October 2014

Family Law Week

NEWS

Wife granted permission to appeal divorce agreement to Supreme Court

Alison Sharland has been granted permission to take her divorce case to the Supreme Court next June after it was found that her husband misled both her and the High Court over the value of his company.

The Supreme Court has confirmed that the case raises a point of law of general public importance and will hear her appeal against the decision of Court of Appeal which refused to set aside an agreement she had entered into with her former husband on divorce, despite his misrepresentation.

Ros Bever, a family and divorce law partner with Irwin Mitchell, acting for Mrs Sharland in the case which will be heard in early June 2015, said that the Supreme Court will need to consider whether the original decision was unjust due to Mr Sharland's dishonesty.

Mr and Mrs Sharland separated after 17 years of marriage. During the final hearing in the High Court to determine the division of their assets, Mr and Mrs Sharland reached an agreement by which Mrs Sharland would receive £10.355m of cash and properties and Mr Sharland would have £5.64m of cash and properties. Mr Sharland would also retain a significantly larger proportion of the profit received on sale of the shares in his company which had been valued in the proceedings at between £31.5m and £47.25m. The judge, Sir Hugh Bennett, approved the agreement.

However shortly afterwards, and even before the order was sealed, it emerged that the company might be worth significantly more (financial press reports suggested up to $1billion) and that, contrary to Mr Sharland's evidence during the hearing, an initial public offering (IPO) was being prepared. Mrs Sharland sought to set aside the agreement as neither she nor the court had been aware of these facts when the agreement was reached and then approved.

Sir Hugh Bennett found that Mr Sharland had knowingly concealed information from and had lied to the court. But he refused to set the agreement aside because he said the court would not have made a substantially different order from the agreement that the parties had reached. Despite Mr Sharland's dishonesty, the court accepted his evidence that plans for an IPO had been put on hold.

GENERAL EDITOR
Stephen Wildblood QC

Deputy Editor
Claire Wills-Goldingham QC
Albion Chambers

Family Law Week is published by

Law Week Limited
Greengate House
87 Pickwick Road
Corsham
SN13 9BY

Tel & Fax: 0870 145 3935

Two of the three Court of Appeal judges upheld Sir Hugh's decision. They held that although Mr Sharland's non-disclosure had been deliberate and dishonest, in the event it proved not to be "material" to the outcome of the case. They accepted Mr Sharland's argument that Mrs Sharland would not have received a substantially different award had the court been in possession of the truth.

Lord Justice Briggs disagreed. In his judgment the husband's fraud undermined the whole agreement and he should not have been given the opportunity to bring his affairs into line with his original misrepresentation (i.e. delay the IPO which had been imminent at the time of the agreement) or to hold his wife to her agreement against her wishes. Lord Justice Briggs was concerned that as a matter of public policy the court's processes must be protected from fraud, and this was more important than economy and speed.

Despite describing Mr Sharland's conduct as 'deplorable' and that his deceit had been 'deliberate and dishonest', the Court of Appeal went on to order Mrs Sharland to pay Mr Sharland's costs of the appeal.

Ros Bever, a family and divorce law Partner at Irwin Mitchell's Manchester office representing Mrs Sharland, said:

> "We are very pleased that the Supreme Court has agreed that this is a case which requires consideration at the highest level.
>
> "Alison Sharland entered an agreement in the belief that she was receiving approximately half of the value of the matrimonial assets which would have been a fair result. In fact Mr Sharland knew that the company was potentially worth many times the sum that he had led her, the expert accountants and the court to believe and that the shares could be realised much sooner than he had represented.
>
> "Despite his argument to the contrary, the deliberate and calculated nature of his fraud underlined the importance of it in his own mind. The entire basis of the agreement was undermined.
>
> "Mrs Sharland agrees wholeheartedly with the sentiments of Lord Justice Briggs that it is contrary to the most basic principles of justice to uphold an agreement entered into on the basis of a fraudulent misrepresentation. Had this been a contract rather than a judicially approved agreement in proceedings ancillary to divorce, the principle that fraud unravels everything would have applied. We think that this is anomalous, unjust and sends out entirely the wrong message.
>
> "Dishonesty in any legal proceedings should not be tolerated; the family court should not be an exception.
>
> "There are numerous legal arguments to be had before the Supreme Court but we hope that ultimately justice will be done and will be seen to be done."

Mr Sharland's solicitors, **James Brown** and **Beth Wilkins** at **JMW LLP**, said:

> "With the Supreme Court due to consider the details of Mr and Mrs Sharland's divorce, we feel that it would be inappropriate to prejudice those deliberations by taking relevant arguments to the media before they are presented to the Court.
>
> "The fact remains that the Court of Appeal upheld the High Court's judgment that the agreement struck between Mr and Mrs Sharland was fair and had not caused her any loss."

The Court of Appeal **judgment is here**. An article by Sarah Foreman, a solicitor at Vardags, concerning the Court of Appeal judgment **is here**.

Hillingdon girl likely to stay with foster carers following Ombudsman's investigation

A disabled Hillingdon girl is now looking forward to a more stable life, following an investigation by the Local Government Ombudsman.~

The seven-year-old was removed from her parents when she was two because of chronic neglect and possible abuse and has been under local authority care ever since as a looked after child. Despite the girl being settled with a foster family committed to her long-term care, London Borough of Hillingdon has pursued a search for alternative carers, even though the council's advisers recommended she stay where she is.

The LGO found that during her time in care the council has spent two years looking for a family to adopt the girl, who has autism and other developmental delays, but none was found. She has been living with her current foster family since May 2011.

The council asked the current foster carers to become special guardians, which would mean a more permanent arrangement, but the family told social workers they would need the extra long-term support they would receive if she remained a looked after child, and declined to become special guardians.

Because of the family's refusal social workers carried on looking for an alternative permanent family, despite all evidence that this was not in her best interest. This uncertainty about her future has caused the girl significant stress and anxiety, damaging her welfare, her emotional wellbeing and her ability to learn.

The girl's advocate contacted the LGO complaining that the council was not listening to the wishes of the girl to stay with her foster family.

Following the LGO's investigation, London Borough of Hillingdon has agreed to reconsider options for the girl's future as soon as possible. It will also arrange a 'Looked after Child review' chaired by the independent reviewing officer to confirm that she will now stay living with her foster carers.

The council will also review social work practice and provide training as necessary to ensure that in future officers follow the proper process to amend care plans of looked after children.

The council will also consider the need for appropriate therapeutic help for the girl to help manage the process and the uncertainty surrounding it and will pay the foster family £500 to spend on her as they consider appropriate to recognise the stress and uncertainty caused to her.

Dr Jane Martin, Local Government Ombudsman, said:

> "I am pleased that London Borough of Hillingdon has agreed to my recommendations, and that the girl can find the stability she craves now that she will be remaining with her foster family.
>
> "All children deserve a stable family life and for far too long this little girl has been distressed by the uncertainty of not having a permanent home, despite having a foster family who very much wanted to be her long-term carers.
>
> "While I understand the council's desire to place the situation with the foster family on a more solid footing, the distress caused to the girl by her very real fear of being pulled out of that caring family environment should have been taken seriously."

Home Secretary appoints chairman of inquiry into historic child sexual abuse

The Home Secretary, Theresa May, has announced the appointment of Fiona Woolf CBE, JP to lead an independent inquiry into historical child sexual abuse.

The inquiry will consider whether and the extent to which public bodies and other important institutions have taken seriously their duty of care to protect children from sexual abuse. It will seek to address public concern over failings exposed by successive appalling cases of organised and persistent child sex abuse both historical and more recent.

Fiona Woolf, the current Lord Mayor of London, will be assisted by Graham Wilmer MBE, a child sexual abuse victim and founder of the Lantern Project and Barbara Hearn OBE, the former Deputy CEO of the National Children's Bureau. **Ben Emmerson QC** of **Matrix Chambers** will serve as counsel to the inquiry. Their first tasks are to finalise membership of the panel and agree terms of reference for the inquiry.

Professor Alexis Jay, the author of the **recent report into abuse in Rotherham**, has also agreed to act as an expert adviser to the panel.

Home Secretary Theresa May said:

> "In recent years, we have seen appalling cases of organised and persistent child sex abuse which have exposed serious failings by public bodies and important institutions. These failings have sent shockwaves through the country and shaken public confidence in the pillars of society in which we should have total trust. That is why the government has announced that an independent panel of experts will consider whether such organisations have taken seriously their duty of care to protect children from sexual abuse."

Government responds to the JCHR's report on children and the legal aid residence test

Coram Children's Legal Centre has expressed disappointment at the **Government's response** to the report by the Joint Committee on Human Rights, ***Legal aid: children and the residence test***, published on 25 June 2014. CCLC has consistently raised serious concerns about the proposed policy since it was first raised in April 2013. CCLC gave written and oral evidence to the JCHR on the impact that imposing a residence test for legal aid would have on children's ability to realise their rights.

The Government considers that the potential effect of the residence test is accommodated by the proposed exceptions to the residence test, flexibility in evidential requirements and the availability of exceptional funding.

It says that it does not agree with the Committee's conclusion that "children will rarely be capable of representing themselves in legal proceedings in which their best interests are at stake, as they may be unable to access a litigation friend".

The response says:

> "Where any individual was unable to access civil legal aid as a result of the residence test, they would be entitled to apply for exceptional funding. Therefore legal aid would continue to be provided where failure to do so would breach the applicant's rights to legal aid under the ECHR or EU law.
>
> "In addition, there are a number of bodies that can practically assist unrepresented children, including voluntary sector support, support provided by law centres, and the possibility that a local authority may (at least in more complex cases) consider whether it is in the best interests of the child to obtain private legal advice."

In ***R (the Public Law Project) v Sec State for Justice*** **[2014] EWHC 2365 (Admin)**, the High Court held on the 15th July 2014 that the Government does not have the power in law to introduce a residence test for civil legal aid because such a test goes beyond the original purpose of the **Legal Aid, Sentencing and Punishment of Offenders Act 2012**, under which the test was to be brought in. The discrimination that would be introduced by the test was held to be unjustifiable.

Coram is concerned that, rather than abandoning this policy – which, it says, even a group of the Government's own senior lawyers has described as 'unconscionable' – the Government is continuing to fight the judgment. In the response the Government confirms that it is appealing against the judgment.

The Government, in its response, states that 'the best interests of the child have been a primary consideration in the development of the residence test'. Coram says that there is no evidence for this claim.

Noel Arnold, Director of Practice at CCLC, said:

> "We find it staggering that, even following the High Court's July ruling against the residence test, the Government continues to defend this policy as being lawful and compatible with children's rights. This is a policy that would leave children unable to enforce the protections that the law provides them when they are mistreated or failed by the system. It would render legal protections meaningless in some children's lives.
>
> 'We hold out the hope that the Government will reconsider its position and rethink what a commitment to children's rights must mean in practice."

The **report by the JCHR is here**. The Government's **response is here**.

Seven in ten looked after children have special educational needs

An analysis of children with special educational needs, recently published by the Department for Education, shows that 67.8% of the children looked after for at least a year at 31 March 2013 in the school population had SEN, compared to 17.9% of all pupils in January 2014. Looked after children are almost four times more likely to have SEN and around ten times more likely to have statements than all pupils.

45% of looked after children with SEN achieved the expected level in mathematics (up from 42% in 2011/12), 38% achieved the expected level in writing (up from 35% in 2011/12) and 50% achieved the expected level in reading (down from 52% in 2011/12). This is worse than for all pupils with SEN where the equivalent figures are 56% in mathematics, 47% in writing and 58% in reading.

11.7% of looked after children with SEN achieved the standard (of attaining 5+ GCSEs at A*-C or equivalent including English and mathematics) compared to 23.4% of all pupils with SEN. 40.1% of looked after children with no SEN achieved the standard compared to 70.4% of all pupils.

The **statistical release is here**.

13,000 Deprivation of Liberty applications made in 2013-14

During 2013-14 in England, 13,000 Deprivation of Liberty Safeguards (DoLS) applications were completed and this reflects a 10 per cent increase compared to the previous reporting year.

The **Mental Capacity Act 2005, Deprivation of Liberty Safeguards (England), Annual Report 2013-14**, published by the Health and Social Care Information Centre, provides the key findings from the Mental Capacity Act 2005, DoLS data collected for the period 1 April 2013 to 31 March 2014. A DoL refers to a restriction of an individual's freedom such as physical restraint or constant supervision. The DoLS are a set of legal requirements which ensure that individuals are only deprived of their liberty in a necessary and proportionate way and provide protection for individuals once a DoL has been authorised.

Of the applications completed in 2013-14, 59 per cent (7,600 applications) were granted and overall, this percentage has increased since the legislation came into force.

Where completed applications were not granted (5,400 applications), the most frequent reason was the best interest assessment, which looks at whether a deprivation of liberty is necessary and proportionate.

Individuals can have multiple DoLS applications and authorisation periods during any reporting period. The 13,000 applications completed during 2013-14 related to 9,400 different individuals. The majority of individuals (73 per cent) had only one application made for them during the reporting period.

Twenty three out of every 100,000 men and 22 out of every 100,000 women in England had a completed DoLS application in 2013-14. The likelihood of having an application increases considerably as age group increases.

A total of 8,500 authorised deprivations of liberty were active during 2013-14, of which 5,800 completed during the period. The majority (70 per cent) of the completed authorisations were in place for less than 3 months.

The **report is here**.

Resolution gives evidence to Justice Select Committee on the need for family legal aid reform

Resolution member **David Emmerson** has told the Justice Select Committee that the family legal aid cuts are leading to a failure of justice for many people, particularly those forced to represent themselves in the family courts.

Mr Emmerson, a family law partner and mediator at **TV Edwards** and a district judge, gave evidence to show the Committee how the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) is causing enormous strain on the family courts and poorer outcomes for those going through the justice system. He highlighted exceptional case funding, the evidence gateway for legal aid funding for domestic violence and initial legal advice to talk people through their options and refer to out of court solutions as key areas for reform.

David Emmerson said:

> "Exceptional case funding, which was envisaged by the Legal Aid Agency as the 'safety net' after the removal of most family legal aid, is not working. Only eight cases were granted exceptional funding between April–December 2013. **New stats released for 1 April 2014 to 30 June 2014** show 125 applications in the family category, with only four granted. This has meant that many people, including those with disabilities and sufferers of domestic violence, have been forced to represent themselves in a courtroom they are ill-equipped to deal with.

> "The exceptional funding application form is so complicated that, if you can complete it, it's almost proof that you can represent yourself."

He explained that the complexity of the application deters many litigants in person from applying.

The second point raised was the widening of the domestic abuse 'gateway', which grants legal aid to those who can prove that they have suffered domestic abuse in their relationship.

He continued:

> "The domestic violence and child abuse gateway is proving difficult to access for some of the most vulnerable applicants due to the eligibility requirements, which many people find difficult to obtain."

A crucial part of eligibility for the domestic abuse gateway is a letter from a GP confirming the abuse, something that Resolution members report that many clients find difficult to obtain, either because the service is not available or there is a fee attached. The evidence requirement, Mr Emmerson argued, should be widened to include other providers, such as independent domestic violence support workers.

The Committee questioned the factors behind the drop in family mediation numbers, which have plummeted by 45% in the years since the cuts to legal aid.

Mr Emmerson argued that legal advice at an early stage in proceedings provided "a detailed analysis of a client's situation and advice on out of court solutions." Following the LASPO cuts this referral route is no longer available, and has been noted by the Ministry of Justice and Department for Education in their latest report ***A Brighter Future for Family Justice*** as a likely key reason for the drop in mediation.

"Lawyers are able to explain to clients how mediation works and how it could work for them – they were a crucial referral source to mediation," explained Mr Emmerson.

Mr Emmerson appeared at the **Justice Select Committee** hearing alongside Susan Jacklin of the Family Law Bar Association, Nicola Jones-King of the Association of Lawyers for Children and Jane Robey of National Family Mediation. Further evidence was given later in the day by Clare Laxton, Public Policy Manager, Women's Aid, Emma Scott, Director, Rights of Women, and Philippa Newis, Policy Officer, Gingerbread.

To read the Government's response to the report by the Joint Committee on Human Rights on children and the legal aid residence test, **please click here**.

70 per cent of local authorities place care leavers in B & Bs

New figures released by **Barnardo's** show that over half of local authorities in England are placing children leaving care in sometimes dangerous and frightening environments for long periods of time.

Government guidance on B&B use by local authorities states that this type of accommodation is unsuitable. It also states that it should only to be used in an emergency, when a young person finds themselves in dire need of a roof over their head. However, Barnardo's has figures, through a Freedom of Information request, which show that:

- 73% of local authorities in England placed care leavers in B&B accommodation during 2013-14
- 51% of local authorities in England placed care leavers in B&Bs for 28 days or more
- 46% of local authorities in England placed care leavers repeatedly in B&B accommodation
- Over 800 care leavers in England were placed in B&Bs last year, a figure much higher than recorded by the Department for Education who only record a snapshot of data that does not reflect the true scale of the situation.

On receipt of these figures Puja Darbari, a Barnardo's Director, went undercover for one night at one of the B&Bs where young care leavers are placed. Commenting on the research findings, Ms Darbari said:

> "Having spent the night in a B&B where care leavers have been placed and having experienced awful conditions, I am horrified that this is how we treat vulnerable young people in desperate need of a place to stay. From the noise of people right outside the door to the pest control box in the room and sirens wakening me in the middle of the night, it really was a horrible experience. I'm a grown woman and I was scared. I can't begin to imagine how a 16 year old would cope in that situation.
>
> "Many of these young people have already had horrific childhoods. Surely we owe them more than placing them on their own in such squalid and isolating environment, against government guidelines.
>
> "We recognise that local authorities are working with limited budgets but they need a range of other ways of providing emergency accommodation. Our new guidance for local authorities and our Beyond Care campaign aims to help councillors provide better support to care leavers."

In July 2014 the Commons Select Committee on Education published its report ***Into independence, not out of care: 16 plus care options*** in which it called for an outright ban on placing care leavers in B&Bs and recommended that the DfE consult urgently with local authorities on a reasonable timeframe in which to introduce this, alongside a strengthened requirement for local authorities to commission sufficient alternative emergency facilities.

Barnardo's has launched new guidance for local authorities, as part of its 'Beyond Care' campaign, which pinpoints particular areas that should be addressed and offers advice. It is hoped by the charity that the guidance will help offer better alternatives and meet the housing needs of care leavers. Although some local authorities are already offering better options such as crash-pads, Night Stop and supported lodgings, the charity is calling for them to only resort to offering care leavers B&B accommodation in emergency situations and as a last resort.

To view Barnardo's undercover video, read its guidelines for local authorities and/or to become involved, **please click here**.

One in three children split up from siblings in foster care

A third of UK children (3,582) have been separated from their brothers and sisters when placed in foster care during the last financial year, **Action for Children** has found by a Freedom of Information request.

This rose to 45 per cent (257 children) in the East Midlands, during those 12 months.

Splitting siblings, the charity says, can ignite feelings of loss and abandonment which can affect emotional and mental health. They increase the risk of unstable foster placements and poor performance at school, as well as further problems in adulthood, such as difficulty finding a job, drug and alcohol addiction, homelessness or criminal activity.

In a poll Action for Children asked children who have been split up from their siblings and live in foster care about how the separation made them feel; more than half say it makes them feel upset and angry. Yet we know a third of adults in the UK are willing to foster children, with 89 per cent prepared to provide foster care to siblings.

Sir Tony Hawkhead, chief executive of Action for Children, said:

> "For many children, being taken into care can be a confusing and upsetting time; add the distress of being split up from your brother or sister into the mix and the impact will last a lifetime.
> "Nobody wants to separate brothers and sisters, but there simply aren't enough foster carers who can look after for siblings. By arming ourselves with a pool of dedicated people who can provide a loving and caring home to groups of children we will avoid breaking more young hearts in the future.
>
> "We know that in some cases children can be so badly hurt by what has happened to them before going into care, including severe neglect and abuse, that they need one–to-one support. In the vast majority of cases, however, siblings benefit hugely by staying together and that's why we need more foster carers to help them."

A Freedom of Information request was made by Action for Children to all local authorities in the UK between April 2013 and March 2014. The request, completed on Friday, 15 August, 2014, discovered that 11,082 children from sibling groups were placed in local authority foster care and 3,598 children had been separated from their siblings. The response rate was 89 per cent.

Action for Children polled 2,000 children in the UK with One Poll. 16 per cent (324 children) responded saying they currently live with foster carers and two thirds (66 per cent) said they had been separated from their siblings. Children were asked whether being separated from their siblings made them feel upset, angry, lonely, scared or if they don't mind.

For the latest Court of Appeal judgment concerning the care of siblings, see ***K (Children)*** **[2014] EWCA Civ 1195**.

Cafcass received 8% more care applications in August

In August 2014, Cafcass received a total of 894 public law applications. This figure represents an 8% increase compared to those received in August 2013.

In the seven months prior to June 2014 Cafcass had seen monthly falls in care applications (compared with the corresponding months the previous year). In the following three months the numbers have exceeded the corresponding 2013 figures. The number of care applications for the first five months of the current year (which began in April 2014) is marginally up on the same period last year.

The **monthly figures are here**.

New private law cases received by Cafcass fall by 37% in August (year on year)

In August 2014, Cafcass received a total of 2,516 new private law cases. This is a 37% decrease on August 2013 levels.

Since the beginning of April 2014 Cafcass has received 13,400 new private law cases. This represents a reduction of almost 40% compared with the same period last year.

When asked about the implications of this reduction in work in respect of private law applications, Antony Douglas, the Chief Executive of Cafcass, said:

> "It is too early to tell what the long-term trend in private law applications is and therefore to assess the consequences. We are working intensively with other agencies to make diversion from court work well, through our commissioning role for out of court support services. We see this aspect of our work increasing in future, which will be better for children than their parents being caught up in adversarial court cases, although the most complex applications will always require social work expertise.'

The **monthly figures are here**.

Children's Commissioner launches inquiry into child sexual abuse in the family environment

The Office of the Children's Commissioner for England has launched a new two-year **Inquiry into Child Sexual Abuse in the Family Environment** (CSAFE). In Phase 1 of the CSAFE Inquiry, the OCC aims to throw light on the scale, scope, nature and impact of sexual abuse in the family environment. In Phase 2, the OCC will be looking at practice.

The Inquiry will:

- assess the scale and nature of this form of abuse in England including among BME, LGBT, disabled and other minority groups of children and young people estimating the prevalence of that which is detected and undetected by statutory agencies
- assess inter-agency and individual practice for preventing and responding to child sexual abuse in England, and its impact on children and young people
- make recommendations for improving the identification and prevention of child sexual abuse and child protection/law enforcement responses to child sexual abuse.

To inform the Inquiry, the OCC is issuing this call for evidence to organisations, professionals and adults working with children and young people who are victims and survivors to identify the full picture of the nature and impact of CSAFE. Accurate data are essential so that Government, police, local authorities, schools, the youth justice sector and health professionals can effectively prevent CSAFE from happening and identify, protect and support child victims. The OCC requests submissions to the call for evidence by the 7 November 2014 to **Research.Inquiry@childrenscommissioner.gsi.gov.uk** .

For full details of the Inquiry, **please click here**.

The Law Commission extends its review of mental capacity and detention

The Law Commission has announced that the Department of Health has asked it to extend the **review of mental capacity and detention**, to consider the Deprivation of Liberty Safeguards (DoLS) in their entirety.

In July, as part of the Commission's 12th programme of law reform it announced a project to consider how deprivation of liberty should be authorised and supervised in community settings, alongside the existing DoLS system which applies in hospitals and care homes. In response to recent developments and following consultation with stakeholders and the Law Commission, the Department has asked the Commission to extend the scope of this work to include reconsidering the legislation underpinning the DoLS under the Mental Capacity Act 2005.

Nicholas Paines QC, the lead Commissioner for the project, said:

> "The Department's decision is very welcome. Our timetable for the project remains unaffected. We expect to publish a consultation paper in the summer 2015 and our final report and draft legislation in summer 2017."

Last week the Health and Social Care Information Centre revealed that during 2013-14 in England, 1**3,000 Deprivation of Liberty Safeguards (DoLS) applications were completed**, reflecting a 10 per cent increase compared to the previous reporting year.

For details of the Law Commission review, **please click here**.

Process of closing all Child Support Agency cases begins

The Department for Works and Pensions says that single and separated parents who have previously received no maintenance from their former partner could start receiving payments for the first time, as reform of the child maintenance system starts to affect existing cases.

A 3-year process of closing all existing Child Support Agency (CSA) cases is now under way. The CSA has already stopped taking on new cases, with newly-separated parents encouraged to make their own family-based arrangements or use the new Child Maintenance Service instead. In the next phase of the changes, the agency is beginning the process of closing its 800,000-strong historic caseload.

Initially, the DWP is writing to around 150,000 parents with details of when their case is due to close and advice about the next steps they should take. Although there is no need for anyone to act until they receive a letter, once parents receive notification of their closure date they are urged to consider their options.

The case closure programme is beginning with so-called "nil-assessed" cases – those in which, because of the circumstances of the non-resident parent, no maintenance has been due. Because of this, some parents may feel there is no point in responding to the letter they receive.

However, because the parents' circumstances may have changed since the initial assessment was made – plus the new statutory child maintenance system, says the DWP, is much more robust, using data from the tax authorities – it may be that maintenance becomes payable once a new assessment is carried out. Therefore, all parents are encouraged to act.

Child Maintenance Minister, Steve Webb MP, said:

> "We're reforming the child maintenance system because we want to get more maintenance to more children. This process provides parents with an opportunity to re-consider their child maintenance arrangements and our estimates show that as many as 50,000 children could benefit.
>
> "I would urge anyone who receives a letter from the CSA about their case closing to look carefully at the options,

as they may be surprised at the support available to them."

Parents whose CSA cases are closed are encouraged instead to make their own family-based arrangements. If that's not possible, there is support available from the new Child Maintenance Service.

Whichever route they choose, advice and support is available online or on the phone from the new Child Maintenance Options service – 0800 988 0988 or **www.cmoptions.org.uk** .

To raise awareness of what's happening amongst parents currently using the CSA, the DWP has launched an advertising campaign across newspapers, radio and the internet.

The campaign, which uses the slogan "We'll keep you in the loop", informs parents that they will be written to ahead of their case being closed; that they need not take any action until they receive a letter; but that support will be available to help them decide on their next steps when the time comes.

Information has also been placed online at **www.gov.uk/csachanges** .

New protocol launched for tackling stalking and harassment

As stalking-related prosecutions rise, prosecutors and police are being reminded by the Crown Prosecution Service to focus on the devastating impact these crimes have on victims. After the first full year of operation, new stalking legislation has seen 743 cases brought to court – cases which may not have been charged under previous law.

Prosecutions for all stalking and harassment offences, using both new and older legislation, have increased by more than 20 per cent in 2013-14 (from 8,648 in 2012-13 to 10,535 last year). Breaches of restraining and non-molestation orders, the vast majority of which relate to domestic violence cases and can involve stalking-related behaviours, have also seen a 14.6 per cent rise in prosecutions brought to court in 2013-14 (from 15,838 to 18,149).

In order to maintain this upward trend the Crown Prosecution Service (CPS) and Association of Chief Police Officers (ACPO) have launched **a new protocol** to ensure consistency of approach when tackling all forms of stalking.

The Director of Public Prosecutions, Alison Saunders, said:

"It is encouraging to see more offenders being brought to justice but police and prosecutors need to do more still to protect the victims of this pernicious crime.

"Stalking and harassment is about the control of others and its impact can be devastating. Stalking creates an environment of continual fear with many victims feeling not only in physical danger but also suffering psychological distress as a result.

"I am pleased that prosecutors are making effective use of new stalking laws in order to protect victims and put their stalkers before the courts where previously, in some cases, we were unable to do so. These new offences enable us to bring people to court potentially before they risk going on to commit more serious crimes. The rise in prosecutions sends a message to both victims and criminals about how seriously we are taking these types of offences."

Legislation which came into force in November 2012 allows prosecutors to bring charges where an offender's behaviour falls short of fear of violence, but where a victim is caused serious alarm or distress affecting their lifestyle.

National Policing Lead for Stalking and Harassment, Assistant Chief Constable Garry Shewan said:

"More people than ever are being prosecuted and convicted for stalking but we know that there are still many more stalkers getting away with it and victims at risk who are suffering immensely.

"We are determined to increase the number of stalkers brought to justice and ensure that measures are put in place to protect victims even if a conviction isn't possible; if police and prosecutors follow this protocol we can achieve this aim. I will be working with chief officers across the country to ensure that this protocol is shared and used by officers on the ground."

The new Protocol on the Appropriate Handling of Stalking Offences, which has been jointly drafted and agreed by the CPS and ACPO, focuses strongly on the needs of stalking victims.

The new protocol reminds police and prosecutors to:

- ensure that in every case the victim has the opportunity to provide a Victim Personal Statement to court and is able to read this out personally should they wish;
- fully investigate the reasons behind any victim withdrawing a complaint, ensuring it is not the result of pressure from others;
- ensure that victims are consulted on issues such as bail and restraining orders.

The protocol also instructs prosecutors to apply, where possible, for restraining orders on both conviction and acquittal in order to protect the ongoing safety and security of victims. Restraining orders on acquittal can be an added protection for victims in situations where the likelihood of abuse may be 'beyond the balance of probabilities', a lower standard of proof than that usually required in criminal convictions of 'beyond reasonable doubt'. Data from the Ministry of Justice shows that 18,656 restraining orders were issued on conviction in 2013 (compared with 18,611 in 2012); and 1,667 restraining orders were secured after acquittal compared with 1,448 in 2012.

Alison Saunders added:

"Stalking and harassment are particularly cowardly crimes which threaten people at home, at work and when socialising, places where people should feel safe. Our focus in this area of offending has helped increase the prosecutions we bring, and the new protocol will

also help ensure that victims are guided through what can be a difficult and stressful time and that their views throughout the process are heard and understood. I hope this offers some reassurance to victims and a warning to potential criminals."

Rachel Griffin, Director of the **Suzy Lamplugh Trust,** the charity that runs the National Stalking Helpline said:

"We welcome the guidance released today focused on ensuring there is a consistent approach to how victims of stalking are treated across England and Wales. We often hear from victims of stalking through the National Stalking Helpline who need more and better support through both the investigation and trial process, so we hope that the clearer guidance released today will aid in ensuring these victims get the help they deserve.

"Stalking is a highly complex crime that has devastating impacts on a victim and because of this we are pleased that the very real issue of online stalking has been addressed in the protocols. The next steps have to be to ensure that all officers are trained to ensure that the guidance in the protocols become a reality for every victim of stalking."

For a review of other recent developments in relation to domestic violence law and practice, written by Mandip Ghai of Rights of Women, **please click here**.

The **CPS / ACPO protocol is here**.

Family mediation take-up rose substantially in first half of year, says NFM

Data from the largest provider of family mediation in England and Wales show a significant rise in the take-up of its services in the first six months of 2014.

National Family Mediation, which delivers in over 500 community locations, was reflecting on data covering its affiliated services and mediators from 1 January to 30 June 2014.

Jane Robey, Chief Executive of National Family Mediation, said:

"Whilst family mediation services nationwide suffered a downturn in 2013 after the Government overhauled legal aid, the signs for the profession are positive in the first half of 2014.

"The picture varies across the country, but in a number of our service areas increases of 30 to 40 per cent in numbers of people attending mediation, compared with the same period in 2013, are common.

"There is no doubt a greater proportion of people are reaching agreement through mediation, realising they can successfully settle family matters in an affordable way.

"Yet whilst it's clear the change in the law effective from April has signalled an upturn, family mediation is not yet out of the woods. Our mediators and managers will continue working tirelessly to show the value of mediation, which is quicker, less stressful and usually cheaper than going to court."

Under the Children and Families Act, implemented on 22 April 2014, it became compulsory for people to attend a mediation information and assessment meeting (MIAM) session before they can apply for a court order.

Jane Robey added that as we head into the autumn, family mediators are optimistic the rise will continue:

"Mediators often report a quiet time during the summer, but referrals were unseasonably high in August this year. And after the holiday period, September signals a return to the routine of work and school. Very often this is when couples make decisions to separate, as the temporary glimmer of hope signalled by the sunshine and break-in-routine is well and truly extinguished."

Couples hit hardest by recession are eight times as likely to break up

A study by ***Relate – Relationships, Recession and Recovery*** – shows that couples worst affected by the recession are eight times as likely to suffer relationship breakdown.

The charity analysed data from Understanding Society (the UK's prime longitudinal study) that detailed how people in the UK were affected by the economic downturn from 2009 to 2012. They were then grouped according to their experiences of recession: job loss, optimism for the future, perception of current and future financial situation, working overtime, satisfaction with employment and being behind with bills. The couples were then assessed as to how relationships fared in each group.

The findings show that people who suffered negative impacts of the recession were considerably more likely to have experienced deterioration in their relationship stability. It was also found that couples in the worst affected groups who remained in relationships had relatively poor relationship quality. This suggests that although the economic recession may be receding, the fallout – the 'social recession' – is still very much being felt by couples and families across the UK.

The evidence suggests that, without action, the UK is likely to remain in this 'social recession' for some time after economic conditions have improved, and the full extent may be yet to materialise. Due to the costs of separation, reduced relationship quality may not manifest as breakdown until financial conditions allow.

Relationships, the charity says, are central to building a 'social recovery' alongside and reinforcing economic recovery. Positive, good-quality relationships are fundamental to our health and wellbeing; our ability to engage and progress in education, apprenticeships, and at work; and they are the key to building resilience and independence.

Relate believes that its findings have important implications for an understanding of the impact of recession; how, accordingly, we think and talk about recovery; and how policy can respond to build a happier, healthier and more productive society.

As the economy recovers, in Relate's opinion, it is crucial to recognise that relationships have been weakened, and therefore to focus on relationships in public policy to shore-up relationship quality and stability, build resilience and individuals' relational capability. An effective social recovery relies on relationships being a priority in public policy and a cross-cutting effort by politicians and policy makers to invest in protecting relationships.

The **report by Relate is here**.

President allows daughter access to late father's adoption file

The President has granted a novel and unusual application by the daughter of an adopted person, X, now deceased, for access to the original court file in relation to an adoption order made on 15 January 1930. The adopters, Mr and Mrs C, are also dead.

The documents contained on the original court file are summarised at paragraphs 11 of the judgment. The significant information obtained are (a) the name, address and occupation of X's birth mother (and the name and address of her mother) and (b) a letter from X's grandmother written to Mr and Mrs C.

In ***X (Adopted Child: Access to Court File)* [2014] EWFC 33-1** the President noted that in the case of the descendant of an adopted person, there are at present only two statutory routes available for an application for the disclosure of adoption records, or information relating to adoptions or adoption proceedings. They are **s 79(4) of the Adoption and Children Act** ('ACA') 2002, and **r 14.24, FPR 2010**. This will change with the enactment of the Children and Families Act 2014, which will amend Section 98 of the Adoption and Children Act 2002 "to bring within its scope the direct descendants of adopted persons."

Munby P reviewed the existing authorities on the interpretation of "exceptional circumstances" in section 79(4) at paragraphs 20 to 22, and concluded that the current application was not exceptional such that relief could not be granted under s 79(4).

In the absence of an "exceptional circumstances" requirement in r 14.24 and its predecessors, the President went to on examine whether the statutory criteria should apply under the rules. After considering the judgment of Scott Baker J (as he then was) in *Gunn-Russo v Nugent Care Society and Secretary of State for Health* [2001] EWHC Admin 566, [2002] 1 FLR 1, the President adopted the following established propositions:

> i) The court has a discretion whether to disclose information contained in its own file to the applicant.
>
> ii) In considering whether or not to exercise that discretion the court should have regard to all the circumstances of the case and should exercise its discretion justly.
>
> iii) The public policy of maintaining public confidence in the confidentiality of adoption files is an important consideration.
>
> iv) The duration of time that has elapsed since the order was made, and the question of whether any or all of the affected parties are deceased, are important considerations.
>
> v) The nature of the connection between the applicant with the information sought from the court file is an important consideration.
>
> vi) The potential impact of disclosure on any relevant third parties, and any safeguards that could be put in place to mitigate this, is an important consideration.

The President concluded that there is nothing in the existing authorities which required the court to apply in the case of an application under rule 14.24 (and its predecessors) the same approach as applies under section 79(4). The rule is not subject to the "exceptional circumstances" qualification. However, "given the context,...an application under rule 14.24 should always be approached with an appropriate degree of caution."

The application was granted and there was no restriction on how the applicant used the information on the court file.

The applicant (the daughter of X) appeared in person. **Alex Forbes** of **Harcourt Chambers** (instructed by the Official Solicitor) acted as advocate to the court.

The judgment and a more detailed summary of the case (from which this news item is derived), written by Katy Chokowry of 1 King's Bench Walk **is here**.

Cobb J gives guidance on out of hours and without notice hearings

In ***Local Authority 1 & Others v AF (Mother) & Others* [2014] EWHC 2042 (Fam)** Mr Justice Cobb has provided particular guidance to practitioners on the topics of (i) out of hours and without notice hearings and (ii) the preparation of bundles.

At an interim stage in the proceedings Cobb J had heard an urgent without notice application by a local authority as a consequence of the dramatic breakdown of a residential placement. The judge had required further investigation to be undertaken by the applicant to establish the position of each of the respondents before determining the application, and this was duly complied with. Counsel who acted at that hearing and made the application did not appear in the case subsequently, and at the final hearing there were important unanswered questions about how the parties' positions had come to be communicated. This was unsatisfactory. At paragraph [299], the Judge reiterated that:

> "It is, in my judgment, not just important but essential that in a hearing of this nature in this kind of case, counsel or solicitor instructed should prepare a note of

the hearing and circulate it to the respondents forthwith following the hearing."

The judge cited ruled 25.3 CPR 2010 in relation to counsel's duty to provide such a note, and reminded practitioners of the view of Munby J (as he then was) expressed in ***C v C (Without Notice Orders)* [2005] EWHC 2741 (Fam)**.

The judge also criticised the condition of the (nine) bundles provided, the pagination of which "was, in parts, of impenetrable and wholly avoidable complexity" [303]. The judge cited the provisions of PD27A FPR 2010 (as amended) and expressed disappointment that "the warning about wasted costs was not of itself sufficient to ensure compliance" [305].

The judgment and the full summary of law and facts (from which this news item is derived), written by Marlene Cayoun of 1 Garden Court Chambers, **is here**.

One in three women have suffered domestic violence, says Refuge

Charity launches campaign with ITV's Loose Women

Sandra Horley CBE, Chief Executive, Refuge

One in three women have suffered domestic violence, says Refuge

Sandra Horley CBE, Chief Executive of Refuge

Refuge, the support charity for women and children suffering domestic violence, has teamed up with ITV's ***Loose Women*** to launch a new domestic violence campaign.

To mark the launch of the campaign, Refuge and Loose Women have released the results of a YouGov survey which showed that:

- Over one in three British women have experienced domestic violence
- Almost two fifths of victims tell no one
- 35% of women say they wouldn't want anyone to know
- Nearly one in four say they wouldn't know how to help a victim
- Two thirds of women believe abuse is a result of a partner losing their temper.

Sandra Horley CBE, Chief Executive of Refuge appeared on Loose Women on Wednesday 17th September to comment on the findings of the survey.

Sandra Horley said:

"Victims of domestic violence often feel trapped and isolated. They may feel ashamed of what has happened to them, or they may be fearful of speaking out. The results from the survey confirm this – showing that 35% of women reported that they would not want anyone to know if they were experiencing domestic violence.

"The survey also showed that domestic violence is still shrouded in myth and misunderstanding. Many women believe that domestic violence is a private matter, and that it is caused when someone is unable to control their temper. Nothing could be further from the truth. Domestic violence is all about power and control. It is purposeful, systematic, patterned behaviour designed to exert control over a partner.

"The truth is that domestic violence is not a private matter. It is a huge social issue that affects the whole of our society. We all have a role to play in ending this horrific crime – and we must start by speaking out about it.

"I would urge anyone experiencing domestic violence to remember that you are not alone. Thousands of women experience domestic violence every single day in this country. Refuge can help you to stay safe. Visit Refuge for support."

YouGov polled 2,244 women. For the purposes of the poll 'domestic violence' was defined as 'any incident of threatening behaviour, violence or abuse (ie. psychological, physical, sexual, financial or emotional) between adults who are (or have been) intimate partners, regardless of gender or sexuality'.

The survey showed that, out of the women surveyed who had not told anyone about their experience of domestic violence, nearly half (43%) didn't think it was serious enough to get others involved; 33% thought it was a private matter between themselves and their partner; 14% thought their partner's behaviour was a normal part of being in a relationship and 11% were worried they would not be taken seriously.

One fifth of victims (20%) revealed that they experienced domestic violence at the hands of more than one partner.

Over two-fifths (41%) of those surveyed claimed to know someone who is or has been a victim and yet one in six (17%) of these women hadn't taken action.

Almost a quarter (23%) of those who refrained from intervening said they did so because they thought it was a private matter. 14% didn't know how to help or who to contact and 5% were too afraid of the victim's partner to raise the alarm.

An update of recent developments concerning the law and practice related to the prevention of domestic violence, written by Mandip Ghai of Rights of Women, **is here**.

Permission given to challenge government refusal of legal aid to domestic violence victims

The High Court has today granted permission for a challenge to government policy depriving victims of domestic violence access to legal aid.

Permission has been granted to **Rights of Women** to challenge the lawfulness of Government changes to legal aid. The charity says that the changes are preventing victims of domestic abuse from getting legal aid for family cases, even when it is clear there has been violence, or there is an ongoing risk of violence. Represented by the **Public Law Project** and supported by the Law Society, Rights of Women argue that this is not what parliament intended and that the policy is in breach of Articles 6 and 8 of the Human Rights Act 1998.

Legal aid changes introduced by the Government in April 2013 required victims of domestic violence to provide a prescribed form of evidence in order to obtain family law legal aid. Many women affected by violence do not have the required forms of evidence. Some of the forms of evidence are subject to a 24 month time limit although perpetrators may remain a lifelong threat to their victims.

Rights of Women say that the statistics are stark; two women are killed each week by a current or former partner and 500 recent victims of domestic violence commit suicide every year.

A report published by Rights of Women and others in October 2013, ***Evidencing domestic violence: a barrier to family law legal aid***, indicated that survivors of domestic violence have been unable to access legal aid in the family courts.

The report stated:

- Half of the respondents (women who have experienced or are experiencing domestic violence) do not have the prescribed forms of evidence needed to access family law legal aid
- 61% took no action in the family courts because of not being able to apply for legal aid
- 17% of respondents had to pay more than £50 to obtain copies of the required evidence
- 38% of respondents had to wait longer than two weeks to get copies of the evidence
- 23.7% paid a solicitor privately and 15.8% represented themselves at court.

Emma Scott, Director of Rights of Women, said after the judgment was given:

> "Today's decision in the High Court is an important step in holding the Government to account on their promise that family law legal aid would remain available for victims of domestic violence. We argue that the practical application of regulation 33, the domestic violence evidence criteria, denies eligibility for legal aid to very many women affected by violence. It simply too restrictive and does not reflect the reality of the routes they take to safety. It does not reflect the Government's own definition of domestic violence or Government policy in other areas.
>
> "Most importantly we know from the women affected that it denies them access to the legal remedies which could enable them to leave violent and abusive relationships and find safety. In our research, the majority of women who did not have the required evidence to apply for legal aid told us that they took no legal action as a result. It is on behalf of those women that we bring this case in order to hold the Government to account on their promise."

Law Society President Andrew Caplan said:

> "The over-strict tests required to bring evidence to satisfy the broader statutory meaning of domestic violence are not what parliament intended. Legal aid is often the only way that those who suffer at the hands of abusers can bring their case before the Courts. Victims of domestic violence should not be excluded from accessing legal aid for family law disputes against an abusive ex partner or relative because of these unrealistic regulations."

The full hearing is due to take place later this year.

State-by-state guide to surrogacy in the United States

The ***New York Times*** has published a useful article explaining the legal status of surrogacy arrangements in each of the individual states of the USA.

The article sets out tables showing where each of the states stands on the issue.

The **article is here**.

NSPCC highlights lack of support for children returning home from care

Research commissioned by the NSPCC shows that the Government is spending £300 million a year as a result of the breakdown of children's return home from care.

By contrast improving support for these children when they return home would cost an estimated £56 million, according to research commissioned by the children's charity from the Centre for Child and Family Research (CCFR) at Loughborough University.

Every year more than 10,000 children are returned home from care. Although this can be the best outcome, research shows that almost half of reunifications break down, resulting in children returning to care. In far too many cases, children are not provided with the support they need to remain safely at home - an issue which needs to be urgently addressed.

The report shows that a substantial amount of money (£300 million) is spent each year as a consequence of failed reunifications. Conversely, the cost of ensuring that children returning home from care and their families are provided with effective support through social and health care is significantly less (£56 million) and could reduce reunification breakdown rates.

Tom Rahilly, head of looked after children at the NSPCC, said:

> "Given around half of children who return home from care end up going back into care again, the support we provide to these families urgently needs rethinking.
>
> "We're calling for an entitlement to support for children and their families, when they return home from care. The Department for Education needs to strengthen the rules so that both children and families get the help they need.
>
> "The Government consulted on this issue last November 2013 and the moral and financial cost of delay in taking action needs to be considered. They must be clear about the action they are going to take.
>
> "Repeatedly moving in and out of care can profoundly damage our most vulnerable children, compounding and intensifying the traumatic experiences and difficulties they face. It is clear that there are gaps in services to help to tackle drug or alcohol problems, mental health provision and parenting support.
>
> "By addressing these issues and providing social workers and other services with a clear framework to use when planning the support needs of both the child and their family after a period of time in care, we can ensure that more successful reunifications take place in the future and we hope the report will help local authorities in planning for this."

As part of ongoing work in the area, the NSPCC is currently piloting its Taking Care service in partnership with nine local authorities. The service uses the lessons from research to see how support for children and families can be improved. The only reunification practice project in the UK, the service is a new approach to assessment, decision-making, planning and review in relation to children returning home from care. It aims to give social workers and families a clear framework to use when deciding if a child should return home from care, and planning the support needs of both child and family when they do.

The **research is here**.

Social workers taking the right care decisions, say Children's Guardians

Continuing its research ***Three weeks in November***, now in its fifth year, Cafcass has captured the views of 300 Children's Guardians on the decisions of local authorities around care applications (s31 Children Act 1989) over a three week period in November 2013. The findings endorse much of the work of social workers, considering, in general, that local authorities are bringing the right cases to court, usually at the right time, and with the cases having been well prepared.

Key findings from the research include:

- Guardians believed there was no other course of action [than making an application] available to local authorities in 84% of cases.
- In 84% of cases Guardians thought that the local authority had met or partially met the requirements of the revised Public Law Outline (PLO); and in 32% of the cases where Guardians indicated that the local authority had not met the requirements they considered this was appropriate.
- Neglect remains the principal category of concern for children who were, or had been, subject of a child protection plan; and was identified by Guardians as being the principal trigger for care applications where the child was not the subject of a plan.
- Guardians considered that the timing of the application was appropriate in 54% of cases.

The principal difference from the findings of the 2012 study is that the percentage of cases in which the Guardian considered the application to have been late rose to 39%, from 26%. Three possible explanations are put forward – in some cases it may be due to the local authority spending too long working with parents who have multiple chronic problems and who are unlikely to make sufficient progress within an acceptable timeframe for their child or children. The increase could also be due transferring work to the pre-proceedings period, and to a lower tolerance of delay from Guardians, resulting from recent changes to promote earlier permanence for children.

Anthony Douglas, Cafcass Chief Executive, said:

> "Our Guardians have rightly upped their expectations of local authority practice and local authority social workers have upped their game – a combination which can only give children at risk better protection.
>
> "It is fantastic news that Guardians consider that, in general, local authorities are bringing the right cases to court, in a timely way and with the cases being well prepared, but it does not come as a surprise – we have been working hard with social workers, local authorities, judges and ADCS (Association of Directors of Children's Services) to get to this point. We have to go on improving as one child poorly served by the family justice system is one child too many."

Annie Hudson, Chief Executive of The College of Social Work, said:

> "These survey results are encouraging. They testify to the expertise and commitment of local authority social workers and Guardians to making sure that children's needs are at the heart of the complex and necessarily finely balanced family justice system decision making process. New expectations and requirements have at times been professionally very demanding of social workers and this valuable study shows that they have risen well to this challenge."

The continuation of this research enables Cafcass to track trends against the changing context in which social work decisions are made since the original Three weeks in November study was published. This includes an unprecedented high number of care applications in 2012/13 and significant legislative and practice reform taking place in the family justice system. Care case duration has dropped from a national average of 56 weeks in November 2011 to 33 weeks (with legislation placing a 26 week target) and the revised PLO emphasising robust analysis and planning to secure early permanence for children.

This research saw the highest response rate of Cafcass Guardians to date, reflecting, Cafcass says, an increasingly engaged workforce.

The **report is here**.

Children's Commissioner's research shows vastly underestimated impact of legal aid changes on children

The first in-depth rights based **examination** of the impact of legal aid changes on children since 2013 shows that in 70% of private family cases one or both parties did not have legal representation compared with 54% who had it previously. Under the 'exceptional funding' regime, which the government created to ensure legal aid was still given to people whose human rights were at risk, due to the complexity of and strict criteria applied to the system, only 57 grants were provided in its first year, rather than the 3,700 the Ministry of Justice had expected. The findings have been published by the Office of the Children's Commissioner in a Child Rights Impact Assessment of changes to civil and prison law legal aid since April 2013.

The Office of the Children's Commissioner's report follows in depth research on the effects of changes to legal aid. The work was done in light of the UN Committee on the Rights of the Child's recommendation that governments should assess the impact of all proposed legislation on children. Along with lawyers, charities and others working with families, the Commissioner remains concerned about the serious potential effects of changes to legal aid on a wide range of children's rights. The research included interviews with children and young people affected by the changes, desk based research and legal analysis.

Key findings on the reforms include:

- Although 'exceptional funding' was meant to be available in cases where failure to fund could infringe the applicant's rights under the Human Rights Act 1998 or under EU law, in practice this requires complex preparatory work, impractical for a child without a solicitor

- Only 57 cases were granted exceptional funding compared to the 3,700 the Ministry of Justice expected

- In the family courts the number of private cases where:

  - both parties were represented fell from 46% to 30%;

  - neither party was represented rose from 12% to 22%;

  - one party was unrepresented rose from 42% to 48%.

The report also found worrying individual cases such as an application by a father for contact with his daughter where the mother alleged the mother had been raped by him. As the father had no legal aid, the prospect of him cross-examining the mother in person in court was raised. The judgment suggested that, if necessary, payment for representation would need to be made by HM Courts and Tribunal Service. Rather than saving money, this simply shifted the payment from one part of the government to another.

Many people were interviewed and their personal experiences contribute to our report. The majority reported that when they presented their problem to the relevant authority without legal support, they were ignored. The report sets out several examples taken from actual cases.

Maggie Atkinson, Children's Commissioner for England said:

> "The human cost of legal aid reforms is clearly immense. Behind the evidence in our research are countless heart rending stories of children and vulnerable young adults whose lives have been seriously affected by their inability to access legal representation. This means, in effect, that they cannot seek, let alone receive, justice. We should not expect children and young adults to face the complexities of the legal system on their own. These systems are daunting enough for adults, let alone vulnerable children and young people.
>
> "The detailed analysis in our Child Rights Impact Assessment demonstrate that the Legal Aid reforms do not make sense. The system is so difficult to navigate that it leads to people having no legal representation. That in turn can prevent decision-makers making decisions properly, as well as stopping individuals obtaining the justice they need.
>
> "Our research also shows that some short term savings to one part of the legal system - Legal Aid - are simply shifting costs to another, because judges direct that representation has to be funded, and this does not strike me as being a saving.
>
> "This report and its analysis give us a powerful reminder of both the severe legal problems some very vulnerable children and young people face, and the importance of legal assistance in resolving them."

In recent weeks:

- the **Bar Council has published a report** claiming that LASPO is damaging access to justice;

- **Rights of Women have been given permission** to institute judicial review proceedings in respect of government policy depriving victims of domestic violence access to legal aid;

- the **Joint Committee on Human Rights** has criticised in particular the effects of the residence test on legal aid (the test has been held in ***R (the Public Law Project) v Sec State for Justice*** **[2014] EWHC 2365 (Admin)** to be beyond the powers of the statute);

- Resolution, the FLBA and other organisations have given evidence to the **Justice Select Committee** concerning the LASPO changes;

- in an interview published on the Resolution website the **Chairs of Resolution and the Family Law Bar Association** have called for changes to the exceptional funding arrangement;

- in ***Q v Q*** the President of the Family Division said that Her Majesty's Courts and Tribunals Service will have to fund parties' representation by lawyers in appropriate private law children proceedings if the Legal Aid Agency refuses to do so.

The **Children's Commissioner's report is here**.

Number of looked after children in Wales has risen by 23% over last five years

The Welsh Government has published its **annual report as to adoptions, outcomes and placements for children looked after by local authorities** for the year ended 31 March 2014.

There were 5,756 children looked after on 31 March 2014, a decrease of 8 (0.1 per cent) over the previous year and a rate of 91 per 10,000 population aged under 18. The number of looked after children has increased by 23 per cent over the last five years, but has remained relatively stable over the last three years.

There were 478 children looked after at 31st March 2014 (8 per cent) who had three or more placements in 2013-14.

The number of children adopted increased by 16 (5 per cent) over the previous year.

Local authorities were in touch with 93 per cent of 19 year old care leavers; 51 per cent of 19 year old care leavers were known to be in education, training or employment.

Comparative figures for England are due to be released by the Department for Education on the 30th September 2014.

The **report by the Welsh Government is here**.

'Sign of a civilised family justice system is more people resolving disputes outside the courts'

Speaking at the **Family Mediators Association** conference in London, Family Justice Minister Simon Hughes said that at a time of significant change for the family justice system it was important for people involved in cases to have ownership of their arrangements by coming to decisions themselves – as they do through mediation.

He highlighted recent work by the Ministry of Justice, including setting up an external advisory group of experts to improve practice and make sure family mediation is focussed on the best outcomes for any children involved.
He added that work will continue with the judiciary, Cafcass and with young people themselves to implement this.

He said:

> "Mediation works and we are committed to making sure that more people make use of it, rather than go through the confrontational and stressful experience of going to court.
>
> "It is not the sign of a civilised family justice system to have more and more people litigating in court whether with lawyers alongside them or not. A civilised system is to have more people resolving disputes away from the often confrontational atmosphere of the courtroom.
>
> "That is why we continue to give our support, both through legal aid funding and promotional work, to alternatives like mediation which can resolve disputes without going to court. Mediation is often quicker and cheaper and leads to more amicable outcomes which both sides can accept because they have agreed them together."

Publicly funded private family law cases fell by 83% in one quarter, claims Lawyer-Supported Mediation

The Ministry of Justice has published **legal aid statistics for April to June 2014**. This is the first quarterly edition of the Legal Aid Statistics, which has previously been published only annually.

During the period the workload in family matters (ie legal help matters started and civil representation certificates granted) fell by 27% when compared to the same period of the previous year. Within that comparison, the workload in family public law has remained stable.

Lawyer-Supported Mediation has claimed that analysis of the figures reveals that publicly funded private family law cases fell by 83% between April and June 2014.

The organisation says that in that quarter the combined number of completed certificates for private law Children Act proceedings, financial provision and other family proceedings stood at 10,227. In sharp contrast, the number of certificates granted for the same period stood at 2366.

Lawyer-Supported Mediation points out that the ratio between the two totals underlines how LASPO will reduce casework levels in the years ahead. Total certificates granted for April to June 2014 amounted to just a quarter of number of corresponding cases completed in the same period.

The analysis also looked at the same quarter of 2012/13, the last full financial year before LASPO was enacted. In this

period, the corresponding number of certificates logged as completed by the LAA stood at 14,168 while the number of certificates granted stood at 13,687. The difference between the two totals was only 3.3%.

More importantly, says L-S M, the year-on-year quarterly comparison shows the number of certificates granted by the LAA fell from 13,687 to 2,366, a drop of 83%.

Marc Lopatin, a trained mediator and founder of Lawyer Supported Mediation, said:

> "The plummeting number of certificates being awarded shows LASPO in motion. Law firms overly dependent on legal aid revenues will need to find ways of earning more private fees. They will have to attract new clientele by offering services that private law firms will not. This is all about offering price certainty and affordability while balancing risk and return."

There has been an increase in the number of mediation assessments in April (when changes from the Children and Families Act came into effect) to June 2014, compared to the previous quarter, but this has yet to filter through to starts and agreements. However, whilst there were 1,778 publicly funded mediation starts, slightly up from 1,751 in the previous quarter, there was a significant year on year fall, with 2,706 mediation starts in the equivalent period in 2013.

Jo Edwards, chair of Resolution, commented:

> "While the introduction of compulsory MIAMs has made a small impact on the plummeting public mediation numbers, it has not yet been the panacea the Government hoped for. There is still a huge disparity between publicly and privately funded mediation, which we believe is a direct result of the cuts to family legal aid and consequent loss of solicitor referrals into mediation.
>
> "Resolution is concerned that this shows that access to justice, and in particular ways for couples to resolve disputes out of court, are being denied to those who lack the means to pay for it.
>
> "Since the cuts to legal aid, we've seen mediation numbers drop, while the numbers of people representing themselves have risen to a point where they are causing delays and serious problems in the courts. The April-June Court Statistics data from the Ministry of Justice shows that the average time for the disposal of a care or supervision application has dropped to just under 30 weeks, which is welcome news.
>
> "However, this has not been the experience for other types of cases. A survey of Resolution members, conducted three months after the 22 April reforms were introduced, shows that there have been significant delays to cases in the family court. 45% of our members report that cases involving financial disputes, are taking longer, and 37% report the same for cases relating to arrangements for children.
>
> "In addition, the lack of legal aid means fewer people are talking to solicitors about their separation, who would previously have signposted them towards mediation.
>
> "We believe that the Government needs to allocate some of the £86m underspend in civil legal aid for initial legal advice for separating couples, so that people know what their options are and how they can access out-of-court solutions such as mediation. It's clear from these statistics that more needs to be done to prevent the creation of a two tier justice system, where those without the means to pay are left to fend for themselves."

Commenting on the moderate increase in family mediation, **National Family Mediation** (NFM) Chief Executive Jane Robey said:

> "Data covering NFM affiliated services and mediators for the first six months of 2014 gives us reason to feel cautiously optimistic. It shows that in a number of areas increases of 30 to 40 per cent in the number of people attending mediation compared with the same period in 2013 are common. Our national helpline has been overwhelmed with enquiries in the same period.
>
> "The key to successfully increasing the numbers of people converting from awareness meeting to starting full mediation is often getting them into the room in the first place, with minds that are open to the possibilities mediation offers them to shape their family's future in an affordable way."

Exceptional case funding applications:
There were 125 applications for exceptional case funding in the family category between April and June 2014. Of these seven were granted, 95 were refused, 20 rejected and three withdrawn.

The **statistical release is here**.

Family court's case load falls 19% from last year

The Ministry of Justice has published **court statistics for April to June 2014**.

The number of cases that started in family courts in England and Wales in April to June 2014 dropped 19% to 57,720 compared to the equivalent quarter of 2013. 60,287 cases were concluded.

Divorce made up 48% of new cases in family courts, with private law contributing 16% and financial remedy 15%. In total, relationship breakdown cases account for four-fifths of the courts' caseload.

The average time for the disposal of a care or supervision application continued to drop to just under 30 weeks (down 28% from April to June 2013 and down 43% from April to June 2012).

The number of private law disposals where both parties were represented fell by nearly 40% in April to June 2014 compared to the same quarter the previous year.

The breakdown of the caseload was as follows:

Public law: in April to June 2014 there were 3,519 new cases (fairly stable since 2011) which related to public law

and 4,027 cases that reached a final disposal. The average time for the disposal of care and supervision cases was 29.6 weeks.

Private law: in April to June 2014, there were 9,291 private law cases started (about 41 % lower than the equivalent quarter in 2013) and 13,028 cases that reached a final disposal (continuing the upward trend).

Divorce: there were 27,550 petitions filed for divorce and 27,726 decrees absolute made in April to June 2014.

Financial remedy (formerly 'ancillary relief'): there were 8,775 cases started and 7,677 cases with a disposal in April to June 2014.

Domestic violence: there were 5,105 cases started and 4,675 cases with a disposal in April to June 2014.

Forced marriage protection: there were 30 new forced marriage protection order cases, and 26 cases concluded in April to June 2014.

Adoption: there were 3,294 cases started and 2,978 cases disposed, under the Adoption and Children Act 2002 in April to June 2014.

In general, across all case types, cases where both parties, or the respondent only had legal representation took longer than those cases where only the applicant was represented or where both parties were without legal representation.

The **statistical release is here**.

Court finds local authority in 'blatant disregard' of Mental Capacity Act processes

In ***Somerset v MK (Deprivation of Liberty: Best Interests Decisions: Conduct of a Local Authority)*** **[2014] EWCOP B25**, HHJ Marston has ordered that P, a 19 year old woman who was being accommodated as a respite for her mother, who cared for her, should be returned to her family after the local authority had sought to have her retained in the placement. The judge said that there had been a 'blatant disregard of the process of the MCA and a failure to respect the rights of both P and her family under the ECHR'.

P had severe learning disabilities and autism spectrum disorder. She lacked verbal capacity and communication was through gestures and pictures. She lived within her family and attended a specialist school.

In May 2013, she presented at school with extremely challenging behaviour and distress to such an extent that she was returned home. The next day, the mother noticed bruising on P's chest – she informed the school and contacted her GP. Later that week, P's mother went on a holiday abroad for two weeks and arranged for P to be in a respite placement. She informed the staff of the bruising; however, when further bruising was observed, P was examined by a consultant paediatrician. The paediatrician was not informed about P's presentation at school (including that P had been observed hitting herself in the chest, she had taken staff to the ground, and been restrained) and concluded that the bruises were unlikely to be self-inflicted. As a result of the medical report it was decided that P would not be returned home.

Various capacity assessments made it clear that P did not have the capacity to make decisions about where she should live. Despite the dispute about what was in P's best interests (the mother made it clear she wanted P home), the local authority did not make an application to the Court of Protection or consult with other family members about whether P could live with them in the short-term.

P remained in the respite placement until November. She became increasingly agitated and was prescribed an anti-psychotic with a sedative effect – the family were not consulted about medication. The judge found that this placement, which was intended for respite care and included up to 10 occupants all with learning difficulties, was clearly inappropriate for P and concluded this should have been "stunningly obvious" to social workers.
In December 2013, the first deprivation of liberty assessment was carried out and a standard authorisation was granted by the local authority authorising the deprivation of P's liberty.

The local authority issued proceedings in mid-December 2013, 6 months after P was removed from her family and her mother requested her return. The local authority argued P should not be returned due to the bruising, the past history of child protection issues and concerns about a sibling. At a hearing in December, a District Judge made interim declarations about P's lack of capacity and that it was lawful and in P's best interests to continue to reside at the assessment unit.

By March 2014, the local authority conceded that P had been unlawfully deprived of her liberty from June to November, contrary to Article 5 ECHR and conceded that there was a breach of P's and her family's Article 8 rights. The local authority no longer pursued findings about the bruising. Despite accepting its previous 'procedurally inappropriate and unlawful actions', the local authority still proposed that P's remain in local authority care.

As to P's best interests, the judge undertook a balance sheet exercise and found the following in favour of P being returned home: P's wishes, her family's wishes, P's and her family's right to family life, at home P would not be subject to deprivation of liberty, concerns about the bruising were abandoned, the Official Solicitor supported her return, the ISW supported her return, none of the findings on the schedule prevented return home, and that there would be a degree of co-operation between family members and the local authority. The only argument in support of placement in a specialist home was that the local authority was of the view that P would reach her full development potential in a specialist home.

The judge concluded that the balance came down in favour of P returning home. Whilst he did not undervalue her reaching her full potential, this could be addressed by a careful support plan.

In evidence, the senior social work manager accepted that there was no understanding of the law in this area by the social workers and local authority lawyers. Both individuals and the philosophy behind their actions were wrong. There had been no consultation with the family throughout the process and no consideration of the impact on P. The judge found that if there had been a proper open-minded investigation into the original bruising, there

would be no basis for a finding that P should not return home.

The judge concluded that there was 'no question' that P was unlawfully removed from her family from the scheduled end of the respite care in June. Whilst the local authority had a duty to investigate the bruising, a conclusion should have been reached within a week and if the local authority did not conclude she should be returned home, they should have immediately applied to the Court of Protection. The case had "many depressing similarities" to ***London Borough of Hillingdon v Neary* [2011] EWHC 1377**. The Article 8 breaches continued to the present due to the blatant disregard of the process of the MCA 2005 and a failure to respect the P's and her family's right to family life.

For the judgment and summary, by Ariel Ricci of Coram Chambers, from which this news item is derived, **please click here**.

Relatives of adopted adults now able to trace family tree

Children, grandchildren and other relatives of adopted adults can now trace back through their ancestors' lives, helping them to unearth their family history, discover more about their medical background and reach out to long-lost relatives under new rules introduced today.

Previously, only the person adopted and their birth relatives were able to used specialised adoption agencies to help shed light on their family history and make contact with their biological family members.

The new rules will extend this right to all relatives of adopted adults, from children and grandchildren to partners and adoptive relatives, allowing greater openness in adoption while ensuring adopted people have the right to a private, family life.

For example, those who have lost a parent to cancer or a heart problem will be able to discover whether their grandparents or other birth relatives suffered from the same condition, given them the chance to seek advice and support.

Children and Families Minister Edward Timpson said:

> "It's right that descendants and other relatives of adopted adults are able to access important information, such as medical records or genetic health conditions, which could impact upon how they live their life today.
>
> "They should also be able to find out about important events from their past, as well as make contact with family members if they wish.
>
> "This positive change will help thousands of people discover their place in history, while keeping important safeguards in place to protect the right to a private family life for those who were adopted."

Julia Feast OBE, from the British Association for Fostering and Adoption (BAAF), said:

"The British Association for Adoption and Fostering is delighted that the government's consultation about extending intermediary services to descendants of adopted people has now been published.

"We are very pleased that the government has extended the rights of descendants and other relatives to access an intermediary service whilst ensuring that the adopted person's rights are not overlooked and will be at the centre of the decision making."

ARTICLES

Finance & Divorce Update September 2014

Jessica Craigs, senior solicitor and Amy Starnes both of Mills and Reeve LLP

This month's article provides an update of the News followed by a case law update summarising the latest developments which will be of interest to family lawyers.

News in brief

1,409 same-sex marriages between 29 March and 30 June 2014

The Office for National Statistics published the first same-sex marriage statistics showing that a total of 1,409 marriages were formed between same sex couples between 29 March 2014 (when the first same-sex marriages took place) and 30 June 2014. Of these, 56% of marriages (796 marriages) were to female couples while 44% (613 marriages). were to male couples The early uptake of marriages of same sex couples is lower than the uptake of civil partnerships.

For the full statistics click here.

Transparency consultation paper issued by President of the Family Division

The President of the Family Division, Sir James Munby, has issued Transparency- the Next Steps, a consultation paper on the transparency agenda within the family justice reforms. The President says that the underlying principles are:

- a need for greater transparency in order to improve public understanding of the court process and confidence in the court system; and
- the public has a legitimate interest in being able to read what is being done by the judges in its name.

The consultation document can be found here.

Consultation launched on strengthening the law on domestic abuse

The Home Office has launched a consultation which seeks views on whether the current law on domestic abuse needs to be strengthened to offer better protection to victims. The consultation focuses on whether there should be a specific offence that captures patterns of coercive and controlling behaviour in intimate relationships, in line with the Government's non-statutory definition of domestic abuse. Comments in response to the consultation should be sent by 15 October 2014.

The consultation document can be found here.

Relate welcomes announcement on free mediation sessions for separating couples

Relate has welcomed the announcement by the Ministry of Justice that more free mediation sessions will be funded by the Government. The announcement of a single mediation session for both parties if one of them is already legally aided is the latest stage of reforms to improve the family justice system and follows recommendations made by the independent Mediation Task Force.

More information can be found here.

Legal aid cuts have left family courts 'at breaking point'
The Guardian reported that the family courts being at "breaking point" due to the abolition of legal aid

For the full **article click here**.

Mrs Justice King appointed to the Court of Appeal
Mrs Justice King has been appointed to the Court of Appeal and will take up her appointment this autumn.

Financial Remedies Working Group publishes proposals
The Financial Remedies Working Group, established by the President of the Family Division in June 2014, has published its proposals in an interim report. Views on the proposals in the report are requested by 3 October 2014 from individuals and organisations.

The Report is divided into 4 chapters covering observations and recommendations on procedure, litigants in person, standard orders and arbitration.

Jacqui Thomas, barrister at 37 Park Chambers has summarised the recommendations of the Working Group as follows:

- The use of one unified procedure for all financial applications, whether following divorce or through Sch 1 to the CA 1989 [para 6];

- A review of the use of the magistrates' courts to deal with financial proceedings, in the light of the ethos of the single family court [para 8];

- The reinstatement of compulsory FDRs in variation and Sch 1 applications, rather than the short cut procedure [para 10];

- The review of international enforcement procedures [para 10];

- A simplification of financial remedy forms – using the Form E for all applications and abolishing the E1 and E2, as well as streamlining the 14 application forms currently available [para 11-12];

- Simplification of the process of issuing proceedings, with only one party needing to issue the Form A, in order for both sides to have their claims considered [para 14];

- The FDR to take place on the first occasion that the parties attend at court, and parties to prepare for it as such [para 19];

- A review of the procedure for leave to seek financial relief after an overseas divorce [para 23];

- A recommendation that financial proceedings are de-linked from divorce / dissolution [para 29];

- The choice for litigants who want to use the specialised financial remedies unit to issue through the Central Family Court. This option is likely to arise in high value or international cases [para 34];

- Support for the proposal of the mediation taskforce that the MoJ should consider paying for all MIAMs for a period of 12 months in order to improve the take up of mediation services [para 47 onwards];

- The introduction of a mechanism to ensure the adoption of arbitral awards as swiftly and simply as possible [para 85], following the observations of the President in S v S [2014] EWHC 7 (Fam);

- Clarification of the court's powers to order one party to pay the outgoings of the marriage directly, rather than by undertaking;

- Guidance for LiPs to be issued in addition to better use of the tools already available [para 40 onwards];

- Court orders to be drafted in plain language in order to assist LiPs, and see the compendium of orders attached to the report [para 58 onwards];

- Specialist judicial training, particularly in relation to conducting FDRs between unrepresented parties, [para 55-57 and see para 65].

The summary of the recommendations **can be found here**. The report **can be found here**.

Family lawyers sound alarm on separating parents
The Law Society Gazette reported on the warnings given by family lawyers that separating parents are giving up on the courts and may take the law into their own hands in trying to see their children. This followed the publication of new figures by Cafcass which show a sharp drop in the number of private family law cases in July 2014.

Access **the article here**.

Case law Update

***US v SR* [2014] EWFC 24**
Mrs Justice Roberts addressed the issues that had been presented to her in October 2013 in relation to this case. At that date she was asked to deal with issues as to costs, allegations and cross-allegations as to conduct; both litigation conduct and conduct as recognised by s.25(2)(g) of the MCA 1973. The outstanding issues that Mrs Justice Robert had to decide related to how the couple's wealth was to be distributed.

The assets involved amounted to approximately £5m of which £1.76m was in pension funds. The legal costs had been £1.25m. It was agreed that the husband would retain the pension funds.

Background
The relationship lasted some 16 years with the marriage itself lasting 13 years. Three children were born who were now aged 19, 17 and 14. The wife (age 48) was a Russian national. The husband (now 63) is a British national. He spent many years working overseas in the gas and oil industry. The husband left employment in December 2011 and was now effectively retired and drawing a pension. The husband has since remarried and has a three year old child.

The wife remained living in the former matrimonial home. This was agreed as being worth £1.1m subject to a mortgage.

At the time the parties met, the husband was in his early 40's and divorced from his first wife. He had a successful career and, despite having to pay a settlement to his first wife, had re-established his capital base. He had acquired four properties in Moscow but at the time of the hearing, only two remained. Both were currently used as investment vehicles and generated an income for the wife.

The wife had disposed of one of the four properties and Mrs Justice Roberts had found that it was sold at an undervalue and then the sale proceeds spent, or otherwise disposed of by the wife. Consequently she had added back a notional £1m to the balance sheet. Paragraph 6 of the judgement states: 'The impact of this loss and the costs burden of this case drive the outcome inevitably towards a needs-centric solution'.

It is on this basis that many of the assets that would have arguably been classified as non-matrimonial and therefore out of the sphere of "sharing", were in fact included in the asset pool. For example, the husband's pensions which had notably been accumulated prior to the marriage. Mrs Justice Roberts comments at paragraph 34: 'Given the value of the resources which remain to this couple, I am spared the task of making specific findings in relation to the value of the non-matrimonial property in this case. It would be an empty and futile exercise. Every last pound and rouble in this case is going to be required to meet ongoing need and make provision for these children.'

The judge struggled with reaching a fair conclusion and compensating the husband for the wife's financial conduct in relation to one of the Russian properties. The conclusion was based on a cross-check of needs without overlooking the fact that the husband had been essentially deprived of £500,000 from the balance sheet.

The final issue addressed by the court was one of costs. At paragraph 59, Mrs Justice Roberts delivers a salutary lesson:

> 'The costs award which I am proposing to make is designed, in part, to reflect the court's opprobrium of the husband's conduct in this litigation. As I have said before, this was not simply an attempt by him to conceal assets. This was a deliberate and sustained concealment compounded thereafter by a fraudulent presentation advanced on the basis of fabricated evidence. He misled the court, his former wife, her advisers and his own legal team. Conduct on that scale has to be reflected in a punitive costs order.'

The judge made an order that the husband pay 70% of the wife's costs.

Once the costs order had been taken into account the final award, in percentage terms, was 45.78% to the wife and 54.22% to the husband. The difference in the shares was a 'proper reflection' of the wife's misappropriation of the husband's half share of the £1m loss incurred on the Russian property.
Paragraph 85 summarises:

> 'Is it fair in all the circumstances that the wife should receive less than 50%? My answer to that question is: undoubtedly, yes. I cannot ignore the impact of her conduct in selling Property B at such a substantial undervalue…Furthermore, in terms of overall fairness, I am satisfied that the award which I have made properly reflects the existence of non-matrimonial property acquired by the husband…'

***SK v TK* [2013] EWHC 834 (Fam)**

The wife (aged 52) was a nurse by profession. Since the birth of the younger child, she had been a housewife and mother. The husband (aged 49) was a technology entrepreneur. From 1987, he worked in the technology sector for a company. Initially he wrote software but he then became involved in sales and was very successful.

The parties married in 1994. At the time of the hearing they had two teenage children both attending public school. School fees were approximately £48,000 per annum.

A petition was filed in August 2011; decree nisi was pronounced in May 2012.
The wife's case was that all the assets were accrued during the marriage. Each party had made an equal contribution (in different ways) and the assets should be divided equally on a clean break basis. In addition, the husband should pay the children's school fees, university costs and periodical payments of £20,000 per annum, per child.

The husband's case was that the assets should be divided 60:40 in his favour. The reasons for the departure from equality were: special contribution, pre-acquired assets and that by retaining the shareholding in his company, Limelight, he was taking on the greater financial risk that the wife. In relation to school and university fees, he said they should be met equally.

In 1992 (prior to the parties' marriage), the husband had discussed with two colleagues, setting up his own company. The company, Vision, was incorporated in 1992. At the time of incorporation, the husband was a 'sleeping partner' due to his ongoing work with his present employer.

As at 31 December 1993, Vision had net assets of £24,853 which had risen to £84,654 by the end of 1994.

The husband began working for Vision after her parties were married. The husband acquired a 1/3rd shareholding in Vision and the company became extremely successful.

In 2000, after various offers for sale, Vision was sold for £36m. By the time the husband left the company, he had received total consideration of £12m gross (subject to 10% CGT).

In 2004, the husband started his second business venture, Limelight. Again, it was very successful. The husband held 75.4% of the shareholding and was keen to retain this free from any interest of the wife.

At the time the matter was before the court, the assets in the case were between £18 - £20m net of tax. Mr Justice Moor had to consider the three elements of the husband's argument as to why there should be a departure from equality.

1. Special contribution
Mr Justice Moor acknowledged the husband's ability as a businessman with a number of important skills. However, applying the authorities he was not satisfied, that there was a 'special contribution' to amount to a good reason for departure from equality. In his words: 'It would not be accurate to describe him as a genius.'

2. Pre-acquired assets
The judge was reluctant to accept the husband's case that his interest in Vision should be treated as a pre-marital contribution. At the date of marriage, Vision had no significant value, plus the husband had not, at that stage, made sufficient contribution to Vision to justify this claim.

No substantial offers were made to purchase Vision during the period prior to the marriage. Moor J describes the business as 'fledgling'.

The second reason for denying this argument was that the husband had not worked for Vision at any point prior to the marriage. With reference to the Jones line of argument, Moor J comments [paragraph 48]:

> 'He cannot rely on a springboard because he had not yet arrived at the swimming pool let alone got onto the diving board. The hard work was yet to come.'

3. Risk
The husband argued that he should receive a greater share of the assets because he was taking all the risk by retaining the shares in Limelight. This argument was dismissed on the following basis:

a) The husband wanted to retain the shares. Whilst he would be taking on the risk, he would also have the opportunity associated with Limelight in the years ahead.

b) The value of the husband's interest in the company was only about ¼ of the total assets in the case.

c) The husband had a significant earning capacity. The wife did not.

d) Until the sale of Limelight (where the husband was only due to receive 50% of the sale proceeds), he would be in receipt of 75% of the dividends.

e) The risk in relation to the future or Limelight should be factored into the value attributed to the company rather than giving the husband an increased share of the net assets.

The conclusion reached was that this was a clear case for an equal division of the net assets. On the basis that the assets were divided equally, Mr Justice Moor concluded that the school fees and university fees should also be divided equally. In addition, the husband was ordered to pay £10,000 p.a. per child, leaving the husband with a net income of over £100,000 p.a.

Fred Perry (Holdings) Ltd V (1) Ivan Genis (2) Ayelet Haim Genis **(2014)**
This was an application by Fred Perry (Holdings) Ltd for an order for possession and sale of the first defendant's property under the Trusts of Land and Appointment of Trustees Act 1996.

Background
Ivan Genis and Ayelet Haim Genis occupied the property with their two children. The property was the family home and was registered in Mr Genis's sole name. The parties married in 2007 and Mrs Genis subsequently registered her rights in the property under s.30 of the Family Law Act 1996.
Fred Perry (Holdings) Ltd had three charging orders on the property.

Judgment
The High Court gave priority to the commercial creditor's charging orders over the wife's registered home rights and made an order for sale of the property. The operation of the order for sale was deferred for 12 months to enable the family to obtain alternative accommodation and arrangements for new schools without interruption to the children's studies during the next school year.

Surrogacy Law Update (September 2014)

Andrew Powell, barrister, **4 Paper Buildings**

Over recent weeks surrogacy has received a great deal of media attention. The case of **baby Gammy in Australia** has reignited the debate about the law related to surrogacy on an international level with some commentators calling for a Surrogacy Hague Contention akin to adoption.

This update is intended to provide a précis of recent surrogacy decisions in this jurisdiction.

Married surrogate

***Re D (A Child)* [2014] EWHC 2121 (Fam)**

The subject child was born as a result of a commercial surrogacy arrangement in the Republic of Georgia using a donor egg and the father's sperm.

The key issue for the court's determination was the question of whether or not the surrogate was married at the relevant time. This was particularly relevant because if the surrogate mother was married at the time 'of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination', then for the purposes of English law her spouse would be the legal father unless it could be shown that he did not consent (**s.35(1) HFEA 2008**).

The court concluded that the evidence did not demonstrate that the surrogate mother was married at the relevant time. The parties agreed to a shared residence order between the mother and father.

Moylan J observed:

> "There is, in my view, a compelling need for a uniform system of regulation to be created by an international instrument in order to make available an appropriate structure in respect of what can only be described as the surrogacy market."

Surrogate's consent

***WT (A Child)* [2014] EWHC 1303 (Fam)**

In this matter the applicants, a heterosexual unmarried couple, sought a parental order for their child born in India. The child was conceived using a donor egg and the applicant's sperm. The surrogate was unmarried.

One of the issues to be determined was whether, as required by **section 54(6) of the HFEA 2008**, the surrogate had freely and unconditionally consented to the making of a parental order.

All of the documents signed by the surrogate were in English, including the consent Form A101A. There was no information whether she spoke English or had the documents translated for her. Understandably, this caused the court some anxiety at interim hearings. However, prior to the final hearing, the applicants were able to locate the surrogate and provide a sworn affidavit confirming that the surrogate had read and signed all the relevant documents.
Having considered all of the relevant criteria under s.54 of the HFEA 2008, the court granted the application for a parental order.

Seeking legal advice

***CC v DD* [2014] EWHC 1307 (Fam)**

The issue in this case was the effect of a step-parent adoption order made in the USA on the parents' application for a parental order in this jurisdiction. The father was the biological father and an adoption order was made in respect of his wife, the mother, in the State of Iowa.

Section 83 of the Adoption and Children Act 2002 places a restriction on individuals who are habitually resident in the "British Islands" bringing a child into this jurisdiction where the child is habitually resident elsewhere for the purpose of adoption. The court found no breach of section 83 as the parents were not habitually resident in this jurisdiction.

Theis J observed:

> "This case highlights once more the legal complexities in this area of the law and the need for those who embark on international surrogacy arrangements to ensure they have expert advice both here and in the jurisdiction where the arrangement is taking place."

Saliently, Theis J opined:

> "There may well be cases, on different facts, where such a breach does occur. In that scenario the court will need to consider, in the light of the facts of that case, whether the applicants have acted in good faith or whether it would amount to a clear abuse of public policy which may prevent the court making a parental order. In circumstances such as this case, where the applicants acted in good faith relying on reputable legal advice it may be difficult to say they were not acting in good faith. However, each case is fact sensitive and needs to be carefully considered." [para 37]

Whilst the court in this case granted the applicants' application for a parental order, the case serves as a frank reminder that there may well be cases where, dependent upon the facts, there could be a breach of s83 of the Adoption and Children Act 2002.

***G & M* [2014] EWHC 1561 (Fam)**

A same-sex couple made an application for a parental order following a surrogacy arrangement in America. The twins had been conceived using donor eggs which were transferred into a married surrogate. The twins were born in March 2013.

In accordance with Iowa law and the terms of the surrogacy contract, once DNA testing established that the applicants were the biological fathers (one of each twin) the name of each was registered on that twin's birth certificates (ie of the twin whom each had fathered). The surrogate's parental relationship with the twins was then extinguished and a decree of adoption was ordered, affording each father equal parental rights over each twin.

The principal issue with which the court had to grapple with was whether there had been a breach of section 83 of the Adoption and Children Act 2002.

The court found that the applicants had little option other than to undertake the adoption process in Iowa and that they had acted in good faith in order to secure the legal position of the twins. Theis J observed that this case, as CC v DD, highlighted the importance of intended parents who embark on an international surrogacy arrangement obtaining legal advice in both jurisdictions.

A secondary issue in this case was domicile. It was accepted that the applicants' domicile of origin was France. However their case was that they had abandoned their domicile of origin and acquired domicile of choice in this jurisdiction. The court was satisfied that they had acquired domicile of choice in this jurisdiction, the applicants having sold their main French property to purchase a family home in London and had long term permanent employment in this jurisdiction.

Application for parental order out of time

***JP v (1) LP (2) SP (3) CP (A Child by his Guardian)* (2014)**

This was a decision made earlier this year by Eleanor King J. The child at the centre of the proceedings was born as a result of an informal arrangement between the parties where, prior to conception, none of the parties had sought legal advice. The commissioning parents used 'partial' surrogacy as a form of conception where the surrogate mother's egg is inseminated using the commissioning father's sperm. The surrogate mother was known to the commissioning parents.

The surrogate mother became pregnant after artificial insemination using the father's sperm. The parties planned that the surrogate mother would give birth at a hospital in Leicester. When the hospital became aware that the child was conceived

as a result of a surrogacy arrangement it asked the parties to enter into a surrogacy arrangement and to provide the hospital with a copy of the same. The parties did so, instructing a firm of solicitors to draft an agreement.

Whilst lawyers are permitted to do so free of charge, the court found that the firm was in fact committing a criminal offence, in breach of **s2 of the Surrogacy Arrangements Act 1985** by 'negotiating surrogacy arrangements on a commercial basis'.

Post birth, the hospital, having seen a copy of the surrogacy agreement, discharged the child into the care of the commissioning parents. The child's birth was subsequently registered, naming the surrogate mother as the 'mother' and the commissioning father as the 'father'.

The commissioning parents' relationship broke down and the mother left the former matrimonial home with the child and then issued an application for a residence order. The matter came before the county court which made a shared residence order, with both parents undertaking to regularise the child's legal status by issuing an application for a parental order. By this time the child was almost 5 months old. The father signed the parental order application form and gave it to the mother to sign and lodge. The mother signed the application, but did not lodge it as agreed. The application was actually issued in October, by which time the child was over 7 months old. By then the application was out of time because the statutory time limit is 6 months from birth (notwithstanding the fact that the parents had separated and so the child's home was not with the applicants).

Months later when relations between the parents deteriorated further, the mother issued an application for a specific issue order for the child to be returned to her care after contact with the father. The shared residence order was confirmed and the mother and father renewed their undertaking to re-issue their application for a parental order (it is plain that it had not been appreciated that the statutory time limit had expired).

The matter was transferred to the High Court and the surrogate and child were joined as parties. In the absence of a parental order being made, the surrogate mother remained the child's legal mother; the father was the child's legal and genetic father, whilst the mother had no formal status save for being the child's psychological parent.

Special guardianship or adoption orders were not available options. However the parties came to an agreement whereby the shared residence order remained in place with all issues relating to parental responsibility delegated to the mother and father jointly; and a prohibition was made on the surrogate mother exercising any parental responsibility without the leave of the court. The child was also made a ward of court.

Eleanor King J observed that the case highlighted the surrogacy provisions in the Human Fertilisation and Embryology Act 2008 "should be as much a part of the skills set of a competent general family practitioner".

Conclusions

The recently reported surrogacy cases all highlight a similar theme: the importance of individuals embarking on surrogacy arrangements, whether domestic or international, seeking appropriate legal advice before they do so. In particular, where the arrangement is an international one there is merit in seeking advice in both jurisdictions, where possible, prior to insemination.

Proper documentary evidence (notarised translations where appropriate) is also important in ensuring that each of the section 54 criteria is met, which will make for a much more straightforward process when applying for a parental order.

Domestic Violence Update – the latest developments practitioners need to know about

Mandip Ghai, Solicitor and Legal Officer, **Rights of Women**

In November 2010, the Home Office published ***Call to end violence against women and girls*** which sets out the cross-government strategy for tackling violence against women and girls (VAWG). The paper identified four key areas of focus: the prevention of violence, the provision of support, working in partnership, and ensuring perpetrators are brought to justice.

Various measures have been implemented since then as part of the action plan to tackle violence against women and girls. This update will summarise those measures and other recent and forthcoming developments to civil and criminal law remedies.

As domestic violence is an issue which disproportionately impacts upon women, this article refers to the victim as female and the perpetrator as male. However, the legislation and measures referred to in this article also apply to violence against men, and violence within same sex relationships, unless indicated otherwise.

Cross government definition of 'domestic violence'

In March 2013, following consultation, the Home Office introduced a new official definition of domestic violence to include young people aged 16 to 17 and coercive or controlling behaviour. The new definition of domestic violence now reads:

> 'Domestic violence' includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse.
>
> 'Controlling behaviour' means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
>
> 'Coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

This definition, which is not a legal definition, includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.
The definition is to be used across all government departments to inform their policies and procedures.

Domestic violence protection notices and domestic violence protection orders

The government identified as a key loophole cases where a suspected perpetrator of domestic violence is arrested following an incident of abuse, but not charged with an offence. The perpetrator is released and able to return to the scene of abuse within a very short space of time, leaving the victim vulnerable whilst she makes the decision to leave or makes arrangements to take out a civil injunction.

Two new measures were introduced under Crime and Security Act 2010 to protect victims in the immediate aftermath of reporting domestic violence incident: **domestic violence protection notices** (DVPNs) and **domestic violence protection orders** (DVPOs). Police forces have been implementing the roll-out of these new powers since 8 March 2014.

The provisions of DVPNs and DVPOS are similar to protection of the kind one can obtain using non-molestation orders and occupation orders. They can refer to particular acts of molestation and / or molestation generally. If the perpetrator and the victim live together the DVPN or DVPO can also exclude the perpetrator from the home or from coming within a specified distance of the home.

It is important to remember that these a temporary measures, designed partly to allow the victim time and space to think about long term options, such as applying for a civil injunction.

DVPNs and DVPOs which are in force or made within the last two years can also be used as evidence of domestic violence for access to family law legal aid.

DVPNs

Sections **24 to 26 of the Crime and Security Act 2010** govern DVPNs.

Police officers (not below the rank of superintendent) can issue DVPNs against a person aged 18 or over ("P") if they have reasonable grounds to believe that:

a) P has been violent towards, or has threatened violence towards, an associated person, and

b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence.

Two people are associated if they are associated within the meaning of **s.62 of the FLA 1996**.

There is no current guidance on necessity to protect. The **Interim Guidance Document for Police** which was issued to assist officers during the pilot scheme from June 2011 to June 2012 states that consideration should be given to:

- What the DVPN will seek to achieve and why this cannot be obtained by any other or less disruptive means, i.e. no further action, bail conditions not applicable or the alleged perpetrator ('P') has accepted a formal police caution
- The risk of harm is too great to allow P to return to the address and therefore the sole use of a suitable risk management plan is not suitable
- The only option to reduce risk of further violence or threat of violence is to remove P from the address and to continue to deny access to P by issuing a DVPN.

Before issuing a DVPN, the authorising officer must, in particular, consider:

a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person),

b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN. The officer can, however, issue the DVPN where the person being protected does not consent to the DVPN,

c) any representations made by P as to the issuing of the DVPN, and

d) if P is being excluded from the home, the opinion of any other associated person who lives in the premises.

DVPNs are temporary measures, and a police constable must apply for a DVPO **within 48 hours**.

DVPOs

Sections 27 to 29 of the Crime and Security Act 2010 govern DVPOs.

If a DVPN has been issued, a police constable must apply to the magistrates' court for a DVPO. The hearing must take place within 48 hours of the DVPN being served upon P. P must be given notice of the hearing.

The court can make a DVPO if two conditions are met:

1. The court is satisfied **on the balance of probabilities** that the perpetrator has been **violent or has threatened violence to an associated person**

2. The court thinks that making the DVPO is **necessary to protect the victim** from violence or the threat of violence.

Before granting a DVPO, the court must, in particular, consider:

a) the welfare of any person under the age of 18 whose interests the court considers relevant to the issuing of the DVPO (whether or not that person is an associated person),

b) the opinion of the person for whose protection the DVPO would be issued as to the issuing of the DVPO. The court can, however, issue the DVPO where the person being protected does not consent to the DVPO,

c) if P is being excluded from the home, the opinion of any other associated person who lives in the premises.

DVPOs last for a **minimum of 14 and up to a maximum of 28 days**.

In the event of a breach, a police constable can arrest the perpetrator without a warrant if the constable has reasonable grounds for believing that he has breached the DVPO. The perpetrator should be brought before a magistrates' court within 24 hours. DVPOs are civil orders, so breaches are dealt with under **Section 63(3) of the Magistrates' Courts Act 1980**. Thus far, there have been reports of one man being successfully prosecuted for breaching a DVPO and he was jailed for seven weeks.

Rights of Women welcomed the introduction of these measures which should help plug an important gap and takes the pressure off the victim to leave the family home rather than the perpetrator. There will need to be a concerted effort to ensure that the measures have the intended impact on the safety of victims of domestic violence. The onus is on police officers to identify the risk and issue the DVPN. Given that the response of some police officers to domestic violence incidents remains a cause for concern, these new measures will only be effective if the police are provided with additional training not just on their proposed new powers, but on domestic violence and the dynamics of violent relationships more generally to ensure that the orders are used appropriately and safely.

According to the impact assessment, key to the success of DVPNs and DVPOs will be the caseworker who should make contact with the victim, offer support and outline the options available to her as soon as a DVPO is issued. This might include advice on applying for domestic violence injunctions or on criminal proceedings. It was envisaged that this role could be taken on by existing Independent Domestic Violence Advocates (IDVAs) or roles could be "grown" within existing specialist support services. There will also need to be significant resources and funding allocated to ensure that there are sufficient caseworkers available if DVPNs and DVPOs are to stand a chance of meeting their potential.

Domestic violence disclosure scheme (Clare's Law)

The domestic violence disclosure scheme (also known as Clare's Law) has been in place since 8 March 2014. Guidance on the scheme **can be found here**.

Under this scheme, an individual has the **right to ask** the police whether a current partner represents a risk of violence (in private if necessary).

Concerned third parties (such as parents, neighbours, friends) can also apply; however it may be that the police disclose the information to the person at risk of violence or a person who can protect her, as opposed to the third person.

Individuals also have the **right to know** whether a current partner represents a risk of violence. This means that if the police receive information that may impact the safety of the victim, they can disclose information to the victim and / or the persons who are best placed to protect the victim.

Information should only be shared where it is legal, necessary and proportionate. The police will meet with other safeguarding agencies before disclosing information. The disclosure should contain enough information to enable the victim to make an informed decision about the relationship. She should also be provided with a robust safety plan tailored to meet her needs.

The likely impact of this measure in preventing domestic violence is dubious. It relies upon a) previous victims of the perpetrator making a complaint to the police and the perpetrator being prosecuted and convicted, and b) potential victims foreseeing abuse and contacting the police. This means that the scheme is likely to capture a minority of victims. Further, many perpetrators are never convicted. Women who use the **right to know** scheme and are told that there is no history of abuse may be left with a false sense of security.

Forced marriage

As of 16th June 2014 it is a criminal offence to force someone to marry. **Section 121(1) of the Anti-social Behaviour, Crime and Policing Act 2014** provides that an offence is committed if a person:

a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and

b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.

It is also an offence to practise any form of deception with the intention of causing another person to leave the United Kingdom and be forced into marriage (see **s121(3), Anti-social Behaviour, Crime and Policing Act 2014**).

Breaching a forced marriage protection order is also a criminal offence (see **s 120, Anti-social Behaviour, Crime and Policing Act 2014**).

The elements of the offences seem rather convoluted. The CPS will have to prove beyond a reasonable doubt that some form of violence, threat or coercion has taken place, and show that this has caused the victim to enter a marriage, and that the perpetrator knows or ought to know that this force would cause the victim to enter into the marriage.

The government has provided detailed guidance on forced marriage for professionals. The guidance makes clear that there should be a victim led approach to ensure their safety, and action that should (and should not) be taken to support them.

It is important to remember that there are already a range of criminal offences that often occur when someone is forced to marry such as assault, harassment, theft of passports, kidnapping and rape. Perpetrators can be charged with these offences as well as or instead of the forced marriage offences.

The government's strong stance on forced marriage is encouraging. However, as with other forms of VAWG, prosecution alone will only go so far in addressing the prevalence and impacts of forced marriage. Whilst the move to criminalise forced marriage sends a powerful message that forced marriage will not be tolerated, many of the leading support organisations for survivors of forced marriage, such as **Ashiana Network**, have raised concerns regarding victims being deterred from reporting and the challenges the police and CPS will face if victims don't want to give evidence or support a prosecution due to pressure from the perpetrators or fear of criminalising family members.

There have been no prosecutions for forced marriage, as far as the writer is aware, since the offence came into force on 16th June 2014. It will be interesting to see if the new criminal offences are utilised or whether they will remain unused, like the criminal offences relating to female genital mutilation, for which there is yet to be a successful prosecution.

Public consultation on prosecuting cases of domestic violence

The Director of Public Prosecutions issued **a consultation document on the prosecution of domestic violence cases** on 14th May 2014. The consultation document helpfully consolidates existing guidance on prosecuting cases of domestic violence. It sets out the cross-government definition of domestic violence introduced in March 2013 (see above) which includes coercive and controlling behaviour, and should be used by police to identify cases if domestic violence. The document also includes guidance on the approach that should be taken when dealing with cases involving domestic violence, the offences available to charge the perpetrator, evidence gathering and sentencing.

The deadline for responding to the consultation has now passed. A summary of the consultation responses will be published in Autumn 2014. There will be a particular focus on the following:

1. Whether the CPS approach to understanding the context of domestic violence is right and well-informed;

2. Whether the current guidance has identified the right potential lines of enquiry for evidence gathering and the right public interest factors to be considered when the CPS makes a charging decision;

3. The CPS's approach to cases where the victim is not willing to support a prosecution;

4. Managing safety and support issues for victims;

5. Whether the current guidance demonstrates sensitivity and understanding to the issues which may be experienced by victims from different groups.

Rights of Women and **Women's Aid Federation of England** are pleased that the guidance identifies the key issues for women survivors of domestic violence going through the criminal justice system. However, the guidance lacks analysis of what the organisations consider the gendered nature of domestic violence, and they suggest the guidance should be amended to include this as a running theme. There also needs to be further information on how the guidance will be implemented, for example, by training local prosecutors.

Consultation on strengthening the law on domestic abuse

The Home Office recently announced a **consultation to consider whether there should be a specific offence which captures patterns of coercive control and behaviour in intimate relationships**, in line with the Government's non statutory definition of domestic abuse.

Currently, there is no specific offence of domestic abuse. However, there are a range of existing offences which capture domestic abuse. The **Protection from Harassment Act 1997** (POA) protects victims from stalking or any form of persistent conduct which causes another person alarm or distress, and this can include coercive control within an intimate relationship. On 11th September 2014, the CPS and ACPO launched **a new protocol** to "**ensure consistency of approach when tackling all forms of stalking**".

The Home Office consultation was instigated following the HMIC Review into the police response to domestic abuse, which showed that police fail to see domestic abuse as a serious crime and lack the awareness and understanding to deal with domestic abuse and coercive control.

Critics of the proposed new offence have several concerns:

- The new offence will just duplicate existing legislation. The emphasis should be on allocating resources, training and raising awareness on how to use existing legislation to arrest, prosecute and convict perpetrators of domestic abuse.

- Many women are reluctant to approach the police for fear of not being believed. Proving coercive control is extremely difficult, which means that only the most extreme instances will be prosecuted and the remaining women will be left vulnerable and even less likely to seek help.

- There is a risk that the offence will be used by perpetrators against their victims as a further form of control and harassment, for example by claiming that "nagging" or requesting child maintenance amounts to harassment.

The consultation closes on 15 October 2014.

Civil remedies

With the number of legal aid solicitors and barristers who can take on domestic violence injunction work declining, the decision to scrap court issuing fees for non-molestation orders, occupation orders and forced marriage protections orders was seen as a very positive move.

This area of work has been relatively unaffected by the recent changes to the family justice system.

In ***JM v CZ*** **[2014] EWHC 1125 (Fam)**, Mostyn J considered the then usual practice of the Central Family Court (and other courts) of making ex parte non-molestation orders for 12 months with a provision for the respondent to request a return date hearing or apply on 48 hours' notice to vary or discharge the order. He found that that this does not comply with the statutory requirements of s45(3) for a full hearing "as soon as just and convenient". He also reminded us that applicants should give at least short, informal notice (e.g. telephone call, text or email) or justify to the court why it is not possible for such notice to be given. The court should make clear why it is satisfied that the application was made ex parte.

EU Regulation on Mutual Recognition of Protection Measures in Civil Matters

The UK has opted into the **Regulation on Mutual Recognition of Protection Measures in Civil Matters** which will come into force on **11 January 2015** and applies to orders on and after that date. The purpose of the Regulation is to ensure that protection measures issued by a member state are easily recognised and acted upon in the rest of the European Union (EU).

Civil protection measures include orders which provide protection from physical, psychological, sexual harm, gender-based violence, domestic violence, harassment and stalking. It will, for example, include non-molestation orders forbidding a person from contacting the protected person including by telephone, electronic or ordinary mail, fax or any other means.

The Regulation requires the court or the issuing authority, upon request of the protected person, to issue a standard form certificate. The respondent must be informed about the certificate and the implications of the certificate – i.e. that the protective order can be recognised and enforced across the EU.

The police in other member states can act on the order for 12 months from the date of the certificate. The actual procedure of enforcement and consequences of breaching the order shall be governed by the law of the member state.

Conclusion

That brings me to the end of my round-up on recent and forthcoming changes to the law and policy on domestic violence. None of the measures will reach their full potential without ongoing, specialist training for police officers, the CPS and judges (which is currently lacking). Many would argue that if the government is truly committed to tackling VAWG then it would fund services that have been shown to work (including services targeting perpetrators), rather than introducing more measures in a fragmented, piecemeal manner to tackle small demands around VAWG. The changes have, however, brought attention and awareness to the issue of VAWG and will, hopefully, remain as one of the Government's top priorities.

Mandip Ghai would like to thank Ruth Tweedale and Frances Trevena for their help with this article.

Care Proceedings and the European Dimension: Article 15 Transfers

Michael Jones, barrister, **15 Winckley Square Chambers**

Following my previous article on the subject of public law cases involving a European element, this article is intended to provide an update in respect of recent case law in this area. Increasingly, practitioners are finding themselves having to grapple with applications for care orders being brought by local authorities, which involve a child or parents originating from another European state. There has been an increasing volume of reported cases dealing with **BIIR** and, in particular, Article 15 transfers. Here I will deal with the recent judgments, which have set down further guidance in this area.

In ***London Borough of Barking & Dagenham v C & Others*** **[2014] EWHC 2472**, the court was concerned with the issue of transferring care proceedings involving a family who were Romanian nationals, back to Romania. In coming to her decision, Parker J considered both the "pros and cons" of transfer, concluding that the balance lay overwhelmingly in favour of the case being one that should be heard by the Romanian Courts. Factors considered to support transfer were that the father was putting himself forward as a carer for the child, the question of whether the support which could be offered to the father in Romania could be underpinned by any form of order or state charitable or voluntary sector intervention could only be answered by the Romanian authorities and only the Romanian authorities could decide how this fundamentally Romanian child would be served by the placement options and whether any negatives in the father's assessment would rule him out in Romanian terms. The father could best litigate in Romania and was likely not to be able to do so effectively here.

What can be seen from this and from other recent judgments, is that the courts are employing a "pros and cons" balancing exercise of the positive and negative aspects of transferring a case under Article 15. It may well be advisable for practitioners to consider utilising the "balance sheet" approach endorsed by the Court of Appeal in ***Re B-S (Children)*** **[2013] EWCA Civ 1146**, in respect of considering adoptive placements; here this would involve a balance sheet listing the "pros" and "cons" of transferring a case under Article 15 and formulating an analysis in support of, or opposition to, transfer. This "balance sheet approach" was employed by Parker J in both *London Borough of Barking & Dagenham v C* and in ***Suffolk County Council v DL*** **[2014] EWFC 29**.

Leicester City Council v S **[2014] EWHC 1575 (Fam)** sets down useful guidance in respect of the procedural aspects of liaising with the Central Authorities of other European states in accordance with Article 55 BIIR. This case involved a family who were Hungarian nationals; the local authority had instigated assessments of the family members residing in Hungary, carried out by English speaking social workers. Moylan J noted that the local authority had failed to enquire into whether it was legal for English social workers to carry out such assessments in the Hungarian jurisdiction; the judgment stresses the importance of making such enquiries prior to commencing any assessments abroad (the **CFAB website** is a useful tool in ascertaining the legality of conducting social work assessments in specific countries).

Moylan J gives detailed guidance in respect of the role of central authorities and consular officials. These points are broadly summarised within the following passage of the judgment:

> "50. I would also draw attention to the fact that the word used in Article 55 is "information" and not "evidence". Evidence is governed by the **Evidence Regulation**. Member States appear to have different approaches to what information can be supplied pursuant to a request under Article 55 (and how that can be achieved) and what can only be supplied under the Evidence Regulation (and pursuant to the specific procedure required by that Regulation). It may be (as referred to above) that, for example, the request in the present case for the health, police and social services records should have been made under the Evidence Regulation, and was accordingly not being made appropriately.
>
> 51. Central Authorities are also typically small agencies, and are not equipped to deal with a broad range of enquiries. They are not enquiry agents or general evidence gatherers. Any requests made pursuant to the provisions of BIIR must be focused on a specific provision within that Regulation.??

52. I do not propose to undertake a detailed analysis of the provisions in BIIR relating to cooperation and communication. The important features to which I am currently drawing attention are, to repeat:

(i) that the agency given primary responsibility for cooperation under Chapter 4 of BIIR is the Central Authority;

(ii) that Embassies and consular officials are given no role in BIIR (or the 1996 Convention) and should not be used as proxies for central authorities; and ?

(iii) that Article 55 relates to the provision of information.

53. Dealing with point (ii) in a little more detail, both the Hungarian Embassy in this case, and the Lithuanian Embassy in ***Bristol City Council v AA***, made clear that they were only forwarding correspondence and had no other role. Given the structure and the provisions of BIIR, it is not appropriate to expect, let alone seek to require, an Embassy or consular officials to play any part in care proceedings other than at their request as set out in ***Re E***."

It is therefore clear that local authorities will now have to be increasingly alive to the limits of exactly what documentation they can request under Article 55. Article 55 has often been used in attempts to obtain police disclosure, medical records and other evidential materials; this is clearly blurring "evidence" with "information". If evidential materials are sought, they should be obtained via the correct procedure in accordance with the evidence regulation (**EC Council Reg no 1206/2001** on cooperation between Courts of member states in the taking of evidence in civil and commercial matters). Central authorities must not be treated as evidence gatherers or enquiry agents.

From Moylan J's judgment, the following points can be taken:

- The need to consider, before they commence such work, whether English social workers are permitted to undertake work directly in another EU Member State (See CFAB website for further information in respect of legality of social work assessments abroad);
- The agency given primary responsibility for cooperation and communication under Chapter 4 of BIIR is the Central Authority;
- Central Authorities (or other foreign State Agencies, including Embassies) are under no obligation, and cannot be placed under any obligation, to comment on or become engaged in proceedings in England. This includes "courts" of another Member State, as defined by BIIR, which are under no obligation to make a request under Article 15, the obligation being on the courts of England and Wales;
- Embassies and consular officials are given no role in BIIR (or the 1996 Hague Child Protection Convention) and should not be used as proxies for Central Authorities;?
- Requests under BIIR for information (under Article 55) must be clearly focused on one or more of its provisions and must be distinguished from requests for evidence which must be made under the Evidence Regulation.

It is clear that local authorities will have to display vigilance in how they approach gathering evidence from foreign jurisdictions and how they go about obtaining assessments of individuals residing abroad. ***Cross border child protection cases: the 1996 Hague Convention - Departmental advice for local authorities, social workers, service managers and children's services lawyers*** is recommended reading for any local authority practitioner (this guidance specifically recommends that local authorities contact ICACU in the first instance in order to ascertain the most appropriate way to make a request for information from a foreign state, something which was endorsed by Moylan J).

In both ***Leicester City Council v S*** and in ***Bristol City Council v AA and Another*** **[2014] EWHC 1022 (Fam)**, the courts have impressed the fact that the additional delay to the proceedings, which would inevitably be caused by transfer, was not in itself undermining of the Article 15 procedure (it cannot therefore be argued by either a local authority or the Children's Guardian, that transfer should not be permitted due to the delay that the instigation of the transfer mechanism would cause).

Another issue which has arisen in a number of reported cases is the issue of the competence of social services departments within foreign jurisdictions; referring to the judgment in ***Re K (A Child)*** **[2013] EWCA Civ 895**, it is very clear that the judicial and social care arrangements in member states are to be treated by the courts in England and Wales as being equally competent. Parties to proceedings cannot therefore argue against transfer on the basis of any criticism of the proposed long term care planning that will be instigated by their foreign counterparts.

A further case of particular note is that of ***Coventry City Council v A*** **[2014] EWHC 2033 (Fam)**. In this case a Romanian mother gave birth to a child and abandoned her in England. The Romanian authorities requested return of the child on the basis that they did not agree with a care plan of non-consensual adoption. Hogg J found that it was not in the child's best interests to transfer as she was born in England and had formed all attachments since birth in this jurisdiction. Hogg J noted that the Romanian authorities had failed to attend any hearings despite invitations to do so, had failed to provide a skeleton argument as requested and had given no clarity as to alternative placement options in Romania. This judgment

reinforces the fact that, in the event that an authority from another jurisdiction voices opposition to a care plan and requests return of a child, it does not necessarily follow that a transfer of proceedings will be inevitable. The courts will come to a final decision in relation to transfer based on the application of the Article 15 criteria and any foreign state seeking repatriation of a subject child should be prepared to actively involve itself in the ongoing proceedings if invited by the court to do so.

The court in this case adjourned the matter in order to allow for further investigations to be made into family members in Romania. This is becoming a common approach, with the courts having to ensure that "no stone is left unturned" in line with *Re B-S*.

Finally, at paragraph 19 of the judgment in the case of **Southampton City Council v A Mother & Others [2014] EWFC 16**, Baker J gives a useful overview of the developing case law and guidance in the area of Article 15 transfers:

(1) "The power to transfer a case or part of the case to the courts of another Member State in exception to the general principle as the opening words of Article 15(1) make clear" (per Lewison LJ in ***Nottingham City Council v LM* [2014] EWCA Civ 152** at paragraph 15).

(2) "The Article 15 power may only be exercised where all three questions identified by Munby J in AB v JLB are answered in the affirmative" (per Ryder LJ in *Nottingham City Council v LM* at paragraph 16).?

(3) "The question of whether a court or another relevant Member State would be better placed to hear the case (or a specific part of the case) is an evaluation to be performed on all the circumstances of the case. It is intimately connected with the question of the best interests of the child" (per Lord Justice Ryder in *Nottingham City Council* at paragraph 19).??

(4) "The starting point for the enquiry into the second question is the principles of comity and co-operation between Member States of the European Union" (ibid).??

(5) "The child protection services and the judicial services of other Member States are to be taken as no less competent than those in this jurisdiction" (per Thorpe LJ in Re K at paragraph 24, endorsed by Ryder LJ in *Nottingham City Council v LM* at paragraph 19).??

(6) "The difference in practice and principle relating to the measures to be taken in different Members States to meet risk and/or to meet the needs of a child including the use of non- consensual adoption is not a basis under Article 15 to decide the second or third questions" (Per Ryder LJ in *Nottingham City Council v LM* at paragraph 39).?

(7) "Questions of fact that might inform the court's evaluation of whether a court is better placed to hear a case. This might include the availability of witnesses of fact, whether assessments can be conducted and if so by whom (i.e. not a comparative analysis of welfare perceptions and principles but, for example, whether an assessor will have to travel to another jurisdiction to undertake an assessment and whether that is a lawful and/or professionally appropriate course), and whether one court's knowledge of the case provides an advantage, for example by judicial continuity between fact finding and evaluation and so on") per Ryder LJ in *Nottingham City Council v LM* paragraph 20).

(8) The evaluation of a child's best interests under Article 15(1) is limited in its extent to the issue of forum. The approach to be followed in this evaluation under Article 15 is the same as under Article 12(3) as described by Baroness Hale in ***Re I (A Child) (Contact Application : Jurisdiction)* [2009] UKSC 10**, [2010] 1 AC 319 at paragraph 36 namely that: 'This question is quite different from the substantive question in the proceedings, which is "what outcome to these proceedings will be in the best interests of the child?" It will not depend upon a profound investigation of the child's situation and upbringing but upon the sorts of considerations which come into play when deciding upon the most appropriate forum" (per Ryder LJ in *Nottingham City Council v LM* paragraph 21).?

(9) "The question of whether there should be a request under Article 15 should be considered alongside other jurisdiction issues at the earliest opportunity" (per Ryder LJ and Sir James Munby P in *Nottingham City Council v LM* at paragraphs 47 and 50 respectively). "The longer the delay the more damaged the child's situation will become" (per Moylan J in *Leicester City Council v S* at paragraph 8).??

(10) "It is highly desirable, and from now on good practice will require, that in any care or other public law case with a European dimension the Court should set out quite explicitly, both in its judgment and its order:

(i) the basis upon which, in accordance with the relevant provisions of Brussels II Revised, it is, as the case may be, either accepting or rejecting jurisdiction; ??

(ii) the basis upon which, in accordance with Article 15, it either has or, as the case may be, has not decided to exercise its powers under Article 15" (per Sir James Munby, P in *Re E* at paragraph 35.)

Children: Private Law Update (September 2014)

Alex Verdan QC, 4 Paper Buildings

In this private law update I will consider:

- Recourse to legal aid funding in private law cases
- Court timetables
- Children giving evidence in fact finding hearings
- Temporary removal from the jurisdiction
- Safeguarding checks on individuals who are not party to proceedings.

Recourse to legal aid funding in private law cases

Q v Q; Re B (A Child); Re C (A Child) [2014] EWFC 31

In these cases the President considered three recent cases involving the issue of recourse to public funding. In all three cases the fathers were seeking contact and were unrepresented, and the mothers received legal aid. The President delivered a single judgment summarising the legal framework governing the provision of legal aid in private law cases, and addressed the criteria for funding.

Facts of the cases

Q v Q concerned a father who appeared unrepresented. He was a convicted sex offender who spoke no English and wished to challenge the recommendations of an expert assessment completed within those proceedings. The President heard the case and invited the Secretary of State for Justice to intervene for the purposes of making submissions in respect of the funding difficulties of the father. The Secretary of State refused.

Re B concerned a father appearing in person who had been accused of rape. The father threatened to judicially review the decision of the Legal Aid Agency not to grant funding and the LAA agreed to reconsider. The Agency refused the application for funding.

Re C was another case involving a father appearing in person who was the subject of allegations that he had raped the child's mother.

The cases raised three common issues:

(i) The denial of legal advice and of assistance in drafting documents

(ii) The denial of professional advocacy in the court room

(iii) The denial of the ability to bring to court a professional witness whose fees for attending are beyond the ability of the litigant to pay.

The legal framework

Public funding is not available for private law children cases save for those who have suffered, or are at risk of suffering domestic abuse, or where the other party to the proceedings is a risk to the children (Legal Aid, Sentencing and

Punishment of Offenders Act 2012, Schedule 1, Part 1, paras 12 and 13 (LASPO) and **regulations 33 and 34 of the Civil Legal Aid (Procedure) Regulations 2012**).

The provisions concerning the funding of 'exceptional cases' are set out in **s 10(3) of LASPO**.

Public funding is available in 'exceptional cases' – where the Director of the Legal Aid Agency (LAA) has (a) made an exceptional case determination in relation to the individual and the services, and (b) has determined that the individual qualifies for the services.

An exceptional case determination is a determination where a failure to do so would be a breach of –

a. the individual's Convention rights (within the meaning of the Human Rights Act 1998),

b. any rights of the individual to the provision of legal services that are enforceable EU rights.

The Guidance issued by the Lord Chancellor says that this is 'to be used in rare cases' where the risk of the breach of material rights 'is such that it is appropriate to fund'.

The legality of this guidance was recently considered by Collins J in ***Gudanaviciene and others v Director of Legal Aid Casework and another*** **[2014] EWHC 1840 (Admin)** (subject to appeal) and held that the guidance above "is defective in that it sets too high a threshold". He came to two further conclusions that are relevant for present purposes:

> 'ECtHR jurisprudence suggests that a high level of probability …. [that convention rights will be breached] ….. is required. I see no reason why that should not be applied in s.10(3)(a) since Parliament must be taken to have appreciated that that was how breaches could be established. This seems to me to be the correct approach if s.10(3)(a) is to have any sensible application. Thus if the Director is satisfied that legal aid is in principle needed when its refusal would to a high level of probability result in a breach, s.10(3)(a) is met and means and merits will determine whether legal aid is to be granted and to what extent.' [44] and
>
> 'If legal aid is refused, there must be a substantial risk that there will be a breach of the procedural requirements, because there will be an inability for the individual to have an effective and fair opportunity to establish his claim.' [50]

In considering the general principles enshrined in the Family Procedure Rules, **FPR 1.1(1)**, which sets out that the court is to 'deal with cases justly, having regard to any welfare issues involved,' and the s 6(2) of the HRA 1998, the President reached the following conclusions on funding:

Interpreters
Her Majesty's Courts and Tribunal Service (HMCTS) will pay and provide interpreters in family cases which involve domestic violence and cases involving children. This is irrespective of whether solicitors are involved or public funding is available.

Also, where appropriate, and if no one else can pay, HMCTS will pay for the translation of documents.

Attendance of experts at court
In circumstances where the attendance of an expert for the purpose of giving evidence cannot be properly obtained by any other means, HMCTS has a duty to bear such costs in accordance with FPR 1.1 and Article 6 ECHR.

Legal advice
The President considered this to be 'a difficult point of real complexity' and was unable to come to a conclusion on it without hearing full argument. The cases relate to the fathers being accused of criminal offences. This raised the question as to whether the fathers are compellable witnesses in the family court. Can they take advantage of privilege against self-incrimination? What advice should they be given as to whether or not to give evidence?

The protection against self-incrimination provided for by section 98 Children Act 1989 available under Part IV or V of the Act is not available in private law proceedings. The President, whilst not making a finding on this point, was of the view that a party in private law proceedings could be compelled to give evidence, even if in doing so he may incriminate himself, but that any statement or admission would not be admissible in criminal proceedings.

Representation at court
The President referred to **s.31G(6) of the Matrimonial and Family Proceedings Act 1984**:

> "(6) Where … it appears to the court that any party to the proceedings who is not legally represented is unable to examine or cross-examine a witness effectively, the court is to—
>
> (a) ascertain from that party the matters about which the witness may be able to depose or on which the witness ought to be cross-examined, and

(b) put, or cause to be put, to the witness such questions in the interests of that party as may appear to the court to be proper, which imposes a duty on the court where a party who is not legally represented is unable to examine or cross examine a witness effectively."

If these criteria are satisfied, and if the judge is satisfied that the essential requirements of a fair trial required by FPR 1.1 and Article 6 and 8 cannot be met in any other way then the court has power to direct that appropriate representation is to be provided at the expense of HMCTS.

Court timetables

***Re W (Children)* [2014] EWFC 22**

Practitioners are advised to take heed of the President's recent decision in which he emphasised the strict requirement to comply with court timetables. The President also highlighted the requirement pursuant to FPR 2010 PD 27A to lodge position statements with the court by 11am the day before the hearing.

Children giving evidence in fact finding hearings

***Re B (Child Evidence)* [2014] EWCA Civ 1015**

This was an appeal from HHJ Cameron's decision to direct a section 7 report on whether to allow G (aged 13 years), the subject child's older sister, to give evidence at a fact finding hearing concerning domestic violence between the parents.

In making the order the judge considered that pursuant to ***Re W* [2010] UKSC 12** [30]

"… the consequence of the balancing exercise will usually be that the additional benefits to the court's task in calling the child do not outweigh the additional harm that will do to the child."

The father appealed the decision arguing that although the judge applied the *Re W* factors she failed to give them appropriate weight. The judge had been wrong in directing a report prior to deciding whether G should give evidence, and in any event the court had sufficient evidence to dispose of the application without the need to have G give evidence. Moreover, he said that it was rare for children to be called to give evidence in domestic violence cases.

In dismissing the appeal the Court of Appeal held:

(i) *Re W* principles apply to public and private law proceedings alike

(ii) Whilst G was not the subject of the contact application the court still had to consider the welfare of the child in considering whether she should give evidence.

(iii) The judge was yet to decide whether G should give evidence and that approach was sound.

(iv) The judge was aware of the need to consider the limitations of G's evidence in deciding whether to direct her to give evidence.

Temporary removal from the jurisdiction

***Re H* [2014] EWCA Civ 989**

This was an appeal of a decision to permit a mother to travel to Iran with the parties' three year old daughter.

The mother had a residence order and the father a contact order. In private law proceedings, by agreement the father was prohibited from removing the child from the jurisdiction, and the mother was permitted to remove the child from the jurisdiction temporarily save for travel to Iran.

The mother subsequently sought to remove the child to Iran for a holiday.

The father relied upon advice from the Foreign and Commonwealth Office, which advised against all but essential travel to Iran.

The Court of Appeal in allowing the appeal cited *Re K (removal from jurisdiction: Practice* [1999] 2 FLR 1084 and *Re R (A child)* [2013] EWCA Civ 115 at [23] which provides the following guidance:

- The overriding consideration of the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child.

- Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of her visiting that country

outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the Court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires.

- Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by UK-based parent.

- We do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue.

- If in doubt the Court should err on the side of caution and refuse to make an order. If the judge decides to proceed in the absence of expert evidence, then very clear reasons are required to justify such a course".

In this instance the FCO guidance and lack of safeguards led the Court of Appeal to find that it should err on the side of caution.

Safeguarding checks on an individual who is not a party to proceedings

***Re D (Child)* [2014] EWHC 2376 (Fam)**
This was an application by Cafcass for safeguarding checks to be completed on a step-father of the children subject to private law proceedings.

The father had applied for a contact order in respect of the family's two children. The children lived with their mother and step-father.

The children had been joined parties to proceedings and were represented through Cafcass. The children said they wished to see their father and they did not like their step-father, describing him as controlling.

The mother and step-father were unwilling for the checks to be undertaken and Cafcass brought an application.

Bodey J, in granting the application, gave the following guidance on safeguarding checks on individuals not party to proceedings [24]:

(i) that there is a public interest in the court having information which may be relevant to its determination of a child's welfare in private law proceedings;

(ii) that any relevant individual who is not a party has a right to respect for his private life, which includes maintaining the privacy of data retained about him by local authorities and the police;

(iii) that the court must therefore balance the individual's right to privacy against the public interest in the due administration of family justice and the need to safeguard the children who are the subject of the proceedings;

(iv) that, since it is mandatory under the CAP for safeguarding checks to be completed on the parties to the application, departure from that approach for individuals who are part of the same household as the child should logically and generally require some good reason;

(v) that the nature of the application before the court, whilst a relevant consideration, is not determinative since the court's concern for the welfare of the child is not necessarily limited to making those orders specifically applied for by the parties;

(vi) that the safeguards about the handling, transmission and storage of data provided within the Disclosure Protocol between CAFCASS and ACPO must be applied to any disclosure of information concerning other relevant individuals from the police and/or from local authority records; and

(vii) that the court should generally require undertakings from CAFCASS about (a) the confidentiality of information which it obtains by way of safeguarding checks; (b) its duty to pass to the court only such information as may be relevant to the issues in the case or to the general welfare of the child; and (c) its duty not to disclose any of the information obtained to anyone else without the leave of the court.

19/9/14

The Children Act – Ian McEwan: a review

Sarah E Green, solicitor, **TLT**

Please note – this review necessarily reveals some aspects of the plot of the book.

In his latest novel, Ian McEwan turns his pen to another British institution, the High Court. He immerses himself in the world of the family lawyer in a novel, which is closely attuned to today's legal, political and religious climates.

A cynic may say that the Ashya King case could hardly have come at a better time for McEwan. Those with a deeper understanding of the law, however, will be more hesitant to draw parallels.

Fiona Maye, 59, is a highly-accomplished lawyer at the pinnacle of her career as a High Court judge, admired and respected by her peers for her "crisp prose" and "almost ironic, almost warm" judgments. McEwan leads us "behind the scenes" of her life as she faces a series of ethical, and personal, dilemmas.

For family lawyers in the early stages of our careers, our impression of those at the top of the profession is limited to the judgments we read and our brief appearances in court. Peeping behind the veil of the age-old institution that is the High Court is, for a junior family lawyer at least, a slightly voyeuristic pleasure.

Fiona's vibrant professional success is juxtaposed with her stale, stagnant home life. Fiona and her academic husband, Jack, should be thinking about reaping the benefits of their own respective careers, enjoying life together after decades of hard work. Instead, Fiona's world is rapidly crumbling around her. She regrets her own childlessness, from which the delights of nephews and nieces provide only a momentary distraction. Her relationship with Jack is more like that of siblings than of lovers. Jack's announcement that he intends to have "one big affair" with a young statistician leaves Fiona devastated and isolated.

Her husband's timing could not be worse, although arguably there is never a good time for a family lawyer to discuss their own relationship. Fiona's private life is spun into disarray, leaving her unable to focus on writing a judgment determining the schooling of two Jewish schoolgirls. McEwan's inspiration for this case is undeniably the judgment of Munby LJ (as he then was) in ***Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233**). Ultimately, Fiona has to put her feelings and her relationship to one side and focus on her duties to the law.

McEwan touches acutely on the complex interplay between career and motherhood. Fiona, whom McEwan describes as belonging to the law "as some women had once been brides of Christ", worries that she has become "selfish, crabbish and dryly ambitious". Fiona's professional success and childless regret could suggest that to succeed in one, you must sacrifice the other (which looking at our profession as a whole, we know not to be true). McEwan is sympathetic to the remorse Fiona feels at this lost opportunity.

As her marriage starts to fall apart, Fiona is called to deal with an emergency application concerning the treatment of Adam, aged 17 (three months away from his eighteenth birthday), a leukaemia patient and Jehovah's Witness, who will die if he is not given life-saving treatment involving a blood transfusion. Adam's devoutly religious parents reject the treatment and the case comes before Fiona's court.

Before making her decision, Fiona chooses to visit Adam in hospital. He is intelligent, writing poetry, learning to play the violin, and yet naïve, with a "fresh, excitable innocence". His view of death is limited and romanticised by his parents' influence and their religious belief. He is weighed down by the pressure of fulfilling his parents' expectations, like so many of his age. Yet Adam's situation is in stark contrast to the seemingly trivial dilemmas faced by his teenage peers. Meeting Fiona, however, seems to change Adam's outlook, and he appears to develop independent thought about the value of his own life. The two strike up an unlikely friendship, united by a love of poetry and music.

Fiona rules in favour of treatment and so Adam is to live. But whereas in most cases, the judge's involvement will come to an end after conclusion of their judgment, the parties exiting the courtroom to face the fall-out, the story continues as Adam writes to Fiona. The first letter, which Fiona is reluctant to absorb, is soon followed by more. Adam rejects religion and his parents but, having been resigned to death for so long, he is lost at the prospect of life. He turns to Fiona, his neediness increasingly verging on obsession, which Fiona struggles to handle.

The novel portrays the interplay between the secular and the religious in the most crucial, life-changing of issues and how (in our jurisdiction at least), the law should, and will, ultimately prevail.

McEwan's explanation of Fiona's decision-making shows a clear understanding of the workings of the Children Act 1989, with which McEwan himself became so familiar during his own children proceedings. He succinctly demonstrates how in reaching her decision, Fiona must give consideration to Adam's age, whilst showing due respect to his faith, the dignity of the individual and the right to refuse treatment. This decision is especially difficult given how close Adam is to his eighteenth birthday but ultimately he is a minor and so, in the eyes of the law, unable to make the decision for himself.

The novel raises interesting questions about the conflict between religion and the law, *Gillick* competency and those tricky years when a teenager, not quite a child, but not yet an adult, is treated as a minor. In the background, we see the workings of a highly intelligent, professional, childless couple and their differing regrets and desires.

McEwan's inspiration, he has explained in **an essay for** ***The Guardian***, was a dinner with a handful of judges, where he found himself "resisting the urge to take notes" and observed how easily those present could be mistaken for a group of novelists discussing each other's work. He later reads a judgment of Sir Alan Ward, whose wife acted for McEwan in his divorce, and admires it as "clean, precise, delicious". The more he researched, he says, the more the parallels between the professions continued to strike him.

The book is littered with references to high profile children cases from recent years. Fiona presides over a case involving conjoined twins, and one cannot help but draw comparisons with ***Re A (Children) (Conjoined Twins: Surgical Separation)*** **[2000] EWCA Civil 254**, heard by Ward LJ (as he then was) in the Court of Appeal with Lord Justices Brooke and Walker. There are also striking similarities to *Re G* and a link to the Sally Clark case (***R v Sally Clark*** **[2003] EWCA Crim 1020**).

McEwan's writing is, like the very best judgments, well-researched, eloquent and to the point. He understands the workings of the family court, the internal conflict faced by family lawyers, the thought process and legal arguments behind a judgment, and, ultimately, the fall-out from the decision of the court. He sympathises with the difficult position judges find themselves in and notes how the choices "are often limited to the lesser harm rather than the greater good".

"The law", he writes, "was at its worst not an ass but a snake, a poisonous snake".

This book has been received by the legal community with much aplomb, although with somewhat less enthusiasm from a handful of critics outside of the legal sphere. It is a must-read for any family lawyer with a passion for literature.

25/9/14

CASES

K (Children) [2014] EWCA Civ 1195

The subject children in this appeal, A and B, boys aged 14 and 12, had been living with their mother and stepfather. The private law proceedings had been ongoing since shortly after the parents' separation some ten years earlier. Contact between the boys and their father had repeatedly broken down amid significant acrimony between the adult parties. In March 2014, the matter had been before a recorder who had concluded that a consent order made in 2012 was the 'solution' to the contact problem and had made orders accordingly. He had also made a 'conditional' residence order which allowed for a temporary change of residence along the lines of the decision of Coleridge J in *Re A (Suspended Residence Order)* [2010] 1 FLR 1679. That order provided that, should the boys' mother and stepfather fail to comply with the existing for contact between the boys and their father, the boys' residence would be temporarily transferred to the father for the summer.

Contact had broken down again in April 2014 and at a hearing on 23 May 2014, the recorder sought to activate the conditional residence order with the effect that the boys would reside with their father from 25 May 2014 until the end of the summer holidays, whereupon they would return to the care of their mother. The boys, however, absconded from their father's home in the early hours of 27 May 2014 and were found with a previous childminder whom they had not seen for some time.

When the matter came before HHJ Marshall on 3 June 2014, she made orders removing both boys from their mother's care. A was placed with foster carers pursuant to an interim care order and B was placed with his father pursuant to a child arrangements order. However, by the time of that hearing the case had lost the benefit of the psychiatrist who had previously been appointed on behalf of the children. The psychiatrist had written to the court to say that the circumstances of this case were now outside of his experience and expertise and the children's guardian had requested that she be replaced by a guardian with experience in public law proceedings. The latter point was not known to HHJ Marshall when the matter came before her.

During the hearing before the Court of Appeal, the court identified, without objection, five errors that made the judgment of the family court wrong:

i) The nature and extent of the applications made by the parties, the orders that could be made in consequence and in particular the welfare options underlying those orders, were not identified with sufficient or any clarity;

ii) There was no sufficient welfare analysis of the options that were available;

iii) The proportionality of the removal of A on the grounds of 'safety' from the care of either or both of his parents was not justified;

iv) The separation of the boys from each other was neither considered nor justified; and

v) The determination of the court was inappropriately influenced by a discussion between the judge and the boys.

Beyond a brief description in the judgment of the applications and the parties' positions, there was no analysis of the purpose of the hearing, that is, the ultimate order(s) / decision(s) to be made and the problem to be solved. In an urgent hearing such as this, which takes place without the benefit of a case management hearing, it is essential to go through a case management exercise within the hearing itself so that the issues to be determined can be properly identified and analysed. Otherwise, the identification and analysis of the key issues is likely to be flawed which is what happened in this case.

Ryder LJ observes at paragraph 30 of his judgment:

> "It was almost as if the urgency of the hearing drove everyone, in particular the children's guardian on whom the court relied, to come to the inexorable conclusion that the children would suffer 'a high level of emotional harm' if they remained in the care of their mother. That was the evidence of the guardian supported by the hearsay opinion of the court's former expert who she had informally consulted, who advised that both of the children 'should have gone into foster care' when the arrangements with their father broke down. The weight to be given to the former expert's opinion is itself an important issue in this case, not least because he was never made available so that his hearsay opinion could be challenged."

Although it was accepted that the threshold for making an interim care order was satisfied, the judge had failed to identify the threat to A's 'immediate safety' that justified his removal to foster care, as required by Re L-A (Care: Chronic neglect) [2010] 1 FLR 80 CA. Consequently, the analysis required by the test in Re L-A could not be performed and therefore the court could not have correctly applied that test.

As far as the separation of the siblings was concerned, the sibling relationship is one to which both article 8 and s. 1 of the Children Act soundly apply and the absence of a proper analysis of the implications of separating the two boys was a fundamental flaw in this decision.

The judge had had a meeting with the boys with the intention of explaining to them her role in the case. She had not wished to discuss their wishes and feelings with them as this would amount to evidence-gathering in an informal setting. However, the error that she fell into was that, following that meeting, her decision was clearly influenced by the impression she had formed of the boys during it. The judge was criticised for failing to listen to the boys who clearly needed her to do so, and for failing to recognise the distinction between listening and evidence-gathering.

The appeal was allowed in part and the case was remitted to the family court to be heard by a High Court judge. In the interim, the boys were to return to the care of their mother and interim care orders were made in respect of both boys. B was to have s.34(4) staying contact with his father on alternate weekends.

A number of pertinent comments were also made in this judgment about the fact that the boys had been judged to lack capacity to instruct their own solicitor. This, according to Ryder LJ, was a confusion between their capacity and their best interests and the court directed that the issue of separate representation of the boys must be considered urgently.

Summary by Sally Gore, barrister, **Fenners Chambers**

O (Minors) [2013] EWHC B44 (Fam)

The court was concerned with F (born in 2011) and L (born in 2013). There was no previous history of any childcare concerns until on 8.4.13 L was found to have a fracture of his right clavicle. On 10.5.13 he was found to have a fracture of his left seventh rib posterolaterally. On 10.5.13 small bruises were also found on L (on the centre of his anterior chest wall, under his left jaw and over his lower spine). L had been suffering from a significant Vitamin D deficiency and had a raised parathyroid hormone. F also suffered from a Vitamin D deficiency.

M was unable to explain how it was that L sustained the fractures. M had previously raised concern about her epilepsy having read that she might unknowingly have had a seizure whilst caring for L. There was also a question of whether or not M's epileptic medication might have had an effect on her own levels of Vitamin D. As to the bruising, M pointed to the evidence that F was jealous of L and prone to pinching him.

The "broad canvas" evidence in respect of both parents was favourable to them. This was reflected in the decision to return F to the care of his parents and in the extensive level of contact afforded with L.

The local authority originally requested findings including that the injuries were non-accidental and perpetrated by the acts or omissions of the mother and/or the father.

The effect of the medical evidence was that L suffered a displaced fracture of his right clavicle and a fracture of the anterior aspect of his left seventh rib. He suffered bruising. Although L suffered from Vitamin D deficiency, the view of the experts was that this deficiency was not sufficient to cause bone fragility in L such as is likely to have caused fractures in the course of normal handling or rough play. The presence of Rickets was discounted. There was no explanation as to how the injuries were caused and no memorable or witnessed event which suggested an accidental explanation. The medical experts therefore concluded that the fractures and bruising were the result of inflicted non-accidental injury (although an honorary consultant paediatrician thought the bruising to chest and chin less worrying and might have been caused by F). The judge referred to the need for the court to guard against the danger of reversing the burden of proof.

A consultant in neurology was the last witness. In his oral evidence he took everybody by surprise. He distinguished between what he described as partial epileptic fits and full epileptic fits. In his opinion it was possible that M could have had a partial fit, during which she injured L, but remembered nothing of it. Further he thought it possible that M would experience no symptoms, before or after a partial fit, that would lead her to remember that she had suffered such a fit.

It was because of this evidence that the local authority reconsidered its position and no longer sought any public law orders. Having considered the effect of the consultant in neurology's oral evidence and placed it into the context of all the other evidence the local authority came to the conclusion that the most likely cause of the fractures was the occurrence in M of a partial fit on the afternoon of 7.4.13 whilst F was asleep.

By the end of the case the positions of the parties were:

- Local authority: public law proceedings should be dismissed and L returned home (upon the basis that M may have unconsciously injured L while having an epileptic fit). A finding was sought that L had normal bone strength.

- Parents: Agreed with local authority save that they sought a finding that the court could not be satisfied that L had normal bone strength.

- Guardian: L had normal bone strength and had suffered inflicted non-accidental injury by one or other of the parents. L should nevertheless be returned home to the care of his parents.

In the particular circumstances of this case, and particularly since the local authority's change of position, the guardian felt it important that the court should have before it, on behalf of the children, arguments which supported a finding of inflicted non-accidental injury. Generally the judge would have expected the guardian to help the court by making submissions which alert the court to the important matters but to remain neutral as to findings. In the unusual circumstances of this case it was helpful for the guardian to maintain the position she did, though the judge regarded it as an exceptional course.

HHJ Bond, sitting as a judge of the High Court, could not be satisfied that L's bones were "normal" and would not have fractured as a result of normal or rough handling. He agreed that L did not suffer from Rickets. He thought that the true condition of L's bones remained a mystery. The local authority invited the court to make a finding that although L suffered from Vitamin D deficiency this was not sufficient to produce abnormally fragile bones; the judge was not satisfied as to this.

The medical evidence had to be seen in the context of the entire evidential jigsaw.

Before he had heard the oral evidence of the consultant in neurology, the judge had come to conclusions set out at paragraph 175 of the judgment, including that L suffered both fractures at sometime between 13:00 and 18:00 hours on 7.4.13, and that he suffered both while in the care of M. He also found that the parents were loving, attentive and co-operative. He was unable to make a finding as to the cause of the bruises.

He should not (absent the evidence of the consultant in neurology, but being aware that M suffered from epilepsy) have made a finding against either of the parents that one or the other had caused either of L's fractures by inflicted non-accidental injury. The evidence of the consultant in neurology imported a further area of doubt and difficulty into the case.

Following submissions, L returned home under an ICO with a direction under s.38(6) Children Act 1989. That position was maintained whilst the judgment was written. As a result of the judgment the application for public law orders was dismissed.

Summary by **Victoria Flowers**, barrister, **Field Court Chambers**

Re Ashya King [2014] EWHC 2964 (Fam)

This was a decision on 5th September 2014 by Mr Justice Baker, within wardship proceedings, as to whether the parents of the child Ashya King ('Ashya') should be allowed to take Ashya to Prague for medical treatment.

Mr Justice Baker set out the history of the matter in so far as it was agreed:

a) In July 2014 Ashya was diagnosed as suffering from a brain tumour known as medulloblastomas.

b) On 24th July 2014 Ashya underwent surgery at Southampton General Hospital ('the hospital') to remove the tumour, which was successful.

c) An MRI scan carried out after the operation indicated that the tumour had been completely removed and there was no evidence of the disease in the brain or the spine.

d) At that point a disagreement arose between Ashya's parents and the hospital as to the treatment that should be administered thereafter. It was agreed that Ashya required both chemotherapy and radiotherapy, but the extent of the treatment and the type of radiotherapy was not agreed.

e) A treatment plan was set out in a letter to Ashya's parents, dated 13th August. The radiotherapy proposed by the hospital was the conventional type of radiotherapy that would encompass the whole of the brain and the spine.

f) Ashya's parents were unhappy with aspects of the treatment plan, particularly the prospect that he should receive the conventional type of radiotherapy. They asked the hospital to consider, as an alternative, a new type of radiotherapy known as proton therapy.

g) Proton therapy is not, at present, generally available in the United Kingdom. It is available in a number of other countries and NHS England has authorised and funded the treatment for a number of English patients in foreign hospitals. However, NHS England does not recommend nor fund the use of proton therapy for cases of medulloblastomas.

h) Ashya's parents made their own enquiries and identified a facility in Prague that offered proton therapy to patients with medulloblastomas. They asked Southampton General Hospital to refer Ashya.

At that point the accounts given by the hospital and Ashya's parents diverged. There was dispute about the content of discussions that had taken place between the parents and the hospital and whether or not the hospital had warned that it would seek an emergency protection order. There was no evidence before the court from the parents as to these issues, and Mr Justice Baker made no findings in relation to them.

On 28th August 2014, Ashya's parents, having been permitted to take Ashya out of the ward around the hospital, removed him from the hospital and travelled with him to Spain. The doctors treating Ashya were very concerned about his removal, especially because, at the time, he was being fed via a nasogastric tube. The hospital informed the Local Authority, Portsmouth County Council and the Hampshire Constabulary.

On an application by the Local Authority, Ashya was made a ward of court on 29th August 2014. The order provided that:

a) Ashya should be presented for medical treatment at the nearest hospital forthwith;

b) that he should, at the appropriate time, be returned to this jurisdiction; and

c) that upon him being delivered to the nearest hospital his parents be prohibited from removing him without order of the court.

A further hearing was listed for 3 September 2014.

In the event, the President of the Family Division, who had been monitoring developments, ordered that the hearing listed on 3rd September be brought forward to the previous afternoon and the matter came before Mr Justice Baker on 2nd September, in open court. By that time, Ashya had been admitted to a hospital in Malaga and his parents had been arrested via a European Arrest warrant, issued by the CPS.

At the hearing on 2nd September the CPS confirmed that they intended to apply for a discharge of the European Arrest Warrant. Mr Justice Baker determined that it was necessary to adjourn the matter for a short time, anticipating that Ashya's parents would be immediately released, so that they could participate in the hearing. Mr Justice Baker directed that the parents attend the next hearing, either in person or by video link, and that as soon as possible they should file evidence setting out their treatment proposals and plans for Ashya. The next hearing was listed for 8th September, but it was directed that the matter could be considered sooner if the evidence was ready.

A further hearing, by telephone, was convened on 3rd September to consider an offer made by the government to fly out an independent expert oncologist to Spain to make recommendations as to Ashya's future treatment. Ashya's parents did not want to take up this offer and it was not pursued. During that hearing it was reiterated on behalf of the hospital trust that it did not oppose the family's decision to obtain proton therapy as long as it could be reliably arranged and funded and the transfer arrangements were safe.

Meanwhile, discussions were ongoing between the medical teams in Southampton, Malaga and Prague. By 5th September, an agreement as to a treatment plan had been reached; it had been confirmed that a private aeroplane would be made available to fly Ashya from Malaga to Prague, if necessary with staffing nurse in attendance; and there was evidence that sufficient funds were available to meet the cost of transport and treatment. With that information, Mr Justice Baker was in a position to make a decision as to Ashya's future treatment and a hearing was convened.

Mr Justice Baker identified three applicable legal principles:

a) Ashya's welfare is the court's paramount consideration;

b) The court has to have regard to Ashya's human rights under the European Convention. In particular his right to life under Article 2 and his right to respect for a private and family life under Article 8; and

c) The fundamental principle of family law in this jurisdiction is that responsibility for making decisions about a child rests with the parents. The state should only interfere with the parents' exercise of parental responsibility where the child is suffering or is likely to suffer significant harm.

Mr Justice Baker considered that when Ashya's parents removed him from the hospital on 28th August, there were reasonable grounds for considering that he was at risk of suffering significant harm; the order making Ashya a ward of court was rightly made. However, Mr Justice Baker considered that the picture had now changed. Ashya's parents had put forward a treatment plan which was coherent and reasonable and made arrangements for transport and funding. The plan was not opposed by Cafcass on behalf of Ashya, or the Local Authority. The hospital trust could not recommend or provide the treatment that was proposed but did not oppose it.

Mr Justice Baker concluded that having considered the evidence there was no reason to stand in the way of the parent's proposal. Accordingly, they were given permission to take Ashya to Prague for the proposed treatment, where upon his arrival at the hospital he would cease to be a ward of court.

Summary by **Amy Perkins**, barrister, **1 Hare Court**

X (Adopted Child - Access to Court File) [2014] EWFC 33-1

The President considered a novel and unusual application by the daughter of an adopted person, X, now deceased, for access to the original court file in relation to an adoption order made on 15 January 1930. The adopters, Mr and Mrs C, are also dead.

The documents contained on the original court file are summarised at paragraphs 11 of the judgment. The only significant information that the application would obtain if given access to the court file is (a) the name, address and occupation of X's birth mother (and the name and address of her mother) and (b) a letter from X's grandmother written to Mr and Mrs C.

In summarising the law at paragraphs 15 to 17, the President noted that in the case of the descendant of an adopted person, there are at present only two statutory routes available for an application for the disclosure of adoption records, or information relating to adoptions or adoption proceedings. One route is in accordance with Section 79(4) of the Adoption and Children Act ('ACA') 2002, and the other is in accordance with rule 14.24, FPR 2010. This is set to change with the enactment of the Children and Families Act 2014, which will amend Section 98 of the Adoption and Children Act 2002 "to bring within its scope the direct descendants of adopted persons."

Due to the fact that X was adopted before the "appointed day", as defined by the ACA 2002, disclosure could be granted only "in exceptional circumstances". As the adoption order was not made under the ACA 2002, the predecessor to FPR 2010 in this field, that is, the Adoption Rules 1984 or the Magistrates' Courts (Adoption) Rules 1984 (both of which remained in force) applied. Although there were a few minor differences in language, the substance of the 1984 rules corresponds to FPR 2010, rule 14.24.

> "In each case the court is given power, exercisable in the particular case (in distinction to any power exercisable in accordance with statute, rule or practice direction, and therefore whether or not disclosure would be otherwise be permitted), to permit the opening to inspection or provision of copies of any "document or order" held by the court. There is no expressed limitation on this power..."

Munby P reviewed the existing authorities on the interpretation of "exceptional circumstances" in section 79(4) at paragraphs 20 to 22, and concluded that the current application was not exceptional such that relief could not be granted under Section 79(4).

In the absence of an "exceptional circumstances" requirement in rule 14.24 and its predecessors, the President went to on examine whether the statutory criteria should apply under the rules. After considering the judgment of Scott Baker J (as he then was) in *Gunn-Russo v Nugent Care Society and Secretary of State for Health* [2001] EWHC Admin 566, [2002] 1 FLR 1, the President adopted the following established propositions:

> i) The court has a discretion whether to disclose information contained in its own file to the applicant.
>
> ii) In considering whether or not to exercise that discretion the court should have regard to all the circumstances of the case and should exercise its discretion justly.
>
> iii) The public policy of maintaining public confidence in the confidentiality of adoption files is an important consideration.
>
> iv) The duration of time that has elapsed since the order was made, and the question of whether any or all of the affected parties are deceased, are important considerations.
>
> v) The nature of the connection between the applicant with the information sought from the court file is an important consideration.
>
> vi) The potential impact of disclosure on any relevant third parties, and any safeguards that could be put in place to mitigate this, is an important consideration.

The President concluded that there is nothing in the existing authorities which required the court to apply in the case of an application under rule 14.24 (and its predecessors) the same approach as applies under section 79(4). The rule is not subject to the "exceptional circumstances" qualification. However, "given the context,...an application under rule 14.24 should always be approached with an appropriate degree of caution."

The application was granted. The President set out his reasons for allowing the application as follows:

i) The contents of the court file as I have summarised them in paragraph 11 above.

ii) The facts to which I have drawn attention in paragraphs 12 and 13 above.

iii) The fact that X, Mr and Mrs C and in all probability X's birth mother are all dead.

iv) The fact that X was adopted over 84 years ago.

v) The fact that Y is X's daughter.

vi) The fact, as I find, that Y's reasons for wanting access to this information are entirely genuine and understandable.

vii) The fact that any upset that might be caused to any of X's birth mother's surviving relatives is no more than speculative.

No restriction was placed on how the applicant used the information on the court file.

Summary by **Katy Chokowry**, barrister, **1 King's Bench Walk**

Local Authority 1 & Others v AF (Mother) & Others [2014] EWHC 2042 (Fam)

The Applications

The parents' two elder children, CF, age 6, and DF, age 4, were the subjects of care and placement orders in favour of a local authority ('LA1'). The parents' younger child, EF, age 20 months, was the subject of an interim care order in favour of another local authority ('LA2'). Cobb J heard: (i) the parents' applications for leave to apply to revoke the placements orders in respect of CF and DF, for discharge of the care orders in respect of CF and DF, and for separate residential assessments of each parents' capacity to parent all three children; (ii) an application by LA2 for care and placement orders in respect of EF; and (iii) an application by the Maternal Grandmother to spend time with the children.

The Judgment: Law and Procedure

The Judge gave clear and helpful summaries of the relevant authorities at paras [89] to [106]. Interestingly, the Judge stated that the authorities render it inappropriate to make an exception to the 26-week rule where there is a need to achieve change in a parent (see paras [93] to [99]). The consideration of the court's options for disposing of the applications at paras [234] to [251] is a detailed, balance-sheet analysis of the evidence read in light of the law, and a holistic view of the issues is set out in the conclusion at paras [252] to [282].

The Judge provided particular guidance to practitioners on the topics of (i) out of hours and without notice hearings, at para. [295] to [301], and (ii) the preparation of bundles, at paras [302] to [305], as follows.

At an interim stage in the proceedings the Judge had heard an urgent without notice application by LA1 as a consequence of the dramatic breakdown of a residential placement. The Judge had required further investigation to be undertaken by the Applicant to establish each of the Respondents' positions before determining the application, and this was duly complied with. Counsel who acted at that hearing and made the application did not appear in the case subsequently, and at the final hearing there were important unanswered questions about how the parties' positions had come to be communicated. This was unsatisfactory. At paragraph [299], the Judge reiterated that:

"It is, in my judgment, not just important but essential that in a hearing of this nature in this kind of case, counsel or solicitor instructed should prepare a note of the hearing and circulate it to the respondents forthwith following the hearing."

The Judge cited ruled 25.3 CPR 2010 in relation to counsel's duty to provide such a note, and reminded practitioners of the view of Munby J (as he then was) expressed in *C v C (Without Notice Orders)* [2005] EWHC 2741 (Fam).

The Judge further criticised the condition of the (nine) bundles provided, the pagination of which "was, in parts, of impenetrable and wholly avoidable complexity" [303]. The Judge cited the provisions of PD27A FPR 2010 (as amended) and expressed disappointment that "the warning about wasted costs was not of itself sufficient to ensure compliance" [305].

The Facts

The facts, in summary, were as follows. The safeguarding concerns included long-term drug abuse, domestic violence, long-term neglect and chaotic lifestyles. The care proceedings in respect of CF and DF had been concluded at a final hearing in March 2013. EF was at that time the subject of care proceedings brought by LA2 and residing with the parents at a specified address under a written agreement. Within two months of that judgment the Mother flew with EF to country X, where the Maternal Grandfather resided. Country X is a signatory to the Hague Convention but this has not been

ratified between country X and the UK. The Mother then immediately returned to the UK and the Mother and Father together removed CF and DF from a contact session and brought them to country X. The Judge described this abduction as "a calculated, clandestine, and audacious act undertaken […] with scan regard for the welfare of the children" [255]. Over the following months the parents entered into email negotiations with the both local authorities, proposing to return to the UK on the condition that the care plans would be amended. In October 2013 the Judge ordered the family to return. Pursuant to a negotiated agreement, the family returned to the UK and commenced a residential assessment. This broke down dramatically and the children were placed with foster carers. The parents then had 'good quality' contact, save for a time period during which they each served prison sentences for offences of child abduction under the Child Abduction Act 1984. In all, by the time this judgment was delivered the family had been subject to care proceedings for approximately 30 months.

On the facts, the tests for granting leave to revoke the placement and care orders relating to CF and DF were not met, and the circumstances required the making of care and placement orders in respect of EP. No order was made in relation to direct contact for any of the immediate or wider family.

Summary by **Marlene Cayoun**, barrister, **1 Garden Court Family Law Chambers**

N-D (Children) [2014] EWCA Civ 1226

A care order was made in respect of a 15 year old child and care and placement orders were made in respect of his two siblings aged 4 and 19 months. The parents had been convicted in the Crown Court of serious physical abuse against the 15 year old, the father received a term of imprisonment and the mother a suspected sentence supervision order. The care order in respect of the 15 year old with a plan of foster placement was not appealed by the parents.

The parents appealed the care and placement orders in respect of the two youngest children and were granted permission to appeal on the basis that the judgment contained no analysis of the threshold under section 31 of the Children Act 1989, no welfare analysis of the risks to the children having regard to section 1(3)(e) of that Act, no adequate welfare comparison of the options for the children and, accordingly, a flawed proportionality evaluation.

The Court of Appeal allowed the appeal in respect of failure to reason the welfare determination. The court set aside the care and placement orders and directed a re-hearing before a different circuit judge for the following reasons:

i) The scant nature of the 4 and a half page judgment was unacceptable in particular given that it was following a 6 day hearing and a 1 month delay for judgment.

ii) The origin of the problem in the case was that the threshold document had been agreed between the parties which resulted in the judge failing to analyse it with care so as to separate out the facts relating to each child and the consequent risks.

iii) The judge had described the witnesses she accepted and rejected without setting out what she accepted and rejected from each witness' evidence.

iv) The judge failed to set out an analysis of the benefits and detriments of the two options available, having heard from a number of experts who had competing recommendations and having failed to justify why she preferred some of the experts' conclusions over others.

v) A re-hearing was required as it is not appropriate for the Court of Appeal to make value judgments about the welfare factors and the options available from the transcripts. This is the function of the first instance judge who has heard the witnesses and evaluated the quality of their assessments by reference to the direct evidence of the parents.

Criticism was made of the parties' representatives on the basis that they should have asked the judge for further or better particulars of her judgment so that the reasoning behind it became clear.

Summary by **Laura McMullan**, barrister, **Coram Chambers**

AVH v SI & Another [2014] EWHC 2938 (Fam)

The parents married in England but separated when S was one year old. In 2008 M successfully applied to return permanently to her native Mexico with S. They moved in 2010 after which F had no direct contact with S. In July 2014 S (aged 15) told M she was staying with a friend overnight but in fact travelled to London to reside with F who had assisted S to clandestinely plan the move. Within days S witnessed a violent assault by her uncle against his wife within the paternal family home. S called the police and as a result F evicted her and she moved to live with her aunt's family before reluctantly moving back to reside with F following a court hearing in August.

The court found that S's removal and retention had been wrongful and Article 12 of the Hague Convention obliged the court to return S to Mexico unless an Article 13 exception applied. In this case the Article 13 exception was S's objection to returning to Mexico.

The court adopted the principles summarised in *De L v H* [2010] 1 FLR 1229 and *Re K (Abduction: Case Management)* [2011] 1 FLR 1268. In particular evaluating whether S's views amounted to an objection by reference to the test of strength, conviction and rationality, the court found there was sufficient rationality in S' s view to amount to an objection in Convention terms and that S was of sufficient age and maturity to take account of her views. The court therefore had discretion as to whether or not to order S's return to Mexico.

Following the guidance set out in *Re M (Abduction: Zimbabwe)* [2007] UKHL 55 the court directed S's return to Mexico. S's objections centred on her desire to be educated in England and her criticism of the educational provision available in Mexico. The court was concerned, however, that S had no school place in England , that she would need to drop an academic year and neither S nor F had sufficiently researched whether S would suit secondary schooling in England. The court was further concerned about the instability and fragility of the father's home.

Summary by **Georgina Clark**, barrister, **Field Court Chambers**

F (No 2 Welfare - Approved) [2014] EWFC 34

This judgment follows the final hearing in protracted care proceedings concerning the child, Amanda. At a previous hearing, following the case being remitted on the successful appeal of the father on the issue of habitual residence, Mr Justice Peter Jackson found that the court had jurisdiction to make orders concerning Amanda's welfare. That judgment **can be found here**.

The father did not appear and was not represented at this final hearing. He asserted that his health did not permit him to participate in this hearing. This was rejected by the learned judge who found that that the father, who had a week before been in front of him in person, absented himself of his own free will.

The mother continued to reside in South Africa with Amanda's younger brother, I. In the week before this hearing, she was able to travel to the UK to meet Amanda for the first time in four years.

Since August 2013, the local authority's plan had been to place Amanda in the care of her mother. There had been a lengthy delay due to the challenge to this court's jurisdiction, in circumstances where no party sought for the case to be dealt with in another jurisdiction.

Peter Jackson J considered that the threshold criteria pursuant to s.31 of the Children Act 1989 were met in this case at the relevant time, and that the harm that Amanda was suffering or was likely to have suffered was attributable to the care given to her by her father in the following respects:

(1) He failed (and still fails) to recognise that Amanda's needs are separate and distinct from his own.

(2) In August 2010, he separated her from her mother and siblings, with the intention of doing so indefinitely, and in doing so deceived the mother. As a result, Amanda was deprived of contact with her mother until September 2014 and of contact with her siblings R and H (ongoing) and has never met her brother I despite having been in the same country, South Africa, for two months from August 2012.

(3) He encouraged Amanda not to trust others, including her mother.

(4) His lifestyle and attitudes caused Amanda to be socially and emotionally isolated from her own family and from broader society.

(5) He travelled continually with her from April 2012 so that she had no home, friends or school.

(6) Amanda's education was significantly delayed in her father's care.

In considering the issue of placement, Mr Justice Peter Jackson reiterated that only as a last resort can the child be placed outside of her family. The learned judge analysed the factors in the welfare checklist which impacted upon Amanda's welfare at paragraphs 41 to 55 of the judgment. The assessment of Amanda's guardian, her social worker and an independent social worker, concurred that a resumption of life with the father would be disastrous for her. The father had refused to have contact with Amanda since 2013 due to the imposition of supervision requirements.

In a detailed report, a South African social worker recommended that Amanda be reunited with her mother and siblings.

In summary, the father was found not to have the ability to meet Amanda's needs for emotional stability and security. Whilst the father had been psychiatrically assessed as suffering from a delusional disorder, given the wealth of other information it had not been necessary to rely on the diagnostic conclusions.

In contrast, the mother was found to have had the ability to overcome considerable difficulties in order to meet her children's emotional and educational needs. Expert immigration advice confirmed that the mother was likely to be able to remain in South Africa with her children, but in the less likely case that this was not possible, she could return to Zimbabwe with them.

Peter Jackson J also found that there was a risk in future that Amanda will suffer harm as a result of the father's actions and attitudes, and that any future unregulated involvement by the father in Amanda's life is likely to be seriously and damagingly disruptive. There was a real threat of a further abduction by the father.

In conclusion, the learned Judge found the threshold conditions met and that it was in Amanda's best interests to be placed with her mother in South Africa, and for her not to have contact with her father in the current circumstances.

An interim care order and an order preventing contact with the father were made until the eve of Amanda's departure from England. At that point a child arrangements order, providing for her to live with her mother, would take effect.

Summary by **Katy Chokowry**, barrister, **1 King's Bench Walk**

AB v CB [2014] EWHC 2998 (Fam)

The husband had, on paper, almost no assets and only a modest income. He was, however, a member of land owning family of great wealth and Mostyn J found that "his position in terms of financial security was absolutely assured".

Post nuptial settlement

In 2005 the parties moved into a farmhouse owned by the husband's parents. In 2009 a trust was established in relation to the farmhouse. The principal beneficiary was the husband and the main discretionary beneficiaries were the parties' children. Mostyn J found that although the wife had not seen the trust deed prior to execution, she knew that it was intended that it would stay in the family and after it had been used by them, it would revert back to the family estate.

The trustees had intervened in the proceedings and argued that the trust was not a nuptial settlement. Mostyn J concluded that it was a nuptial settlement as it satisfied the test proposed by Lord Nicholls in Brooks v Brooks; the trust was "[an] arrangement which makes some form of continuing provision for both or either of the parties to [the] marriage". Mostyn J also dismissed the trustees' submission that the only nuptial element which was capable of variation by the Court under Section 24(a)(c) of the MCA 1973 was the husband's right to occupy. However, the trust included a clause that gave the trustees specific powers to advance all of the property to the husband during his lifetime, thus all of the property contained within the trust was regarded as a variable nuptial settlement.

Mostyn J held that the wife was to receive £23,000 from the trust outright (the value of her contributions), and an additional award of £134,000 on the terms of a life tenancy. The additional element was designed to reflect the sharing principle in relation to the matrimonial home while, at the same time, recognising the existence and purpose of the trust. The total award to the wife (£157,000) corresponded to half the net value of the farmhouse.

Needs

Both parties had formed new relationships. The husband cohabited with his new partner who had recently given birth to their child. The wife had chosen not to disclose the fact she was in a relationship, which had been ongoing for nine months. Her new partner was about to buy a £500,000 home and, though the wife maintained that she was not going to live with him, Mostyn J found that "it is perfectly clear that the relationship is strong".

At paragraph 66, Mostyn J described such relationships as "a significant fly in the ointment in the assessment of need". If the relationship develops into "full blown cohabitation akin to marriage" then the paying party may feel significantly aggrieved, whereas if it does not then the payee may be left stranded. However, the facts of this case meant even if the wife was "assuredly single" her capital position would be sufficient to meet her needs.

Permission to appeal ([2014] EWHC 2990 (Fam))

In response to an application by the trustees to appeal the above judgment, Mostyn J expressed his opinion that an application for permission to appeal should always be made to the court of first instance, before an approach is made to the Court of Appeal. This would:

i. save time;

ii. minimise cost;

iii. not harm the appellant (who could subsequently apply to the Court of Appeal) or the respondent;

iv. remove the necessity for a time consuming permission application at the subsequent hearing; and

v. provide the judges of the Court of Appeal with a ruling, from a judge who is a specialist in the field, on the merits of the application.

The application for permission in the instant case was dismissed.

Summary by **Tom Harvey**, **1 Hare Court**

Somerset v MK (Deprivation of Liberty: Best Interests Decisions: Conduct of a Local Authority) [2014] EWCOP B25

P, aged 19, had severe learning disabilities and autism spectrum disorder. She lacked verbal capacity and communication was through gestures and pictures. She lived within her family and attended a specialist school.

In May 2013, she presented at school with extremely challenging behaviour and distress to such an extent that she was returned home. The next day, the mother noticed bruising on P's chest – she informed the school and contacted her GP. Later that week, P's mother went on a holiday abroad for two weeks and arranged for P to be in a respite placement. She informed the staff of the bruising; however, when further bruising was observed, P was examined by a consultant paediatrician. The paediatrician was not informed about P's presentation at school (including that P had been observed hitting herself in the chest, she had taken staff to the ground, and been restrained) and concluded that the bruises were unlikely to be self-inflicted. As a result of the medical report it was decided that P would not be returned home.

Various capacity assessments made it clear that P did not have the capacity to make decisions about where she should live. Despite the dispute about what was in P's best interests (the mother made it clear she wanted P home), the local authority did not make an application to the Court of Protection or consult with other family members about whether P could live with them in the short-term.

P remained in the respite placement until November. She became increasingly agitated and was prescribed an anti-psychotic with a sedative effect – the family were not consulted about medication. The judge found that this placement, which was intended for respite care and included up to 10 occupants all with learning difficulties, was clearly inappropriate for P and concluded this should have been "stunningly obvious" to social workers. Contact between P and her family was limited and supervised, despite the father and grandmother not being involved in the original safeguarding concerns.

In December 2013, the first deprivation of liberty assessment was carried out and a standard authorisation was granted by the local authority authorising the deprivation of P's liberty.

The local authority issued proceedings in mid-December 2013, 6 months after P was removed from her family and her mother requested her return. The local authority argued P should not be returned due to the bruising, the past history of child protection issues and concerns about a sibling. At a hearing in December, a District Judge made interim declarations about P's lack of capacity and that it was lawful and in P's best interests to continue to reside at the assessment unit.

By March 2014, the local authority conceded that P had been unlawfully deprived of her liberty from June to November, contrary to Article 5 ECHR and conceded that there was a breach of P's and her family's Article 8 rights. The local authority no longer pursued findings about the bruising. Despite accepting its previous "procedurally inappropriate and unlawful actions", the local authority still proposed that P's remain in local authority care.

As to P's best interests, there were two possible places for P to live – either at home with a package of support or in a specialist residential home. When considering s.4 of the MCA 2005 and "all the relevant circumstances", the judge undertook a balance sheet exercise. He concluded that it was highly unlikely that P will at any time have the capacity to decide where she should live. However, P had expressed a clear wish to go home and that needed to be given appropriate

weight. Her family wished her to be at home and any interference with P's and her family's right to family life needed to be justified as necessary and proportionate.

The judge found the following in favour of P being returned home: P's wishes, her family's wishes, P's and her family's right to family life, at home P would not be subject to deprivation of liberty, concerns about the bruising were abandoned, the OS supports her return, the ISW supports her return, none of the findings on the schedule prevented return home, and that there would be a degree of co-operation between family members and the local authority. The only argument in support of placement in a specialist home was that the local authority were of the view that P will reach her full development potential in a specialist home.

The judge concluded that the balance came down in favour of P returning home. Whilst he did not undervalue her reaching her full potential, this could be addressed by a careful support plan.

The conduct of the local authority

In evidence, the senior social work manager accepted that there was no understanding of the law in this area by the social workers and local authority lawyers. Both individuals and the philosophy behind their actions was wrong. There had been no consultation with the family throughout the process and no consideration of the impact on P. The judge found that if there had been a proper open-minded investigation into the original bruising, there would be no basis for a finding that P should not return home.

The judge concluded that there was "no question" that P was unlawfully removed from her family from the scheduled end of the respite care in June. Whilst the local authority had a duty to investigate the bruising, a conclusion should have been reached within a week and if the local authority did not conclude she should be returned home, they should have immediately applied to the Court of Protection. The case had "many depressing similarities" to London Borough of *Hillingdon v Neary* [2011] EWHC 1377. The Article 8 breaches continued to the present due to the blatant disregard of the process of the MCA 2005 and a failure to respect the P's and her family's right to family life.

Summary by **Ariel Ricci**, barrister, **Coram Chambers**.

Re B (Children: Long Term Foster Care) [2014] EWCA Civ 1172

This case concerned two boys, A and B, who were age 11 and almost 10 respectively at the time of the appeal hearing. The appeal was brought by their mother against the decision of HHJ Scarratt, on 30 October 2013, to make final care orders in respect of both boys.

The judgment describes the concerns about the children as 'diverse'. These included domestic violence between the parents, poor home conditions, poor school attendance, trouble caused by family members, the children being out unsupervised at night and the mother being stabbed by a neighbour. Although at the outset of the proceedings, the local authority had sought interim care orders, they subsequently accepted that the boys could remain at home during the proceedings under interim supervision orders. The evidence at this time acknowledged that the mother had been able to make improvements and work with professionals for the benefit of the children.

During the course of the proceedings, the mother continued to show some positive engagement although fresh issues also arose which gave the local authority and the Guardian cause for concern. However, the local authority evidence reflected its plan for the boys to remain at home under interim supervision orders.

The local authority changed its plan to one of foster care prior to a hearing on 5 September 2013. This was due to the ongoing concerns and their view that 'only minimal improvements' had been made despite the support and the ongoing reports of fresh incidents of concern. Further incidents occurred between the local authority's final evidence and the final hearing in October 2013.

At that hearing, HHJ Scarratt preferred the evidence of the local authority and the Children's Guardian and made the care orders sought. The mother's grounds of appeal were distilled into the following propositions:

That the judge failed to scrutinise properly the local authority's change of position from July 2013 to August 2013;
That the judge wrongly accepted the local authority's evidence about two of the incidents in September when the witnesses to those incidents had neither given statements nor attended to give oral evidence.

The Court of Appeal held that the judge had failed to carry out a sufficient analysis of the alleged incidents that had given rise to the change of position and had failed to make findings about what had occurred.

Matters were not helped by the local authority having confused the criminal record of the mother's new partner, Mr SB, with that of his brother. It was difficult to ascertain from the judgment what the judge had made of the supposed convictions of the partner as his reasoning was unclear. Moreover, the judge had not determined whether the mother had ended her relationship with this partner and whether that showed an ability to put the needs of the children first. His reasoning about the mother's association with Mr SB was therefore described as 'decidedly shaky'.

In relation to a finding that the judge had made, namely that the mother's partner had assaulted A, the judge had not carried out sufficient analysis of the evidence before him to justify that finding given the significance of that alleged incident in the proceedings overall.

In allowing the appeal and remitting the case back for a fresh final hearing before a different judge, the judgment emphasises that the Court of Appeal did not do so because there was insufficient evidence to justify a care order but:

"The basis on which we allowed the appeal was that the judgment was flawed in its approach to the events which led to LA's change of mind and was lacking in the detail that was required to substantiate the decision taken. The more finely balanced the decision in a case, the more exacting must be the judge's approach to the evidence, the more precise his findings of fact on pivotal matters and the fuller the explanation of his route to his determination."

The judge's treatment of the background history lacked sufficient detail and analysis and so this compounded the difficulties with his treatment of recent events and:

"In short, this was a case which could only be resolved by a detailed and critical review of the evidence, old and new, with each step of the way meticulously charted in the judgment."

Summary by Sally Gore, barrister, **Fenners Chambers**

SUBSCRIBE NOW Family Law Week online CPD

Please register my annual subscription for Family Law Week online CPD at £95 + VAT = £114.00. I understand that I will have 12 months access to CPD courses and related podcasts from the date that you receive my payment. (To register more than one person, please copy this form and complete as necessary)

Your Details	
Name Firm	
Invoice Address	
Number/Street Town/City Postcode Email Telephone	
☐	Tick here if you are an existing Family Law Week user. If you don't tick here we will create a username and password for you

Family Law Week

Up to date, high quality CPD you can rely on

What you get for £95 + VAT

✓Unlimited access to Family Law Week assignments for 12 months. You can claim up to 12 hours CPD every training year using our scheme.

✓Access to our exclusive podcasts featuring leading practitioners speaking on practical topics

Payment Details

(tick as appropriate)

☐ I enclose a cheque for _____ inc VAT (made payable to Law Week Limited)

☐ Please charge my debit/credit/VISA/ Mastercard/Switch for the amount indicated above (delete as appropriate)

No. _____

Start (if present) _____

Expiry _____

Issue _____

Signature _____

Return the completed form to

Subscriptions
Law Week Limited
Greengate House
87 Pickwick Road
Corsham
SN13 9BY
Tel & fax 0870 145 3935
Email: info@familylawweek.co.uk

Terms and conditions are available on www.familylawweek.co.uk

Family Law Week

Family Law Week's online CPD
12 hours CPD for only £95 + VAT

Have you tried our online CPD yet?
It's the most flexible and convenient way of taking CPD. The features include -

- Fully accredited by the Bar Standards Board, Solicitors Regulation Authority and ILEX
- Dozens of courses to choose from
- Multiple choice questions on either Finance and Divorce or Children Law and Practice
- Easy to use
- Question print out facility for prior review
- Flexible - you don't have to answer all the questions in one go
- Freedom to complete your CPD anywhere you can get Internet access
- Can be completed 24/7
- 9-5 Monday to Friday telephone and email support
- 10% discount on any Family Law training run by Lime Legal

Subscribe Now

Choose any one of the 3 methods below

1. **online**: for instant access to our CPD courses, you can subscribe and pay online at www.familylawweek.co.uk.
2. **phone**: call us on 0870 1453935 with your payment card details
3. **post**: complete the order form and send it to us with a cheque or credit card details.

Of course, if you have any questions about the service, just call us on 0870 1453935