience of the family judge without appellate interference.”

§22 “her findings on the allegations at the conclusion of her judgment as follows:

- a. The parties’ relationship was based on love as well as the father wishing to marry a UK citizen
- b. The father has intentionally deceived the Home Office by not telling the truth about his family circumstances in India
- c. The father was coercively controlling towards the mother in the following ways:
 - i. Being physically aggressive towards the mother
 - ii. Shouting and screaming at the mother over minor issues
 - iii. Being verbally abusive and belittling about the mother’s appearance
 - iv. Threatening to remove G to India
 - v. Undermining the mother’s friends and family causing isolation
 - vi. Mocking the mother’s disability

At the conclusion of the fact-finding hearing the judge:

- listed the matter for a one hour directions hearing.
- Directed the parties to file five-page statements responding to the judgment.
- Provided that any party seeking permission to instruct an expert should issue a Part 25 application by 20 February 2026.
- Made an order for indirect contact which provided for the father to send communications to G including a photograph of himself to her home address at a frequency of no more than every two weeks. The mother was to encourage G to read and/or respond to the communications.

- §35 [a very good point in my opinion]:

In accordance with the judge's directions, each of the parties filed short statements responding to the fact-finding judgment. Although I have not heard argument on this specific issue, I have some reservations about the utility of this course. If, in the aftermath of a judgment, a party files a statement accepting all of a judge's findings against them, this must surely give rise to questions about whether that acceptance is sincere or whether it has merely been proffered to appease the court. For the father to come to a genuine acceptance of findings made about his conduct is likely to require more than the filing of a statement and to entail some form of specialist work."

On the basis of the mother's written evidence, the judge held that she was a capable, caring parent who was "very, very badly affected by even indirect contact to [G] to the extent that the Judge was confident that it would affect her capacity to parent." She determined that it was not necessary to order expert evidence from a psychologist. She further held that as a result of the impact of the indirect contact on the mother: "pursuing looking at how a form of contact that is not just indirect might take place, either by involving an officer from CAFCASS again, or father suggests a Guardian acting independently for the child, is not going to give the court any further information than the information it already has".

- The Judge made an indirect contact order for 6 times a year via MGM
- Section 91(14) order for 24 months.
- F appealed on basis that the judge's decision about contact was both procedurally irregular (Ground 1) and wrong (Ground 2). Counsel submits that the judge should not have proceeded to make a determination without a further report from Cafcass or a children's guardian.
- Her substantive decision disregarded the positive benefits of contact for the child and placed too much weight on the mother's health and the father's statement in response to the court's findings while not giving proper weight to his willingness to engage in domestic abuse perpetrator programmes.
- Also, that the judge failed to consider alternative options for direct contact which would not have involved the mother.

- It was submitted that the judge was wrongly influenced in her decision by issues relating to the mother's medical and psychological health without any "Part 25 expert evidence capable of supporting [her] conclusions".
- Further submitted that the judge was wrong to make a section 91(14) order in circumstances where **the court was dealing with the father's first and only application for contact** and such an order was not warranted in the interests of the child.
- Further, Counsel made the point that the mother's assertion that the proceedings are having an adverse impact on her mental health is inconsistent with her ongoing pursuit of judicial review proceedings against the Secretary of State for the Home Department, with the object of rescinding the father's immigration status and ultimately procuring his removal from the jurisdiction.

- The appeal was allowed:
- §64 – *“In my judgement, the mother’s ongoing and vigorous pursuit of the judicial review proceedings was highly relevant to the overall welfare analysis. First of all, it was inconsistent with the case advanced by the mother that the pursuit of these proceedings was so harmful to her mental health as to require them to be brought to a swift conclusion. In this context, I was unimpressed by the submission made on behalf of the mother that she had not needed personally to attend court hearings in connection with the judicial review. That may be so, but as the client she was inevitably the driver of the litigation.”*

§65- *“The second reason the judicial review proceedings were relevant was that they reinforced a finding already made by the court that the mother’s wish was to eradicate all memory of the father from the child and, in effect, to write him out of existence, an outcome which the judge had made clear would be contrary to the child’s interests. By her ongoing pursuit of the judicial review, the mother had demonstrated no change in her attitude in the light of the judge’s findings. This, in my judgement, raised real doubt as to whether any form of indirect contact could ever be effective in maintaining for the child a positive impression of her father and the knowledge, if nothing else, that she was dearly loved by him.”*

- §68 – Harrison J found Judge should not have proceeded without expert evidence. He said:
- *“To a significant extent, the opinions expressed by the experts [clinicians] were based upon the mother’s self-report. By contrast with the responsibility of a court-appointed expert to consider analytically statements made by the subject of an assessment, a treating clinician will generally have no reason to do other than take at face value that which their patient communicates to them. The judge had previously made findings which, as a minimum, suggested that the mother could not be relied upon as a narrator. The clinicians had not had cause to comment upon the significance of the mother’s ongoing pursuit of the litigation to which I have already referred; in common with the judge, they had not been made aware of it.”*

§69 – *“I am unable to accept Ms Whelan’s submission to the effect that the court should not waste its resources for the benefit of a father who has refused to accept its findings. It must not be forgotten that whatever faults he may have as a father, it is the child who has a right to have a relationship with him, provided it can safely be achieved. She, and not the father, is the court’s focus. The court should not lightly cast aside the long-term significance for her welfare of growing up without any meaningful relationship with her father or potentially even knowledge of him.”*

§70 - *"I do not in any way seek to minimise the serious findings of domestic abuse made against the father, but I do not consider that they fall into the category of severity whereby, without more, the court should inevitably conclude that any form of direct contact will be contrary to the child's interests, especially in circumstances where there must be a real doubt about the effectiveness of a regime of indirect contact."*

Re T and A (Children)(Appeal: Duration of Section 91(14) order

- Before Mr Justice Harrison
- Appeal against DJ decision to make an order under S 91(14) Children Act 1989 preventing both parents from making applications about the children under S.8 without the court's permission for a period of 3 years.
- The older child, A was 14 and T was nearly 10.
- By the time the restriction was to cease A would have been 17 and T 13
- Permission was granted to challenge the duration of the order (not the making of the order itself)

- The history of this case mirrors many private law children cases:
 - ‘the application made slow progress through the courts’
 - The process applied by the justices to the fact-finding hearing was unfair and so F appealed and the findings were set aside
 - The litigation had been ongoing for 10 months and ‘no progress had been made’
 - ‘the proceedings meandered for a further 17 months before a final order was made by consent’
 - 16.4 Guardian appointed
 - Two S.37 directions for LA to assess emotional harm
 - Children made subject to CP Plans
 - Expert instructed identified children at risk of harm in M’s care due to her negative views about F
 - Neither child had anything positive to say about F
 - Children suffering harm due to length of proceedings
 - Final hearing by agreement to live with M and spend time with F
 - Family Assistance Order to support family to achieve unsupervised and overnight contact

- Contact did not progress as envisaged
- F made further application to court
- Cafcass invited the Local Authority to become involved and court would need to consider transfer of residence to F's care and Local Authority to consider whether threshold for public law proceedings is met
- 'Absence of legal representation for the parents is likely to have aggravated the problems which have beset the litigation. The main casualties have been the children.'
- Court dismissed F's applications for change of residence and contact and endorsed recital providing for M's agreement to F attending football matches.
- F sought to appeal the substantive decision – Permission refused
- 91(14) made due to family needing a 'break from litigation'.
- On appeal – Mr Justice Harrison – did not agree it was a case in which to make such an order but said the Judge at first instance had discretion to make it.
- Mr Justice Harrison did feel the duration was too long

- *In advancing his case on appeal, F's simple submission is that in circumstances where he had not litigated inappropriately it was wholly disproportionate to restrict his access to the court for a period of three years. Although the children have been harmed by the litigation, the responsibility for this lies not with him but principally with the professionals who have mismanaged the case. He informed me that he has raised a complaint about the local authority which has been upheld by the Independent Investigator.*

- I begin by acknowledging that, as I outlined above, this experienced family judge was faced with a very difficult task. The case had been going on for over four years. **No tangible progress had been made to the children's relationship with F.** With both parties acting in person, undertaking a meaningful process of fact-finding would have been challenging and created significant further delay. In circumstances where the litigation was causing harm to the children, **he was entitled to come to the view that a pause was needed** and that this should be bolstered by the making of a section 91(14) order.
- In spite of the care with which the judge approached his task, I have reached the conclusion that **he fell into error in dealing with the duration of the order.**

- The *Re P* guidelines make it necessary for a judge to give **careful consideration to the ambit and length of any s 91(14) restriction** in order to ensure that it is proportionate to the harm it is aimed at alleviating. As PD12Q makes clear, judges should give reasons for the length they have identified as appropriate. In this case, the judge selected a three year term but gave no explanation for that aspect of his decision. **The question of proportionality was not addressed.**
- **The duration of a section 91(14) order is a critical issue which should not be dealt with cursorily.** There is a substantial difference between an order of short duration which affords children a pause from litigation and one which endures for several years.
- In my judgment, the benefit to children of sparing them from the corrosive effect of being placed at the centre of litigation must be balanced against the disadvantage they may suffer from restricting their parents' ability to **raise legitimate issues** about their welfare before the courts. Even though a section 91(14) order is not an absolute barrier to making applications, **it erects an additional hurdle for applicants to overcome.** It is for this reason that it has been emphasised that the power is to be used with '**great care**'.

- Although I previously determined that the judge was entitled to make a section 91(14) order, I do not consider that this was an obvious case for doing so. F's initial application to spend time with his children took more than three years to resolve, **but this was not his fault**. The primary causes of the inordinate length of the proceedings were:
 - Delays in the court system which meant that it took 16 months to list an initial fact-finding hearing
 - The errors made by the justices which resulted in their determination being set aside;
 - The need to appoint a guardian for the children and the subsequent change of guardian;
 - M's attempt to manipulate the process by denying the guardian and her solicitor unrestricted access to the children;
 - The potential risks faced by the children in M's care and the need to involve the local authority and commission further reports;
 - Delays by the local authority and the repeated changes of social worker.

In my judgment, it is regrettable that when the matter was restored to court in 2024 Cafcass determined that it was not appropriate to join the children, thus contradicting one the previous guardian's recommendations. This had the effect of denying the children a degree of continuity which they badly needed. For the purposes of the enforcement application, two local authority reports were prepared by different social workers, neither of whom will have had the same level of knowledge about the proceedings as the previous guardian.

- This is not a case where F has abused the court process by making repeated applications or by indulging in the type of '*lawfare*' described by King LJ in *Re A*. I reject the submissions made on behalf of M that F's conduct of the litigation demonstrated an '*entrenched pattern of coercive and controlling conduct*': no such finding has been made; the previous guardian's reports lend support to the approach he adopted.
- In my judgment, the desirability of easing pressure on the court lists should not routinely be used to justify the imposition of a section 91(14) order in cases where this feature is absent
- Most regrettably, this is a family which has been let down by the system. A section 91(14) order was justified as the prolonged litigation had become harmful to the children. In my judgment, however, it was disproportionate in the circumstances of this case to impose a three year restriction on making any type of application for orders under section 8 of the 1989 Act

- So far as applying for a 'spend time with' order is concerned, the proportionate duration for the restriction, in my judgment, would have been 12 months. This would have given the children a significant degree of respite from litigation. In circumstances where it remained in the children's long-term interests to repair their relationship with F, it was wrong, in my view, to impose a longer restriction.
- So far as other section 8 orders are concerned, I do not consider there was any need to impose a restriction at all save perhaps for a very short period of time. This aspect of the section 91(14) order should be immediately discharged. I was informed that the parties presently disagree about the most appropriate school for T to attend for his secondary education. I urge them to attempt to resolve this through mediation, but if they cannot do so it is an issue that will require urgent resolution through the courts.
- An unintended consequence of the present section 91(14) order is that neither party can make an application for a specific issue order without the leave of the court, a position which reinforces the need for 'great care' when a court is contemplating the making of such orders.

- I want to end with a note of caution. Although I have decided to allow this appeal to the extent set out above, both parties should think carefully before issuing further applications.
- Mediation is usually a much better way of resolving disputes than going to court. As the history of this case demonstrates, litigation is an inherently flawed process. Judges can make decisions and craft orders, but do not have the ability to cause parents to change their attitudes towards each other. This is often the root cause of the harm which children experience when they are placed at the centre of adult conflicts. My decision to allow the appeal will not prevent a court in future from imposing further section 91(14) restrictions should the welfare of the children require it.

PP and QQ v RR [2026] EWFC 172 – Surrogacy

- Parties underwent IVF treatment in Sri Lanka using Husband's sperm and donor egg and surrogate mother.
- The surrogate gave birth to a child but subsequent DNA testing (for immigration application) established that the husband was not the genetic father.
- Neither intended parent was a genetic parent of the child
- Parties could not apply for a Parental Order due to s54(1)(b) which requires that 'the gametes of at least one of the applicants were used to bring about the creation of the embryo'
- In my judgment, the Applicants are blameless. Neither of them is biologically related to the children, as a result of the actions of the clinic which used donor sperm rather than the sperm of PP. Whether this was inadvertent error, perhaps as a result of poor internal processes, or was intentionally done (for whatever reason) is not clear. The fact that the clinic's explanation for what happened is inconsistent has added to the pain of the Applicants.

- Application made S42(6) Adoption and Children Act 2002 – The children had lived with the Applicants since birth and it was intended that they would be brought up by the Applicants. The surrogate has given consent to the applications and relinquished any legal rights.
- *From everything I have read and heard, the Applicants are giving the children outstanding care. They are the de facto parents of these young children who need permanence and stability. Adoption would confer legal parentage and parental responsibility. Lesser alternatives (child arrangements orders or special guardianship, for example) do not carry the same legal parentage rights. In my judgment, the application for an Adoption Order has real prospects of success and is in the interests of the children, and I will grant the Applicants leave to apply*
- The Applicants will need to give at least three months notice of their intention to apply for an Adoption Order to the relevant Local Authority (s44(3) of the ACA 2002), after which period they will be able to make their substantive application for an Adoption Order.
- The court was also satisfied that a child arrangements order should be made to provide the applicants with parental responsibility pending determination of the adoption application (S12(2) Children Act 1989)

Re Q (Surrogacy: Legal Advice) [2026] EWHC 1538

Mrs Justice Knowles

Case concerned a foreign surrogacy agreement

Applicant was a single man who sought to become a parent via surrogacy

He did not have the benefit of independent legal advice before he began the process.

Chose a clinic in Northern Cyprus. He was matched with Ms X who was from Kyrgyzstan but was working in Dubai. Applicant was told Ms X would return to Kyrgyzstan but the birth was planned to happen in Moldova but due to complications Ms X could not fly to Moldova and so gave birth in Kyrgyzstan.

Applicant and the child remained in Kyrgyzstan after the birth for many months due to significant difficulties obtaining a passport for the child.

Kyrgyzstan - no legal framework within which surrogacy to achieve parenthood by a single man could be formally recognised

“Mr A and Q paid the price for these chaotic arrangements in that he was unable - over many months - to obtain a British passport for Q because he did not have access to original surrogacy and other documents ”

Child was issued with a British passport in March 2025 and entered the UK in July 2025

Having considered the evidence as a whole, I have however concluded that Mr A did not act other than in good faith albeit he acted naively.'

*'I urge intended parents to obtain independent legal advice about what is contemplated **before** they embark on a surrogacy journey and cause a child to be born. The glib assurances by this agency that a child could be born anywhere other than the state of the surrogate's nationality builds into any such surrogacy arrangement legal uncertainty, if not downright illegality, as the circumstances of this case so clearly illustrate. Additionally, the situation in this case was complicated from the very start by the fact that it was never envisaged that the surrogate would give birth in the country in which the embryos were implanted into her. Leaving aside the undeniable risk that medical care for the surrogate and the unborn child might be compromised by such an arrangement, it creates legal uncertainty, potential delay in resolving legal and other administrative matters, and exposes the surrogate and unborn child to unacceptable risk arising from unforeseen consequences such as premature birth in a state not envisaged as the place of birth. '*

Application for parental order made by a single applicant is governed by S.54A HFEA 2008. The court may make a parental order in respect of a child born through a surrogacy arrangement where (a) such an order meets the child's welfare needs in accordance with S.1 ACA 2002 and (b) the following criteria is satisfied:

- (1) The child has been conceived artificially and is genetically related to the applicant (s.54A(1)).
- (2) The intended parent has applied for an order within six months of the child's birth (s.54A(2)).
- (3) At the time of the application and the making of the order, the child's home has been with the applicant and the applicant is domiciled in the UK (s.54A(3)).
- (4) The intended parent is over 18 years old (s.54A(4)).
- (5) The surrogate (and her spouse, if applicable) has given her consent to the making of a parental order and that consent has been given freely, unconditionally and with full understanding of what is involved and that consent has been given more than six weeks after the birth of the child (s.54A(5) and s.54A(6)).
- (6) No money or other benefit (other than reasonable expenses) has been given or received by the applicant in respect of the surrogacy arrangement unless authorised by the court (s.54A(7)).
- (7) No order relating to Q pursuant to s.54 or s.54A has previously been made (s.54A(8)).

The court must also have regard to the welfare checklist set out in s.1(4) of ACA 2002

Re J (Loss of Parental Responsibility) [2026] EWCA Civ 344

Court of appeal

Sir Andrew McFarlane, Lady Justice King, Lord Justice Stuart-Smith

Case concerned the attribution of parental responsibility and the status of ‘father’ in respect to a child.

There was an acceptance by all parties that the common law definition of ‘father’ applied, so that only the individual whose sperm has fertilized an ovum so as to create the embryo from which the living child has developed can be regarded in law, as the child’s father ‘the genetic father’

The appeal related to the consequences where an individual who is not, in law, a child’s father, nevertheless, registered as such in the child’s birth register entry.

‘4. Acquisition of parental responsibility by father.

- (1) Where a child’s father and mother were not married to, or civil partners of, each other at the time of his birth , the father shall acquire parental responsibility for the child if—
- (a) he becomes registered as the child’s father under any of the enactments specified in subsection (1A);

The CoA determined:

“Where an individual is registered as a child’s ‘father’ in their birth register entry, the parental responsibility attributed by such registration does not attach to that individual if they are not, in fact, the biological/genetic father of the child. In order for parental responsibility to be acquired by registration on a birth certificate under CA 1989, s 4, two conditions must each be fulfilled:

- a) The person must be the genetic/biological father of the child; and
- b) That person must be registered as ‘father’ in the child’s birth register entry;

Although the parties may believe otherwise, no parental responsibility is acquired at any stage by an individual who is wrongly registered as 'father' in a birth register entry. In consequence the question of whether parental responsibility in such circumstances is automatically terminated on the making of a declaration of non-parentage under FLA 1986, s 55A, or requires a bespoke order, simply does not arise.

On that basis, it is clear that the decision of Debra Powell KC in the case of J was entirely correct for the reasons that she gave (save that, rather than any parental responsibility being 'void ab initio', the correct understanding is that it never arose in the first place as the registrant was not the father).

Re X (female partner non-acquisition of parental responsibility) [2026 EWFC 252]

Before Recorder Sirikanda KC

- Applicant and respondent both women
- AR – the Applicant. BM the respondent.
- AR's application for child arrangements order in respect of the child, X.
- BM is child's genetic and gestational mother. X lives with BM and does not have contact with AR. BM opposes the application. She makes allegations of domestic abuse against AR which are denied.
- X's genetic father is LY. He has played no part in X's life.
- AR relied on her inclusion on X's birth certificate as the basis for her parental responsibility
- X was conceived after sexual intercourse with LY

- The pregnancy was not as a result of assisted reproduction
- X was born in 2023 and AR was present at the birth.
- 6 weeks later BM and AR visited the local registry office and met with the Deputy Registrar.
- Both parties gave differing accounts of what took place at the Registry office
- The birth certificate recorded 'Parent ' as AR and 'Mother' as BM
- AR's case is that by being named as the parent of X on his birth certificate she acquired PR for him
- Recorder Sirikanda KC relied on the Judgment of McFarlane in Re J (Loss of parental responsibility) [2026] EWCA Civ 344

- It was held that:
 - The only way AR, a woman, could acquire PR for X as a result of registration as his parent on the birth register, is if , prior to registration, she was also a parent pursuant to section 43 HEFEA 2008. That is the proper construction of Section 4ZA CA 1989
 - Section 43 HEFEA 2008 contemplates that the child was born as a result of assisted reproduction within the scheme of the Act
 - It is common ground X was not born as a result of any form of assisted reproduction
 - Therefore AR does not have PR for X and I will make a declaration to this effect

If the parties' accounts of what took place at the registry office are accurate it is of concern that there may be a practice of unmarried same-sex female couples who are not in a civil partnership attending registry offices to register a birth, and the woman who is a non-genetic, non-gestational parent being registered as a "parent" without satisfying the criteria for such registration under the Section 43 of the Human Fertilisation and Embryology Act 2008. This is not in accordance with the law and not in the interests of the registered child, who needs certainty as to whether the persons named on the birth register are their legal parents.

I will publish this judgment in an anonymised form on The National Archive website and direct a copy is sent to the Registrar General.

Re M (A Child: Costs) [2026] EWCA Civ 381

Court of appeal

Lord Justice Peter Jackson

Sir Launcelot Henderson

- Appeal by the father from an order of costs made against him by HHJ Rowe KC from an appeal of a panel of two lay magistrates in private law proceedings under Children Act 1989.
- The Judge ordered the father to pay the mother's costs of the appeal from the magistrates which she summarily assessed in the sum of £32,723.50 plus VAT

The appeal from the magistrates in respect of which the Costs Order was made concerned a final child arrangements order under CA s.8 made by the magistrates.

The mother appealed and the father cross appealed. Both appeals were heard by HHJ Rowe KC.

- The Judge allowed the mother's appeal and set aside the Magistrates Court decision
- Dismissed the father's cross appeal
- Directed the case be listed for a final hearing with evidence from the ISW and both parents
- Determined a new ISW should be instructed
- Child arrangements should remain unchanged

Procedure:

- There was no appeal against the judge's decision in the main judgment
- The question of costs was unresolved as was the identity of the replacement ISW
- M applied for an order that F pay her costs of the hearing before the MC and of the appeal to the Judge on an indemnity basis. The application was resisted by the father. The Judge directed the father to file written submission and then handed down judgment without further oral hearing.
- HHJ Rowe KC refused the application for costs of the first instance hearing, but she made a costs order in respect of the appeal
- Baker LJ gave permission largely on the basis that "there is a real prospect that the appellant will succeed in showing that the case fell outside the category of children's cases in which a costs order should or may be awarded"
- The father argued that the mother's appeal had succeeded due to procedural failures by the magistrates, not due to misconduct of a reprehensible nature by the father. The judge had also mischaracterised the father as taking 'the gamble of an appeal' when he had merely responded defensively to the mother's appeal. His own cross-appeal was orthodox and limited in scope and it was dismissed by the Judge without adverse comment.

- *“the mere fact of resisting an appeal, even if brought on grounds which appear to be strong, is in my view **unlikely to amount to conduct which is unreasonable or reprehensible**, even if with the benefit of hindsight, after the appellate court has given its ruling, the appeal may be characterised as a strong one. It is important in my judgment to guard against the dangers of being wise after the event. Looking at the matter objectively, and without hindsight, it is far from obvious to me that the father’s decision to resist the appeal was from the beginning doomed to failure, when it is remembered that the magistrates were exercising a partly inquisitorial jurisdiction with its paramount focus on the welfare of M, and they were not legally bound to proceed in accordance with the wishes of the parents.”*
- *“Further, they had the assistance of the expert evidence of the ISW, Mr Walker, and he gave oral evidence at some length and was cross-examined before the magistrates decided on their order. This is not to say that I doubt the cogent reasons given by the Judge in the Main Judgment for allowing the mother’s appeal from the magistrates’ order, but only that the high bar of unreasonableness in this context must involve a lot more than the mere fact of ending up on the losing side of an appeal where the welfare of a child is at stake and where the views of both parents as well as independent expert evidence need to be considered.”*

The second and third factors taken into account by the Judge also relate to the father's conduct in relation to the appeal from the magistrates. The second factor is the father's decision to cross-appeal, which the Judge criticises in para 27 apparently on the basis that he was acting inconsistently in attacking the reasoning of the magistrates in his appeal on the one hand, while at the same time seeking to uphold their approach and reasoning in resisting the mother's appeal. I do not think this is a fair criticism. The cross-appeal was responsive in nature, and once it was clear from the mother's grounds of appeal that there was going to be a comprehensive challenge made by her to the magistrates' decision, raising issues of procedure as well as the substantive merits of the timetable for moving towards shared overnight care for M, it was clearly incumbent on the father to raise by way of a respondent's notice all the further points which he wished to run so that the appellate court would be fully able to adjudicate on the matter in the round. It is also commonly the case that a litigant wishes to run arguments in the alternative which are mutually inconsistent, and it is not normally an abuse of process to do so. Here, the father was in my view fairly entitled to make the point that the timetable decided upon by the magistrates was in some respects slower than that recommended by Mr Walker, with no apparent explanation for the discrepancy, and to cross-appeal on that basis.

- *The Judge's third related factor (para 29) was the alleged failure of the father to take stock and decide whether it was reasonable to oppose the mother's appeal. The implication is that the strength of the appeal should have been so obvious to him and his lawyers that he should have made an open offer to concede the appeal at an early stage (presumably subject to the court's approval, given the involvement of a child) and that his failure to do so was again unreasonable. In the light of what I have already said about the Judge's first and second factors, and with the greatest respect to her, I am again unconvinced by this argument which is heavily dependent on the benefits of hindsight. Nor does the Judge anywhere explain precisely why, or how, in her words "[w]hat was reasonable at first instance became, in this case, unreasonable on appeal"*
- *62. The Judge's fourth factor (para 28) relates to the solicitor's letter sent on behalf of the father to the mother's solicitors on 23 June 2025, putting her on notice that the father would be seeking a costs order if her appeal was unsuccessful. **The Judge thought that this letter showed an acceptance by the father that costs should in principle follow the event, and he nowhere explained why the reverse proposition should not apply if the mother's appeal succeeded. In truth, however, there can be no place for routine tit-for-tat reasoning of this nature to play any part where costs in children's cases are in issue.** The threat in the letter of 23 June was, in my view, at worst an inept (though familiar) tactical manoeuvre which may merit some censure, but it cannot in itself come anywhere near to justifying a departure from the general rule of no order as to costs. Nor can it reasonably be treated as a tacit admission of liability, whether by estoppel or otherwise.*

63. *The Judge's final factor, before she turned to quantum, was that money paid by the father on costs could not be spent on M, but it was his choice "to take the gamble of an appeal in the face of the merits" (para 30). It is unclear whether in the Judge's view the gamble taken by the father was in deciding to resist the mother's appeal, or in his own decision to cross-appeal. I incline to the view that the Judge probably meant the former, but in either case this factor adds nothing to those which I have already discussed apart from the obvious point that any costs order made against a parent in a case concerning the welfare of their child will prima facie reduce the money available to be spent by the paying parent on the child's welfare. This melancholy fact of forensic life cannot, however, itself be a reason for making an adverse costs order against one of the parents, although it is one of the considerations which cumulatively justify the existence of the general rule in the normal run of cases: see Re S at [24].*

64. Having reviewed the reasons which led the Judge to order the father to pay the mother's costs of the appeal, I am reluctantly driven to the conclusion that, although the Judge directed herself correctly on the law, she erred in principle in distinguishing as she did between the costs of the first instance hearing before the magistrates and the costs of the appeal. In my judgment there were no grounds of sufficient weight to justify the distinctions which she drew, and there was, on the contrary, every reason to make the same order for costs on the appeal as she rightly did in relation to the first-instance costs below. All the considerations which explain the existence of the general rule apply in my judgment with equal force to the costs of the appeal, including in particular those so eloquently stated by Wilson J (as he then was) in the Sutton case, quoted in Re S by Lady Hale at [19].

65. *For these reasons, I conclude that the father's appeal must be allowed, and the costs order made by the Judge against the father must be discharged and replaced by no order for costs*

Lord Justice Peter Jackson :

*66.I agree that the appeal should be allowed for the reasons given by my Lord. His account of the background shows that this was a parental dispute of a sadly familiar kind and that, whatever the outcome of the first appeal might have been, there was no indication that the litigation conduct of the unsuccessful parent was likely to be characterised as reprehensible or unreasonable. Nevertheless, on receipt of the Main Judgment, the mother applied for an order that the father should pay her costs in both courts on the indemnity basis in a total amount of some £80,000. Even the Judge's order granted her barely half that sum, and now that that order is to be set aside she must also bear her own costs of this appeal, which are in the region of £20,000. **This case and the very recent decision in Pringle are unfortunate reminders of why satellite litigation about costs in child welfare cases is to be discouraged by maintaining the general principle that there should be no order for costs unless there has been reprehensible or unreasonable conduct in relation to the proceedings.***

THE END

Darren Howe KC MCI Arb
Clare Ciborowska MCI Arb

