The Newsletter of the Family Law Bar Association

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# Editorial

Samantha Hillas KC
& Kate Burnell KC | Editors

By the time you read this issue of *Family Affairs*, Spring will (hopefully) be here bringing with it the green shoots of the new season. The author L.M. Montgomery said, '*Nothing ever feels impossible in Spring, you know*', she clearly hadn't taken on the mammoth, and somewhat daunting, task of taking over the editorship of this publication from our fabulous predecessors. We are just delighted that we have managed to get our first issue out at all – huge thanks to John and Philip for their support and encouragement.

And so welcome to the first 2026 issue of *Family Affairs* and our first as editors!

Under the editorship of John Wilson KC and Philip Cayford KC, *Family Affairs* went from a short update to the high quality, polished journal you have come to expect. It was a true labour of love. We want to take this opportunity to thank them, on behalf of us all, for the dedication, time and care they both gave to every issue – we hope we can do justice to this publication in the future. We always knew they worked hard on *Family Affairs* but, until we took over, did not realise quite how hard they worked to ensure *Family Affairs* continued to maintain consistently high standards in both content and presentation. We hope they are both enjoying the hours (and hours!) of time which is now their own, although John will not be leaving us entirely. We are delighted that he has agreed to be *Family Affair*'s Art Editor from the next issue and will be responsible for choosing the covers as well as advising us on all things artistic (not a skill either of us share, sadly).

Whilst this issue may feel and look very similar in terms of format, our editorship has coincided with a time of significant change. One regular *Family Affairs* contribution which will, sadly, come to a natural end is that of Sir James Munby and his peerless articles on historical and fascinating aspects of family law. We are exceptionally lucky that Sir James had already penned his final instalment of his series of articles on jactitation and that, with the valuable assistance of Sir Nicholas Mostyn, we were able to include it in this issue. The Summer issue will include Sir James' final piece penned for *Family Affairs* which, again, he had fortuitously completed last year. Sir James' death will leave a huge hole at the heart of *Family Affairs* as well as – as you will see from the tributes we have included in this issue from Sir Nicholas Mostyn, Jo Delahunty KC and Nick Vineall KC – the family law and wider legal community. We send our love and condolences to Sir James' family and thank his son, Thomas Munby KC, for his assistance in enabling us to feature Sir James' final articles.

In this issue we say goodbye to both Sir James and Sir Stephen Brown. We hope

their tributes do justice to these two giants of the family law world.

The cover artwork for this issue features 'Rain, Steam and Speed – The Great Western Railway' by J.M.W. Turner. Described as an '*allegory of the forces of nature*', representing speed and change, the painting is a fitting tribute to Sir James.

You will notice the absence of some of *Family Affair*'s regular contributors. Some long-standing articles are no more, their authors deciding to retire from *Family Affairs* along with John and Philip after many years of faithful service. To Flawyer and to Duxbury, we say farewell and thank you. As soon as we have pressganged their replacements into a position where they are unable to refuse, we will announce which columns will be taking their place. We have some exciting ideas in the pipeline which we hope to share with you by the Summer issue.

We also thank Charles Hale KC for his previous authorship of 'Westminster Watch' and are delighted to introduce to you Michael Jones KC as his replacement. We are sure you will agree he has done a sterling job and we very much look forward to his future contributions from 'Up North'.

We are grateful to our fabulous legal update team – Sharon Segal KC, Andrew Bagchi KC, Lily Mottahedan, Victoria Green, Mani Singh Basi, Greg Williams, Bethany Scarsbrook and Sophie Smith Holland. Not only have they met our deadlines with time to spare, they have produced some excellent summaries of recent jurisprudence in their respective areas and will continue to do so for future issues. You will see this issue introduces new faces (or should that be jurisdictions) as we welcome updates from Northern Ireland, Ireland and Wales. We hope to include updates from Scotland and further afield in future issues in what we hope will be a regular 'Letter from ...' feature to keep us all informed about what is happening in family legal circles in our neighbouring jurisdictions.

This issue sees the usual regional round ups and Georgina Rushworth's glorious (and speedily prepared) report of the FLBA dinner, complete with photographs by Jeremy O'Donnell. We will include a link to all the photographs on the FLBA website for you to peruse at your leisure but include a few of our favourites in this issue. We are grateful to Georgina and all our regional contributors for helping us pull this issue together.

There are no changes planned to the regular 'back of the magazine' sections including the crossword competition, Michael Sternberg KC's excellent wine column and the book reviews. In this issue there is not just one but two reviews

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of Jo Delahunty KC's important and thought-provoking book *We Set the Bar*, as well as Lady Hale's recent publication *With the Law on Our Side*. We hope you enjoy reading them as much as we did and that the reviews help boost sales of both worthy additions to your legal libraries.

We hope, too, that you enjoy as much as we did the excellent interview with Jo Delahunty KC which features in this issue. We were thrilled that Shelly Glaister Young agreed to undertake the role of interviewer and we hope to see more of her excellent writing in future issues.

As we move forward there will be some changes to *Family Affairs*.

This year will see the end of *Family Affairs* as a primarily paper publication. Whilst paper copies will remain available on request and following a slight increase to FLBA membership fees for those who want them, we will be moving to an e-version which, when the IT capability is in place, will enable the download of individual articles and a more readable format for those who, like us, are largely paperless these days. Until then, you will continue to receive *Family Affairs* in much the same format as in previous years, with the main changes to the format being planned for the start of 2027.

The new family silks of 2026

We welcome Melissa Chapman to the team. Melissa, along with our copy editor Heather Jones and Mike Waugaman of Cider Café have worked hard behind the scenes to ensure this issue is available largely on time and looking as great as it does.

Finally, a plea. We want *Family Affairs* to be fresh, entertaining and thought-provoking. We can only do that with fresh, entertaining and thought-provoking content and so we look to you, our readers, to help us in our task. If you have ideas for articles or new features, we are all ears. We now have a dedicated *Family Affairs* email address (FAEditors@FLBA.co.uk) and welcome your contributions.

We hope you enjoy this, our first issue as editors. By the time this issue reaches you, we will all be enjoying what may be our first break from work of the year. We will also have celebrated our 2026 family silks who received their letters patent on 23 March 2026 and congratulate Chris Barnes KC, Jennifer Perrins KC, Christopher Poole KC, Andrew Powell KC, Morgan Sirikanda KC and Nicholas Wilkinson KC. Just in time for publication, we thank Michael Reeves of 4PB for the fabulous photograph of them all *left*.

Finally, you will all know that Monday 30 March 2026 marked the end of an era: the retirement of Sir Andrew McFarlane as President of the Family Division. We are sure you will join us in sending Sir Andrew and Lady Susanna our very best hopes and wishes for the future, as well as our grateful thanks for his stellar leadership during his time as President. Our Summer issue will cover the valedictory in full as well as – we hope – an interview with the man himself.

*Sam and Kate*

# Chair's Column

Leslie Samuels KC | Chair of the FLBA

As I write this, I am still buzzing from a successful and enjoyable Annual Dinner on Friday, 27 February at Lincoln's Inn Hall. When you look at the photographs you will see people in dinner suits and evening wear and, as I said in my speech, an outsider would think we are all the same. But we are not. Everyone will have had their own journey to get to the Family Bar. We need to recognise and celebrate the diversity within us but also strive to do much better. The more diverse we are and the more different life experiences we bring, the better able we are to serve our clients and the public at large.

I have so much admiration for the work that John Wilson KC has put into *Family Affairs* over the last decade and more. Assisted by Philip Cayford KC and the *Family Affairs* team, the publication grew from a 'newsletter' to a professional, attractive, and yes 'weighty' publication. It has been extraordinary feat, combining detailed legal analysis, humour, political commentary, book reviews, history, photographs – and so much more – underneath a beautiful artistic cover.

It is with huge delight from me (and a massive dollop of relief) that Kate Burnell KC and Sam Hillas KC have come forward as the new editors of this publication. They will bring their own style I am sure, but also retain some of the essence of what John and Philip have created. In taking on this important role they know they have the full support (and gratitude) of the FLBA. I look forward to reading this issue!

To say the first few months of my term as Chair have been busy would be something of an understatement. Stuff happens, whether planned or unplanned, every day. I cannot but marvel at the work James Roberts KC undertook on behalf of the Association over 30 years on the National Committee and 20 as an executive officer, first as Treasurer, then as Vice Chair and finally as my predecessor as Chair. In that time, he was at the heart of everything the Association did. It was a privilege to be his vice chair for 2 years and I learned a great deal about leadership and getting things done. So much of what he did went unnoticed because he did it quietly, so effectively and without fuss. He was at every meeting, contributed on every issue and responded to every letter, every email.

James' advice to me about my vice chair was to hope the Association elected a '*do-er*'. You certainly did. In Lucy Reed KC you have elected a person who is astoundingly knowledgeable, creative, hardworking and proactive. She cares about the Association and its members, as we all do.

Lucy and I have attempted to be at every event, every meeting, to accept every invitation. So far, one or both of us have succeeded on almost every occasion. It is exhausting but also incredibly rewarding. We attend, as James and I did, every meeting of the Bar Council Remuneration Committee. We have both attended meetings with the Ministry of Justice. Lucy attended a VAWG ('Violence Against Women and Girls') meeting with ministers Baroness Levitt KC and Jess

Phillips MP. I attended the Family Justice Council Conference in person in Birmingham. Between us, we have attended every Bar Council and General Management Committee ('GMC') meeting. We meet regularly with the Chair of the Bar, Kirsty Brimelow KC, and I am working my way around the Circuit Leaders. We meet fortnightly with the President (or Keehan J in his absence) and the other practitioner groups. I have met with judges, with the Law Society to discuss its 'Save Our Legal Aid' campaign and plan to meet soon with Resolution. I attended the local FLBA drinks in Exeter on 16 February and Lucy and I plan to attend the local Bristol event on 26 March. We want to engage much more fully with the Bar across the whole country.

What do we contribute to or learn from these events?

First, the Family Bar is a truly inspirational and talented group of people. As one judge told me at the Annual Dinner, the advocacy exhibited by family barristers in court is generally of exceptional quality and not bettered by advocates from other areas of practice. For many, it is a vocation as much as a profession. Most of our clients are in crisis. They are ill equipped to navigate the justice system without our help. Each of us needs to be 'at the top of our game' every day of the working week. And we are. Many put their private lives and their own wellbeing behind their commitment to serving their clients and the public at large.

Second, publicly funded barristers are worn down by the unrelenting pressure of work and the lack of proper remuneration. As we all know, there has been no fee increase for legal aid lawyers for 30 years. In fact, there have been decreases during that time due to austerity cuts that were never reversed and the introduction of the Family Advocacy Scheme to replace Family Graduated Fees. In these 30 years, the work we are asked to undertake has changed dramatically. The fee scheme has not changed to keep up with this. Much of the work we do in a case is unremunerated, whether it is preparing written documents before and during a hearing or reading voluminous medical records and data downloads from devices.

Third, attending these events gives us a platform to put this message across. The message may not be welcomed by those in government (and perhaps others) but it needs to be heard.

Fourth, we learn about the incredible work being undertaken on our behalf by others. I have always found the Bar Council Remuneration Committee to be a hugely impressive body with an immense amount of accumulated knowledge. Adrian Vincent, Head of Legal Practice and Remuneration, is working tirelessly with us on publicly funded fee issues and the consequences of the cyber attack. As another example, at a recent Bar Council GMC meeting, I learned of the research being undertaken into KC appointments and how that impacts particularly on the Family Bar. The work of the Ethics Committee is equally impressive.

The FLBA is committed to implementing the recommendations of the Harman Report. Lucy and I met with the new Commissioner for Conduct, Dame Maria Miller, in February and impressed upon her the issues that impact upon the Family Bar including the operation of rule C66 and how bullying and harassment operate in the largely private arena of family proceedings. In this context, we relaunched earlier this year our Respectful Working Policy with a new list of Respectful Working Mentors across all regions of England and Wales. We are grateful to Darren Howe KC, Chair of our wellbeing subcommittee, who conducted a training session for all mentors in the early part of this year.

Much of the work of the FLBA continues as before. We remain ever grateful to Siân Smith, Lorraine Cavanagh KC and Alison Moore and their team of trainers for the vulnerable witness training sessions that they organise and run. We are grateful to Joy Brereton KC and the scholarship subcommittee for the work they do each year in assessing and selecting candidates

for this prestigious award, alongside Mrs Justice Morgan. The specialist subcommittees continue their invaluable work. The Money and Property Committee, led by Peter Newman, continues to liaise with the Law Commission on s 25 reform, to push back against attempts to regulate/accredit pFDRs, and has responded to Mr Justice Peel and HHJ Edward Hess on the proposed new Financial Remedies Guide. The Children Committee, led by Laura Briggs KC, has been working with the other practitioner groups to look at the impact of Pathfinder and mitigate some of the unintended legal aid consequences. It will also be responding to the consultation on short-notice applications.

We have two new subcommittees. With our thanks, Katy Chokowry has set up a new International Committee, which has already responded on our behalf to the proposed worldwide convention on parallel proceedings. Also, with our thanks, Matthew Maynard has set up a new Website Committee to tackle the internal and external difficulties we have been having with our website. The website has been problematic now for a while and we are sorry to those members who have had difficulty with membership renewal issues. If you are reading this and do not receive our emails – biweekly but often more frequent – please get in touch with Antje at admin@flba.co.uk.

The impact of the cyber attack and legal aid fees more generally has continued to dominate my inbox. The Annual Dinner gave me an opportunity to thank publicly Scott Baldwin, Senior Clerk at St John's Buildings in Liverpool (who attended the event as our guest), for all the work he has undertaken on behalf of the Association and its membership. Scott has been phenomenal in the work he has done in negotiating on our behalf with the Legal Aid Agency on the contingency payments, the escalated payment scheme, recoupment and in piloting the new portal. Barely has a day gone by without Scott responding to one of our emails or liaising with the LAA on our behalf. I am delighted that the Bar was able to show its appreciation to Scott with a standing and fully deserved round of applause.

On legal aid fees, I was able to set out with clarity (I hope) where I stand:

(1) I do not accept that family fees should always remain at the back of the queue of pressing issues to be tackled.
(2) I do not accept that spending restraint means that the family Bar should not receive an inflationary uplift or proper payment for work required to be undertaken.
(3) I do not accept that we are being treated the same as other publicly funded lawyers. We are not.
(4) I do not accept that family legal aid issues are a matter for the FLBA alone. They are not. The Ministry of Justice needs to hear everyone's voice – the voice of the Bar Council, the Circuits, the Inns and every stakeholder in the family justice system.

The Annual Dinner itself, as I said at the beginning of this column, was an enormous success. For many years this event, and many others, have been organised effortlessly, or so it seemed, by our then Secretary Charlotte Hartley and our Administrator Khadija Khan. Both devoted many years to serving the Association and its members. As I said at the National Conference in October, I have valued Charlotte's friendship and her sage advice over many years as I have the quiet efficient way she just 'got on with things'. Khadija had been the Administrator of the Association, it had seemed, for ever. The public consistent face, the 'go to person' for our members, the executive officers and for the committee to rely on. Both have been simply great to work with.

Now there is, of course, a new team in place. Tahmina Rahman, our Secretary, has been fantastic. She is wonderfully proactive and efficient. It feels like she has been undertaking this role for years not months. I have worked with Antje Barnes, our Administrator, for over a year now so I knew we would be okay when Khadija stepped down. And so it has proved. She has been brilliant, utterly indispensable. Together, they organised the Annual

Dinner for the first time with no (obvious!) hitches.

As for the longer established team members, Greg Williams continues his sterling work as Treasurer. He keeps our finances in order and brings crucial experience to the work of the executive officers. Greg also worked with me on the guidance note we sent out in January to assist those facing applications for wasted and disallowed costs.

The Annual Dinner itself was an occasion to mark the passing of two former Presidents, Sir Stephen Brown who died on 1 October last year and Sir James Munby who died on New Year's Day. Sir James' passing, at the age of 77, was particularly sudden and unexpected. There will be more eloquent tributes than mine within this publication but Sir James was a champion of the legally aided profession. He was an outstanding judge and barrister; someone who cared deeply about the family justice system. Anyone who worked with him or appeared before him will be aware of his extraordinary intelligence and his empathy for those disadvantaged within society. With the death of Sir James, the family justice system has lost one of its greatest supporters and advocates.

Our guest speaker at the dinner was Lady Morag Wise. Lady Wise is the President of the Scottish Tribunals, a Senator of the College of Justice and a Judge of Scotland's Supreme Courts. In practice as a solicitor and at the Bar she specialised in family law. It was delightful to hear her speak about her early days in practice. She spoke of unreformed judges who had little idea how to manage vulnerable witnesses and parties, and of the smell of wet horse that wafted across the court room when she accidentally got her wig wet before coming into court. It was a pleasure to welcome Lady Wise to the event and for me personally to spend the evening in her company.

The Annual Dinner also represented an occasion, my last occasion, to mark the retirement of Sir Andrew McFarlane. It is hard to know what to say at such a moment, and again others will speak more eloquently than me both in writing and at his Valedictory on 30 March. On a personal level, I want to thank Sir Andrew for his support of the Family Bar and the wider family law community. He has always made time for us and for the issues that concern us. His judgments, guidance and his reforms of the family justice system will remain as essential tools for the work of family justice for many years to come. He will be remembered as the President who kept the justice system running, and running effectively, during the COVID-19 pandemic, but also as the President who constantly sought ways to make proceedings fairer, to avoid delay and to find ways of resolving disputes that are better for children and kinder to parents.

As I said at the Annual Dinner, I have heard Sir Andrew speak on many occasions and each time he would hit exactly the right note with the occasion and the audience. His speech at the dinner was no exception. He spoke movingly of Sir James Munby's funeral, only a few days earlier. Having reminded him of his magician training, under the tutelage of the grand wizard himself, Cyrus Larizadeh KC, he explained how he had managed to avoid causing serious bodily harm to one of His Majesty's judges. He told us how grateful he was for the work undertaken by all those involved in family justice, aptly comparing us with the 'sweepers' during a curling match, frantically sweeping away to help the stone move in the right direction. At the end of his speech, our members gave him a standing ovation that would have lasted long into the night had he not, with his usual modesty, brought it to an end.

We will all miss Sir Andrew, his kindness, his good humour (even when sorely tested), his judgement and his commitment to family justice. We wish him and Lady Susanna a long, healthy, happy and fulfilling retirement.

Lastly, I wish to thank all of you, our members. Thank you for putting your faith in me as Chair. Thank you for your messages of support. Thank you for your questions, your rants (mostly justified) and your constructive comments. '*Keep 'em coming*' as they say.

# Sir James Munby

## A Tribute By Sir Nicholas Mostyn

In the light of the comprehensive obituaries in *The Times* (4 February 2026), *The Daily Telegraph* (19 January 2026) and my own in the *Financial Remedies Journal* (12 January 2026), it might be thought that there are no more encomia that could be offered up for Sir James Munby.

However, I have in my possession a nearly finished draft of a massive work by him entitled *The Astonishing Fate of Scott v Scott (1911–1913): Secrecy in family cases from the Court for Divorce and Matrimonial Causes (1858) to the Financial Remedies Court (2024)*. It is an astounding feat. At nearly 50,000 words in length, it is about the same length as *Slaughterhouse-Five*, *The Catcher in the Rye*, and *The Great Gatsby*. It is twice as long as *King Lear*. Its depth of learning is formidable. The autobiographical details included are intriguing.

In this tribute I will review this work. This exercise will demonstrate just how erudite he was as a lawyer and how brilliant he was as a historian. Assertions to this end have been made in the obituaries, but in this exercise, I intend to provide living proof.

I must make clear by way of disclosure that on several occasions I was asked by Sir James to consider critically proposed passages to be included in the work and, from time to time, I made amendments which he was prepared to accept.

In the preface, Sir James explains that for most of his professional career, he was not a family lawyer. He tells us he was first introduced to family law transparency issues in 1988 when he was briefed by the Official Solicitor as amicus curiae in *Re W and Others (Wards) (Publication of Information)* [1989] 1 FLR 246. From 1988 until his appointment in 2000, he was involved as counsel in many of the most important reported transparency cases in the family courts. Sometimes he acted on behalf of a child, sometimes he acted as amicus curiae, but frequently he acted on behalf of newspapers, as, for example, in *In re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 211. As counsel, his involvement in transparency cases was limited to those cases where a child's welfare was at the heart of the dispute. He did not appear in any case where the question was the anonymisation of a financial remedy report. Indeed, as a judge, it was not until *Clibbery v Allan & Anor* [2001] 2 FLR 819 that he considered, albeit *obiter*, secrecy in money cases.

The importance of these biographical details is that they remind us that he was, prior to his appointment, first and foremost a civil lawyer who dabbled in family law matters only occasionally. He came to the Family Division in the year 2000 as a civil lawyer with only limited experience of family law matters. Even as President of the Family Division, his backstory was not in family law. Sure, he had served for 9 years as a puisne Judge of the Family Division, but his later tenure at the Law Commission and in the Court of Appeal before his appointment was not exclusively, or even to a majority extent, in family law. Therefore, as he put

it, his approach to family law transparency issues was to start with the principle of open justice and look into the family justice tent, whereas most family lawyers when thinking about transparency start in the family justice tent and then look out.

These two cases, *Re W* and *In re M and N*, served as launchpads for the development of his Olympian learning about family law transparency issues.

*Re W* was a very important case in the development of his great learning on this subject for three reasons. First, he had to get to grips with the complexities surrounding s 12 Administration of Justice Act 1960. That is a provision which has recently been in the spotlight as the Law Commission has recommended in its report (*Contempt of Court: Report (Part 1) on Liability*, 17 November 2025, Chapter 7) the repeal of s 12, with no statutory replacement. The proposal is that once the case is over there should be no automatic statutory prohibition on publication, and that reporting restriction orders should be made in the individual cases if such protection is required.

In *Re F (Orse A) (A Minor) (Publication of Information)* [1977] Fam 58 at 98 and 100 Scarman LJ explained that:

> *'the plain purpose of section 12 is to clarify the law, which had been extremely obscure, governing the right to publish information relating to the proceedings and order of a court sitting in private … it must be interpreted in the light of the pre-existing law. It is not a code of new law, but a clarification of the old.'*

Thus, the mere repeal of s 12, with the consequential effect that the common law would revive, does not seem to be a sensible solution.

As a judge, Sir James expounded at length and in depth on s 12 in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, and in *A v Ward* [2010] EWHC 16 (Fam), [2010] 1 FLR 1497. His observations in the former case made the government sit up. He had held that disclosure by a party in proceedings covered by s 12 to a journalist or to an MP, or to a Minister, or to a Law Officer, or to the DPP, or to the CPS, or to the police (except when exercising child protection functions), or to the GMC, or to any other public body or public official, would be a publication for the purposes of s 12, and therefore potentially a contempt of court. This led the government to cause Parliament to enact s 62(7) Children Act 2004, which inserted s 76(2A) into the Courts Act 2003. This provided:

> *'Family Procedure Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to family proceedings held in private.'*

Pursuant to this provision, an array of disclosures has been authorised. Given the existence of this power, it is unnecessary to repeal s 12. All that needs to happen is that further types of disclosure should be authorised under the rules. Indeed, as explained in the *Financial Remedies Journal* obituary, a modest proposal jointly made by Sir James and me to allow former wards of court to talk about their wardship when everybody has grown up is still pending before the Family Procedure Rule Committee and making glacial progress.

Second, *Re W* had *Scott v Scott* at its heart. Later, Sir James was to explore *Scott* as a judge in a number of cases, in particular in *Clibbery v Allan & Anor* [2001] 2 FLR 819 and in *Re Webster (A Child), Norfolk County Council v Webster & Ors* [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146.

Third, and more fundamentally, it opened his eyes and alerted him to the fact that the assumptions and beliefs in relation to transparency commonly accepted by family lawyers were not then, and are not now, necessarily a sound guide to what the law really is. In *In re M and N*, a case where a newspaper wished to report a story about a local authority removing a child from the care of foster parents, he argued that:

> *'The present practice of the courts has been to grant such injunctions routinely and without consideration of the relevant principles … The width of prohibition is also greater than can be necessary, and there is rarely any expressed time limit. The current practice militates against the policy of the legislation and shifts the emphasis against freedom of speech.'*

In that case, he argued, vitally, that freedom to publish was a component of freedom of speech;

that freedom of speech was a fundamental doctrine of the common law; and that freedom to publish included the right to be unfair, unbalanced, and prejudiced. There was, he said, much truth in the proposition, '*publish and be damned*'.

As a judge, he explored this unhappy phenomenon in *Kelly v British Broadcasting Corpn* [2001] Fam 59 and in *In re A Ward of Court (Wardship: Interview)* [2017] EWHC 1022 (Fam), [2017] Fam 369.

Since these pronouncements were made, matters have only got worse. In the field of money, Lord Sumption has in *Prest v Petrodel Resources Ltd & Ors* [2013] UKSC 34, [2013] 2 AC 415 condemned family law practitioners and judiciary for living on a desert island where the normal rules of law and equity do not apply. I myself have issued a closely reasoned criticism of the *Guidance* issued by the President dated 11 December 2023 under which the financial remedy transparency pilot scheme was rolled out to all courts in January 2025. Sir James and I have argued that the guidance is both ultra vires and unlawful in as much as it prescribes anonymity for all reported financial remedy cases with open justice only happening exceptionally, if at all. This is completely contrary to the law which mandates that anonymity, as a serious derogation from open justice, can only be implemented in highly exceptional circumstances.

In the field of children law, it remains completely unknown for how long the restrictions imposed by s 12 endure and attempts to enact even the most modest reforms in this regard seem to have run aground in the Family Procedure Rule Committee.

*In re M and N* was likewise important to Sir James for two reasons. First, it deepened his understanding of the significance of *Scott v Scott*. Second, it established that in matters of transparency the interests of the child are not paramount, and that conflicting interests are to be reconciled by a balancing exercise, albeit not described as such in those days before the Human Rights Act 1998, or the various, now familiar, Convention rights. This he was subsequently to explore judicially in *Re Roddy (A Child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 2 FLR 949, and in other later judgments.

So, to the work itself. Like Gaul, it is divided into three parts. The first concerns *Scott v Scott* and Lord Gorrell's Royal Commission on Divorce and Matrimonial Causes which reported in 1912. In an extraordinary sweep of history over 54 pages Sir James analyses the law and practice that existed before the great reforming statute of 1857 was passed. He then, in meticulous detail, analyses the substantive law and the procedural disputes that prevailed after 1857. He looks carefully at the role of Mr Justice Bargrave Deane, who was the first true family practitioner judge and whose principles and *dicta* were of key importance in those early days.

It was a strange coincidence that the deliberation of the Royal Commission took place while *Scott v Scott* was proceeding at first instance and in the Court of Appeal. The Commission itself reported on 8 November 1912 in the interlude between the judgments being delivered in the Court of Appeal on 6 July 1912 and the hearing in the House of Lords which took place on 3–11 March 1913. In his customary beautiful prose, Sir James explains how the recommendations of the Royal Commission sat in conflict with the explanation of the law in *Scott v Scott* by the House of Lords.

Curiously, Stephen Cretney's great work (*Family Law in the Twentieth Century: A History* (OUP, 2003)) is remarkably thin on this period of the law. I doubt very much that there is anywhere a more detailed, more analytical, or more scrupulous examination of the law and practice of divorce in that period of change – from 1857 to 1912 – than in this great work.

Students of legal history will admire Sir James's reference to the evidence given by Dr Tristram to the Royal Commission in 1910. He was the sole surviving Queen's Proctor and advocate at the Doctors' Commons, which had held a monopoly over the law and practice of legal separation (divorce *a mensa et thoro*) in the Ecclesiastical Court for centuries, and which was abolished in 1865.

Sir James demonstrates that although after 1857 the judiciary resolved to hear nullity cases in

private where the Ecclesiastical Court would have done so, there was complete confusion about the law and practice in the Ecclesiastical Court. The confusion is distilled into the despairing remark of Bargrave Deane J in *D v D, D v D and G* [1903] P 144 at 147) that '*There is nothing to shew on what grounds the old Ecclesiastical Courts heard suits for nullity of marriage in camerâ*'. Nonetheless, Mrs Scott and her solicitor were both found guilty of contempt for making disclosure of embargoed material.

As mentioned above, in *Scott v Scott*, the Court of Appeal handed down judgments on 6 July 1912: [1912] P 241. Among those judgments is the brave, pellucid reasoning of Fletcher Moulton LJ. Sir James points out that were it not for a judgment of such persuasion and excellence, the House of Lords would probably have never taken the appeal.

Sir James then embarks on a scrupulous analysis of the judgment of Fletcher Moulton LJ. This was resoundingly vindicated 5–0 in the House of Lords. I can comfortably say that history was made when Fletcher Moulton LJ read out his judgment on 6 July 1912. Sir James's analysis of it occupies 40 pages; it is an exhaustive exposition of the great man's thinking. Here, Sir James writes at his best; his analysis is replete with historical detail, anecdotal bravado and intellectual challenge.

On 8 November 1912 the Gorell Commission issued its report. It recommended that the court should be given power to close the court for the whole or part of a case in the interests of decency, morality, humanity, or justice. It further recommended that the court should be able to order that written evidence must not be reported or published. Third, it recommended that there should be no publication of the report of a case until after it was finished. Lastly, it proposed a ban on sketches of parties, witnesses, or others involved in court.

On 5 May 1913 the opinions were given by the House of Lords: [1913] AC 417. The members of the Committee were unanimous that the order made at the beginning of the case, that the proceedings were to be heard in camera, was unlawful. They were withering in their condemnation of the lazy arrival of the trope of secrecy. They did not pay any attention to the views of the Gorell Commission.

All this is described in measured yet curiously arresting language by Sir James. The historical exposition is truly extraordinary.

Second, *Scott v Scott* articulated the constitutional impropriety of restraining a litigant's right to speak out. Sir James explains that Fletcher Moulton LJ's ringing declaration of principle as to the litigant's right to speak is now to be found in the jurisprudence of the Convention, particularly in Art 10's protection of the '*right … to … impart information*'.

Third, and of much wider and more fundamental significance, *Scott v Scott* established definitively and for all time that, as Viscount Haldane LC put it (p 436), referring to the Court for Divorce and Matrimonial Causes established by the Matrimonial Causes Act 1857:

> *'the Court which the statute constituted is a new Court governed by the same principles, so far as publicity is concerned, as govern other Courts.'*

Earl Loreburn was equally pithy (p 447):

> *'the Divorce Court is bound by the general rule of publicity applicable to the High Court.'*

Specifically, it held that, specific statutory provisions apart, the Divorce Court and its successors could, and can, sit in camera only in the very limited circumstances permissible in the other Divisions.

This third point is absolutely vital and was taken up by Sir James in *Re Webster (A Child), Norfolk County Council v Webster & Ors* [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, where he said at [39]:

> *'Scott v Scott established once and for all that there is in principle no difference for these purposes between the Family Division and the other two Divisions. It is impossible to argue that the Family Division as such has any greater powers to sit in secret or to enforce the confidentiality of its proceedings than any other part of the High Court. If it is to be*

*argued that the Family Division has some such power, either generally or in some particular class or classes of case, that power is not to be derived from the fact that the Family Division is the Family Division or from any "practice" of the Family Division however inveterate; it has to be founded in specific statutory authority or, since the coming into force of the Human Rights Act 1998, justified by reference to the Convention.'*

In the third part of this magisterial work, Sir James explains how the unambiguous pronouncements by the House of Lords, referred to above, have failed to put an end to the idea that the family courts are not bound by the same principles as the rest of the High Court. Astonishingly, over a century after *Scott v Scott*, family law exceptionalism remains rife, so much so that, as Sir James puts it:

*'there remain, even today, far too many family practitioners, and, dare one say it, far too many family judges, who, whatever they may or may not say openly, still complacently prefer the accustomed comfort of the desert island to the harsh rigorous world of principle and proper legal analysis.'*

In this final part of the work, Sir James sets out a grand remonstrance against family law isolationism and exceptionalism. He identifies case after case, some decided by him himself, in which the family law cult of secrecy and anonymity, and the existence and occupancy of the family law silo, are condemned. This is familiar territory; his arguments have been recycled in his seven essays on transparency.

Lastly, Sir James sets his sights on the infamous rubric. Of course, as he explains, a rubric is perfectly reasonable as an aide-mémoire of the contempt rules in play in a children's case where there is statutory protection. However, the use of a rubric in a financial remedy case to create the jeopardy, or at least the appearance of jeopardy, of contempt consequences is, he explains, completely wrong and unlawful. Such an outcome can only be achieved by making a proper reporting restriction order. Such an order has to comply with the applicable law. These requirements and stipulations cannot be avoided by the use of a pallid proxy in the form of a rubric. Sir James does not pull his punches. He states:

*'The existing rubric should be abolished in financial remedy cases at the earliest opportunity. It is a brutum fulmen, is thoroughly misleading and is almost certainly unlawful.'*

In his conclusion, Sir James asks what the outside observer is to make of all this. Why do practitioners and judges find it so difficult to understand and honour the learning in *Scott v Scott*? What is the explanation for the unprincipled adherence to the cult of anonymity? How, he asks plainly, can a citizen be expected to have any respect for a legal system which obstinately continues to behave in such a confused and erratic way? He refers to an episode, released on 23 March 2024, of the podcast *Law and Disorder* which I present alongside Lord Falconer and Baroness Kennedy of the Shaws KC, where I was unrepentant:

*'We have been transported back to 1912 immediately before the House of Lords erupted in Scott. Back then, family law occupied its own silo where the cult of total secrecy prevailed. And we know what the Lords said about that. It is incredible that the Family Judiciary has succeeded in reinstating the cult of secrecy that prevailed before the Lords abolished it.'*

Sir James concludes by identifying a bitter irony about *Scott v Scott*. It was first and foremost a family law case, yet its principles are sacred in the world of civil law. However, in the family law world, where the decision is directly applicable and binding, it has been, and continues to be, studiously ignored by everyone – by practitioners, by judges and by policy-makers. Where are we 113 years after that decision was made? It is as if the House of Lords had never spoken.

In my obituary of Sir James for the *Financial Remedies Journal*, I described him as our Hale, Coke, Blackstone or Stephen. However, in this astonishing work, he is revealed as our Gibbon. The work showcases his exceptional intellectual skills, and his ability to convey an idea in language which is readable, attractive and educative. The work is an emblem of the man himself, and I very much hope that one day it will be published.

# In Memory of Munby

Jo Delahunty KC | 4PB

Sir James Munby, the former president of the Family Division, died suddenly on New Year's Day, aged 77.

Born in 1948, Munby attended Magdalen College School. At Oxford he was an Eldon Scholar at Wadham College, Oxford. He was called to the Bar by Middle Temple in 1971 and practised at New Square Chambers. In 1977, Munby married Jennifer, who survives him along with their son and daughter. He was made Queen's Counsel in 1988. When appointed to the High Court in 2000, he was assigned to the Family Division and also authorised to sit in the Administrative Court. In 2009, he became chairman of the Law Commission and was made a Lord Justice of Appeal in the same year. In 2013, he succeeded Sir Nicholas Wall as President of the Family Division. Munby retired in 2018 after 5 years in office when he reached the statutory retirement age of 70. He went on to serve as chairman of the board of the Nuffield Family Justice Observatory from 2018 to 2023, and remained actively involved in family law matters until his death.

As the country's most senior family law judge, Munby often spoke out against injustice and failures of the state that left children and young people at risk. His words ring true decades after spoken or written by this remarkable man. In the landmark case *Re B-S (Children)* [2013] EWCA Civ 1146 the profession were held up to account for poor practice, moral assumptions and judgments and devaluing parental care. We were told in no uncertain terms that adoption should only be considered as a last resort, when *'nothing else will do'*. Munby emphasized the profound nature of adoption, particularly when conducted without parental consent, and spoke of the forced removal of a child from their parents and the severance of legal ties which adoption entails as being *'with the exception of the abolition of capital punishment, the most draconian and final intervention by the state into family life'*.

We have Munby to thank for Re A [2015] EWFC 11 which, over a decade later, still sets the standard we hail and claim as the bedrock for an Article 6 and Article 8 compliant trial process. As he said

> *'The elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation'.*

Threshold must be pled with a forensic eye focused on to what needs to be proved and to what point in issue, and element of harm, it goes to. It is striking how often this still needs to be argued. When it is, we turn to Munby.

The admiring and affectionate resume of Munby's career by Sir Nicholas Mostyn[1] makes us lesser mortals feel deeply inadequate (that rings true of both men to be fair):

> *'In his 29 years of practice, he appeared in a prodigious number of important cases. Westlaw lists 90 which were reported. It is not the sheer number that makes one stretch one's eyes but the extraordinary diversity. … It was said at the time that he was of the calibre to have been appointed to each of the three Divisions; and it is the opinion of many that had he been appointed to either of the other two Divisions he could equally well have risen to its leadership. He did not confine himself to judging. He was an active and assiduous commentator. I have a list of 38 speeches and other writings made by him following his appointment as a judge; of these seven (including two memorable book reviews) were delivered as a puisne. In those 9 years he delivered 296 reported judgments, of which 251 were in the High Court and 45 as an additional judge of the Court of Appeal. They include some themes which would later become habitually associated with him: transparency, and the protection of vulnerable adults under the inherent jurisdiction. … Further, the reader collects from his judgments a strong attachment to the interests of the weak, powerless, and dispossessed, whether they were failed asylum seekers awaiting deportation, coerced wives or seriously unwell adults and children. A recurring theme is the defence of the weak against a monolithic, unthinking state.'*

Polly Morgan put together a 'Greatest Hits' List for the Transparency Project in January 2026[2] and I urge all to read it to be reminded of the sheer scale of Munby's reported cases – diverse in terms of subject matter but threaded through by humanity which shone through in every erudite (and long!) judgment. James enjoyed words. He was as unstinting with them as he was with his time for the Bar. Many will recall their chats with James in the garden or in the bar at Cumberland Lodge (well after the bell for last orders had been rung) with affection and just a little astonishment that a man of such accomplishments was interested in them and genuinely wanted to hear what they had to say. That wasn't a front. James didn't hide behind his Bench or title. He sought out conversation. He was actively inclusive before it became a buzz word.

Mostyn's final words on Munby speak for so many of us:

> *'He was a great leader, a brilliant historian, a remarkable lawyer, and a superb writer. Yet, transcending these professional gifts, he was a kind, witty, and deeply compassionate human being whom I was fortunate to count as a close friend. His departure leaves a profound void in my life, as I am sure it does for the many others who knew him.'*

Mostyn's words certainly speak eloquently to my professional and personal loss. James was my mentor, my friend, my champion. Our history went back over 25 years. He saw something in me as a raw junior. I had ambition and the beginnings of ability and James turned that potential into something worthy of a silks application. When I took silk in October 2006 I went to be presented to him. In the hustle of his room where my husband, three kids, relatives and friends had all been bundled into with great noise by George (Pitchley), Munby's indefatigable clerk, my mum could very easily have been swallowed up by the commotion. Mum, aged 67, seemed older than her years and was frail with the onset of dementia and the hidden cancer that would kill her 5 months later. James found the space to 'see' my mum and took her aside, sat her in his chair, shielding her from the hullaballoo. He told her how much he respected her for all she had done to being me up as a single parent. He said that this day and celebration belonged to her as much as to me. He got through the fog and noise. He made his time and words count. It left me with a debt of

1 https://financialremediesjournal.com/sir-james-munby-obituary/

2 https://transparencyproject.org.uk/sir-james-munbys-greatest-hits-an-appreciation-of-his-work/

gratitude I have tried to repay in my years as silk.

James told me to '*make silk count*'. I have tried to do that. He expected nothing less. We communicated often and frankly about the law, the state of the justice system and family life. He had been sent my book *We Set The Bar* to review. The back and forth started on 30 October with this heads up after a skim read, '*Gosh! Powerful stuff! The old men will hate it – GOOD!*'. We kept up the dialogue as he read each chapter. As of 23 December, he wrote '*Phew. What a powerful read! Much of the time I did not know whether to weep or rage. But the overall message is tremendously positive and a very necessary call to arms*'. James approved of my outrage and drive to be heard for the disaffected and vulnerable. Others who shared his background, age and status might not have done so, certainly not with such alacrity. James had high expectations for himself as well as others. He was characteristically full of beans. Emails from him tumbled into my in-box with ideas and plans. It was hard to keep up. He had just received a batch of Law Commission reports and rather than being cowed by the density of material and their daunting deadlines, he exulted in the chance to 'dig in' to the detail .

This was James' sign off email to me just before Christmas Eve:

> *'Although now 77 – tempus fugit – I refuse to see myself as one of the old men, many of whom, of course, are very much younger!'*

James was a man of principle; prepared to speak up and out about things that mattered. He was a thinker, an agitator, a writer, a doer. He was an endless fount of knowledge and opinion which he shared with generous enthusiasm. He expected his views to be engaged with, not deferred to. But, more than anything, James was a man whose kindness and curiosity made him a companion of choice.

James was a titan within our legal world. I can't believe his intelligence, curiosity and kindness are no longer mine to plunder. He was a very fine man. He is irreplaceable. It was a privilege to have him in my and my family's life.

RIP James Munby; man who made a difference to many.

# Sir James Munby

Nick Vineall KC | 4 Pump Court

There have been many tributes to James Munby, many noting his qualities as judge. But before that he was an extraordinarily fine advocate.

In 1993, in the case which was eventually turned into the film *The Children Act*, he was acting for the Official Solicitor. I had applied on behalf of a hospital to make their teenage patient E, a Jehovah's Witness, a ward of court, because he was refusing a blood transfusion and was about to lose his sight. The application came on at less than a day's notice, right at the end of term. I made my submissions, and was very nervous, partly because of the subject matter but more because I had never seen a silk in court before – indeed I had to ask James how to refer to him because I didn't know.

When James stood up to make his submissions (to Mr Justice Ward as he then was), I was transfixed and completely overawed. Despite having had only hours to prepare he gave a pellucid exposition of a thorny area of the law and it was like being in a masterclass. He came to the perfect point to make a break in his submissions, having (apparently) neither rushed nor tarried on his way there. '*Would that be a convenient point for the short adjournment?*'. It was on the dot of 1 o'clock.

It was elegant and compelling advocacy, showing the clarity of thought and compassion that so many others have noted in his judging. A kind and lovely man and a great loss. RIP.

The painting of Sir Stephen Brown above has been reproduced with the kind permission of Malvern College.

# President's Address for the Memorial Service of Sir Stephen Brown

5 March 2026

*Reproduced with kind permission from Sir Andrew McFarlane, President of the Family Division*

The Right Honourable Sir Stephen Brown, Knight Grand Cross of the Most Excellent Order of the British Empire (GBE), awarded the Chevalier de la Légion d'honneur by France (twice) and the Russian Commemorative Medal (again twice), QC, judge of the High Court and Court of Appeal, President of the Family Division, was born on 3rd October 1924. He died on 1st October 2025, just two days short of his 101st birthday.

Whilst we are gathered here in sadness that a wonderful and most valuable life has ended, we do not meet in shock that a man of such an age should have died. We are here to remember Stephen with warmth and pleasure as we recall all that he did and all that he meant to us during the 36,862 days of his long life.

Before embarking on these few words, I should justify my presence here. Stephen was 30 years older than me. Whilst I joined the same small chambers in Birmingham that he had headed, Stephen was already a High Court judge, having been appointed in 1975. And, although I typed this script sitting at the desk that Stephen will have used as President of the Family Division, by the time I was made a judge in 2005, Stephen had been retired for 6 years. Thus, as many of you will, I hope, have spotted as I walked towards the lectern, I was neither a contemporary nor a close colleague. Nevertheless, our paths crossed a good many times, through the Birmingham connection and, more particularly, during Stephen's time as President when I, and others, worked closely with him around the implementation of the Children Act 1989. Much more recently, I had the pleasure of interviewing Stephen to mark his 100th birthday. On that occasion we spent well over an hour together. During that time, it was clear that, whatever physical limitation he may have had, his intellect, his memory, his humour and his humanity were as chipper as ever.

First, some basic coordinates: Stephen Brown was born in Staffordshire to Wilfrid Brown and Nora Elizabeth Brown. He attended Malvern College. In later years, he served as Chair of governors for that school for nearly two decades.

Stephen will have been around 16 years old at the outbreak of war. Although he went up to study law at Queens' College, Cambridge on leaving Malvern, very soon, at the age of 19, he joined the Royal Navy Voluntary Reserve (the RNVR). His ship, the HMS Scourge, was engaged in escorting The Arctic Convoy of ships bringing vital supplies to Russia through

the channel of sea between the Arctic ice and the German occupied Norwegian coast.

The Scourge, an S-class destroyer, then took part in D-Day. Its role was to open up bombardment of the German gun batteries an hour or so before the landings began. As Stephen told me when we met in 2024, '*Well, the Germans had nothing else to do but to shoot at us*'. We can all pause and think just what that experience must have been like for a 19-year-old and, indeed, everyone else on board.

After D-Day it was back to the Arctic, and after the war, in 1946 it was back to Cambridge for two more years. The contrast between all that he had seen in the awfulness of war, and the tranquillity of Cambridge was, Stephen agreed, hard to adapt to. He told me '*they called us "The Returning Warriors"*', which of course they were.

He completed his studies and was called to the Bar by Inner Temple in 1949. He commenced practice in Birmingham.

In 1951, Stephen married Patricia Ann Good, daughter of Richard Good from Tenbury Wells, Worcestershire. It was a marriage that lasted nearly 70 years, ending with Pat's death in 2020.

In those days, the various sets of chambers in Birmingham were dotted around buildings in Temple Row. Stephen's set was in the Law Library building at 8 Temple Street. In a feat of collective endeavour, which is rare at the Bar, the various sets came together in the 1960s to finance and build a purpose-made block conveniently located 100 yards from the main law courts. Stephen was at the forefront of this project and was justly proud of 'Fountain Court', which came to house eight sets of chambers. It not only provided modern and convenient premises, it did a great deal to create a feeling of collegiality between the various sets and to provide cohesion for the Birmingham Bar as a whole.

Stephen's set became No 2 Fountain Court. He told me that the sets had been allocated by lottery and '*We were lucky to get No 2*'. '*Why?*' I asked; '*Well, it was only one floor up*' came the reply.

Alan Taylor, who was Stephen's pupil in 1962, and who is here this evening, tells me that Stephen's practice was widely based, taking in both criminal and civil work, together with planning. Alan recalls travel to all parts of the Oxford Circuit, particularly Stoke and Stafford and, of course, Birmingham. The Midland and Oxford Circuits later merged in 1969, but, as Stephen told me with a broad smile, '*Oh, there was still rivalry and real division!*'

Time for some more basic coordinates:

Stephen was appointed Deputy Chairman of Staffordshire Quarter Sessions from 1963 to 1971, and Recorder of West Bromwich from 1965 to 1971, when the system changed, with assizes and quarter sessions being abolished, at which time he was made a Recorder.

He took Silk in 1966. As was the custom then for a regional practitioner becoming a QC, he joined a set of London chambers, 1 Paper Buildings and soon became its Head.

From 1972 to 1975 Stephen sat on the Butler Committee inquiring into the treatment of criminal psychiatric patients and the subsequent protection of the public when they are released. This followed the conviction of a 24-year-old man of murdering two of his workmates in a photographic laboratory. The man's employers had not been told that he was a former Broadmoor patient who had poisoned his father, his sister and a schoolfriend 10 years earlier.

Stephen was appointed as a High Court Judge and knighted in 1975. He was initially assigned to the Family Division, but in 1977 he transferred to the Queen's Bench Division.

The Lord Chancellor's decision to place the new judge in the Family Division was slightly left field, as Stephen's practice had not included many, if any, family cases. But, as we shall see, those 2 years in family may have played a significant part in subsequent events.

For 4, no doubt very happy, years Stephen was Presiding Judge of the Midland and Oxford Circuit, from 1977 to 1981. From my own experience, there

are few judicial roles better than that of being a presider on your own circuit. During this time, just as he had done with Fountain Court when at the Bar, Stephen was very instrumental in the establishing new Judges' Lodgings in Birmingham.

I joined the Birmingham Bar during his time as Presider. I was the lowest form of barristerial life. To me, Mr Justice Stephen Brown was in the stratosphere – even though he was still known in chambers by his nickname of '*stainless Stephen*'.

In 1983 came appointment as a Lord Justice of Appeal and, with it, membership of the Privy Council. During this time, in 1988, Stephen was one of three judges, together with Lord Chief Justice Geoffrey Lane, hearing the first appeal made by the Birmingham Six, who had been convicted of the IRA Birmingham Pub Bombings in 1975. I will not dwell on that case, but, when we met, both of us had a ready recall of one night during that time when there was a grand dinner at the Birmingham Botanical Gardens to mark the opening, that day, by Her Majesty the Queen Mother, of the new Law Courts in the city. Security at the event was at the highest level. Stephen's recollection was:

> *'I remember that evening very well indeed. I was sitting in London with Geoffrey Lane and others. We left early. I changed into my black tie in the train and we had a police escort at Birmingham New Street to go to the Botanical Gardens.'*

Changing in the loo, followed by a police escort; high living indeed!

After 5 years in the Court of Appeal, Stephen was appointed to be President of the Family Division, a post that he held for 11 years until retirement at age 75 in 1999 – making him the longest serving PFD, so far. Baroness Butler-Sloss will speak of her recollections of that time, but I will share with you my understanding of how this came to be.

The President had, hitherto, always been appointed from amongst the senior judges of the Division. When the vacancy occurred, on the retirement of Sir John Arnold, Margaret Thatcher, as Prime Minister, decreed that that practice must change and the appointment should be drawn from amongst the Court of Appeal judges. In that context, Sir Stephen's previous experience as a family judge will not have been irrelevant and, coupled with his other undoubted attributes as a senior judge and leader, he was appointed to be the PFD.

I put that story to Stephen. He could not recall it, but he was clear that the appointment of a Court of Appeal judge to the post really changed things and put the Family Division firmly on the map. I am sure that that is right, and I am equally sure that the manner in which Stephen Brown discharged the role during those 11 very influential years contributed far more to the enhancement of family justice than the simple fact that he had been a Court of Appeal judge.

During his time as President, Stephen showed great kindness to David Hershman and to me, two young unknown barristers, as we began to write a book on children law. He was then, and throughout all the years that followed, immensely supportive to me and I will remain forever grateful for his generosity.

Standing back, we are thinking about a man who not only did the day job, but, it would seem, at every stage went the extra mile and more. Spotting something that needed to be done and then stepping up to lead the doing of it.

In the Birmingham chambers, at a time when the clerks recorded all bookings for work in a handwritten diary, if a barrister was due to sit as a part-time judge it would go into the book as 'PD', meaning 'public duty'. Stephen Brown demonstrated a commitment to public duty in the widest sense throughout his life. From the decks of HMS Scourge, to the building of Fountain Court, leading his chambers in both Birmingham and London, serving on the Butler Inquiry, chairing the governors at Malvern, serving with conspicuous distinction as a judge for 24 years, being President

of the Family Division, to hearing the most taxing of cases, he saw that there was a job that needed to be done, and he did it to the best of his immense ability.

To offer an example of this commitment, I will share an amusing memory. Some time during his time as President, Stephen agreed to chair a conference at the Birmingham NEC conference centre. It was on care plans for children. This is a dry, yet important, subject that would not normally draw a big crowd. At that time, however, new regulations were about to come in and the conference was so over-subscribed that we were moved into one end of the aircraft hangar-sized convention halls. Stephen was on the stage all day introducing the speakers. Wearing standard edition ex-Navy double breasted blazer, one hand in the pocket, he warmly welcomed each speaker and, at the end, said something positive about what they had said. It was going well. I went up and sat by Stephen during the afternoon ready to speak in my slot. It was only then that I realised that his seat on the stage was well behind the massive loudspeakers. The acoustic in this barn of a place was such that all the noise had been going forwards, and it was impossible to hear a word from where we were seated. I whispered to him *'You can't hear anything can you?'*, *'No'* said the President, *'I have done the best that I can, but it has been a bit boring!'*. He was a saint that day, and I suspect on many other occasions in other ways.

What was he like in court? I have my own memories, but I cannot better the description that Peter Jackson, now Lord Justice, has given:

> *'I appeared in front of Sir Stephen regularly as a junior in the 90s. He set the tone with his brisk way of coming into court, his smartness and his ramrod posture. He was always kindly, but like the Ancient Mariner he held you with his glittering eye in a way that discouraged any unmeritorious submissions.*
>
> *He is insufficiently remembered for the extremely high quality of his judgments, probably because he was not given to generalising. He wrote beautifully, telling the story with clarity and authority. He conferred dignity on people in distress. For example, the father of Tony Bland was "a splendid straightforward Yorkshireman". But where criticism was called for, he had the words for that too. We have all seen people being dismantled by judges over many a long page, but for me no reproach was more powerful as that delivered in two words by Sir Stephen to my clients when he said that he regarded their conduct as being "most unworthy". And it was.'*

At the close of my interview with him I asked: *'Of all the stages of your career – young barrister, busy barrister, Silk, High Court Judge, Court of Appeal and President – which time did you enjoy most?'*

***Sir Stephen:*** *'Well, I haven't really researched that!'*

***McF:*** *'I get the feeling you've enjoyed all of it?'*
*Sir Stephen: 'I did. There have been fearful times, when you were scared stiff, when one never felt very certain about how things were going. But I think it's gone extremely well, which is very fortunate. Put it like that. There is a great deal of very good fortune about it and it says a lot about the company that you're with and the people you are dealing with. We were a band of brothers, I'm sure.'*

***McF:*** *'Last question: if you were talking to a youngster about to start off in a career at the Bar what advice would you give them?'*

***Sir Stephen:*** *'Don't expect too much too soon. You have got to pick up by getting yourself used to speaking to people and taking issues as they come. Don't expect it all to be laid out as a career. No, it's all full of surprises. Remember you are dealing with human nature, that is the important thing.'*

As I said at the start of this address, we are here to remember, with warmth and gratitude, a man of real intellect, humour and great humanity. He lived such a long time, but I do not imagine that many of those days were wasted. He was not one of life's passengers, on the contrary, he was at the helm in so many ways. Stephen Brown's was a long, long life that was profoundly well lived, and we are all grateful to have been some part of it.

# A Conversation with Jo Delahunty KC

Shelly Glaister Young | 42BR Barristers

Jo Delahunty KC drops into our Teams meeting, right on time and looking ... well, looking exhausted. I know – because this meeting was meant to take place in 3D and accompanied by food – she's been up most of the night sick. Today, she's squeezing me between a podcast recording, drafting guidance in response to a judgment handed down by the President, fielding emails in an end-of-life case and preparing for an advocates' meeting before shooting off to Liverpool. I think the world of Jo, but I never envy her life as a leading silk. She's running on empty, but still sharp as a tack and ready for battle.

When Jo and I first met, on the topic of work–life balance she told me, '*Do as I say, not as I do*', and I told her she needed to slow down. She hasn't, and now I'm one foot out the door. Much has changed since she asked me to contribute to her book *We Set the Bar* (recently released and the primary purpose for our meeting today), and whilst I know she always has my back, I wonder how this conversation will go. One thing is certain; the Jo I know will tell me exactly what she thinks.

Deep breath. Here goes.

Jo Delahunty KC – advocate, leader, mentor, professor, writer and red-lipstick wearing warrior – is a well-known face to many at the Family Bar, not just for her take-no-prisoners, win-every-witness approach in court, and her many (many) accolades and titles, but also because of how vocal and forthright she's been on issues affecting the modern-day Family Bar. At the heart of all that, I ask, '*Who is Joanne Delahunty? How would you hope to be spoken about when you're not in the room?*' Jo pauses briefly and says:

*'I think, in the end, I hope to be someone who tried and did make a difference. Not just what I do in court for families, but what I try to do for individuals at the Bar and what I try to do on behalf of the Bar systemically. I struggle with that answer because the other side of me recognises that doesn't mean to say I'm liked by everyone. Nor admired by everyone. But I think the word "like" is of limited value. It makes me as angry as the word "nice". Both are deeply inadequate, beige words, and I don't intend to be and am consciously, deliberately, not "beige". I think I'm acknowledging I can divide people as much as unite them.'*

I ponder that, because it resonates with how I sometimes feel about the mantra 'be kind'. Reader, please don't judge me. I mean, obviously we should be courteous and respectful in our professional interactions, but what does 'kindness' really mean in that context, and how easily can two little words become a shortcut to compromising our boundaries? You simply can't get on with everyone, and neither would I want to, I say. There are people in this world I would not want to be held in high esteem by.

In so far as niceness and kindness are linked to the concept of wellbeing, this evokes a visceral

response from Jo. *'Wellbeing is a trite word for a really significant deficit. Saying it does not make it valid. I think the whole concept of wellbeing has become an excuse, a derogation from responsibility. It makes people feel better by saying it, but it doesn't actually make or deliver any difference.'*

We take a moment to acknowledge the efforts made in recent years to improve wellbeing at the Bar. Wellbeing was, of course, a major theme of Cyrus Larizadeh KC's tenure as Chair of the Family Law Bar Association and kickstarted a philosophy we saw echoed in Barbara Mills KC's chairmanship of the Bar. We have an app, 'Talk to Spot', that enables confidential reporting of inappropriate and abusive behaviour. Arguably, we are not lacking talk, but how does this translate into real cultural change at the demoralised, underfunded, knackered Legal Aid Bar? *'I thought we actually did that better under COVID'*, Jo says:

> *'Under COVID, we developed a way of being able to engage with vulnerable clients and to attend hearings, which meant we could be protected both from the threat at large, but we were also able to protect our loved ones, and we were able to be with them. Women with caring duties in particular – because it is mainly women – were able to earn money because they could flick between screens and not have to choose so often as to priorities between family and their career.'*

I'm not sure I agree on this point entirely. I say COVID opened us up to 24–7 online accessibility. Post-COVID, I'm receiving and responding to emails every moment of every day. Jo agrees whatever limited barriers were in place before, have come down, but says:

> *'I think we could have learned the lessons of COVID, one of which was taking time – there had to be time. We had enforced periods of absence and recovery from work, you know? It took longer to do things like getting food, didn't it? There were the necessities of life you had to focus on. So therefore, there was an enforced break in our accessibility because everyone understood things had to be done in a very longitudinal way. Now, it's not just the pace of what we do has increased, so it's 24–7, it's that the world around us has sped up exponentially and demands every scrap of our being just to keep up.'*

So how do we effect change, I ask?

> *'I think pay, all right. The bottom line is pay. Because unless pay is increased, you can't afford to take time out, to think, to breathe. More pay gives you the chance to take a break. Without a decent pay rise to take account of fees set over 20 years ago, then no one can afford those things which enable them to cope. That's what wellbeing requires, isn't it? So yes, pay has to change or we crash.'*

This hits home, given Jo has been the sole breadwinner of her household since 2014. I have no children, and a husband with a salary. I advocate for a 3-days-in-court week, still full-time working and still broke, but with someone else to help pay the bills. I accept I'm in a position many are not.

Jo goes on to acknowledge the massive gap in privately paid and publicly funded work. *'I think that divide has become an unbridgeable gulf'*. In response, I ask, *'We talk about One Bar, but are we? Do we feel like One Bar?'* *'No, we're not'*, Jo says emphatically. *'No, I think we're a publicly funded Bar and then the others.'* I tell Jo about counsel instructed by a commercial solicitor pal of mine, who command £90k for a one-day case management hearing. She stares at the screen, mouth fully agape. It would be comical if the pay discrepancy wasn't so obscene.

It isn't just about the disparity of earnings, I reflect. It's also about our experiences as barristers and the public's perception of us. *'The toxicity of affluence'*, Jo replies, *'and of course the other thing is, many of us that come from non-traditional backgrounds go into legal aid work, because we're drawn to it, yet we've got the least resources to cope with the poor pay and how long it takes to get paid. So, it's a double hit, isn't it?'*

We're fully into the themes of *We Set the Bar* now, so I ask her, *'You've described it as a love letter, your love letter to the – would you say Legal Aid Bar or Family Bar?'* Without hesitation, Jo says, *'Legal Aid Bar. I don't really think of myself as a family barrister.'*

***"I think the powers that be don't understand the degree of pro bono work that's required. Not even required - ordered .... The pro bono work is demanded to save time and expense in court and to keep a broken, underfunded system going."***

I ask why that is:

> *'I think it's too narrow a concept. It's quite limiting. I'd probably call myself an abuse barrister. Whether it's domestic abuse or whether it's child abuse, it's ... it's not money cases or international child abduction work I do, is it? My work is about those who are vulnerable and have limited expectations, and choices. I've got far more in common with my crime and human rights colleagues than I do with a significant proportion of family colleagues. It's no accident the people who've given me their stories in "We Set the Bar" come from the broad spectrum that common law covers. From my earliest days at Tooks, and still up to this day, I think of myself as a common law lawyer. Not as a family barrister.'*

'*As a love letter, then, to the Legal Aid Bar – '* I start, but Jo interjects. '*Yeah, do you think? I think the love comes across; the passion comes across. I hope it does. The admiration is there. I think that should be really obvious.*' I ask if Jo means for the individuals or the system, and Jo clarifies she means both. Inevitably, Jo calls upon the parallel in recognising the work of doctors and nurses in the NHS as well as appreciating the NHS; she's previously referred to the legal aid profession as the Fourth Emergency Service. Although, she recognises nobody is likely to have a weekly public clap for us.

I challenge Jo on this, though. '*At what point do we say things are never going to change if we keep propping up a broken system? As long as we remain, aren't we complicit in structures that are failing us?*' I can tell from Jo's hesitation this is a question weighing on her:

> *'I ... yeah ... okay, so when I go and do talks for "Speakers for Schools", which means I go to academies to talk to children from non-traditional [barrister] backgrounds. I talk to them about where their potential might take them. I tell them about my transition from a 17-year-old member of the awkward squad, to being who I am now with all the initials. I know I inspire them with the stories about what I do, because what we do in family or crime or human rights is incredibly engaging and powerful and connects with what they're experiencing. But then I have to say at the end of it, do think about becoming a lawyer, but don't think about becoming a legal aid barrister because you deserve more. You deserve better pay. You deserve better respect. You deserve better working conditions. If you're coming from a background where it's going to be hard to go into further education because a job gives the cash you and your family need, and if you do stay on you're going to be invested in debt, then go into an area of law that values you, what you do and pays you accordingly.'*

With evident resignation, Jo adds, '*I'm turning off the tap.*'

I sit with that notion a moment, and I see Jo does too. For a long time, I've wrestled with balancing my desire to be the loudest cheerleader I can be for my own mentees and Bridging the Bar students, whilst also wanting them to be prepared for reality. It occurs to me I'm no longer fit for that role when Jo says, referencing my incoming sabbatical to return to study, '*And then, the likes of you are leaving.*'

Jo goes on to highlight the latest horror story to land in the laps of family legal aid practitioners, *System Overload: A Report on Family Legal Aid*, which was published by the Bar Council in December last year. The concluding paragraphs include quotes from family barristers who were asked about their intention to continue legal aid work, the first of which is, '*Many people would leave in a heartbeat if they could.*'

The three key findings from *System Overload* – if you aren't already living them – are:

(1) Remuneration is now insufficient to support

family barristers in maintaining a sustainable legal aid practice.

(2) Working conditions and ways of working in the system are intolerable, and the fee schemes do not reflect the changing nature of work.

(3) The financial and systemic pressures on family barristers are having a detrimental effect on their wellbeing.

'*No government is going to be prepared to invest in a legal aid system because they can get away with not doing it*', Jo says:

> *'and we don't require them to account for that failure. It worries me. I think we may end up with a public defender system. But look what you can do if you look at the Criminal Bar? I mean, that strike was really effective. It was not decried by the press. It was supported by the press. It put the awful rates of pay for the Criminal Bar front and centre and on the front pages of the quality press. The government was forced, wasn't it, to come to a compromise? That's just not going to happen in family. We don't have that type of collective will for agitation and confrontation for the collective good of the Family Bar. I wish we did. I've already said I consider the divide between the private wealth and legal aid sector to be an unbridgeable chasm and that's not simply referring to income.'*

I ask whether Jo thinks there's a sense we don't (yet) have it as bad as the Criminal Bar, so maybe we should keep our heads down. Jo thinks there's something in that, along with a fundamental misunderstanding from the higher-ups about our fees and the huge amount of pro bono work hidden behind the fee:

> *'I think the powers that be don't understand the degree of pro bono work that's required. Not even required – ordered. It's not just, you know, volunteered. The pro bono work is demanded to save time and expense in court and to keep a broken, underfunded system going. We are ordered to do practice direction documents. We are ordered to do written submissions. We are ordered to do experts questions. We are ordered to draft orders. And then you add what we are not ordered to do but are expected to do. It's quicker to list what we are paid for than what we do pro bono.'*

This was, I say, the point of the Family Law Bar Association's letter to the judiciary on 12 November 2025; a stark reminder of what work we do – and mostly don't – get paid for. I suspect my Chambers' Marketing Manager, who emails every so often to ask how much pro bono work has been undertaken in Chambers, has tired of my insistent replies that every family legal aid barrister is doing pro bono work every day. The Family Law Bar Association's letter told the judiciary how our fees have devalued hugely since the Family Advocacy Scheme was introduced in 2011 (£100 in 2011 is now worth £67). Jo agrees the letter was a necessary and appreciated initiative, but one that needs repeating to engender a common language between the Bar and the Judiciary.

Of course, there are welcome and powerful voices who speak up for us. The recent loss of one of those voices, I know, hit Jo especially hard. Sir James Munby, former President of the Family Division, had read and written his review of *We Set the Bar* shortly before his unexpected passing. On his reading of the book, Sir James candidly said much of the time he didn't know whether to weep or rage. He commended the book as a necessary call to arms whilst acknowledging, depressingly, those who most need to read it probably won't. I ask Jo if she would say the book has an ultimately positive message:

> *'Yeah, I do. I think that message is be loud and be proud. Don't accept the word "no". We've got to push ourselves more forward into the public arena and be articulate about who we are and what we do. I think we're going to have to hold our paymasters to account, as well as those in authority that are in position to actually make changes. I think the message of the book is that we are a really valuable resource, which is underappreciated. I want to make sure my colleagues know I appreciate them. I want us collectively to call out for recognition for what we do, and then pay as a consequence, and respect that comes with it.'*

*We Set the Bar* is an amalgamation of stories woven into Jo's own experiences coming to and at the Bar. I ask her, '*What were the voices you called*

*upon to tell their stories and why?*' I can see she's glad I asked and I know Jo revels in praising her squad:

> *'They're all people I knew or have made a point of getting to know because I had seen them either through their activism or through our work profile and I really admired them. I wanted to know what made them tick. It's no accident, Shelly, that I'm surrounded by people who I think have all got something to say and say it with passion. That's not an accident. It's also no accident they don't all look like me. That's deliberate. I'm really conscious, as I've tried to make plain, there are some things I can speak about and some where it would be immensely arrogant to talk about as though I knew what it was like. So, I can't talk about racism from experiencing it. I can't talk about being judged by the colour of your skin or how your hair is braided or free or how your name looks and reads on a form. And I shouldn't pretend I can, but what I should do is make sure I positively embrace those people who might not otherwise be able to talk about it or, if talking about it, might not be heard. That applies also to issues like neurodiversity and disability. It's not just because I've got a vested interest in it, it's because it's a recognition that – what's that phrase? – we are all fearfully and wonderfully made. I believe diversity is a strength. To keep going through a process of self-selection can be very unhealthy. No, I think the energy and imagination of the group of people I gathered around me is a powerful elixir for life.'*

I'm sure I'm smiling as Jo gives her answer. For me, too, it has been the incredible people I have around me who have kept me at the Bar this long. Since my words were written for *We Set the Bar*, my personal scales have tipped and I'm due to take a year away from barristering from August. Nonetheless, I share Jo's complete admiration for my colleagues and appreciate what a privilege it is to do this job alongside them.

Since Jo asked me to commit words to paper nearly half a decade ago now (it takes a long time to write a book!), the situation at the Bar, particularly for legal aid practitioners and especially for women, has arguably got worse. The Legal Aid Agency hack. The Harman Report. The Bar Council's research on an increasing gender pay gap – '*Family is the only area of practice at the Bar where there are more women than men. Yet across all PQE bands, men's median gross fee income is higher than women's.*' Also, starting the year off with a bang, the *Financial Times* reported on 1 January 2026 the number of female barristers appearing in UK Supreme Court cases hasn't risen in 17 years – that's about 23% when women make up approximately 40% of the Bar.

On female representation in the Supreme Court, Jo asks me whether those statistics predate the work of Mikolaj Barczentewiz, a public law lecturer at the University of Surrey. Mikolaj Barczentewiz's algorithm also highlighted the limited speaking roles for women in the Supreme Court and prompted a joint statement on 8 November 2023 from the Lady Chief Justice, Master of the Rolls and the Heads of Divisions encouraging the participation of junior counsel in general, and female counsel in particular, in advancing oral argument in court and tribunal hearings. This was followed by a practice note from Lord Reed, President of the Supreme Court, on 7 March 2024, stating the court similarly expects a speaking part for junior counsel in all suitable cases. Having now checked, the *Financial Times* article references both *dicta*.

I tell Jo I've come to feel trapped in a dysfunctional relationship with this job, and ask '*What would it take for you to walk away?*' Jo reflects on the patterns of her relationship to the job. '*My norms have been warped. I accommodate the impositions. And I seek to excuse them or to explain them.*' All telling red flags for a family lawyer, but still she stays.

We talk about what the job means to us, in addition to the vocation we share. I say the barrister label was hard-earned. It's a testament to my family's sacrifices. It's a security blanket I wrap around myself when the world underestimates me. Jo says it gives her status and it gives her authority, she wants to represent the wronged and the disadvantaged, and:

> *'As I said in the book, there really is no adrenaline rush like it. There is something so … oh, it's like*

> *the biggest intellectual power rush … when you're on your feet and the words roll out from your lips in a way that demands and absorbs the court's attention. And you can rewrite a narrative. It's addictive. To know when it's happening. You know when it's happening. When people stop taking notes and they look. And sit back. I'm lucky because it happens to me – No, I'm not lucky, I work really hard to make it happen. But I feel disappointed if I don't make it happen, Shelly. I think that's why I like being a trial lawyer. I like the immediacy, the energy, the unpredictability, the drama of it.'*

I ask if there is any professional bucket list item Jo has yet to tick off. Jo says she would like to make a difference in the private law arena. With the handing down of *Re Y (Experts and Alienating Behaviour: The Modern Approach)* [2026] EWFC 38 on 20 February 2026, in which Jo represented the young person, that goal may soon come to fruition. Jo tells me of her hope to set up, with the President's approval to be steered through the Family Justice Council, an alternate route for remedy.

I ask, does she have any professional regret. After a long and thoughtful pause, Jo says, '*I wish I'd understood more about coercive controlling behaviour earlier in my career, because I'm worried I didn't spot it.*' As I type this, I feel a familiar gnawing in my gut and my thoughts turn to a client who died at the hands of the other party. What might I have missed? What could I have done differently? I'm sorry I didn't protect you. This is why the job brings such emotional strain. Our decisions aren't just strategic manoeuvres; they continue to impact the lives of real people, including – first and foremost – the children at the heart of our cases, long after we've closed the bundle.

As one of our most steadfast champions, will Jo ever hang up her wig?

> *'I've got to, haven't I? I mean, I'm 62 now. I don't, I shouldn't be doing this when I'm 67. I shouldn't lie, 65-ish. I should have an exit. I need to leave something of myself that's not exhausted. I feel replenished when I do things that connect me with art. Whether it's making things in my silversmithing studio, whether it's throwing pots, whether it's drawing, whether it's embroidery, whether it's the act of getting tattooed or pierced. But I, unless Jonathan [Mr Jo] gives me the nudge to make the time to do those things, I find it far too easy to keep on pushing them to one side. And yet when I do them, I feel so much more complete and fulfilled.'*

Conversation turns to tattoos and piercings. How different our relationship might have been had I not spotted the jewellery in her rook. How, following encouragement from her daughter and me, Jo embarked on her first tattoo. I say I know it seems a silly thing but, '*How many times do we have people coming up to us, young people who say they feel more comfortable in this place, knowing there are seniors with tattoos and piercings?*' Inwardly I wonder, if I don't return to the Bar will this be my only legacy – a more openly pierced and tattooed Bar?

Finally, then, just as Jo asked me to consider for *We Set the Bar*, I ask her what she would tell her younger self about pursuing this career. It comes as no surprise at all when Jo says, '*I think I'm quite confident in the way she did things, actually. I think I'd say, "crack on, girl!"*'.

# FLBA Annual Dinner

Georgina Rushworth | Coram Chambers

If there is ever a theme for the Annual FLBA Dinner, this one, taking place on Friday, 27 February, might have been one of exits and entrances, and of change. The death of our former President, Sir James Munby on 1 January 2026 being perhaps the greatest herald of that change, prompting outpourings from across the Bar and beyond.

It was for that reason perhaps, that my joy at the sight of blossom heralding the end of the darkest, dampest days and the start of spring, was tempered by quiet reflection as I approached The Great Hall at Lincoln's Inn, the setting for the gathering again this year. That feeling was not to last for long.

From the excited buzz and clink of glasses that could be heard as I approached, it was clear that members of the Family Bar were on top form, such that calls to be seated accompanied by the resounding thud of the rod, were initially ignored.

Seated at last, we dined on a velouté with roasted chestnuts, accompanied by some delightful artisan bread and whipped noisette butter. There followed a rump of lamb and dauphinoise potatoes with artichoke puree and a whiskey brûlée with honey sponge and blackberry.

When it was time for port, there was a jolly swapping of seats and stories as members caught up before the speeches, which began promptly with our new Chair, Leslie Samuels KC, offering a very

personal account and emphasising the importance of diversity and different life experiences at the Bar.

He introduced our Guest Speaker, Lady Morag Wise, President of the Scottish Tribunals who, offering some '*slapstick moments*' from her career, made a very powerful point, quoting Winston Churchill, '*failure is not fatal: it is the courage to continue that counts*'. The trick is to keep moving.

The importance of that sentiment was clearly felt across the Hall, as there followed our new Chair's further address focusing on the fees crisis and the predicament that the family justice system finds itself in, being progressively starved of resources.

He led the very necessary thanks to John Wilson KC and Philip Cayford KC, departing editors of this magazine, to the new officers of the FLBA, including Tahmina Rahman and Antje Barnes, who were responsible for this tremendous evening, and congratulations to the new Silks (all met with raucous applause) before offering the floor to the departing President, Sir Andrew McFarlane.

Sir Andrew's address was arguably the highlight of the evening. Following an amusing account of magic, a saw and Mrs Justice Frances Judd at one Cumberland Lodge weekend, he remembered the recently departed, former President, Sir James Munby, and Sir Steven Browne who died last year aged 100, before offering a window into his own thoughts on departure, faced now with his retirement. '*Not just the dewy-eyed sentiments of someone about to retire*', he opined. He would miss the people, because ultimately, how we relate to one another is what is important. '*Seasons change*'.

Seasons change. After more raucous applause, members were afforded another opportunity to reconnect, uplifted by the sentiments expressed and ready to embrace another year.

A very good time was had by all.

Speakers of the evening, from top to bottom: President of the Family Division; Lady Wise; and Leslie Samuels KC

# Annual Dinner

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1. President of the Family Division, Kirsty Brimelow KC and Leslie Samuels KC
2. Tony Atkins and Jenna Lucas
3. Georgia Sessi and Hannah Whitehouse
4. Scott Baldwin and Shiva Ancliffe KC
5. Deborah Bryan, Alison Easton KC, Ann Osborne
6. Greg Williams, Tahmina Rahman, Lady Wise, Lucy Reed KC and Leslie Samuels KC
7. Katy Chokowary and Arbuthnot J
8. James Roberts KC and Phillip Marshall KC
9. Phillip Marshall KC
10. Antje Barnes and James Roberts KC
11. Moylan LJ and Baroness Hale
12. Sharan Bhachu and Andrew Pote
13. Lucy Reed KC and President of the Family Division
14. Amean Elgadhy
15. Moylan LJ and Lady Wise
16. Baker LJ and Tahmina Rahman

*photographs by Jeremy O'Donnell*

# Legal Updates:
# Financial Remedies

Bethany Scarsbrook and Sophie Smith-Holland | St John's Chambers

***LP v MP* [2025] EWFC 473** is a must-read for all practitioners watching the ongoing 'conduct' debate. In his judgment, Cusworth J observed that while the threshold for conduct under section 25(2)(g) MCA 1973 has been set very high: there is a real risk of unfairness to victims of violent or coercive controlling behaviour if the lack of a readily quantifiable financial loss prevents the courts from even considering whether to take the perpetrator's behaviour into account as part of the financial outcome. This '*does not mean that the fact of such behaviour will inevitably lead to a different award, but in the right case, it clearly should do*'. This paragraph leaves the door ajar for future cases to prise open, in line with the swelling tide of opinion on this topic.

The judge concluded that W's award should be assessed through the '*glass*' of her deplorable conduct. Her sharing claim was reduced from 50% to 40% as a result. W had from the outset of the parties' relationship deceived H and perpetrated coercive and controlling behaviour against him. This started prior to the parties' marriage in August 2011. Despite only meeting in 2010, W told H that marriage prior to the start of the new legal year would help her career as she was about to become a High Court judge. She was not a judge and indeed had no legal training at all. The marriage had been initiated by deception. W had demanded significant sums from H throughout the marriage for legal trips and training, none of which took place. W's untruths turned to verbal and physical abuse after the scales began to fall from H's eyes as to W's character, when she was convicted of housing benefit fraud in 2021. H paid for all W's legal costs and compensation order. H, in fact, paid far more than the true sum W was required to pay. The parties separated in January 2023, after W perpetrated serious physical abuse, which included threats to kill H and brandishing a knife at him. W had been charged with coercive and controlling behaviour against H. At the time of judgment, a plea had not been entered.

Bethany Scarsbrook

Sophie Smith-Holland

H retired from his city career in 2007. By then, he had wealth of £21.6m, the majority of which was made between 2000 and 2005. At the time of the final hearing, his assets were £22m. This was due to him solely funding the family's living costs, as well as all the payments he had made to W, and the events giving him less time to focus on managing his own investments. As a result, there was no marital asset base. However, there were two properties in joint names, which were held to constitute matrimonial property. These, combined with W's own modest property, totalled £6.64m. After determining W should receive 40%, the court deducted funds already received by W through her deception, as well as W's declared assets. The lump sum required for W to receive her share was therefore just £750,000.

***MH v FD* [2025] EWFC 390** is a case under Schedule 1 CA 1989 before Mr Justin Warshaw KC. X was 4 years old. M made an application for interim relief until trial (4.5 months). F deployed the *millionaire's defence*. Save for meeting X's nursery fees, F had not paid anything towards X's expenses since birth. M sought legal costs as follows: £94,101 for non-legal expenditure already incurred, £160,482 for legal costs already incurred and paid, £153,834 for unpaid legal costs with two firms, £254,898 costs allowance for the Schedule 1 proceedings and £263,664 costs allowance for

the section 8 proceedings. She also sought interim maintenance of £16,365 pcm until 31 December 2025 and £24,786 thereafter. M had not obtained a maximum assessment from the CMS so there was no jurisdiction to deal with interim maintenance, but F agreed to honour whatever was suggested by the judge as a reasonable figure. For the purpose of the interim hearing, M's income was fixed at £50,000 net p.a. M said she owed her parents £164,000, £92,000 of which related to X. F said it was an ongoing resource. The judge found that the alleged liability to W's parents, and the £160,483 claimed for legal costs incurred and paid were not urgent and could await trial. F said the £153,834 of unpaid costs should be met by M or her family. The judge rejected this. £5,000 of those fees were for previous solicitors, so could await trial. The remaining £148,834 were to M's current solicitors, who said they would not continue to act unless they were paid in full, and they would not act on a Sears Tooth agreement. F complained that the costs (which included Schedule 1 and section 8 proceedings costs) were enormous and disproportionate. The judge agreed, and ordered F to pay £90,000. In respect of the costs allowance for the proceedings under section 8 CA 1989, M revised her figure to seeking £48,948 to the FHDRA, as the position could be reconsidered at the directions hearing before trial. F offered nothing. F was ordered to pay £40,000. In respect of the Schedule 1 costs, M had sought costs to the pFDR, including an FDA, which did not end up being listed. The figure was therefore reduced down to £191,250. F was ordered to pay £160,000. There was not really any reason why M would have to make enquiries into F's means. In respect of maintenance, F offered £5,000 pcm. £6,250 pcm was ordered, representing M's income shortfall.

***NI v AD* [2025] EWHC 2997 (Fam)** was a decision of Trowell J concerning a marriage of 8 years. H had worked with his brothers in a number of business ventures under the umbrella of Company A, to do with Product A. F's brother, AF, held a licence agreement enabling him to take a large part of the profits. The parties did not agree matters like the value of H's interest in Company A, how H's Director's Loan Account (DLA) should be treated, and H's potential income. There was evidence from two forensic accountants (SJE, JD, and AS, instructed by H pursuant to a *Daniels v Walker* application). The parties' differences derived broadly from the value of Company E, as the experts used different multipliers, the value of Company B and Company I. Further, H imposed a minority discount of 30% to his share and W only sought to deduct that part of H's DLA which was not taken into account at the time of valuation. The net value of Property A was £2.7m. There was a small rental property and both parties had debts of c. £100k. The experts were 'hot tubbed'. The judge decided that the Company E multiplier should be 8 – the mid-point of the experts' figures. Company B's valuation was found to be £6m. Company I's valuation was found to be £3.061m, following AS's simple net asset valuation, to consider what would be left after a winding up. Regarding minority discount, both parties were assuming that the business would continue and H would draw his income from it. On a sale, there would be a one-third division of the sale proceeds, in accordance with the shareholding. If H was forced to sell now to a third party, they would require a discount, but the minority discount was not relevant to the circumstances the judge was being invited to consider. Trowell J considered it was at best a sort of indicator of the illiquidity discount that might be appropriate. In respect of H's income, H had told JD that the dividend pot had been divided between him and his other brother, AE, as AF receives the licence fee. Trowell J concluded that this would happen in the future too, notwithstanding H was not legally entitled to that level of dividend. Trowell J found it to be £1.125m. H advanced a figure of £168k as he said he needed to repay the DLA of £5.6m by dividends allocated to him over £250k. Trowell J held that H's DLA account would be recorded as a deduction in H's business interests, as it will be satisfied from those interests. He also allowed a further deduction, namely the tax on the dividend to clear the DLA. Total assets were around £6.5m, but only £2.7m was liquid (needed for accommodation) and £3.8m was illiquid (to generate an income). Trowell J decided he should approach the case on a needs basis. W would have the bulk of the liquid capital to provide accommodation for her and the children, and H would have the illiquid assets, to generate money to

pay for accommodation needs for himself and the children, and income to meet both his needs and, potentially, W's.

***HA v EN* [2025] EWHC 2436 (Fam)** was a decision of Mr Richard Todd KC, following on from the decision in *HA v EN* [2025] EWHC 48 (Fam). There had been some negotiations, reaching the stage of a *Xydhias* agreement, with some points outstanding for the court to determine. The parties had agreed that the FMH should be sold, and H's illiquid assets should be realised. The net receipts from both would be paid out as follows: 70:30 in W's favour until she receives £3.5m, to pay H's HMRC debt, the assets then to be divided 70:30 in H's favour until both parties have £5m, and thereafter the fund would be divided equally. There was to be a cap on funds received by W of £24m (reflecting the pre-nuptial agreement's stop-loss clause). H was to pay school fees, university fees and living costs for the children at university, and child maintenance of £25k p.a. per child and additional costs. The settlement was to be achieved in the first instance by the setting up of a family fund with all the liquid assets, H's pension, H's income, and various assets to be placed in it. It would be liquidated on the later of the FMH being sold or W getting £3.5m. Most of the wealth was in the FMH. It was being marketed for £19.95m and the parties had received an offer of £15m which they rejected. H was concerned that if the house sold for less than £19.95m then his share would be progressively reduced, and the increased calls on the family fund. He was therefore raising several points about the agreement. The judge considered the case law on *Xydhias* agreements and concluded that the position was that the parties' accord would not be binding until it had the approval of the court. W's counsel advanced that all matters raised were known to H at the time of the negotiations. H relied on the little-known provisions in sections 34 and 35 MCA 1973. The *Xydhias* agreement fell within those provisions so the court had the power to vary it. The judge decided that there were two matters that represented a change of circumstances which were advertised in section 35(2)(a) as being valid bases for there to be a variation in a maintenance agreement: the liability incurred by additional items is higher than H expected to them to be and the fear the FMH would sell for less than had been hoped for when concluding the agreement. Therefore, the judge decided to put in contingent variations at the relevant points in the draft order.

***BY v CG (No 2)* [2025] EWFC 397** was a decision of Mr Nicholas Allen KC, concerning a long marriage. The parties' business assets and corporate interests were complex due to restructuring on occasions, including offshore. H's earlier *Daniels v Walker* application had been refused in *BY v GC* [2025] EWFC 226. W sought equal sharing of assets she valued at £105m. H sought a 60:40 split in his favour of assets he said were worth £72m. The main disputes were quantum and timing of lump sums that H would pay W. W sought the sale of a Spanish property (CC), but H wanted to keep it. CC was owned by a limited company of which H was the 100% shareholder. The judge accepted the SJE valuation (£14.712m), and 12% for costs of sale as there was evidence this would be the percentage in Spain. The corporation tax figure was £2.05m, there was wealth tax of £1.4m plus a £5.5m loan secured against the property. This meant the net equity in CC was just under £4m. PwC provided a valuation report for Company A and Company B. H was given permission for his shadow expert to sit in court and listen to the SJE's evidence, and the judge held that on the facts of this case it was appropriate for H to give his own evidence as to the valuation of his businesses in his section 25 statement, distinguishing *BR v BR (No 2)* [2025] EWFC 88. In respect of Company A, W said the value of H's 87.3% interest was £24.833m, whereas H said it was £11.793m. H was found to be overplaying issues relating to the market and that Company A has little or no value without him and this was based on a desire to reduce the value. The judge was unpersuaded by H's case that the court should adopt a net asset valuation rather than an earnings-based one. The SJE's valuation and 'accountancy discount' were adopted by the judge. In respect of Company B, W contended for £1.973m, whereas H contended for £907k. The parties' co-invest in Company B of £670k each was not in dispute. The dispute was about H's entitlement to profit share in the LLP. The SJE accepted some of H's criticisms of her assumptions,

and offered to recalculate her figures to reflect an income stream with a finite life rather than an indefinite one. She made some other changes too, leading to a post-tax market value figure of £654k. This figure was adopted by the judge, making H's interest worth £1.324m. There were disputes about loan notes, and the value of a small business. Mr Z had made a personal loan of £6.2m. The investment was unsuccessful. F paid £6.7m to Mr Z (to include interest). W sought an 'add-back' of this sum. The judge was satisfied that H and Mr Z had a common understanding based on verbal assurances, that if the venture was unsuccessful, he would be repaid and so refused to add-back the repaid sums. H had sold his entire shareholding in AA at a price of 37.5p to partially fund the payment to Mr Z, at a loss of £340k. W's position was that the crystalised loss was much higher, at £3.259m. The judge concluded that there was not sufficient evidence to justify an add-back, but if there had been, then it would have been the c. £340k only. The judge found the assets to be £89.5m and divided them 55:45 in H's favour to reflect liquidity and risk: the 'court discount'. H could keep the Spanish property if he could raise W's lump sum by the ordered date, otherwise it would be sold by way of a deferred order for sale.

In ***Silberschmidt v Richards* [2025] EWHC 2841 (Fam)** the court considered whether delay in bringing an otherwise meritorious application to set aside a final consent order on the grounds of non-disclosure would be fatal, and if so, how any such fatality is to be assessed. The parties entered into a final consent order, which was approved on 19 November 2020. This followed a pFDR on 30 September 2020. The primary issue of fraudulent non-disclosure centred around H's company, Silverstream, which was founded in 2010 during the marriage. In July 2021, W received from an anonymous informant: (1) the Silverstream Directors' Report for 2020, dated 21 June 2021; and (2) the email from H to Silverstream investors dated 29 September 2020 (the day before the pFDR). She consulted with two different solicitors' firms thereafter in 2021, but no further action was taken. On 4 April 2023, W met H at a restaurant, during which they discussed Silverstream and H boasted that W had been too trusting during the divorce. W consulted further solicitors that same month and a letter before action was sent on 12 June 2023, with her first set aside application following in August 2023. The parties agreed to treat 12 June 2023 as the relevant date of W having made her application to set aside.

Recorder Chandler KC heard the matter at first instance. He made numerous findings against H, including that: (1) H did not disclose a €1.5m fund raise in a clear, full or frank way; (2) H did not disclose a €7m fund raise during the course of the proceedings at all; (3) H deliberately concealed his inclusion in the company bonus scheme; (4) H concealed the sale of his shares on 10 November 2020. The Recorder concluded that H's actions were conscious and deliberate regarding his non-disclosure, and taken together amounted to fraudulent conduct. This non-disclosure was obviously relevant, and would have at the very least caused W to make further enquiries and/or raise her sights. W had submitted that the penny did not drop for her until the conversation between H and W on 4 April 2023. The Recorder referred himself to the decision in *A v M (No 3)* [2024] EWFC 299, asking himself two key questions: (1) what is the effective date for time to run; and (2) what other factors fall to be considered in the balancing exercise? The court took April 2023 as the relevant date, although adding that if he was wrong about this, and the start date should have been July 2021. W had set out clear evidence as to the personal turmoil and family challenges she was facing at that time and the Recorder concluded that these were matters which should weigh in the balance. He therefore allowed W to proceed with her application *even if* the delay was as much as 23 months. There is, of course, no limitation period set down in the FPR 2010 for the making of a set aside application either for fraud or on any other basis.

Permission to appeal the findings made was refused. Poole J therefore proceeded on the basis of the findings made at first instance, but considered an appeal as to whether the delay caused W to be unable to pursue her otherwise worthy claim. Poole J concluded that the court had taken the correct legal approach, which was: (1) the principle to be

applied was that a party should act without undue delay and therefore with reasonable promptness; (2) there is no fixed time limit under the FPR 2010 nor set down by any appellate authority; (3) what amounts to reasonable promptness or unacceptable delay will depend upon the facts and circumstances of the case. H argued that the date of knowledge by the applicant was to be objectively assessed by reference of the information or evidence known or available to the potential applicant. The court did not accept this submission, determining that it was a combination of both objective and subjective assessment, which was the approach taken by the lower court. Whilst the lower court had taken April 2023 as the relevant start date, it had also considered whether this had been wrong and it should have been July 2021 and considered this accordingly. Poole J concluded that whilst not every court would have assessed W as acting with promptitude in July 2021, given the documents in her possession, the court at first instance had applied the correct legal test, considered all the facts and circumstances of the case, and as a result reached a conclusion that was open to it, with reasons in support. Had the court further considered the lack of any adverse consequences for H, then the same conclusion would have been reached but with greater confidence. H's appeal was therefore dismissed.

***BS v HC* [2026] EWFC 20 (B)** provides a first insight into the post-*Standish* lens when arguing in relation to pensions. Both parties were in their sixties; the marriage had spanned from 2009 to 2024. H had four adult children from his previous marriage. W had never previously been married nor had any children. There had been a large degree of agreement between the parties on computation, save as to c. £120,000 worth of payments that H had made unilaterally to his adult children. W argued that these should be added-back on to H's side of the asset schedule. This was because where the parties had agreed that the sharing principle should attach to marital assets, W would otherwise shoulder 50% of the cost of these payments to which she had not consented. W has historically benefitted from the generosity of her wealthy father. This had included the parties living in an East London property owned by W's father from 2009 to 2014. W permitted one of H's sons to live in the same property rent-free between 2018 and 2020. W received a gift of £1.5m from her father in 2013, which although she could have kept separate, she contributed to the matrimonial pot in its entirety. As the parties had broadly agreed how the non-pension marital assets should be treated, the magnetic issue of dispute was treatment of the pensions. H had pensions valued at just over £3m, with the majority being held in his Quilter SIPP. W's total asset funds were just £35,363. W argued that H's pension funds had become wholly matrimonialised.

HHJ Hess noted that, unlike cash or property, pensions are rarely 'mingled' during a marriage. As such, the question arises as to what is required for a pension to be deemed as matrimonialised. H argued that the pension fund remained untouched as it had not translated into 'actual use and enjoyment' as per the words of the Supreme Court in *Standish*. Whilst those words appear in the Supreme Court determination, HHJ Hess concluded that this was too literal an interpretation to take. Whilst actual use and enjoyment is one example, a common intention to put the asset to use or enjoyment in the future could also give rise to matrimonialisation, if that intention was relied upon by the other party to their detriment. For example, one party contributes £1m towards a family home purchase, and the other agrees to treat a £1m pension fund they hold as a joint asset. This, the court held, would amount to matrimonialisation. The court then considered this analysis on the facts of this case. W had contributed the £1.5m gift from her father towards the purchase and extensive refurbishment of a family property. When discussing how the property should be held (in W's name or jointly), H asked for joint names on the basis that the parties shared everything in their marriage and everything went in and out of the same pot. No specific reference to his pension was alleged. HHJ Hess concluded that '*it is a difficult question, but I have not been persuaded on the facts of the present case that these words could fairly give rise to the husband's pension rights thereby became matrimonialised. More, in my view, would be required to meet the Standish test*'. He accordingly concluded that W should receive a 27.5% share of H's Quilter SIPP.

Legal Updates:
# Private Law Children

Sharon Segal KC | 1GC Family Law

## News update
### *Pathfinder research*

In January 2026, the Ministry of Justice published research aimed at understanding how children and families experience the Pathfinder[1] process. Most participants had positive experiences with Cafcass/Cafcass Cymru, and some had positive interactions with the judiciary. However, participants also reported negative experiences when they believed social workers, Cafcass, judges or magistrates downplayed their concerns.

Most children reflected positively on their interactions with Cafcass/Cafcass Cymru. Parents felt the Child Impact Report helped children express their wishes. However, there were mixed experiences as to whether children's wishes and perspectives were considered in the final outcome of proceedings. Participants in cases involving domestic abuse had mixed feelings about whether the Pathfinder goal of reducing re-traumatisation had been met. Most participants felt multi-agency collaboration needed improvement. Those participants with solicitors shared mostly positive experiences with the court process, while those who were litigants in person shared mostly negative experiences.

## Case law
### *Re E (A Child)* [2025] EWCA Civ 1563

This was a permission to appeal application from a decision to publish a fact-finding judgment without anonymising the applicant, a psychotherapist, who had given evidence in the proceedings. The Court of Appeal directed that the judgment may be cited.

The fact-finding judgment contained findings about the applicant which, she said, were unfairly made and wrong, and that their publication would violate her Convention (ECHR) rights. The judge rejected those arguments. In refusing permission to appeal, the Court of Appeal accepted that the cases show that the adverse portrayal of an individual's conduct in an authoritative judicial ruling may cause serious harm to that individual's reputation amounting to an interference with the right to respect for private life. If those findings have been arrived at by an unfair process, the interference may not be justified. As s 6 Human Rights Act 1998 prohibits the court from acting incompatibly with Convention rights, a person who claims to be the subject of unfair findings may object to the publication of those findings. If a timely objection is raised, then the court must consider and reach conclusions upon it and if the court finds that the complaint of unfairness is well-founded, it may go on to conclude that the findings should be quashed, or revisited, or that they should not be published, or some combination of these. The applicant, however, never challenged the findings, nor did she suggest that there had been any unfairness.

The Court of Appeal distinguished the decision of *Re W (A Child)* [2017] 1 WLR 2415. There the adverse findings that the judge went on to make did not feature at all in the presentation of the case of any of the parties and were not raised by the judge during the hearing, they '*came out of the blue*' for the first time in the judgment. The Court

of Appeal held that a witness of fact will generally have no legitimate ground of appeal in respect of adverse findings contained in a judgment, provided the criticisms have been fairly put to the witness in cross-examination for comment or response before the findings are made.

***AA & Others* [2026] EWHC 317 (Fam)**

This judgment, delivered by Morgan J, concerned 15 separate applications brought by individuals whose gametes or embryos remained in storage in circumstances where the statutory consent to storage had expired and was not renewed. They sought declarations that it was lawful for the embryos or gametes to continue to be stored and used, despite the failure to renew consent within the statutory scheme.

Detailed provisions govern the process for renewing consent, the circumstances in which consent is deemed to have been withdrawn, and the consequences of withdrawal of consent. It is a strict scheme permitting of no exceptions. If there is to be relief, it can only be outside the statutory scheme by a reading in of an implied opportunity to renew consent.

The arrangements for the renewal of consent had the effect of preventing renewal regardless of the circumstances that led to the failure to renew before the end of the renewal period. The applicants argued that a failure to renew consent (often due to clinic error or misunderstanding) interfered significantly with their private/family life.

The court examined whether such interference might be justified or whether the statutory scheme should be interpreted under s 3 HRA 1998 to read in provisions permitting renewed consent. Morgan J considered *'there is nothing in the legislative history … which suggests that circumstances of the sort which are the focus of these applications were ever considered by Parliament'*.

Morgan J held:

> *'The aim of the detailed and complex legislation which has developed alongside the scientific and medical progress necessitating it, has been to protect the autonomy afforded by that consent, to ensure that those whose gametes and embryos can now be stored outside the human body are in a position that only with consent can use be made of them. The other important aims of certainty and restriction impose obligations on those who keep gametes and embryos as part of so ensuring. I am satisfied that in principle to read in, an opportunity to renew consent does not therefore go against the grain but with it, but that this is dependent on the particular circumstances of the case in which the court is invited to consider it, not simply as a blanket approach.'*

In applying the formulation: *'was the applicant by reason of the particular facts and matters raised unable to renew their consent because he or she was not given a fair and reasonable opportunity to do so in accordance with the legislation'*, the court granted declarations in 14 out of the 15 cases.

***R v R* [2025] EWHC 3180 (Fam)**

This was an appeal against findings of fact following a contested hearing in private law proceedings. As one of several grounds of appeal, the mother stated that the judge failed to ensure that she was treated as a vulnerable witness in that the judge failed to ensure that the father's counsel, in cross-examination of her, used the techniques set out in the relevant Advocate's Gateway toolkits as required by FPR 2010 PD 3AA, para 5.7.

In granting permission to appeal, but dismissing the substantive appeal, McKendrick J stated:

> *'Fairness is essential. Fairness to vulnerable parties is particularly important. … The obligations on both the court and the parties*

***"there is nothing in the legislative history… which suggests that circumstances of the sort which are the focus of these applications were ever considered by Parliament"***

> *contained within FPR Rule 3A and PD3AA are clear … Paragraph 5.7 of PD3AA sets out the expectation that advocates should be familiar with the techniques being employed by the Advocates' toolkit. No more; no less. Any trial judge must consider the Rules and the Practice Direction and the overall fairness of the proceedings. The Toolkit is guidance particularly aimed at advocates and litigants in person. It should normally be followed.'*

**_Bradley v CM & Others_ [2026] EWHC 125 (Fam)**

An accredited journalist applied for access to documents on the court file in four private family law cases, requesting expert psychological reports, Cafcass reports, all final orders and judgments, and sought permission to publish and communicate the contents of the psychological reports as well as the final orders and judgments, but not the contents of the Cafcass reports. The journalist had attended a hearing in one of the cases but not in the other three. Transparency orders were made in the four cases.

Poole J noted the difficulty for journalists (and transparency) if judgments are not published and reporters have not attended hearings: the only way in which a journalist can gain a proper understanding of what has happened in proceedings (in this case, where alienating behaviour had been an issue) is by making an application.

Balancing Art 8 and Art 10 ECHR, the judge acknowledged the deeply sensitive material in the reports, the risk of jigsaw identification and the risk of emotional harm to the children from knowing that they are the anonymised subjects of a published judgment, but:

> *'they are considered to be at an acceptably low level such that they should not interfere with the publication of judgments in the furtherance of open justice. Accordingly, in the absence of particular circumstances which would give rise to a specific risk of harm to a child or an unjustifiable interference with a person's Article 8 rights, where there is a strong public interest in publication of a judgment, and the Judge has handed down a judgment in writing, or given an oral judgment which can be transcribed and approved, then the judgment should be published in a suitably anonymised form. To proceed otherwise would be clearly contrary to the principle of open justice.'*

***"Without transparency the Family Court cannot be fully accountable for the decisions its judges make, decisions which can have lifelong implications for the families involved."***

In ordering that anonymised judgments and final orders be provided to the journalist, with access to all expert reports (but that she may publish only some information from those reports, Cafcass reports could be accessed but not published), Poole J held:

> *'there is a strong public interest in furthering understanding of how courts hearing private family cases deal with issues not just of alienating behaviour but also of the strong resistance of some children to spending time with the parent with whom, following parental separation, they do not live. The use of expert psychological evidence in such cases is also of considerable public interest. …The Applicant has a legitimate interest in investigating how expert evidence was used in these four cases and how the courts addressed the common issues. …Without transparency the Family Court cannot be fully accountable for the decisions its judges make, decisions which can have lifelong implications for the families involved.'*

FPR PD 12R does not cover situations when an accredited journalist or legal blogger has not attended a hearing but wishes to see documents on the court file and publish from them and in relation to the proceedings. Poole J considered it would be helpful to have guidance and/or a streamlined procedure for such cases.

**_FZ v MZ_ [2025] EWHC 3338 (Fam)**

The applicant, FZ, was a transgender man with a Gender Recognition Certification (GRC). He married MZ, a natal woman. MZ gave birth to DZ in 2023; DZ was conceived before FZ and MZ

married, via artificial insemination, following a private arrangement outside a licensed clinic, using the gametes of a known donor. They registered the child with MZ as DZ's mother and the applicant as the father. The registration was wrong as a matter of law (not complying with ss 36 and 37 Human Fertilisation and Embryology Act 2008). The council later notified the couple of the mistake. At the hearing before Lieven J, a step-parent adoption order was made, and by way of a judicial review claim, a quashing order was made so that the erroneous registration was expunged from the record.

A second child, AZ, was born in 2024 via artificial insemination following a private arrangement, outside a licensed clinic using the gametes of a known donor. By the time AZ was conceived, MZ and FZ were married. The applicant sought a declaration of parentage, that he was the father of AZ. The question arising was whether the applicant, a transgender man with a GRC, who was married to the mother, could be registered as AZ's father.

By s 35(1) HFEA 2008, where a woman is married to 'a man' at the time of the conception then he can be registered as 'the father'. Under s 9(1) Gender Recognition Act 2004, a person with a GRC is for all purposes the acquired gender, here male. However, s 9(3) makes s 9(1) subject to the other provisions in the Act. Section 12 states that the fact that the person's gender has become the acquired gender '*does not affect the status of the person as the father or mother of a child*'.

Lieven J held that s 35 was clearly concerned with the applicant's status as AZ's father, it therefore followed that the fact that the applicant had become a man pursuant to s 9 GRA 2004, for the purposes of his marriage to the respondent, did not, on a pure domestic law interpretation, affect whether or not he can acquire the status of 'father' under the parenthood provisions of s 35 HFEA 2008.

The court accepted that an inability to register as AZ's father interfered with the applicant's (and AZ's) family and private life. As to whether the interference was justified under Art 8(2) ECHR, the court considered that the aim or purpose of s 12 GRA 2004 was broader than merely to protect the biological fact of the mother having given birth to the child, it is '*expressly to exclude the status of parenthood, whether as mother or father, from the legal effect of having obtained a GRC pursuant to Section 9*'.

The question of whether that aim was 'legitimate' is '*one fraught with issues of social policy, ethical judgements, and morality*', but '*biological sex, rather than acquired sex or gender, remains determinative for the status of parenthood. Although there may well be strongly divergent views as to whether this aim is "legitimate", it is, in my view, capable of being such*'. Whether the maintenance of the biological sex of the individual, for the purposes of registering parenthood, is sufficiently important to justify the interference under Arti 8(1) ECHR was, said the judge, ultimately a policy question: '*I also accept that if FZ cannot be named as the father, he is put at a disadvantage as a transgender man because he cannot be named as the second parent under section 42 HFEA 2008, not having been married as a woman. It therefore follows that there is, or may be, a lacuna or inconsistency in the statutory scheme*'. The court declined to make a declaration of parentage.

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

The mother issued an application under FPR 2010 Part 18 seeking to reopen and then set aside findings of fact from 2019/2020. Within those earlier proceedings, allegations of abusive behaviour were made by each parent against the other. The court heard evidence from a psychologist, Ms Melanie Gill (neither a chartered psychologist, nor registered with the Health and Care Professions Council). Without hearing from any other witness, the judge found that the children had been alienated from their father as a result of the mother's highly negative attitude towards him. An order was made

that the two children (then aged 12 and 9) should move to live with their father.

In the context of the mother's Part 18 application, and in giving guidance on the instruction of an expert psychological witness in children proceedings, the President stated that:

> *'permission should not be given under section 13, Children and Families Act 2014 for the instruction of an expert "psychologist" who is neither registered by a relevant statutory body, nor chartered by the BPS. It would be good practice, before a potential expert is appointed, for them to be asked to state whether they hold an HCPC protected title, and if so, what that is, before any order is made appointing them as an expert. The "registered or chartered" requirement should only be departed from where there are clear reasons for doing so (for example no registered or chartered expert is reasonably available); where that is so, those reasons should be set out in a short judgment.'*

In summarising the modern approach to '*alienating behaviour*', the President stated that '*the reason for the court's investigation should be "a child's unexplained reluctance, resistance or refusal to spend time with a parent", rather than the allegations that one or other parent may be making against the other*'. Where a child is reluctant, resisting or refusing to engage in a relationship with a parent or carer, then the court's focus will move to consider whether that reluctance, resistance or refusal is a consequence of the action of the estranged parent, where it is alleged that that parent has been abusive to the child and/or caring parent. If it is found that the estranged parent has *not* behaved in a way in which the child's reaction can be seen as an '*appropriate justified reaction*' to such behaviour, or, for other reasons, it is found that the child's reaction is *not* caused by any factor such as a child's ordinary alignment, affinity or attachment to the parent with care, then the court will focus on whether the caring parent has engaged in alienating behaviours that have directly or indirectly impacted on the child, leading to the child's reluctance, resistance or refusal to engage with the estranged parent. Thus:

> *'where domestic abuse is alleged, and there is a cross-allegation of alienating behaviour, if a fact-finding process is required, the focus of the fact-finding must be to first determine the issues of domestic abuse and secondly to consider whether the child's refusal to engage with the estranged parent is an "appropriate justified reaction" to any abusive behaviour, or that what has occurred is the result of protective behaviour or a traumatic response on the part of the victim parent.'*

Courts should not determine the issue of alienating behaviour on its own and without determining the underlying facts and, where it is alleged, the primary issue of domestic abuse; and courts should not appoint an expert to advise in cases where a child is reluctant, resistant or refusing to engage with a parent unless and until there is clarity and, if necessary, facts that have been found as to the parents' past behaviour towards each other and the child and, if domestic abuse is proved, whether the child's reaction to that behaviour is an appropriate one.

Those seeking to challenge findings of alienating behaviour made some years earlier should go back to the first instance court either under FPR 2010 Part 18, or to apply for past findings to be reopened as part of a substantive application to discharge or vary existing orders. The President invited the FJC to consider whether there is a more proportionate alternative to a Part 18 application.

**Notes**

1. https://assets.publishing.service.gov.uk/media/695544d06a4ea67a402a839c/Private_Law_Pathfinder_Pilot.pdf

## Legal Updates:

# Public Law Children

Victoria Green | 1 KBW

Various articles and research over the past few months have reflected how increasingly difficult it would appear to be for local authorities and adoption agencies to find permanent, secure and stable placements for children who are placed away from their birth families.

On 26 November 2025, OFSTED published accredited official statistics, 'Fostering in England 1 April 2024 to 31 March 2025'. Their main findings included that the number of mainstream fostering households has continued to decline over the past 4 years, though at a slower rate compared to last year. The charity Become noted that the statistics showed that more than 18,000 children in care are living more than 20 miles from home, far away from everything they know. The number of children in care at more than 81,000, remains high and reflects how urgently there is a need to increase the number of foster children's homes. Over the past 5 years the number of children living in children's homes or secure units has increased by 27%, with 12% (9,480 children) now living in these settings. In contrast, children living in foster care has decreased by 4% over the same period.

At the same time, the BBC published an article based upon an upcoming *File on 4* programme, regarding adoption breakdowns. Following a Freedom of Information request, they reported that more than 1000 adopted children in the UK have returned to care in the past 5 years. The adoptive parents who spoke to the BBC had told them that they were subject to lies and blamed by local authorities, as they had struggled with the needs of traumatised children who had often suffered before they were removed from their birth families. A whistleblowing social worker had reported a culture of blame against parents when adoptions run into problems, and said they are 'sold a lie' about post-adoption support.

New research by Lancaster University had found that 38% of adoptive parents said they had considered returning the child to care. Coram BAAF responded, saying that despite its complexities, evidence suggests that adoption remains a positive outcome for children where this is the right plan for them and there was the right support in place. They nonetheless called on the government to urgently carry out a full review of the support for adopted children and families across all services. That was echoed by Adoption UK, which noted that despite the government's manifesto commitment to adoption support there have been cuts to specialist therapy for adoptive families, putting more families at risk of breakdown.

The Department for Education has now outlined proposals for reforming the adoption support system in England, and has confirmed the Adoption and Special Guardianship's Support Fund will be extended to 2028, with a 10% increase on last year, which is higher than the rate of inflation. However, there is no commitment to reverse the significant cuts made last April.

**IRHs and robust case management**

In ***Re H (Final Care Orders at IRH)*** **[2025] EWCA Civ 1342**, the Court of Appeal allowed the appeal of a father against the making of final care orders at the IRH. The subject children were three boys, aged 9, 5 and 3. The father was only father to the youngest child, and the eldest child was not subject of the appeal. The 5- and 3-year-olds had both been in the father's care in late 2024 (and earlier in their lives), until section 20 accommodation was agreed, following the father having attended the boys' school to collect them when he was observed to be drunk. The 3-year-old was then placed with his paternal grandmother, whilst the 5-year-old was placed with foster carers.

By the date of the IRH, the proceedings were in week 128, and there had been 12 hearings. In its position statement for the IRH, the local authority had suggested the case should be listed for a final hearing on the basis that the final care plans were opposed by the parents. The local authority then changed its stance at the IRH, supported by the guardian, and invited the judge to make final orders at that stage. The concerns in relation to the father related to alcohol and substance misuse by him. By early March 2025, he maintained that he had achieved total sobriety, and subsequent hair strand testing appeared to offer some support for that claim. The paternal grandmother and her partner had been assessed as special guardians for the 3-year-old. Some concerns had been raised regarding the paternal grandmother's partner's response to issues of historical sexual abuse within his own family. Focused work on sexual risk had therefore been commissioned, and was ongoing by the date of the IRH. The plan was for there to be further assessment of them once that work had been completed. There was also a positive assessment of the paternal grandmother's partner's daughter (subject to Disclosure and Barring Service (DBS) checks) to care for the 5-year-old. The final care plan for the 3-year-old was for him to be placed with his paternal grandmother subject to the work on sexual risk, and an evaluation of the effectiveness of that (which was to have been completed by the end of July 2025). In the event that the paternal grandmother and her partner were not deemed suitable to care for him, the local authority's parallel plan was for adoption. The guardian had indicated that she could not lend support at that stage to the long-term family placement of the 5-year-old absent DBS checks.

At a short, 45-minute hearing in late June 2025, and on submissions only, the judge made final care orders. The local authority had sought final orders on the basis that the placements with family members should be confirmed, initially under regulation 24 Care Planning, Placement and Case Review Regulations 2010 (SI 2010/959) as temporary approval of connected carers, that being a prelude to each becoming a special guardians. They had also proposed a significant reduction of contact between the children, and between the parents and all of the children. The father had opposed, seeking for the children to return to his care, and contested the contact arrangements. The mother's position was aligned with that of the father, whilst the guardian supported the local authority. The father appealed on the basis that it was wrong for the judge to have made those orders at the IRH, and wrong to make 'short-term care orders' as a prelude to the court making special guardianship orders. The father added that the judge's reasoning had been inadequate when refusing to list the matter for a final hearing, she had failed to consider the wider welfare issues, and had not addressed the welfare checklist, nor the merits of the father's case to resume the care of the boys, and/or Article 6 ECHR. She had also placed inordinate weight on the issue of delay, and not considered the question of contact.

The Court of Appeal noted that following the appeal having been lodged, the paternal grandmother had unexpectedly died, and her partner reportedly did not wish to care for the 3-year-old alone. That was pertinent given the local authority's contingency plan of adoption. Allowing the appeal, Cobb LJ referred to the identified purposes of an IRH, as set out in the

***"…the solution to the procedural disarray of this protracted litigation did not lie… in the summary termination of the proceedings at the IRH in a manner which was procedurally unfair to the parents."***

PLO. He referred too, to the judgment of Macur LJ in *Re J (Care Proceedings: Issues Resolution Hearing) (ALC Intervening)* [2017] EWCA Civ 398, in which she had highlighted the importance of 'robust case management' at the IRH. Macur LJ had said that whilst there can be no doubt that the PLO contemplates the resolution and final determination of applications under section 31 CA 1989 at the IRH, nonetheless quoting Pauffley J, '*justice must never be sacrificed upon the altar of speed*'. Cobb LJ agreed that the objective of robust case management was for there to be, '*efficient, informed and timely decision-making in the interests of the subject children*', and that judges have a considerable discretion to manage any particular application or hearing within a wide spectrum of procedure. He recognised that there had been very significant delay in this case, and said that pointed to persistently ineffective and unfocused case management. It was easy to understand the judge's eagerness to resolve the case. However, that '*must never be at the expense of procedural fairness and justice*', and '*the solution to the procedural disarray of this protracted litigation did not lie … in the summary termination of the proceedings at the IRH in a manner which was procedurally unfair to the parents*'. Unfortunately, the judge had allowed the issue of the appalling delay, and likely prejudice to the children, so to dominate her thinking that all other considerations relevant to welfare were largely, if not completely, ignored. The judge had given no indication that she had considered any of the constituent elements of the welfare checklist. There had been a material issue of fact to be tried, regarding whether the father had made and could sustain the changes he had seemingly made regarding his alcohol misuse. The parents and their lawyers were entitled to complain that they had been taken by surprise by the local authority's change of position on the day of the hearing. In dispatching the proceedings at the IRH in no more than 45 minutes, including judgment (which gave every indication of being rushed and improvised), there was a real question as to whether the listing of the hearing had complied with the letter or the spirit of the President's 2024 guidance.

Cobb LJ said, '*there should always be "sufficient preparation and hearing time" at an IRH, so that the parties are treated justly and fairly, and no-one is denied the opportunity to attempt properly to resolve the issues*'. The evidence by the date of the IRH was incomplete, with the final assessment of the paternal grandmother and her partner not yet available, and DBS checks in respect of the other alternative carers not yet returned. The contingency plan of adoption for the youngest child should have been addressed by the judge, with reasons given as to why it would not be unfair to proceed to finality notwithstanding the potentially very different long-term outcome. The judge should also have engaged further with the issues is to contact, instead of the judgment offering no more than a perfunctory endorsement of the local authority's care plan for contact. The judge was therefore wrong to have terminated the proceedings at the IRH. The judge's rationale for concluding the proceedings at the IRH, on the basis that she had '*more than sufficient evidence*' did not begin to explain why she thought it not necessary nor proportionate for the court to determine in effect the father's case, why the case could be concluded before all of the evidence had been filed, how adoption could in the circumstances be a proportionate outcome for either or both children, or how the summary hearing met the parents' Article 6 rights. Cobb LJ trailed his concerns regarding courts '*deeming*' threshold to have been met on the basis of procedural non-compliance by the parents. He said the judge's summary treatment of the threshold criteria had been barely adequate, if indeed adequate at all.

***"there should always be "sufficient preparation and hearing time" at an IRH, so that the parties are treated justly and fairly, and no-one is denied the opportunity to attempt properly to resolve the issues."***

In ***Re D (Threshold Findings and Final Orders at IRH)*** **[2025] EWCA Civ 1362** the Court of Appeal then considered the practice that has grown up of courts 'deeming' threshold as proved, when parents have failed to respond to a threshold document. Cobb LJ noted that such provisions appeared in the Standard Form orders template. In this particular case, the child concerned was just 10 months old by the date of the appeal. Proceedings had been issued upon her birth, and an interim care order granted shortly thereafter. At the first case management hearing, the parents had been required to respond to threshold in the usual way, and the matter timetabled to an IRH. The local authority had filed an amended version of the threshold document shortly thereafter. At a further case management hearing, a direction was included that in the event the parents failed to comply with filing their responses to threshold, *'they shall be taken as not disputing threshold criteria as set out by the local authority'*. The father filed a written response, accepting some of the allegations, rejecting others, and challenging the relevance of others to the threshold test. When the court later made a section 34(4) CA 1989 order granting the local authority permission to refuse contact between each of the parents and the child, the parents appealed. Neither parent had attended that hearing, and neither had by then been engaging with the local authority or attending contact.

King LJ refused permission, and in giving her reasons emphasised how important it was for the parents to attend the IRH when the local authority would be seeking care and placement orders. King LJ specifically pointed out that by disengaging from the court process the parents had denied themselves the opportunity to put their case or to challenge that of the local authority. However, come the IRH, neither parent attended. The father had issued applications to strike out of the proceedings, and for the judge to recuse himself; he had made plain that neither he nor the mother would attend the hearing, saying that the process was *'tainted by judicial unfairness and breach of ECHR rights'*. The judge dismissed the father's applications at the IRH, and went on to make the final care and placement orders sought by the local authority. In dealing with threshold, the judge said simply, *'the threshold document is relatively short and I am satisfied on the balance of probabilities that the threshold is met out [sic] in this case'*.

In granting permission to appeal, Macur LJ had observed:

> *'The judge does not indicate the evidence to which they had regard. It is arguable that the judgment gives the impression that [the parents'] deliberate absence from the proceedings and [their] apparent wilful intransigent resistance to engage with the local authority establishes the threshold without further analysis. This is regrettable in the context of the draconian nature of the orders sought and made. I am satisfied that this is a procedural irregularity which provides a compelling reason for me to give permission to appeal on the grounds indicated above.'*

At the appeal, Cobb LJ noted the case management of these proceedings had for some time been complicated by the parents' almost complete lack of engagement. However, he said *'the ultimate resolution of the proceedings had to be done in a fair and just way'*. The judgment had shown relatively little judicial engagement with the issues raised in the evidence, let alone any findings made. Cobb LJ was concerned that the judgment had *'the appearance of a quasi-administrative act, in which the judge nods through the local authority's proposals'*. He emphasised that it was important to remember why the threshold criteria are important, even in cases where the process is essentially uncontested; it has long been recognised as the 'bulwark' against

too ready an interference by the state in family life. Section 31(2) CA 1989 places an obligation on the court to be satisfied of the threshold criteria, and only then if satisfied can the court go on to make an order under Part IV. It is the court's duty to scrutinise the documents, and Cobb LJ said, *'it is important that the judge exercises discipline in scrutinising the statement of proposed threshold'*.

Cobb LJ referred to the decision of Baroness Hale in *Re J (Children) (Care Proceedings: Threshold Criteria)* [2013] UKSC 9, in which she had spoken of the need for *'a clearly established objective basis for such interference'*. It is further the court's duty to set out the basis upon which orders are being made, and a judge must clearly express their findings and reasons. In this case, the threshold document was not even *Re A* compliant, and the judge should have rejected the threshold as it was presented to him. Instead, the judge had accepted threshold as met, without addressing any of the evidence, nor identifying the alleged facts to support the threshold. There was thus no record of what the judge actually decided.

Moreover, the judge had not even appended the statement of threshold facts to the order, contrary to common and expected practice. Cobb LJ agreed with the observations that had been made by Macur LJ when she had granted permission for the appeal. He then went on to say that he was troubled by the provisions set out in the Standard Orders in relation to deeming threshold, saying:

> *'This is not in my view a safe basis on which a court should proceed on a matter of such importance; such an order may well have the effect (as shown by this case) of reducing or discouraging judicial engagement in conducting analysis by reference to the burden of proof of evidence necessary to establish the threshold facts. The effect is all too easy to see – that the determination of threshold becomes more of an administrative than a judicial act.'*

Instead, he suggested that a more appropriate form of words, to replace those that have been on the Standard Orders would be as follows:

> *'If the parents fail to respond [to the schedule of findings in support of the threshold criteria], the court may proceed to consider [at the next hearing/at the IRH/at the final hearing] whether the section 31(2) Children Act 1989 threshold criteria are established by reference to the written evidence filed by the local authority.'*

The appeal was allowed, both because of the issues regarding threshold, and also due to the absence of reasoning contained within the judgment, for the making of the final care and placement order.

**Disclosure and safeguarding**

In ***Re X (A Child) (Disclosure to the NMC)* [2025] EWFC 332**, Henke J was concerned with an application by the local authority for permission to disclose findings and the court's judgment in care proceedings to the Nursing and Midwifery Council (NMC). The court had made serious findings against the father, that he had sexual intercourse with a vulnerable 16-year-old who was placed in the care of his mother. The court had found that the subject child was likely to be at risk of significant sexual, emotional and psychological harm from him. The father was a registered mental health nurse, although he said he no longer worked as such. His registration remained current, and there was nothing to prevent him from returning to nursing. He had previously worked with mentally ill patients and vulnerable adults. Henke J said that there was a public interest in the NMC carrying out a fully informed Fitness to Practice investigation.

Following the court making its findings, the local authority had made a referral to the NMC about the father, and had proceeded to instigate its own enquiries. Henke J considered that none of the circumstances set out in table form within FPR 2010 PD 12G automatically permitted the local authority to disclose the judgment and findings to the NMC. That could only therefore be done if the court gave permission, pursuant to FPR 2010 r 12.73(1)(b). Henke J said that when considering whether to give permission to disclose to a regulatory

body, that could be done where it is necessary and proportionate to do so, and is in the public interest. Those areas would include child protection and safeguarding patients and the vulnerable.

The principles and approach to be adopted by the court are to be found in *Re C (A Minor) (Care Proceedings: Disclosure)* [1997] Fam 76. *Re C* did not create a presumption in favour of disclosure. Henke J reviewed a number of cases in which disclosure to a regulatory body or employer had previously been considered. She said, *'the balancing exercise the court needs to undertake … includes a balance of confidentiality and the rights of privacy to both the family and the child as well as a balance of the public interest in patient safety and professional regulation'.*

Henke J recognised that the application for permission to disclose was made in accordance with the need for inter-agency cooperation when safeguarding children and the vulnerable. She factored in the public interest to enable that to happen, at the same time as noting that she needed to undertake a holistic evaluation. Henke J took account of the fact that the child concerned in the proceedings was now subject of a final care order and in long-term foster care. The father had made no contribution to her maintenance. Henke J considered that disclosure to the NMC was unlikely to have any real impact on the subject child's day-to-day life or her relationship with her father. The findings that she had made in respect of the father were grave, and had relevance for those assessing the risk he may or may not pose to vulnerable people in his care. Whilst the subject child's right to privacy and confidentiality of information would be compromised by the disclosure, the court would redact the judgment and findings such that the anonymised versions would minimise the impact on the child's Article 8 rights. Whilst there would remain a risk that the child's identity would become known as the disclosure related to her father, that risk could be mitigated by making the disclosure on condition that the judgment was used by the NMC only for the purpose of its Fitness to Practice investigation.

The father had objected to the disclosure, and it was recognised that such would also impinge upon his Article 8 rights. However, he had previously sought publication of the judgment in full without redaction or anonymisation. Although the disclosure of the judgment may also impact on the father's ability to work in the future and his income, the court's decision to disclose did not dictate the outcome of the process that was a matter for the NMC. Overall, Henke J said:

> *'it is important in the overall interests of justice that barriers should not be erected between one court or tribunal and another. The NMC is not part of the court and tribunal system but it's fitness to practice procedures are underpinned by statute and regulation and pay proper regard to an individual's right to a fair hearing as well as ensuring that nurses are fit to practice. It is in the public interest that high standards are required and maintained by those working with vulnerable adults and patients.'*

Henke J therefore determined that the balance lay in disclosure to the NMC, conditional upon the NMC only being able to use those documents for the purposes of its investigation.

In ***Re X* [2025] EWFC 479**, Arbuthnot J was concerned with an application brought by the DBS. The DBS had sought disclosure of findings made by the Family Court following public law proceedings that had taken place 4 years earlier. In addition to the application for disclosure, the DBS sought to dispense with service of its application on those who had been a party to the original Family Court proceedings. It had been told by the local authority that there had been a fact-finding and welfare hearing, and it sought to receive both the judgment and other relevant information generated by the public law family proceedings relevant to its jurisdiction.

Arbuthnot J noted that pursuant to the Safeguarding and Vulnerable Groups Act 2006, the DBS is responsible for deciding whether individuals should or should not be placed on a list which prohibits individuals from undertaking

'regulated activity' with either children, vulnerable adults or both groups. Regulated activity is in effect the undertaking of direct roles teaching or caring for children or vulnerable adults. The DBS had received information that the individual concerned had been convicted of an offence, and may be wanting to engage in regulated activity. As a result, it was under a statutory obligation to seek relevant information about the nature of the child protection or other concerns which may mean that individual should be placed on the barred list. Section 40 of the SVGA 2006, provides that if the DBS thinks a local authority holds any prescribed information relating to the person, it may require the authority to provide that, and the local authority must comply. The prescribed information includes details of proceedings before any court, tribunal or any other person taken or to be taken in relation to the individual's conduct, including the outcome of any such proceedings and including proceedings commenced under the Children Act 1989.

The DBS had been told by the police that the individual concerned had been convicted of an offence of '*causing or allowing a child or vulnerable adult to suffer serious physical harm*' under the Domestic Violence, Crime and Victims Act 2004. They had issued an '*intention to bar letter*', and had given the individual an opportunity to make representations about that. The offence amounted to an '*auto bar*' offence under the SVGA legislative scheme, which allowed for the individual to make representations as to why they should not be barred.

Following receipt of those representations, the DBS had sought to make further enquiries. That was when they had been informed of the public law proceedings. The local authority had told the DBS that they were not entitled to disclose the documentation, as the DBS was not an organisation to which the authority could supply information under Part 12 of the FPR 2010. The DBS maintained that the provisions under the SVGA 2006 and the Prescribed Criteria and Miscellaneous Provisions Regulations 2009 (SI 2009/37), along with the relevant rules of the FPR meant they were entitled to have the information from the local authority once it had been requested.

Arbuthnot J referred to the provisions of section 12 of the Administration of Justice Act 1960, which prevents publication of information relating to proceedings before any court sitting in private dealing with, amongst other things, proceedings under the Children Act 1989. She also set out the general rules about communication of information from the court under Part 12 of the Family Procedure Rules 2010. Arbuthnot J said that in her view FPR 12.73 (1)(a)(viii) read with FPR 2.3 makes it clear that the DBS is a professional acting in the furtherance of the protection of children, and the local authority is therefore entitled to disclose information about proceedings to the DBS. Such would not be a contempt of court under s.12 AJA 1960. Thus, she directed that disclosure be ordered pursuant to the relevant provisions.

Arbuthnot J further directed that there be redaction of documents of the names of other children or family members who may be mentioned in the proceedings prior to the disclosure, alongside the dates of birth of the children, though their year of birth could remain. Arbuthnot J went on to say that she considered the DBS had applied the correct approach in not notifying the parties to the family proceedings. There is a very limited list of individuals or bodies who are permitted to know whether someone is on the barred list for children and vulnerable adults; they are limited to those who may wish to employ individuals, or use them in a voluntary capacity which would amount to regulated activity or other regulatory bodies and the police. The DBS is not permitted to share information with those not directly involved in seeking to engage someone in regulated activity. Thus it was highly likely that the parties would include those who had no right to know the barred status of one of the parties to the proceedings.

Legal Updates:

# Court of Protection

Andrew Bagchi KC | 1 GC Family Law

In this quarterly update we examine a number of interesting decisions, including a finely balanced medical treatment case, the proper use of fact-finding hearings in court proceedings, the use of health and welfare deputyship, and whether the test of a person's capacity to marry is person- or act-specific.

In ***Re RS (Best Interests: Surgery and Intensive Care)* [2025] EWCOP 38 (T3)** Poole J was concerned with RS, a 18-year-old man with a complex range of physical and cognitive impairments. The issue was whether it was in his best interests to undergo a surgical procedure. The procedure envisaged was surgical correction to curvature of his spine. However, the choice was a stark one because as the judge said:

> *'35. […] There is no conservative treatment that will help RS's scoliosis. There is no safe way of offering him surgery without the elective postoperative intensive care under heavy sedation, intubation and mechanical ventilation. He either has the corrective surgery and post-operative mechanical ventilation or he has no treatment for his scoliosis at all.'*

RS lacked capacity to consent or to refuse consent to the treatment, and, as Poole J noted at [2]:

> *'Notwithstanding a long and detailed medical decision-making process, concerns remain that the way forward in RS's case is finely balanced. In fact there is a broad measure of agreement between RS's mother, GH, the surgeon who would carry out the operation, independent expert witnesses, the providers of a second opinion to the treating clinicians, and the Official Solicitor, acting as RS's Litigation Friend. No party contends that the proposed treatment is contrary to RS's best interests. However, all involved agree that the decision is finely balanced and the healthcare professionals who would provide the post-operative treatment are particularly anxious for confirmation from the Court that it will be in RS's best interests.'*

This case highlighted the requirement that in cases where the treatment decision may be agreed between the relevant parties but is nevertheless a 'finely balanced' one, the matter should be brought before the court for a best interests decision to be taken.

In RS's case, the treatment was not life sustaining or life-giving (which may explain why the application was not brought by the treating bodies, as would be expected, but rather by RS's mother), but it would have implications for RS's life expectancy. Poole J gave a very helpful explanation of his approach to the question of (in effect) the legitimacy of a judge making the decision as to whether the surgery should proceed:

> *'41. Judges are not inherently better at assessing risks and benefits than those intimately concerned with a person's care and treatment, including parents and medical professionals, but there are differences:*
>
> > *– Judges have some distance from the person whose treatment is under consideration. Unlike those intimately involved with the individual's care, judges will not have responsibility for carrying out*

*the treatment, dealing with complications, or living with the direct consequences of the decision.*

*– Judges can hear evidence from key witnesses, including independent experts, scrutinised by experienced Counsel, in a formal court setting to assist them to assess risks and benefits and to assess best interests.*

*– Judges can take a neutral overview having taken into account the family's perspective and the clinicians' perspective.*

*43. It might be argued that some of these differences place judges at a disadvantage. Some would say that fundamental decisions about a person's medical treatment should be made by those who know them best and who will be living with the consequences. However, the law requires that when disputed or finely balanced decisions regarding medical treatment of this kind are brought before the Court, it is the Judge who makes the decision as to what is in the person's best interests, applying the principles and provisions of MCA 2005. Court procedures are designed to ensure fairness to all the parties involved. The process requires the judge to be objective. Responsibility for the decision is taken away from the family and the clinicians who may find objectivity difficult to achieve and is placed in the hands of the Judge. Precisely because the Judge is one step removed from the day to day care of the individual, they may find it easier to take a balanced overview than those with a particular, personal perspective.'*

In RS's case, Poole J found that the benefits of proceeding outweighed the (significant) risks to RS, and that, taking into account all the circumstances, including the views of GH and others concerned with his welfare, it was in his best interests for the surgery to proceed.

In ***Nottinghamshire County Council v SV & Anor*** **[2025] EWCOP 37 (T3)** Lieven J has provided a helpful analysis of the approach to the question of when it is necessary to carry out a fact-finding hearing in the context of Court of Protection proceedings and confirming an approach which has many parallels with the position in public law proceedings relating to children. As she noted:

*'48. Finding of fact hearings are relatively rare in Court of Protection cases. The need for them was considered by Munby P in Re AG [2015] EWCOP 78 at [29]–[31] where he confirmed that, unlike in care proceedings in relation to a child, there is no requirement to establish 'threshold' in the case of proceedings in relation to an adult in the Court of Protection.'*

Following an extensive review of the applicable jurisprudence in previous decisions of the Court of Protection and the Family Court relating to the test to be applied in determining whether there should be a discrete fact-finding process, the judge summarised her conclusions thus:

*'54. In my view the overall approach to whether or not to hold a fact finding hearing is analogous between Children Act cases and Court of Protection cases.*

*55. The facts which are sought to be found must have a direct impact on the welfare decisions that need to be made in respect of P. The fact finding must be 'necessary' for the determination of those welfare decisions. The fact finding exercise must be proportionate to the issues that need to be determined. In determining proportionality, the likely cost to public funds, the time taken and the impact of delay on P are all relevant considerations.'*

Applying that approach to the complex factual matrix before her, in proceedings which had become extremely protracted, Lieven J had little hesitation in concluding that there was no need to hold a fact-finding hearing in circumstances where P's wishes and feelings as to where he should live in were very clear.

In ***Parr v Cheshire East Council & Anor*** **[2026] EWCOP 1 (T3)** Poole J addressed the question of whether it would be in P's best interests for her mother to be appointed as a deputy for health and welfare. Because this measure grants the primary right to make health and welfare decisions to one individual, in recent years this has not been a power commonly granted to family members. This case, however, concerned an application by Alison Parr, the mother of an 18-year-old to be appointed as welfare deputy for her daughter, Ruby. Ruby lived

with her mother and two siblings, with her mother being her lead carer and the person coordinating Ruby's care package. Ruby had a severe learning disability and multiple serious health problems, including intractable epilepsy, and was on long-term ventilation and was fed by PEG. Her mother's application had been rejected on the papers (as is common) but on reconsideration, Poole J granted the deputyship order and permitted the family to be named. Poole J noted that Ruby's mother was '*highly attuned to her daughter's needs, always acts in in what she considers to be Ruby's best interests, and is extremely well placed to assess what those best interests are, including in medical emergencies and when making decisions about her residence and care*'. Moreover, Poole J accepted that there had been times when it would have been positively advantageous to Ruby for her mother to be welfare deputy, because her status as deputy would mean that her views were not at risk of being sidelined by professionals who did not have the same background knowledge and experience of Ruby, and information about Ruby would not wrongly be withheld from her. Poole J accepted that there would be '*countless*' health and welfare decisions to be made daily for Ruby and that there would be important one-off decisions too, such as whether she should move to a unit run by a specialist care provider.

Poole J applied the decision of Hayden J in *Re Lawson, Mottram and Hopton* [2019] EWCOP 22 but, reflecting the reality that best interests decisions would always have to be made for Ruby, noted that:

> *'put bluntly, someone with Ruby's level of cognitive functioning will never have capacity to make any decisions about her personal welfare other than at a very rudimentary level. She might express a dislike of a particular experience or enjoyment of another, but she cannot, and never will be able to, understand consequences of decisions such as where to live, what care package is best for her, or whether she should have a particular medical intervention or an admission to hospital. Appointment of a deputy would not take away autonomy from Ruby because she cannot exercise autonomy in relation to anything except the most basic activities and needs. I would not view the appointment as being restrictive of Ruby's freedom or right to self-determination.'*

Poole J further noted that there was no conflict of views with the family or with professionals about her mother being an appropriate welfare deputy, and that as she was the person '*most in tune with Ruby's wishes and feelings*' and '*most committed to ensuring that Ruby's best interests are met*' it was appropriate to appoint her as deputy:

> *'[n]aturally, not all adults without capacity and with severe disabilities, who have significant daily care needs, need a PWD. But Ruby's particular history and circumstances, combined with her likely change of residence and therefore carers, mean that a constant voice in decision making will be to her advantage.'*

Although Poole J was keen to stress that welfare deputies will not be required '*in most cases*', he highlighted a number of features of Ruby's care and the need for decisions to be taken daily on her behalf. It will be interesting to see whether this decision prompts more applications for health and welfare deputyship orders – either free-standing or as an outcome to proceedings brought to determine a number of welfare issues.

In ***Re VW (Looked After Child: SMT: Need for Application)* [2025] EWHC 3928 (Fam)** Poole J determined an application brought by a city council for a declaration that it would be lawful for a 3-year-old child (VW, a looked after child in long term foster care) to undergo cranio-facial surgery. The case was listed for a preliminary issue, namely whether it was necessary for the application to have been brought and whether the application should be permitted to proceed in circumstances where the treatment was unanimously recommended by the treating team and was agreed by VW's parents and the local authority as being in VW's best interests. The local authority's case was that it was sufficiently concerned about the risks of the treatment that it was anxious to have the court's declaration that the treatment was in

VW's best interests. In making this submission, the local authority relied on the well-known Court of Appeal decisions *Re C (Children)* [2016] EWCA Civ 374 (*Re C*) and *Re H (A Child) (Parental Responsibility: Vaccination)* [2020] EWCA Civ 664 (*Re H*), which establish the proposition that some decisions are of such magnitude that it would be wrong for a local authority to use its power under s 33(3)(b) Children Act 1989 to override the wishes or views of a parent.

Poole J considered the decision of the Court of Appeal *J v Bath and North East Somerset Council & Others* [2025] EWCA Civ 478 in which King J made the important point that *Re C* and *Re H* were cases '*about the profound impact upon the Article 8 rights of a parent who continues to share parental responsibility with a local authority which has no Article 8 rights*'. As the judge noted on the case before him:

> *'the parents' views are known and the Local Authority is not seeking to limit or restrict the exercise of the parents' parental responsibility. There is no need to do so in order to safeguard or promote the child's welfare. The parents have been engaged in the decision making process. They have capacity to exercise their parental responsibility in respect to serious medical treatment for their son. They fully understand the risks and benefits involved and they support the proposed surgery. The Local Authority also supports the proposed surgery. There is no debate amongst the treating clinicians – they agree that it is in VW's best interests to undergo the surgery. The treatment, whilst serious, is not experimental or unusually risky.'*

The judge went on to hold that the application was not required, and that the clinicians could '*proceed on the basis that they have the necessary consent to perform the surgery, and the Local Authority can have confidence that it can exercise its parental responsibility to consent to the surgery, that being in accordance with the views of the child's parents and all treating clinicians*'.

Lastly, in ***Stockport Metropolitan Borough Council v EKK* [2025] EWCOP 42 (T3)** Trowell J considered the question of whether an assessment of a person's capacity to marry should be carried out on a generic basis or in respect of the particular person it is proposed they marry. In other words: does P have capacity to marry anyone or a specific person. For many years the clear guidance from the higher courts has been that the decision is taken on a general basis and that the court should not be asked to 'vet suitors' – in other words, to decide that P can marry Y, but not Z!

Following the decision of the Supreme Court in *A Local Authority v JB* [2021] UKSC 52, the local authority argued that the previous approach of assessing capacity to marry in the abstract was wrong. The local authority argued that the Supreme Court had made clear, in connection with capacity to engage in sexual relations which had also previously been treated as a generic or '*act-specific*' assessment, that in fact the Court of Appeal had got it right in *York City Council v PC* [2013] EWCA Civ 478 when it said in relation to decisions about contact and cohabitation that the information relevant to a decision had to be assessed within the specific factual context. The Official Solicitor argued that the person-specific approach endorsed by the Court of Appeal in the *York* case only applied to decisions about contact.

Trowell J ultimately decided that he had to be guided by the *York* decision, in which the Court of Appeal had said that some decisions such as marriage are to be assessed on a generic basis, and that to adopt a person-specific approach would '*divert the court into an assessment of the intended spouse, rather than P's capacity*', risking making the test for P a higher one than for people whose capacity is not queried. The expert in the case would therefore be instructed to answer the question whether P had capacity to make a decision to marry, not a decision to marry her partner. So it remains the case that whilst the court can make a person-specific decision in relation to P's contact with another person, in relation to marriage the test remains whether P has sufficient understanding of the legal nature of marriage as a concept (amongst other factors) rather than focusing on the merits of the intended spouse.

# Legal Updates: Cohabitation

Greg Williams | Coram Chambers

If you had s 53 Law of Property Act 1925 on your Easter bingo card, then this update is for you. There have been three decisions on various matters involving s 53 in the previous few months alone.

First, does a sender's name which shows in a WhatsApp message header constitute a signature for the purposes of a property transfer? No, according to the High Court (Cawson J), in ***Reid-Roberts & Anor v Mei-Lin & Anor* [2026] EWHC 49 (Ch)**, who dismissed an appeal by the wife of a bankrupt on that very issue.

By an earlier decision, Deputy Insolvency and Companies Court Judge Frith had found that the trustees in bankruptcy of the second respondent, a Mr Gudmundsson, held a 50% interest in the matrimonial home jointly with Mr Gudmundsson's former wife, Ms Lin, the first respondent. The Deputy ICC Judge had also held that Ms Lin must sell and deliver up the property to the trustees in 2032, some 8 years from the date of his decision. (Incidentally, the trustees were successful in their cross appeal to the length of the deferment of the sale.)

In a clear judgment, Cawson J held that the Deputy ICC Judge was right to find that Mr Gudmundsson had not transferred his beneficial interest in the property to Ms Lin prior to his bankruptcy, albeit for different reasons. On the question of deferment, although the court agreed there were exceptional circumstances for the purposes of s 335A(3) IA 1986 to defer the sale of the property to realise the trustees' interest, a delay for 8 years was too long and a new period of 18 months (from the date of the appeal hearing judgment) was substituted.

To the facts. Ms Lin had married Mr Gudmundsson in 2009 and they had bought their marital home, as beneficial joint tenants, in that year. Later, they became tenants in common in equal shares automatically either because of their divorce and/or because of Mr Gudmundsson's bankruptcy. During financial remedy proceedings in 2018–2019, and in particular before the final judgment given by the Central Family Court in those proceedings in February 2019, Ms Lin alleged that Mr Gudmunsson had communicated with her with regard to the settlement of the divorce. In particular, she contended that by a WhatsApp and email exchange on 2 December 2018 and 3 December 2018, Mr Gudmunsson had immediately and effectively transferred his beneficial interest in the property to her. The said exchange clearly did not resolve the financial remedy proceedings, which were heard in February 2019 with judgment reserved. Owing to a delay in the handing down of judgment Mr Gudmunsson was later declared bankrupt before judgment could be delivered. The fact of his bankruptcy (and the threat of his bankruptcy) was not communicated to the financial remedies judge, who went on to make the order he had intended to make anyway, namely a transfer of all of Mr Gudmunsson's interest in the family home to Ms Lin (who was the primary carer of the

parties' two children). Of course, the bankruptcy, when it came to light, changed everything. Ms Lin applied to annul the bankruptcy but in 2021 Chief ICC Judge Briggs dismissed her application. In 2023, on the trustee's application for an order for sale, Ms Lin alleged for the first time that there had been a transfer to her of Mr Gudmundsson's interest in the property in the course of the December 2018 communications. In 2024, Deputy ICC Judge Frith found that there had been no such transfer. In the same year, Peel J, hearing an appeal in the Family Court, held that the judge in the financial remedy proceedings had not had the power to transfer Mr Gudmunsson's interest in the family home to Ms Lin because, at the time, he had been bankrupt and there was no share to pass.

In hearing Ms Lin's appeal to the Chancery Division against Deputy ICCJ Frith's decision that she was not the 100% owner of the property, Cawson J had to determine whether Mr Gudmundsson's purported disposition by WhatsApp and/or email in December 2018 was in writing such as to satisfy the requirements of s 53(1)(a) and/or (c) LPA 1925, namely that it was: '*… in writing signed by the person*' disposing of the same.

The judge below, having referred to *Hudson v Hathway* [2022] EWCA Civ 1648, [2023] KB 345 and having noted that Mr Gudmundsson had signed off emails within the 2018 communications with '*All the best, Audun Mar Gudmundsson*', had held that the requirements of s 53(1) were satisfied. However, the judge below had also ruled that that there had been no disposition because, applying *Xydhias v Xydhias* [1999] 1 All ER 386, a Family Court judge had not approved this agreement. On appeal, it was common ground that this was the wrong approach because, applying *Soulsbury v Soulsbury* [2007] EWCA Civ 969, [2008] Fam 1, it is necessary to distinguish an immediate disposition of an interest in property from an agreement to dispose of the same, and only the latter might be caught by *Xydhias*.

Accordingly, the question of whether there was a valid disposition by Mr Gudmundsson became a live issue again. As Cawson J explained, the court will be concerned with whether the joint tenant has evinced an intention to divest himself of his interest in the property immediately, which may then amount to a disposition for the purposes of s 53(1)(a) and/or (c). In Cawson J's analysis, disagreeing with the judge below, the words written did not demonstrate Mr Gudmundsson had evinced an intention at any point to unequivocally and immediately relinquish his interest in the property in favour of Ms Lin.

Therefore, it was not strictly necessary for Cawson J to consider whether the WhatsApp messages were sufficient to satisfy the requirements of s 53(1) LPA 1925, but his Lordship did deal with that point in the event that he was wrong on the construction of the contents of the messages. He therefore determined, *obiter dicta*, that the sender's 'header' at the top of a Whatsapp message was *not* a 'signature' and was akin to an email address in some respects. The heading was there because Ms Lin had saved Mr Gudmundsson's name in her phone contacts (ironically misspelling it, though nothing turned on that). His saved contact details, displaying his name, did not mean he had signed the message. Cawson J therefore held that the WhatsApp messages would not have satisfied the requirements of s 53(1)(a) or (c) LPA 1925 even if his Lordship had found that the WhatsApp messages were to be read as effecting a release or disposition of Mr Gudmundsson's interest in the property (which he did not).

From one case about s 53 LPA 1925 to another, though this time about s 53(1)(b) rather than s 53(1)(a) or (c). In ***National Iranian Oil Company v Retirement, Savings and Welfare Fund of Oil Industry Workers v Crescent Gas Corporation Limited* [2025] EWCA Civ 1211**, the Court of Appeal confirmed that a declaration of trust in respect of land or any interest therein requires the personal signature of the settlor, not a third party on their behalf.

The background concerned a multi-billion-pound breach of contract claim between two parties that had been pursued via arbitration. On an application to enforce the arbitral award and obtain

a charging order, the High Court Judge, Sir Nigel Teare, found that an agent for a party could not sign a document to satisfy the requirements of s 53(1)(b) LPA 1925. That finding became the appellant's first ground of appeal when applying to the Court of Appeal (and the only relevant ground for the purposes of this update). It was common ground between counsel (of which there were many) that there was, to that point, no existing authority on the question of agency relating to s 53(1)(b).

The judge below had noted that Parliament had specifically provided, in paragraphs (a) and (c) of s 53(1), that signing may be by an agent. He had concluded that the omission of any reference to an agent in s 53(1)(b), which refers to '*some person who is able to declare such trust*' was intended to be limited to the settlor himself, and not an agent. He drew a distinction between a signature by a director, which would be a signature by some person who is able to declare a trust, and a signature by a mere contractual agent, which would not.

The appellants tried to argue, unsuccessfully, that there is no coherent reason for precluding an agent more widely from being a person whose writing is sufficient to manifest and prove the trust, provided they have authority to do so. In support of this they tried to argue that there was no coherent reason for permitting an agent to sign a document which effects the creation or disposition of an interest in land or a disposition of an equitable interest while precluding an authorised agent from signing a document which evidences the creation of a trust. They also submitted at common law an agent could bind his principal in writing.

The Court of Appeal therefore considered carefully the wording of s 53(1)(b), having regard to the principles set out in *Bennion, Bailey and Norbury on Statutory Interpretation* (LexisNexis, 8th edn, 2022). They looked at the language and the purpose of the provision. Zacaroli LJ, giving the lead judgment on Ground 1, noted the evolution of the legislation from the Statute of Frauds to the LPA 1925. He noted the change from the words '*the party*' in s 7 Statute of Frauds to '*some person*' in s 53(1)(b) LPA 1925, and the removal of the words '*or else they shall be utterly void and of none effect*'. His Lordship reasoned that the appellants could only succeed if they established that the change of wording by Parliament to '*some person*' was intended to expand the range of persons whose signature sufficed to include agents. His Lordship did not think that that was so, particularly because the use of agents was *not* specifically mentioned, whereas in s 53(1)(c), immediately adjacent, the word agent specifically *was* mentioned. After carefully dealing with the various points raised by all sides, the court determined, authoritatively for the first time, that s 53(1)(b) does not permit a signature by an agent to create a trust.

What does this mean for Trusts of Land and Appointment of Trustees Act 1996 cases? It means that there is now clear, Court of Appeal authority that a declaration of trust must be signed by the person declaring the trust; which means, for our purposes, by the property owner. An agent, be that a family member, a managing agent, a solicitor or any other person (whether or not holding a power of attorney) will not suffice.

A welcome break now from the rigours of statutory construction and a much more interesting factual case, of likely greater practical resonance. ***A v N* [2025] EWFC 371 (B)**, a decision of Recorder Christoper Stirling, has been certified as citable by Peel J pursuant to the Practice Note (Citation of Cases: Restrictions and Rules) [2001] 1 WLR 1001. It concerns the exercise of powers of sale pursuant to s 24A Matrimonial Causes Act 1973, where the interests of a third party co-owner need also to be considered. In the opening lines of his judgment, the Recorder set out the task before him. Within this financial remedies case, he said, he had to deal with a separate legal issue. It was '*an issue that is becoming more common within financial remedy proceedings reflecting change in society more generally. That is where an elderly parent comes to live with their adult child and spouse, and makes a significant financial contribution to the home in which all the parties are then to live*',

The husband and the wife had had a 29-year marriage, including 2 years' cohabitation. They

had five children, of whom four still lived at home, one of whom was a minor. The intervenor, called 'R' in the anonymised judgment, was the wife's mother. The husband and the wife had lived in a number of homes prior to the purchase of the current matrimonial home. R had given them gifts from time to time to assist them in moving up the housing ladder. All parties accepted these were gifts, for at that time R lived separately.

Framing the law that applied to the case, Recorder Stirling noted that the court must approach the matter in the same way as that of the Chancery Division, per *TL v ML* [2005] EWHC 2860 (Fam), [2006] 1 FLR 1263. R was not on the legal title to the FMH and there was no express deed of trust conferring a beneficial interest upon her. In these circumstances she must establish a form of implied trust.

The judge referred to *Oxley v Hiscock* [2004] EWCA Civ 546, [2004] 3 WLR 715, *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432 and *Jones v Kernott* [2011] UKSC 53, [2012] 2 AC 776.

The family home had cost £881,161. R had contributed £130,000 to that sum. The remainder was paid by the husband and the wife, from the sale of their former home, plus a mortgage of just over £270,000.

Having heard the evidence of the parties, the court found as a fact that R's initial contribution to the deposit had been intended as a gift to the wife. That was not, however, the end of the matter, because not long after purchase and after moving into the FMH it was, as the Recorder found, decided that the construction of an Annexe should commence. A 'granny annexe' replaced the garage, whereby separate accommodation was physically attached to the main part of the FMH. The annexe did not have separate utilities. At the same time as the building of the annexe other work was done to an extension to provide a home office and workshop for H and W. Overall, however, R paid about 80% of the costs of the building work.

All parties agreed that there was no express agreement or discussion between R and the husband and the wife about R acquiring an interest in the FMH by reason of her funding the construction of the annexe. R, in her 80s, did not know what a beneficial interest was. As the Recorder stated, therefore, this case turned entirely on the proper inferences that could be drawn. The Recorder found that it was open to him to infer a beneficial interest on the evidence (which he did) and he also found detrimental reliance, namely the payments made by R to the monthly instalments on the loan she had borrowed to pay for the annexe. Having found that R had a beneficial share in principle, the court's next task was to assess the quantum of it, ultimately found to be 12% of the net equity in the house.

The next task before the court was to decide whether or not to sell the property, bearing in mind that it had found R to have a minority beneficial share. Recorder Stirling had regard to

s 24A(6) MCA 1973, which places a duty on the court to give any person who also has a beneficial interest in the family property to make representations about it. As there was no existing authority on how the representations of the third party under s 24A(6) should be balanced against the needs of the spouses, Recorder Stirling gave a helpful summary of the (non-exhaustive) factors which he held were likely to be pertinent. These were:

(1) the extent of the third party's interest in any property as compared to that of the spouses.
(2) whether the property is the home of the spouses;
(3) whether the property is the home of the third party, and in this regard they have a right of occupation by reason of s 12 TLATA, or merely a form of investment;
(4) whether the property has been modified or adapted in some particular way for the benefit of the third party;
(5) whether by reason of the third party's age or medical condition the fact of the sale will be

particularly onerous upon them; and

(6) where the property is the third party's home whether it is proposed and practical that they will be adequately rehoused with one of the other parties.

In the result, and taking into account the other issues and assets in the case, the court *did* go on to make an order for sale, all the while noting that R would in the future continue to live with the wife, and their combined equity was sufficiently high enough to meet their needs.

For our final case in this update, we return again to s 53 LPA 1925. In ***Khan v Khan* [2025] EWCA Civ 1436**, the Court of Appeal dismissed the appellant's appeal against a Deputy High Court Judge's finding that the legal titles to properties held by him were subject to constructive trusts in favour of all of his siblings. The Deputy High Court Judge below, Saira Salimi, had found that the appellant, Muhammed Khan, had acquired his interests in the properties on the basis of his acceptance that he would hold them on trust for his father during his lifetime and then later for his siblings. The trial judge had held that one of the properties was held on an express trust for the daughters, alternatively as a *De Bruyne* type trust (after *De Bruyne v De Bruyne* [2010] EWCA Civ 519) or, in the further alternative, a common intention constructive trust. The other three properties were held on constructive trusts for the three sons of the family (including him) or, alternatively, under a common intention constructive trust.

The decision is helpful because the Court of Appeal set out an interesting summary of the principles applying to acquisition constructive trusts, per *Archibald v Alexander* [2020] EWHC 1621 (Ch). As Fancourt J had said in that case, common intention trusts arise when the owner of a property has expressly or impliedly promised or agreed with another person that they have, or will have, an interest in it. An informal promise of that kind cannot be enforced against the owner unless the promisee has reasonably changed their position in reliance on the promise. Acquisition constructive trusts, by contrast, arise where a property is transferred into the name of the owner on the basis of their agreement to hold the property on trust for another (at [56]). The owner only obtains the property on the terms of the agreement and equity does not permit them unconscionably to refuse to give effect to the terms. The trust arises from the terms on which the property was transferred, not from detrimental reliance on the agreement by the beneficiary.

Miles LJ, giving the leading judgment in *Khan*, agreed with the exposition of Fancourt J in *Archibold* with one '*one qualification*'. His Lordship said '*Fancourt J might be read as suggesting that acquisition constructive trusts arise only where the transfer was gratuitous. This is not a necessary condition for an acquisition constructive trust*'.

But back to s 53. One of the four properties was to have been held for the benefit of three of the daughters of the late Mr Khan. In 2013, the appellant had written an email to members of the family in which he said, '*I want Essex Grove out of my name by 2014. This belongs to three sisters as stated clearly*'. The email ended with Muhammed's name. The trial judge accepted that this sufficed to evidence an express trust of that property in favour of the three sisters for the purposes of s 53(1)(b) LPA 1925. The judge also accepted that the email constituted signed writing for the purposes of that section in light of the Court of Appeal's decision in *Hudson v Hathway* [2022] EWCA Civ 1648, [2023] KB 345.

Mohammed appealed, arguing that although the email constituted signed writing it did not evidence a prior declaration of trust, thereby failing to satisfy s 53(1)(b), and it failed to evidence all terms of the trust (since it made no reference to the parties' late father's prior life interest). Miles LJ (with whom Nugee LJ and Asplin LJ agreed) dismissed the appeal on this point, holding that s 53(1)(b) '*does not require the writing to set out the terms of the trust in full*' but rather it requires sufficient acknowledgement of the trust by the trustee, which, in this case, Muhammed had demonstrated. The appeal was therefore dismissed.

Legal Updates:

# International Divorce and Financial Remedy

Lily Mottahedan | 1 Hare Court

Since the last issue, there have been three cross-border cases of note: (a) an Anglo-Russian leave decision under Part III Matrimonial and Family Proceedings Act 1984 (Peel J); (b) an Anglo-Irish EU Maintenance Regulation 2009/child maintenance appeal (MacDonald J); and (c) an Anglo-Nigerian Forum non conveniens decision (HHJ Hess).

I also promised to update readers on whether Mr Potanin was successful in achieving permission to appeal the Court of Appeal's decision to: (a) set aside the High Court's decision to refuse the wife leave to apply for financial relief under the MFPA 1984; and (b) grant the wife leave under the MFPA 1984. The short answer is, he was not, and Mrs Potanina's substantive Part III claim is therefore now proceeding in the High Court.

Now turning to the three decisions of note.

The first is Peel J's decision in ***AT v NT* [2025] EWFC 456** which was published shortly before Christmas.

I acted for the wife in her applications for orders: (a) under s 13 Part III MFPA 1984 for leave to apply for an order for financial relief after a Russian divorce; and (b) under s 46 Land Registration Act 2002 that a restriction be entered against the title of the property in London occupied by her and the parties' youngest but owned by the husband. The property was the only known tangible asset in this jurisdiction.

The applications were made without notice to the husband and the court listed them without notice but on the basis that it would be a matter for the judge hearing the applications to decide whether hearing them without notice would be appropriate. The reason the applications were made without notice was that it was essential that the property be protected and preserved prior to service of the leave application on the husband.

By way of background, both parties were Russian nationals aged 50. They married in Russia in 2003, moved to England in 2007, separated in 2018 and divorced in Russia after reaching a signed financial settlement in England between themselves and a mediator. The wife withdrew her English divorce and financial remedy application and consented to a divorce in Russia on the basis that a binding financial agreement had been reached between the parties.

The agreement provided:

(1) Sale of the family home in central London and for W to receive £2m or 40% of the sale proceeds.
(2) H to pay the outgoings of any property bought by W until the children were 21.
(3) W to retain the Moscow family property.
(4) H to pay W maintenance (supplemented by a family trust if H fell short on the payments) to a total of £17,000 per month until her remarriage, plus child maintenance, education costs and property outgoings.
(5) H to pay W a lump sum of $1m.
(6) W to receive 20% of all trust assets which was anticipated to provide her with between $8m and $20m.
(7) Other ancillary provisions.

The agreement was frustrated by years of litigation brought to recover trust assets allegedly misappropriated by the trustee of an offshore family settlement, which also resulted in the London property being repossessed and the wife being evicted.

As a result, the wife did not receive her entitlement to a share of the trust assets, the money from the London property or (apart from $50,000) the $1m lump sum. The wife moved into a Penthouse flat owned by the husband and the husband returned to Moscow where he is understood to have substantial assets.

By the time the wife made her application, the litigation with respect to the Trust had concluded and the maintenance was also no longer being paid. There was no clear timeframe by which the agreement which had been reached was to be implemented. As the agreement had not been converted into an English consent order, the wife made her Part III leave application.

Peel J heard the applications. He concluded that in view of the Supreme Court's decision in *Potanina v Potanin* [2024] UKSC 3, the procedural landscape for Part III leave applications has changed and such applications should now be listed on notice '*absent some exceptional reason meriting a without notice determination*' irrespective of the prima facie merits of the leave application. As such, he made provision for the husband to respond to the wife's leave statement and listed an on-notice hearing.

However, Peel J was persuaded to make an order under s 46 Land Registration Act 2002 on an ex parte basis and permitted the wife to delay service of both of her applications until the Land Registry confirmed that the restriction was in place.

At [24]–[29] of the judgment, the judge sets out the different forms of injunctive and protective orders available to an applicant who wishes to apply to preserve an asset before the granting of leave. The three examples given are: an injunction under s 37 Senior Courts Act 1981 (this is because without the granting of leave, there is no power under the MFPA 1984 to make a injunction), a preservation order with respect to tangible property under FPR 2010 r 20.2(1)(c)(ii), as set out by Mostyn J in *UL v BK* [2013] EWHC 1735 (Fam), and a s 46 order as was sought in this case.

In short, the vast majority of Part III leave applications will be *on notice* but if there are grounds for making an application to preserve or protect an asset on an ex parte basis before the leave application is served, listed and/or heard, applicants may still take the necessary steps to secure their position.

**Cross-border child maintenance/Maintenance Regulation 2009**

***MM v FF (Maintenance: Scope of EU Withdrawal Agreement)* [2026] EWFC 1**

This was an Anglo-Irish child maintenance case involving unmarried parents. The mother was successful in her appeal before MacDonald J against DJ Devlin's dismissal of an application for child maintenance on procedural and jurisdictional grounds. The judgment addresses the scope of Council Regulation (EC) No 4/2009 (the Maintenance Regulation) and its continued relevance post-Brexit. In the previous update, I summarised Cusworth J's decision of *TY v XA (No 2)* [2025] EWFC 349, which similarly (albeit in a different context) reminded us of the continued relevance of this Regulation in cross-border financial remedy cases.

Following a brief relationship, the mother raised the parties' child in the Republic of Ireland. On 14 August 2019, she initiated a cross-border request via the Irish Central Authority under Art 56(1)(c) Maintenance Regulation to seek child maintenance from the father who was habitually resident in England. Article 56(1)(c) provides for an application to be made for the '*establishment of a decision in the requested Member State where there is no existing decision*'.

The mother's initiating request was transmitted by the Irish Central Authority to the Central Authority for England and Wales in September 2019 adopting the procedure set out in Art 55 Maintenance Regulation. Ten months later, on 28 July 2020, the English court confirmed that the application was being treated as an application made under Sch 1 Children Act 1989. The application was given a deemed issue date of 17 September 2019, the day the application had been received by the English Central Authority.

The case was plagued by procedural difficulties and delay caused, in part, by the litigation conduct of both parties respectively at different times. On 11 September 2024, the mother issued a separate application under Sch 1 Children Act 1989. The

mother contended that the application was issued in error and, in any event, she argued it made reference to the ongoing litigation and did not therefore amount to a distinct application, but the father capitalised on this and invited the trial judge to take this as being the date of her application.

DJ Devlin dismissed the wife's application as she failed to file and serve evidence in support, and in any event on jurisdictional grounds, finding that Art 67 Withdrawal Agreement restricts jurisdiction under the Maintenance Regulation to '*recognition and enforcement*' proceedings instituted before the transition period's end. He found that there could be no valid application under Art 56 as there was no existing maintenance decision to recognise or enforce, and he treated the mother's application as having been made on 11 September 2024, therefore well after the end of the transition period in any event.

The wife appealed on four grounds. For this update, I focus only on the two grounds which are relevant to this update, namely, that the judge was wrong to take the latter date as being the date of her application and the correct date was 17 September 2019. The father conceded this on appeal.

The second ground was the question of whether the judge erred in his analysis of Art 67 Withdrawal Agreement and was wrong to conclude that no valid application existed under Art 56 Maintenance Regulation as at the date of trial because there was no existing maintenance decision.

In short, did the Withdrawal Agreement *limit* the application of the Maintenance Regulation post-Brexit to applications made before the end of the transition period concerning '*recognition and enforcement*' of '*established*' maintenance decisions *only* or did the whole of the Maintenance Regulation continue to apply (to include the provisions enabling the court to reach a decision when, under the Maintenance Regulation, when there had been no prior decision)?

The court agreed with the mother that in circumstances where her application to establish a maintenance decision under Art 56 was commenced before the end of the transition period on 31 December 2020, the Maintenance Regulation continued to apply *in its entirety* to her case, *including* the ability of the English court to establish a maintenance decision under Art 56(1)(c). The court found that Art 67 Withdrawal Agreement, and the domestic secondary legislation giving it effect, demonstrates that *all* ongoing establishment cases commenced under the Maintenance Regulation prior to 31 December 2020 continued to be governed by that scheme.

**Forum non conveniens**

***AO v EO*** **[2026] EWFC 30 (B)**

This was an Anglo-Nigerian jurisdiction and forum non conveniens dispute before HHJ Hess.

The husband applied to strike out the wife's petition for want of jurisdiction and, in the alternative, sought a stay of the wife's English divorce application in favour of divorce proceedings he had issued in Nigeria. The wife had also brought civil proceedings against the husband in Nigeria but her position was that these were primarily to protect and preserve assets and had no bearing on jurisdiction and/or forum.

The jurisdiction question arose in the context of s 5(2)(d) Domicile and Matrimonial Proceedings Act 1973, which confers jurisdiction for divorce '*if (and only if) on the date of the application, the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made*'.

The husband argued that the wife had to have been habitually resident in England for the full 12 months prior to the application in England. The wife argued that she had to be habitually resident on the date of her application and resident merely in the 12 months prior.

This was an argument which used to raise its head in relation to the proper construction of the

different wording which appeared in art 3, indent 5 EC Council Regulation 2201/2003. There were different judicial conclusions about this – on the one side *Marinos v Marinos* [2007] EWHC 2047 (Fam) and on the other side *Munro v Munro* [2007] EWHC 3315 (Fam) – and the issue was never conclusively resolved before Brexit.

HHJ Hess agreed with the wife's interpretation of the provisions of the DMPA 1973 and derived support from the fact that a prior iteration of this section, before the adoption of the EC Council Regulation above, said that '*the court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage, was habitually resident in England and Wales throughout the period of one year ending with that date*' but that this old wording was not revived, which must have been deliberate.

The court addressed the difference between residence and habitual residence by citing *Pierburg v Pierburg* [2019] EWFC 24. The most significant difference is that a person can have only one habitual residence (and this can be established very quickly, much like domicile) but can be resident in two countries at the same time (albeit a mere holiday home would not in and of itself suffice to establish residence).

HHJ Hess concluded that the wife was habitually resident in England on the date of the application and had resided between England and Nigeria throughout the 12-month period preceding her application. The English court therefore had jurisdiction.

As to forum, HHJ Hess found that the husband had not made out his case that Nigeria was the more convenient forum. For the law, he referred to his seminal case of *SA v FA* [2022] EWFC 115 (B) with some commentary on a debate which arose in the Court of Appeal case of *Butler No 2* [1997] EWCA Civ J0219-4, as to whether the husband must show that the other forum is '*more appropriate*' or '*clearly and distinctly more appropriate*'.

HHJ Hess recognised the strong connections to both jurisdictions and the ease with which the parties travel between the two but ultimately found that the following factors militated against a stay:

(1) Procedural differences between Nigeria and England. Specifically, obtaining full and frank disclosure is more difficult in Nigeria and MPS and LSPO orders would be unlikely to be awarded.

(2) England has been the family's centre of interests for many years, notably for the children's education, the parties' health needs, and the family's vacations. The wife and children took on British citizenship and the husband had obtained indefinite leave to remain in England.

(3) The most valuable asset was the property they had in England. It represented more than half of the parties' overall assets.

(4) Whilst any order with respect to Nigerian property by the court in England would not be enforced by the courts in Nigeria, this was neutralised by the wife's assurance that she would not be seeking any such order. Her claim would consist only of a property adjustment order of the English house plus (possibly) a lump sum order or periodical payments order in personam against the husband (which, in any event, would be enforceable in Nigeria if needed).

(5) Further, to date, all the civil litigation brought by the wife in Nigeria against the husband, which was ongoing, had for its object the protection of assets in Nigeria from dissipation and that the English financial remedy proceedings could perfectly well proceed alongside those proceedings.

The burden is on the person seeking the stay to prove that the other forum is a more convenient forum. The husband in this case failed to discharge that burden.

Legal Updates:

# International Child Abduction

Mani Singh Basi | 4PB

**Contempt**

In 2025 there were a number of first instance committal decisions arising out of proceedings in the High Court concerning the inherent jurisdiction, the latest significant one being that of Lieven J in ***AA (Mother) v XX (Father)* [2025] EWHC 2165 (Fam)**. Two further recent decisions have been published by Henke J in the High Court, the first being *Re D (Contempt: Breach)* [2025] EWHC 3190 (Fam). In this judgment, her ladyship found the defendant in breach of two orders ( at [17]). The sentencing judgment was reported as *Re D (Contempt: Sentencing)* [2025] EWHC 3475 (Fam), which contains a number of important features when practitioners are contemplating the issue of sentencing arising out of contempt proceedings. The sentencing judgment at [4] highlights that the court made a direction for a psychiatric assessment of the defendant for the purposes of mitigation. Relevant to the judgment was the '*vulnerability of the defendant in terms of his mental health*' (at [8]) and the role that played was apparent from the decision at [17] and [18]:

> *'17. In the circumstances, his breaches are serious. I consider I have no alternative but to mark the seriousness of the breaches by a period of imprisonment. It seems to me appropriate that in relation to each breach he should serve a period of 28 days. They will run concurrently. I have reminded myself that if, as I have, imposed a prison sentence, it is open to me to order the execution of the suspension of the committal order as I consider appropriate.*
> *18. Given mitigation before me, I am going to suspend the committal order, but the term I impose is that the defendant will not take any steps to prevent, whether by himself, his servants or agents, the applicant mother in this case or their mutual child from travelling to the jurisdiction of the courts of England and Wales. That condition it seems should be limited in time, as otherwise it would involve a never-ending suspended sentence. That condition will remain in force for 6 months from today's date. Thereafter, should the defendant not take any steps to obstruct the mother and the child's return, by himself, his servants or agents, the condition will no longer need to be complied with.'*

**Jurisdiction and habitual residence**

Mr Rees KC, sitting as a deputy High Court Judge, recently handed an important decision relating to jurisdiction in the case of ***Re HF, KF and LF (Children) (Habitual Residence)* [2025] EWHC 3306 (Fam)**. The judge was concerned with three children who were in Dubai with the father (FF). The proceedings were commenced by the mother (MF), who sought the summary return of the children pursuant to the inherent jurisdiction (at [1]). An interesting feature of the case was that the court was considering the case at a preliminary stage with the issue being that of the court's jurisdiction (at [2]). Dealing with jurisdiction, the parties gave oral evidence given the factual disputes in existence. Turning to jurisdiction, the judge first considered the provisions of s 2 Family Law Act 1986, with reference to the 1996 Hague Convention. The judge provided an analysis of Art 5 and Art 7. He found jurisdiction on that basis (at [52] onwards). The judge found a date for wrongful retention and the judge also provided an analysis in the alternative relating to forum conveniens and referred to the recent cases covering this issue, namely, *Re K (A Child) (Stranding: Forum Conveniens:*

*Anti-suit Injunction)* [2019] EWHC 466 (Fam), [2019] 4 WLR 38.

Mr Rees KC, sitting as a deputy High Court Judge, also provided a judgment dealing with jurisdiction and habitual residence in ***Re MP (A Child; Habitual Residence)* [2025] EWHC 2723 (Fam).** This judgment was in the context of an application for a specific issue order requiring a return to this jurisdiction and a prohibited steps order preventing the respondent from removing the child and preventing her from enrolling the child in any educational establishment. This judgment, alongside *Re HF, KF and LF*, considered the recent Court of Appeal authority on the issue of habitual residence, *Re F (A Child) (Habitual Residence)* [2025] EWCA Civ 911. This judgment is significant, in that at [58], Moylan LJ set out the following key factors when considering habitual residence:

> *'The determination of habitual residence is not a formulaic exercise because it requires a broad consideration of the child's and the family's circumstances and because different factors will be present in different cases with the same factor being more significant in one case than another. Accordingly, as was said in the case of HR, at [54], "guidance provided in the context of one case may be transposed to another case only with caution". With those caveats, I set out the following elements (which are not intended to be exclusive) drawn from the cases:*
>
> > *(a) "The identification of a child's habitual residence is overarchingly a question of fact": Re B, at [46]. It is "focussed on the situation of the child": Re A, at 54(v) and Re R, at [17]. It is an issue of fact which requires the court to undertake a sufficient global analysis of all the relevant factors. There is an open-ended, not a closed, list of potentially relevant factors;*
> > *(b) As set out, for example, in Proceedings brought by HR, at [41]: "In addition to the physical presence of the child in the territory of a [member] state, other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent";*
> >
> > *(c) Factors of relevance, as set out in Proceedings brought by HR, at [43], and reflected in many other domestic cases, include: "the duration, regularity, conditions and reasons for the child's stay in the territory of the different [member] states concerned, the place and conditions of the child's attendance at school, and the family and social relationships of the child in those member states";*
> >
> > *(d) The intentions of the parents are also a relevant factor and there is no "rule" that one parent cannot unilaterally change the habitual residence of a child: Re R, at [17];*
> >
> > *(e) As set out in Re R, at [16], it is "the stability of the residence that is important, not whether it is of a permanent character" but there "is no requirement that the child should have been resident in the country in question for a particular period of time" because habitual residence can be acquired quickly: e.g. A v A, at [44];*
> >
> > *(f) The "degree of integration of the child into a social and family environment in the country in question" is relevant, Re R, at [17]. It is clear that "full integration" is not required, "Re B (SC)", at [39], but only a degree sufficient to support the conclusion, when added to the other relevant factors, that the child is habitually resident in the relevant state;*
> >
> > *(g) The relevant factors will reflect the age of the child (see Mercredi v Chaffe [2012] Fam 22, at [53]-[55]; A v A, at [54(vi], and Re LC, at [35]). Accordingly, "The social and family environment of an infant or young child is shared with those (whether parents or others) on whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned": Re A, at 54(vi);*
> >
> > *(h) The court is considering the connections between the child and the country or countries concerned: A v A, at [80(ii)]; Re B (SC), at [42]; and Proceedings brought by HR, at [43]. This is a comparative analysis as referred to, for example, in Re M, at [60]; Re B (EWCA), at [86]; and Re A, at [46]. As observed by Black LJ in Re J, I repeat:*
>
> *"What is important is that the judge demonstrates sufficiently that he or she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence."*
>
> *An example of this is seen in Re B (SC) in which Lord Wilson, at [49]–[50], referred to the factors which pointed to the child having "achieved the requisite degree of disengagement*

*from her English environment" and those which pointed to the child having "achieved the requisite degree of integration in the environment in Pakistan".*

Turning to the determination of the judge, who described the case to not be a '*straightforward*' one, the judge provided an analysis of the factors argued in the case and concluded:

*'75. As I set out at the beginning of the previous section of my judgment, MP is a child who has achieved a degree of integration in all three countries in which he lives and there are factors which are capable of supporting the father's case for his being habitually resident in England and factors which support the mother's case that he is habitually resident in Country B. On balance, having considered all of these matters carefully, I find that as at the date of issue of the father's Children Act proceedings on 29 July 2025 MP was habitually resident in Country B. In particular, I consider that the fact that MP's presence in England has always been contingent on not remaining here for more than 120 days a year, coupled with the degree of integration that he and his mother have in Country B and the length of time that he has spent there since December 2024 all point towards MP having a habitual residence in Country B, and outweigh those factors that point in other directions.*

*76. Although the father's Children Act proceedings were issued on 29 July 2025, they had been lodged with the court over two weeks earlier on 11 July 2025. For the avoidance of doubt, I do not consider that anything turns upon this point and my conclusions on habitual residence would be the same even if the relevant date was 11 July 2025.*

*77. Nothing has happened since 29 July to alter this analysis, so I find that MP was also habitually resident in Country B as at the date of the issue of the father's High Court applications on 4 September, and that he remains habitually resident in Country B as at the date of this judgment.*

*78. Accordingly, it is the courts of Country B that have primary jurisdiction in matters of parental responsibility in relation to MP pursuant to Article 5 of the 1996 Hague Child Protection Convention.*

*79. That is my decision on the issue of habitual residence and jurisdiction. If the parties continue down the path that they have started, doubtless further litigation lies ahead, and I wish to conclude this judgment by repeating the appeal that I made to the parents at the hearing before me to ensure that their attention is focussed on MP's welfare and to look for a solution to their current dispute outside the courtroom.'*

**Summary return orders**

There have been a number of first instance High Court judgments relating to the 1980 Hague Convention in recent times. One judgment is that of Mr Stonor KC, sitting as a deputy High Court Judge, in ***Re VQ and XY (Children: Return Order to Romania)* [2025] EWHC 3377 (Fam)**. In this judgment, the judge considered the defences of consent and child objections. The judge ordered the return, and described the retention as 'inexcusable' (at [49]). The important feature of this case is that the judge ordered a return order for the children to be returned to the applicant in England, to enable the applicant to facilitate the return (at [52]).

In respect of Art 13b, Mr Warshaw KC, sitting as a deputy High Court Judge, handed down a judgment of ***C v D* [2025] EWHC 3131 (Fam).** The court refused to order a return and found the Art 13(b) threshold crossed (at [64]) and found that the 'protective measures do not ameliorate the grave risk of harm to these children'. The judgment is a useful one in that it considers the issue of protective measures (from [53]) with reference to a USA expert as well as considering the issue of mental health as a single joint expert prepared a report within the proceedings.

**Important resource for international family law practitioners**

Class Legal has recently announced the *Dictionary of International Family Law* is due to be published in March 2026 and is available for pre-order. The book is authored by Michael Allum (International Family Law Group), Mani Singh Basi (4PB), Ruth Cabeza (Harcourt Chambers), Professor Rob George KC (Harcourt Chambers) and Michael Horton KC (Coram Chambers). The foreword of the book was provided by Lord Justice Moylan. The book contains over 100 entries on international family law issues, covering all areas of child abduction, jurisdiction, adoption and financial remedies topics.

# Westminster Watch (up North)

Michael Jones KC | Deans Court Chambers

Following the change in editorial team for *Family Affairs*, I was asked if I would take over from Charles Hale KC and pen the 'Westminster Watch' piece for the magazine. Needless to say my contributions are not going to be as learned as those of CHKC, and I have pretty big shoes to fill in taking over this column, which has been re-named as 'Westminster Watch (from up North)'. Technically, it is Westminster Watch from a location just outside Runcorn, as that is where I am currently sat writing it, however: (1) 'up North' sounds better; and (2) I am acutely aware that a large proportion of the readership may not know where Runcorn is.[1]

I will begin by committing to full disclosure here: I have only actually ever been to Westminster once and that was on silk's day. This is primarily because anywhere south of the M6 spaghetti junction in Birmingham is completely out of my comfort zone. I have, however, seen Westminster a lot on the telly, so I know what the Houses of Parliament look like at least. Fortunately, by virtue of the amazing invention which is the internet (or 'tinternet' as they call it in certain boroughs up north[2]), I am able to keep a close eye on any relevant developments coming out of central government that relate to family law, hence I can at least attempt to provide an update that will hopefully be of some limited use to the *Family Affairs* readership.

1 Fun fact: in the late 1990s the ICI chemical plant in Runcorn was identified as one of the most polluted sites in Europe.

2 Astute readers will have identified the *Phoenix Nights* reference here. I had a bet that I could get a Peter Kay reference into this article somewhere and couldn't work out a way to topically include a 'Garliiiic Bread!' comment.

**The Children's Wellbeing and Schools Bill and amendments to section 25**

The Children's Wellbeing and Schools Bill was passed on its second reading by the House of Commons on 8 January. It contains a number of significant amendments to the Children Act 1989, including expanding the scope of s 25. Section 25 has been a statutory provision which, in my view, when combined with the current resource issues, has been unfit for purpose for a significant period of time. Any practitioners working in this area will be well aware of the shortage of registered secure accommodation, which regularly forces local authorities seeking secure welfare beds to resort to seeking a deprivation of liberty authorisation under the auspices of the inherent jurisdiction in order to deprive a child of their liberty in accommodation which is not registered with the Secretary of State.

Helpfully, the explanatory notes to the Bill provide some explanation as to what is proposed in relation to amending s 25:

> *'The Bill seeks to amend section 25 of the Children Act 1989 to provide a statutory framework for the authorisation the deprivation of liberty of children in a different type of accommodation – one that is not a secure children's home (SCH), but which is primarily to be used to provide care and treatment for a vulnerable, complex cohort who may need restrictions which deprive them of their liberty (i.e. that the totality of the restrictions means that the person is under continuous supervision and control and not free to leave of their own accord).*

> *Currently, the only statutory framework for depriving a child of their liberty on welfare grounds (outside other relevant legal frameworks such as in relation to mental health) is via section 25 of the Children Act 1989. This power enables a child to be placed or kept in accommodation provided for the purpose of restricting liberty (a SCH). A core feature of a SCH is that it should be designed for, or has as its primary purpose, prevention of a child from absconding or causing harm to his/herself or others. Other, highly therapeutic accommodation designed for a child would have as its primary purpose the care and/or treatment of the child, as opposed to prevention of absconding or harm, and so cannot currently be used to deprive a child of their liberty via section 25 of the Children Act 1989.*
>
> *The effect of this legislative change would be to provide an alternative statutory route to authorise the deprivation of liberty of a child in a more flexible form of accommodation, bringing more deprivation of liberty cases under a statutory framework via s 25 Children Act 1989, with clear criteria for access, mandatory review points and parity with SCH in terms of access to legal aid.'*

Clause 15 of the Bill contains the proposed amendments to s 25, which extend the s 25 criteria to a child being kept in '*relevant accommodation*'. '*Relevant accommodation*' will be defined as accommodation that is provided for the purposes of the care and treatment of children *and* is capable of being used (in whole or in part), in connection with the provision of such care and treatment, for the purpose of depriving children of their liberty. It will be extremely interesting to see how this will work in practice and how the government proposes to regulate '*relevant accommodation*'. Unfortunately, as numerous reported cases have made clear, deprivation of liberty authorisations are being sought in relation to children placed in wholly inappropriate and often unregulated placements. This issue ties in with the general lack of investment in residential placements nationwide and the use of unregistered children's homes. Whilst this amendment may seem like a sensible idea, there is presumably going to have to be a very clear and robust array of regulatory provisions accompanying it in order to ensure that these placements in '*relevant accommodation*', which accommodate some of our most vulnerable children, comply with a strict set of requirements. It will be fascinating to see how central government attempts to implement these changes on a practical basis.

**Developments (even further) up North**

On a separate but linked note which extends slightly beyond Westminster to Scotland, the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 (SI 2026/31) are intended to provide for '*a robust legal framework in respect of cross-border placements made into residential and foster care in Scotland, thereby ensuring that the welfare of placed children is safeguarded and promoted, and that their rights are upheld*'. The provisions of these Regulations will be required reading for any professionals in this jurisdiction who are involved with placing English children in cross-border placements in Scotland. These Regulations were implemented in February 2026 and are now in force.

In relation to depriving children of their liberty, I do think that when dealing with these cases on a regular basis it can be easy for professionals to forget just how significant the interference with a young person's Article 5 rights really is. The Children's Commissioner's report on this issue *(https://www.childrenscommissioner.gov.uk/resource/children-with-complex-needs-who-are-deprived-of-liberty-interviews-with-children-to-understand-their-experiences-of-being-deprived-of-their-liberty/)* makes for extremely sobering reading.

It is easy to colloquially refer to an authorisation as a 'DOLO', but doing so can detract from the significant implications that a deprivation of liberty authorisation actually has upon a young person.

**Further proposed reforms**

Other provisions included in the Children's Wellbeing and Schools Bill are extensive but in terms of the central provisions relevant to child protection, I can summarise what I found to be of particular interest:

(1) An intention to 'to introduce a provider oversight regime to help safeguard and protect vulnerable children, reduce risks and improve

their experience'. The provisions of the Bill aim to improve local authorities' ability to 'shape' the children's and social care placement market and tackle profiteering.

(2) Attempting to address profiteering in the residential care and independent fostering sectors by, amongst other actions, inserting two new sections into the Care Standards Act 2000, which will enable the Secretary of State to cap the profits of non-local authority Ofsted-registered providers of children's homes and independent fostering agencies (the question I was asking myself when reading this is whether the Secretary of State will actually choose to cap profits and, if so, when?).

(3) Providing the power for the Secretary of State to make regulations applying to all English local authorities on the use of agency workers in children's social care.

(4) Closing the gap in existing legislation by ensuring the offences against ill treatment or wilful neglect in the Criminal Justice and Courts Act 2015 apply to children aged 16 and 17 in regulated establishments in England (a very welcome development).

(5) Amending the current provisions in relation to support for children in care, children leaving care and children in kinship placements (including a requirement for local authorities to publish information for kinship carers and children in kinship arrangements and providing clear guidance on the available support in their area specific to their circumstances).

(6) Provision for the Secretary of State to direct two or more local authorities to make regional cooperation arrangements to carry out their joint functions in relation to accommodating looked after children.

(7) Amending the provisions of the Children Act 2004 to make it a requirement for each local area to include education and relevant childcare agencies as mandatory participants in their multi-agency safeguarding arrangements.

(8) Requiring the establishment and running of one or more multi-agency child protection teams in local areas.

(9) Introducing a new s 16LA into the Children Act 2004 relating to information sharing, imposing a duty on specified persons and bodies ('relevant persons') to disclose information that may be relevant to safeguarding or promoting the welfare of a child to other relevant persons in certain circumstances.

It is fair to say that a number of the proposed initiatives in relation to tackling profiteering in the children's home sector and increasing the emphasis on inter-agency cooperation will be welcomed by all of us; however, as is always the case, the real question will be how effective initiatives resulting from the proposed statutory amendments and any further regulations actually will be on the ground.

On a positive note, on the issue of strengthening multi-agency response during s 47 investigations via the creation of multi-agency child protection teams (creatively referred to as MACPTs), for 2026–2027 and 2027–2028, the government has committed £2.4 billion to the Families First Partnership programme, which focuses on multi-agency, system-wide reform by implementing Family Help, multi-agency child protection teams and Family Group Decision Making. My own personal view is that the only way the creaking child protection system can be sustainably improved is via investment and we can only hope that this is now becoming apparent to those in government. Recently, I had an interesting conversation with one of my friends back home about the impact of the closure of their local Sure Start centre over a decade ago: the fact that the closure of Sure Start centres during austerity tied in with a steady increase in the number of sets of care proceedings issued is plainly not coincidental (but what do I know?).

I would also recommend having a read of the UK Parliament POST note *Improving outcomes and support for children in care* (5 February 2026) by Jennifer Fielder and Natasha Mutebi. The statistics make for depressing reading: 18% of children in care for more than 12 months achieved a grade 4 or above in English and maths at Key Stage 4 compared to 65% of their peers, with one in three care-experienced children receiving a caution or conviction between ages 10 and 17 and with

around half of care-experienced children meeting the criteria for a diagnosable mental health disorder. The need for improved funding and access to support has perhaps never been as critical as it is now.

**National shortage of foster carers**

As record numbers of children reside in care, there remains a national shortage of foster carers. This has become a significant issue and the government has recently published its policy paper *Renewing Fostering: homes for 10,000 more children*. Providing 10,000 more foster homes is a very big commitment. The policy paper's 'Action Plan Summary' proposes a national recruitment and awareness campaign, in addition to £25 million in capital grants to help carers create extra space in their homes, £12.8 million investment in expanding and re-designing regional fostering hubs, investing in support for carers, and investing £10 million in Regional Care Cooperatives. I recently listened to Louise Allen give her views in a podcast on how the current fostering crisis can be fixed[3] and I would strongly recommend giving it a listen.

A final point taken from the Children's Wellbeing and Schools Bill is that it also provides for the Secretary of State to conduct a mandatory review of the level of funding available per child from the adoption and special guardianship support fund (ASGSF). The importance of such a review cannot be understated, particularly given the situations we often see in which an adopted child is found to require significant levels of expensive therapeutic input. A recent £5 million increase to the funding for the ASGSF over the next 12 months has been announced by the government; however, despite this, there are clearly still issues relating to the adequacy and availability of the ASGSF. Kinship, the kinship care charity, recently published a response to the announcement of reform to the ASGSF, stating that:

> *'the government's proposals for reform to an "adoption and kinship support system" fail to consider the unique needs, strengths and experiences of kinship families and how they might differ from those of adoptive families. This undermines the valuable experiences and expertise of both groups.'*

The government has also launched a consultation on adoption support entitled *Adoption supports that works for all*.

**Online safety**

Other recent news from Westminster includes Liz Kendall's statement on the government's next steps on online safety, which brought forward the 3-month consultation on further measures to keep children safe online, to include the option of banning social media for children under 16 and raising the digital age of consent in order to stop companies using children's data without their or their parents' consent. The government has already made intimate image abuse and cyberflashing priority offences, and the Crime and Policing Bill has introduced an offence to criminalise AI models which have been optimised to create child sexual material. The government is apparently looking 'closely' at the Australian experience in introducing a ban on social media for under-16s.

**Adieu until next time?**

I can only hope that I am able to offer some helpful updates in the 'Watch' column in the next issues of *Family Affairs*. My learned editors are carefully monitoring reader responses, so if they are inundated with complaints about the dive in quality that this section has taken since Charles stepped aside, I may be forcibly removed from it, in which case, I can honestly say that I enjoyed contributing for the purposes of this issue. If anyone does wish to make any observations about my content, please feel free to inbox me. Come the next issue, the Northern takeover may have actually extended beyond *Family Affairs* and into Westminster: in that respect I moot the possibility of Andy Burnham replacing Kier Starmer as PM and re-shuffling the cabinet, appointing Bez from the Happy Mondays as Secretary of State for Justice … it could happen![4]

3 https://www.bbc.co.uk/sounds/play/m002q39v)

4 https://www.bbc.co.uk/sounds/play/m002q39v

# Extraordinary Episodes in the Curious History of a Forgotten Remedy

# Jactitation of Marriage from the Tudors to Abolition (Part 2)

Sir James Munby
Edited by Sir Nicholas Mostyn

This is the second part of the last in a series of articles about the now almost entirely forgotten remedy for jactitation of marriage.[1]

A decree of jactitation of marriage was the remedy provided by the ecclesiastical courts to a petitioner when the respondent had falsely asserted that he or she was married to the petitioner. It was an order in the nature of an injunction prohibiting the respondent from 'throwing out' such false claims.

Having recounted in previous articles the details of two quite extraordinary cases – *Thompson v Rourke* (1892) and *Ascroft v Foley* (1906) – I now turn to the final 80 years until the abolition of the remedy by section 61 Family Law Act 1986.

**The case-law from 1906 to 1968**

Jactitation suits were given a new lease of life by the unfortunate decision of Sir Samuel Evans P in *Countess De Gasquet James v Duke of Mecklenburg-Schwerin* [1914] P 53 at 69–71, holding that the Probate, Divorce and Admiralty Division (PDA), like its ancestors, had no jurisdiction to grant a mere declaratory judgment, unless (of no relevance for present purposes) the case fell within the Legitimacy Declaration Act 1858, and, specifically, that RSC Order 25, rule 5 (later RSC Order 15, rule 16, and now CPR rule 40.20) did not apply in the PDA.

In *Goldstone v Smith (Otherwise Goldstone)* (1922) 38 TLR 403, the issue was as to the validity of a marriage entered into between two Jews in November 1889 in a part of Poland which was then within the Russian Empire. The woman, Leah Smith, asserted but the man, Israel or Isadore Goldstone (he is referred to under both names in the various proceedings), denied that it was a valid marriage. On 26 April 1921, Smith obtained an order against Goldstone from the Stipendiary Magistrate of Leeds, Mr Horace Marshall, under the Summary Jurisdiction (Married Women) Act 1895 for weekly maintenance of 40 shillings (£2). In his 'Note & Reasons for Judgment' preserved in the court file in The National Archives (TNA J77/1784/5652), he explained that he was of opinion

1 The etymology of jactitation is the Latin jactitare – to throw out.

that a certificate produced by the complainant was sufficient evidence of marriage, adding 'I should, had it been necessary to consider it, have also held that marriage by reputation had been established'. By notice of appeal dated 13 May 1921, Goldstone appealed to the Divisional Court of the PDA, on the grounds that there was no evidence that Smith was his lawful wife; that there was unreasonable delay in the summons for alleged desertion; and that there was no evidence that he had deserted her. The appeal came before the Divisional Court (Sir Henry Duke P and Hill J) on 24 and 25 May 1921, when it was ordered to stand over generally. As the President later explained ((1922) 38 TLR 403, 405):

> *'As there were no satisfactory materials before the Divisional Court for dealing with the question,[2] it was suggested that the matter should be put forward in a form which permitted of the question being satisfactorily determined. The result was that [Goldstone] resorted to proceedings for jactitation of marriage.'*

We can trace the jactitation proceedings in the separate court file in The National Archives (TNA J77/1790/5818). The pleadings were short – very short. Goldstone's Petition ran to five paragraphs, Smith's Answer to three, and Goldstone's Reply to only one.

The petition dated 3 June 1921 was verified by Goldstone's Affidavit in support sworn on 3 June 1921. Paragraphs 1–3 pleaded:

> *'1 That Leah Smith (falsely calling herself Leah Goldstone) … did in or about the month of September 1919 at the City Police Court, Town Hall, Leeds in the County of York and at divers other places wilfully and without the authority of your Petitioner boast and assert that she was the wife of your Petitioner.*
> *2 That your Petitioner is not and never at anytime has been married to the said Leah Smith.*
> *3 That the said Leah Smith refuses to desist from boasting and asserting that she is the wife of your Petitioner.'*

Paragraph 4 was purely formal. Paragraph 5 set out details of the proceedings in the Divisional Court.

***"A decree of jactitation of marriage was the remedy provided by the ecclesiastical courts to a petitioner when the respondent had falsely asserted that he or she was married to the petitioner."***

In his prayer for relief Goldstone sought an order '*(1) That the said Leah Smith do cease and desist from boasting and asserting that she is the wife of your Petitioner [and] (2) That she be enjoined perpetual silence in the premises*'.

The Answer dated 6 July 1921 was verified by Smith's Affidavit in support sworn on 11 July 1921. This shows that she was illiterate and unable even to sign her name; she made her mark. The Answer pleaded:

> *'1 That she denies each and every allegation contained in paragraphs 1, 2 and 3 of the … Petition and joins issue thereon.*
> *2 That on or about the 9th day of November 1889 she was lawfully married to the Petitioner at Tschirmisch in Poland at that time in the Empire of Russia according to the rites of the Jews.*
> *3 That after her said marriage she lived and cohabited with her said husband … in the City of Leeds … and at divers other places and there has been no issue of the said marriage.'*

> She prayed:
> *'That the court will be pleased to dismiss the … Petition and to grant her such further and other relief as may be just.'*

> The Reply dated 12 September 1921 pleaded:
> *'That [the Petitioner] denies each and every allegation contained in paragraphs 2 and 3 of the … Answer and joins issue thereon.'*

The suit came on for hearing before the President in February 1922.

The artificiality of the jactitation proceedings

2 The question was the validity of the marriage.

appears clearly enough from the decision of the President ((1922) 38 TLR 403 at 405):

> *'I am satisfied on the evidence that [Goldstone] did for his own purposes permit and encourage [Smith] to hold herself out as his wife, and on the point of acquiescence this suit ought to fail. But that is not the main question. The main question is:- Was there a valid marriage?'*

And to that question the President then turned. The contrast with how, in similar circumstances, the proceedings had been disposed of by Sir William Scott in *Lord Hawke v Corri* and by Gorell Barnes J in *Thompson v Rourke* is striking.

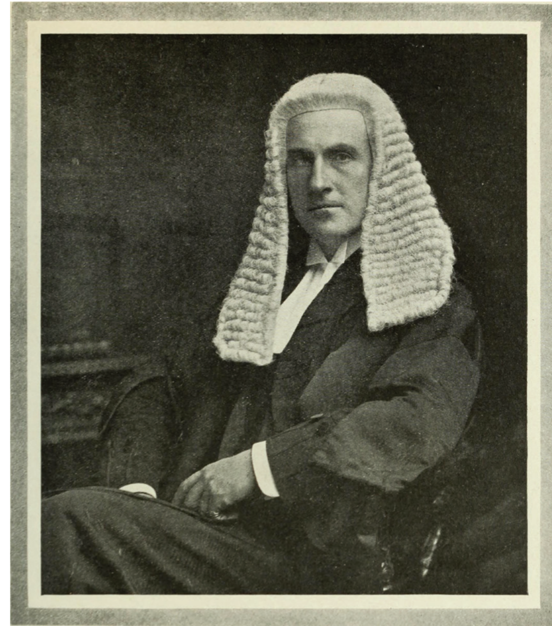
Having heard much expert evidence, the President held that there was a valid marriage, concluding (at 406):

> *'The result is that the marriage will be declared a good and valid marriage, and to be recognised as such by the Courts of this country. The petition of jactitation of marriage will be dismissed with costs.'*

The order was in the following terms:
*'The President … dismissed the Petition herein with costs, and declared that the marriage had and solemnised on or about the 9th day of November 1889 at Tschirmisch in Poland in the Empire of Russia was a valid marriage.'*

That was on 14 February 1922. On 17 March 1922 the appeal was re-listed before the Divisional Court and dismissed with costs. On 1 August 1922 the President made two orders directing Goldstone to pay Smith's taxed costs of the proceedings: in relation to the appeal in the sum of £59/17/10, and in relation to the jactitation suit the balance of her costs in the sum of £181/5/0 (costs in the sum of £29/9/11 having previously been ordered to be paid by him by order of the President dated 28 November 1921).

Following this decision of the President it became established that a suit for jactitation was a suitable method for determining the validity of a disputed marriage or a foreign divorce. Examples of the latter are to be found in *Shuck v Shuck* (1950) 66 TLR 1179, involving the question of the validity


Sir Samuel Thomas Evans in *The Times History of the War* (1914)

of a Czechoslovak divorce, and in *Igra v Igra* [1951] P 404, where the question was as to the validity of a German divorce granted by a Nazi judge in deplorable circumstances.[3] In both cases the outcome, as it happened, was the same. In each case the judge held that the divorce was valid and granted a declaration to that effect (in the first case a declaration that the divorce was valid; in the second a declaration that the parties were no longer married). In each case the judge found that the petitioner had acquiesced in the respondent's assertions of a marriage and accordingly refused to grant the injunction sought by the petitioner.

In fact, as both Ormerod J in *Shuck v Shuck* and Pearce J in *Igra v Igra* had recognised, the availability of the power to make a declaration under RSC Order 25, rule 5, had been conferred on the PDA, by rule 97 Matrimonial Causes Rules 1924 (subsequently rule 81 Matrimonial Causes Rules 1937 and rule 80 Matrimonial Causes Rules 1950).

In *Har-Shefi v Har-Shefi* [1952] 2 All ER 821 at 822, faced with a bare application for a declaration that an Israeli divorce was valid, Barnard J

3 The husband was a Jew, the wife was not. It was 'suggested' to her by the Gestapo that she should divorce her husband. The divorce was granted in 1942 in circumstances where, as Pearce J put it, *'racial prejudice resulted in a party's being unfairly treated'*. The divorce was nonetheless held to be valid because of the effect of the 1946 Law No 16 of the Control Council for Germany set up by the Allies.

distinguished *Shuck v Shuck* and *Igra v Igra* on the basis that *'both petitions were properly constituted petitions for jactitation of marriage'*. He did not engage with the obvious illogicality of relying on such a distinction when, as we have seen, in both *Shuck v Shuck* and *Igra v Igra*, as earlier in *Goldstone v Smith*, the jactitation claim had been dismissed on the ground of the petitioner's acquiescence in the respondent's boasting. In the course of a most interesting judgment in the Court of Appeal (*Har-Shefi v Har-Shefi* [1953] P 161 at 169), Denning LJ was briskly dismissive in rejecting the suggested distinction:

> *'In each case the claim for jactitation failed, and so the declaratory order had to stand on its own bottom.'*

The Court of Appeal, reversing Barnard J, took the obvious step and held that there was no need to resort to a jactitation claim in such cases and that disputes as to the validity of marriages and divorces could be dealt with by a free-standing application for a bare declaration. As Denning LJ said (at 170):

> *'I do not think that we ought to revive [suits for jactitation] today to support a declaratory order. It would be absurd if a petitioner had to insert a fictitious or unjustified claim for jactitation in order to obtain a declaratory order.'*

The decision in *Har-Shefi v Har-Shefi* [1953] P 161 was quickly applied in practice: *see Har-Shefi v Har-Shefi (No 2)* [1953] P 220 and *Dunne v Saban* [1955] P 178.

Given the reasons that had brought *Goldstone v Smith*, *Shuck v Shuck* and *Igra v Igra* to court, and given the decisions in *Har-Shefi v Har-Shefi* and *Dunne v Saban*, it might be imagined that the long history of jactitation suits would now come to an end.

***"'Stop calling this woman your wife" rules court.'***

Indeed, in the March 1956 Report of the *Royal Commission on Marriage and Divorce, 1951–1955*, chaired by Lord Morton of Henryton, Cmd 9678, para 326, it was recognised that such petitions were now *'extremely rare'* and that those presented in recent years – the reference was to *Shuck v Shuck* and *Igra v Igra* – had *'been prompted by the desire to get a declaration by the court as to the validity of a divorce decree obtained in another country rather than by the need to restrain the respondent from actively claiming a false relationship'*. Noting the decisions in *Har-shefi v Har-Shefi* and *Dunne v Saban* (see the cross-reference to para 910 of the Report), the Commissioners went on to record that *'It was therefore suggested to us that ... it is unnecessary to retain the remedy of jactitation of marriage'*. But, without any further elaboration, they concluded:

> *'We think, however, that it may on occasion still be useful and that it should remain.'*

No public manifestation of such utility was to be forthcoming for a further 12 years until, on 28 March 1968, *The Times* reported the hearing the previous day before Cumming-Bruce J of the remarkable case of *Malhotra v Pinfield-Welles*. It involved the obsessive pursuit by a middle-aged man of a much younger woman who had rejected his proposal of marriage. It was what we would now think of as a bad case of stalking and harassment.

Miss Neelam Malhotra brought jactitation proceedings against John Pinfield-Welles, seeking a declaration that she was not and never had been married to him and an injunction to restrain him from boasting or asserting that he was and had been married to her. The application before Cumming-Bruce J was for the continuation of an interim injunction, seemingly granted ex parte. The background is set out in the report in the *Reading Evening Post* of 27 April 1968, under the headline '"Stop calling this woman your wife" rules court', of the committal proceedings brought by Miss Malhotra against Pinfield-Welles for alleged breach of the injunction granted on 27 March 1968 by Cumming-Bruce J.

Pinfield-Welles was 45 years old, a businessman living in Ealing and a widower with six children.

Miss Malhotra was 21 years old, living at home with her parents in New Malden. They had met at what was described as a racial unity meeting.

> *'Her counsel, Mr Peter Flint, alleged that Mr Pinfield-Welles had been "hanging around" the place where she worked, followed her home from Knightsbridge tube station and had his son keep watch on her.*
>
> *He learned that she was attending evening classes at Wandsworth Technical College and attended the classes himself. He asked her to marry him. "He was told he could not," said counsel. "But he kept writing to her and sending telegrams."*
>
> *In August 1967, she moved with her parents to her present address at New Malden.*
> *But the letters continued and he kept referring to her as his wife. On December 30. 1987 he put an advertisement in The Times referring to himself as her husband.*
>
> *Miss Malhotra's solicitors asked him to stop. He replied alleging he was married to her and that the marriage had been consummated.'*

The advertisement in the personal column of *The Times* (what Sherlock Holmes and his contemporaries would have called the agony column in the original sense of the expression) was in the following terms:

> *'Neelam Malhotra, formerly of Amritsar. Husband wishes to contact you. – Box 1532E, The Times.'*

Before Cumming-Bruce J, Pinfield-Welles, appearing in person, had consented to the continuation of the interim injunction until the final determination of the suit. The injunction restrained him from communicating with Miss Malhotra or publishing any reference to their purported marriage or its purported consummation. According to the later report in the *Reading Evening Post*, the injunction also restrained him from '*communicating with and molesting*' Miss Malhotra. Cumming-Bruce J warned him that if he asserted to anyone except his solicitors that Miss Malhotra was his wife, he would be liable to be sent to prison.

It was not long before he breached the injunction. We can pick up the story from the report in the *Reading Evening Post*. In breach of the injunction he wrote to Miss Malhotra saying '*you would be a wise girl if you were to pack a bag and come to me*'. He was committed by Judge Herbert sitting in the Vacation Court:

> *'Judge Herbert ruled that Mr John Pinfield-Welles, of Trent Avenue, Ealing, had been "communicating with and molesting" Miss Neelam Malhotra in defiance of a court order … Today's prison committal order was made on the application of counsel appearing for Miss Malhotra. Mr Pinfield-Welles … was not in court … He had written one letter. "Dearest Meena, you would be a wise girl if you were to pack a bag and come to me … I am quite determined not to lose my wife."*
> *"That is enough for me," said the judge, making the jail order. Mr Pinfield-Welles was ordered to pay the costs. Miss Malhotra was not present at the hearing.'*

It would seem that Judge Herbert's committal order was not for a fixed term. Until the law was changed by section 14 Contempt of Court Act 1983, although a committal order for a criminal contempt had to be for a fixed term, a committal order for a civil contempt (as here) could be for either a fixed term or *sine die*: *Egeneonu v Egeneonu* [2017] EWHC 43 (Fam), [2017] 2 FLR 1181 at [48]. Thus, Pinfield-Welles would languish in prison indefinitely until either he applied to purge his contempt or the Official Solicitor made an application for his release in accordance with the Direction of 29 May 1963 of Viscount Dilhorne LC.[4]

Pinfield-Welles applied to purge his contempt. As reported in the next day's *Birmingham Post*, under the headline '*Grow up, says judge as he frees man*', he came up before Ormrod J on 31 May 1968, having been in prison for a little over a month:

> *'Mr John Pinfield-Welles (45) … who was committed to prison for contempt of an order not to molest or communicate with a 21-year-old Sikh girl, was freed yesterday after giving his personal apology to a divorce judge.*
> *He had been in custody for a month and four days.*

4 This Direction remained in force until revoked by Lord Chancellor Chris Grayling on 1 November 2012. We are told by the Official Solicitor in his Annual Report for 1 April 2012 to 31 March 2013, para 1.4, that the Direction was '***at the request of the Official Solicitor, revoked, as obsolete***' – a surprising view: see the discussion in ***Devon County Council v Kirk*** [2016] EWCA Civ 1221, [2017] 4 WLR 36 at [44]–[49].

> *"This is all very tiresome stuff," Mr Justice Ormrod told him. "You had better grow up and stop it."*
>
> *Mr Pinfield-Welles had been committed on an application by Miss Neelam Malhotra, who has a petition against him seeking to stop him "boasting" that she is his wife.'*

The final hearing was on 12 November 1968, the date given both by the Law Commission in 1971 (*Working Paper No 34*, para 6, fn 35), and by Cumming-Bruce J in his letter to the Law Commission of 27 May 1971 (see below). There seems to be no report of the hearing (the reference in *Law Com No 132, Family Law: Declarations in Family Matters*, 1984, para 4.5, fn 313, to a report in *The Times* of 12 November 1968 is incorrect), but it would appear from Cumming-Bruce's letter that the final order contained the relief the petitioner had been seeking.

It is noteworthy that this was the first 'pure' jactitation case in the almost 150 years that had passed since *Hawke v Corri* in 1820. In *Thompson v Rourke* in 1892, in *Ascroft v Foley* in 1906 and in *Goldstone v Smith* in 1921, the jactitation suit had served as a proxy for a financial or child custody dispute; in *Shuck v Shuck* in 1950 and in *Igra v Igra* in 1952, the jactitation suit had served as a proxy for a dispute as to the recognition of a foreign divorce. This case, in contrast, was about false boasting, pure and simple; that and nothing else.

**Law reform and abolition**

As part of its comprehensive examination of family law, on 22 January 1971 the Law Commission issued *Working Paper No 34*. By modern standards this was very short, running to only eight pages. But it set out in masterly fashion what remains the best analysis of the history of the remedy and of the law, including a detailed analysis of the case law and reference to many 19th century textbooks. The Law Commission's provisional conclusion was clear (para 9):

> *'the remedy of jactitation of marriage is to-day inappropriate and should be abolished.'*

In contrast to the unreasoned pronouncement of the Royal Commission in 1956, the Law Commission explained its thinking in some detail (para 8):

> *'It may be that false assertions that people are married to each other are among those embarrassing falsehoods which it should always be possible to restrain by injunction. But a suit for jactitation is not the right vehicle. What the victim needs is a remedy against any of those who are spreading the false rumour (for example, the newspaper which is repeating it in its gossip column); not merely against the other party to the alleged marriage who is more likely to be another innocent victim of the rumour, At present he may have such a remedy if the assertion is defamatory of him; but unless he is already married to someone else it is unlikely to be defamatory, though it will generally be acutely embarrassing. It could be argued that victims of embarrassing rumour and gossip should have a better remedy, but it is clear that the matrimonial suit of jactitation is not the right remedy: it has no potential for growth as the appropriate remedy; it is limited to false assertions of marriage (other assertions are equally embarrassing and more common, for example an allegation that the parties are engaged), and it can be used only by one party to the alleged marriage against the other. If reform is needed it must come through changes in the general law of tort or crime; not through reforms of matrimonial law.'*

The relevant files of the Law Commission, from which certain key documents have most kindly been supplied to me by the Law Commission, contain the response of the judges to this recommendation. A letter dated 28 May 1971 from the President, Sir George Baker, reported that he had received responses from nine of the 16 judges of the Division approving of abolition, that Cumming-Bruce J disapproved, that the other 6 judges had not replied and were therefore neutral, and that he himself approved of abolition. The files also include Cumming-Bruce J's letter dated 27 May 1971.

'Spider' Cumming-Bruce, as he was always affectionately referred to, was no reactionary, even if he was the son of the 6th Baron Thurlow (and the younger brother of the 7th Baron and younger twin-brother of the 8th Baron), and thus a descendant of the Thurlow who had prosecuted the Duchess of Kingston in 1776. He rejoiced in the splendid name of Sir James Roualeyn Hovell-Thurlow-Cumming-

Bruce. He was a clever and humane man with a subtle mind. In his younger days he had been an active communist at Cambridge, though hunting during the vacation. In the Second World War he fought in North Africa where he was erroneously given a senior staff appointment having been confused with his eldest brother, who was a regular officer – his brother appeared in the Army List under his full surname, beginning with 'H', while the War Office had looked him up under 'C'. His Obituary in the *Daily Telegraph* on 14 June 2000 gives hilarious accounts of how on different occasions, once in Whitehall and subsequently in the House of Lords, he impersonated his twin without being detected. Since the obituarist was careful to note that Cumming-Bruce was '*spirited company and a great raconteur*' who told these stories '*with a mischievous smile*', they ought, perhaps, to be taken *cum grano salis*.

Prior to his appointment to the PDA in 1964 he had since 1959 been the common-law Treasury Devil – Junior Counsel to the Treasury (Common Law). In his October 2016 blog on The Treasury Devil, Sir Henry Brooke tells us that Spider was appointed to the PDA '*at a time when that Division was being reinforced with intellectual heavyweights capable of mastering the increasing volume of complex family property disputes*'. In a reply in December 2017, Spider's son, Richard Cumming-Bruce, provided this intriguing response:

> '*Roualeyn Cumming-Bruce was my father and, although it's a long time ago now, perhaps it's worth putting on the record that the reason that he went to the Family Division was principally that it enabled him to be based in London, rather than go out on circuit at a time when both my mother's and my health (I was 1 at the time) were extremely fragile. But for that overriding domestic excitement, I'm sure that he would have joined the QBD; although as it turned out he found the work in the Family Division (in which I think he had little, if any, experience at the Bar) fulfilling and rewarding.*'

Be that as it may (and I suspect that Henry Brooke was anachronistically pushing back into the 1960s a development which actually dated to the 1970s with the appointments of Bagnall J in 1970 followed by Arnold J in 1972 after the radical statutory changes effected by the Matrimonial Proceedings and Property Act 1970), Cumming-Bruce's reasons for challenging the Law Commission's recommendation are interesting.

He had clearly been affected by the effect on Miss Malhotra of Pinfield-Welles's behaviour: a '*man who was obsessed with passion for a single woman*' whose actions '*were deeply upsetting to the woman*'. He went on: '*No other form of relief was available to her beside proceedings for jactitation because though the publication was deeply embarrassing she was advised that it was unlikely that the Court or a Jury would hold that the publications were defamatory*'.

Disagreeing '*strongly*' with the Law Commission's view, he went on: '*It is well known that the occasion when relief is sought in this way is extremely rare, but when it is sought and obtained as in [this] case … it is a very valuable remedy*'. It is what follows that is striking:

> *'The reasoning that a useful remedy should be abolished because it is rarely used, or because it should logically form part of non-existent legislation controlling invasion of privacy does not attract me. The elegance of a system of jurisprudence is much less important to the subject than the present existence of a remedy. I think it would be monstrous to repeal a remedy which has been found valuable, albeit rarely, in modern times and to put nothing in its place.*
>
> *The difference of approach may be the difference between the academic and codifying mind and that of the practitioner who is concerned with relief for the individual subject. The subject cries for a remedy in his or her distress and is not assisted by the vague expectation that a future generation may obtain relief from an unknown Statute for the Protection of Privacy.*
>
> *I hope the Law Commission will carefully consider whether the damage that repeal will do to the subjects' present rights is really balanced by the advantage of removing an untidy procedure from the law.'*

There may be an inwardness to this rather teasing letter, for the Chairman of the Law Commission in 1971 was Cumming-Bruce's more senior colleague in the PDA, Sir Leslie Scarman.

Unhappily, Cumming-Bruce in his letter had referred to Pinfield-Welles as being a '*married*' man when in fact, as we have seen, he was a widower. This seems to have muddied the waters, for in an internal Law Commission Note the author writes that he '*cannot understand*' the judge's conviction that the plaintiff would have had no other remedy but for jactitation:

> *'it must be defamatory of Miss A if Mr B, well-known to be married to Mrs B, goes around saying and writing saying that he is married to and is cohabiting with Miss A.'*

This thinking was carried into a roughly contemporaneous draft of a final report recommending the abolition of the remedy of jactitation. Referring to *Malhotra v Pinfield-Welles*, the draft says:

> *'it seems likely that an action for defamation would have succeeded and that the complainant could equally well have obtained an injunction on that basis.'*

Now quite apart from the fact that, as Cumming-Bruce tells us in his letter, Miss Malhotra had actually been advised that she was '*unlikely*' to have a remedy in defamation, the fact is that Pinfield-Welles – Mr B in the example given – was not married to Mrs B, because she was dead. And that distinction, one is inclined to think, may make all the difference in terms of the law of defamation. In the example given, the statement carries with it the connotation of adulterous cohabitation. So too does a different example given, as we shall see, by the Law Commission in its final report in 1984, where it is the petitioner, rather than the respondent, who is married to someone else. But that connotation was wholly lacking in *Malhotra v Pinfield-Welles* where, to repeat, neither party was married to anyone else.

In the event, when the Law Commission returned to the topic in 1973, it took a very different tack. In *Family Law: Declarations in Family Matters, Working Paper No 48*, para 63, it said:

> *'The majority of the comments we received advocated abolition of the remedy, but there were also a number of commentators who were anxious to see it retained or, at all events, not abolished unless an alternative remedy was provided to take its place. The gravamen of their arguments was that there were, albeit rarely, cases in which a person found himself or herself in an intolerable situation because someone falsely claimed to be married to him or her and was giving publicity to the false claim, but since the claim did not of itself necessarily amount to defamation, it could not be silenced except through the medium of a jactitation suit. It was also pointed out that the threat of instituting jactitation proceedings was, in the commentators' actual experience, at times sufficient to put an end to such false claims. In these circumstances, we think that if the suit is to be abolished it should only be done after a general review of civil remedies available in respect of injurious statements.'*

In the event, more than a decade was to pass before, in 1984, the Law Commission published its final report on the topic, *Law Com No 132, Family Law: Declarations in Family Matters*, paras 4.1–4.11.

**The last case**

In the meantime, in 1977 there had been one more – apparently the final ever – jactitation case. It involved a colourful international businessman of uncertain origin who plays an important role in the suggestively titled 2004 book by Alan Block and Constance Weaver, *All Is Clouded by Desire: Global Banking, Money Laundering, and International Organized Crime*. In Chapter 2, entitled 'The Indonesian Affair: Spies, Lies and Oil', they give an account, under the sub-heading 'Other Privateers: The Kulukundis Clan and Davids-Morelle', of '*a mystery man called Steven Davids-Morelle*', a '*scoundrel*', as they refer to him, though they quote investigators who thought it likely that he had been working at least partially in the interests of US intelligence. They describe the jactitation case he brought:

> *'The life and times of Davids-Morelle contained more than a few oddities. For example, in spring 1977, a British tabloid ran a story in which Davids-Morelle, described as a Russian-born businessman, had an action for "jactitation of marriage," which means the "pretence of being married to another." The result in olden days was a decree of "perpetual silence" against the pretender. The woman in question was Hanna Isabella Conway, whose maiden name was*

> *Nowierska and former married name Cdziak. She married a young guitarist, John Joseph Conway in 1974, and then divorced him in Haiti. Subsequently, she and Davids-Morelle were married in Haiti. As far as English law was concerned, however, neither the divorce nor the marriage in Haiti was valid. Sir George Baker, who was the president of the High Court Family Division, demurred from giving Davids-Morelle what he wanted. Judge Baker noted that the ancient law of "jactitation" was rarely used even 150 years ago, and added that the marriage could be valid in countries such as the United States or Switzerland. At the time of the failed action, Davids-Morelle was living in Switzerland and had other quarters in Monaco, Marbella, Spain, New York City, and St. Albans Mansions, Kensington, London.'*

The '*tabloid*' they cite was in fact the *Daily Telegraph*, which in its issue of 20 May 1977 ran the story under the headline '"Silence Her" Plea to Judge'. The case had come before Sir George Baker P on 19 May 1977. He was quoted as saying that in his career (he was called to the Bar in 1932, took silk in 1952, became a judge of the PDA in 1961, and President in 1971) he had seen only one such case. The report tells us that the claim was struck out by Sir George without any evidence being heard. It explained his reasoning:

> *'the divorce and marriage in Haiti were not valid in England. The judge said he was being asked to declare that the couple had never been married. But the marriage might be valid in other countries such as Switzerland or the United States.'*

The case was referred to in a footnote but not discussed in the Law Commission's final report in 1984 (*Law Com No 132*, para 4.5, fn 313). Baker's reasoning, if correctly reported, is interesting. For it goes beyond the previous decisions, where the question was treated as being simply whether the foreign divorce or foreign marriage was recognised in this country, without any consideration of whether a marriage held invalid in this country might nonetheless be considered valid in some other country.

There is in fact one more reference I have found to a later case. We are told in a lecture given in Australia in July 1999 by Nicholas Mostyn QC, as he then was, published as '"Justice Must be Seen to be Done" – Open Justice and Family Law' [1999] IFL 80, that he '*recalls drafting a jactitation petition while in pupillage in 1980*'. Finding no other reference to this intriguing event, I sought elucidation from him. His recollection, some 23 years later (personal communication from Mostyn J, 9 February 2023), and, as he put it, '*now rather turbid*', was of his pupil master, Peter Singer, later of course Singer J, telling him that he had had a phone call from a solicitor, representing some minor celebrity, whose girlfriend was going round claiming that on a holiday somewhere, they had got married on the beach, which was quite untrue, and that he wanted her stopped. Being told by Peter that this was a classic case for jactitation of marriage relief and that he was to draft a petition, he got all the old books out, duly drafted the petition and handed it over to his pupil master – only to be told by Peter that he had had another phone call and been told that they had made up and the celebrity would not be taking any further steps. He added '*There was a twinkle in his eye which made me suspect that the whole thing was a prank!*' So whatever was going on (and it must be remembered that Peter, in common with a number of other family practitioners of that era who later achieved distinction as family judges, was an inveterate practical joker and prankster), we can be confident that the matter never came to court.

**The end**

In its final report (*Law Com No 132*, paras 4.1–4.5) the Law Commission rehearsed in much the same terms the historical and legal matters originally set out in *Working Paper No 34*. Having summarised its provisional proposals as set out in the two Working Papers, the Law Commission commented (para 4.7) that on consultation there had been no dissent from the conclusion in *Working Paper No 48*. Having given the matter further consideration, the Law Commission's conclusion now (paras 4.8, 4.11) was that the suit for jactitation of marriage should be abolished. It explained why (para 4.9):

> *'Although in the past a jactitation suit may have been of use in obtaining a declaration as to the validity of marriage, it is no longer needed for that purpose today, more appropriate means being available for that purpose … If*

*the false allegation of marriage is defamatory, as it may well be, if, for instance, the petitioner is married to someone else, a remedy is already available. That leaves one with the case where the false claim alleging the existence of a marriage is not in itself defamatory, but merely embarrassing to the party aggrieved. Thus the only remaining purpose of a jactitation suit is to restrain a party from repeating an embarrassing falsehood about the existence of a marriage, and we do not think that it should continue to be available for this purpose. We have already referred to the limitations of the remedy: it can be used only by one party to the alleged marriage against the other; it cannot be used to restrain a third party, for instance, a newspaper, from repeating the false allegation. For this and other reasons, proceedings for jactitation of marriage are extremely rare, and the action has been abolished in other common law jurisdictions [a reference to Australia and New Zealand].'*

It went on (para 4.10):

*'It could be argued that what is needed is not the abolition of the remedy but the creation of a more effective one. In our view, however, there is no valid reason why a false claim as to marriage should be treated differently from any other false claim. If a person makes a false claim, for instance, that he is someone's son or brother, or that the parties are engaged, such a claim does not of itself enable the person aggrieved to obtain in injunction, even though the allegation may be just as embarrassing as an allegation that the parties are married.'*

The draft Bill appended to the report contained a provision, clause 9(1), that '*No person shall after the commencement of this Act be entitled to petition the High Court or a county court for jactitation of marriage*'. That wording was enacted as section 61 Family Law Act 1986. And so, some 510 years after the very first case, *Ex officio c Sandecoke* in 1476, the remedy of jactitation disappeared into legal oblivion.

**The continuing problem**

But if that remedy has gone, the problem remains, human nature being what it is. The human condition has hardly changed, though the emergence of the internet and social media have provided means of disseminating untruths that would have been as inconceivable to The Law Commission and Cumming Bruce J 40 or 50 years ago as to Sir William Scott 150 years previously.

As I write this, my eye falls on a court report in the online *Daily Telegraph* of 16 February 2022 (the print version is rather shorter) under the headline 'Former civil servant convicted of stalking ex-colleague after camping outside Whitehall with "waiting for my Wilko" placard':

*'A former civil servant has been convicted of stalking an ex-colleague after camping outside his office on Whitehall with a "waiting for my Wilko" placard.*

*Economist Ray Israel-Wilkinson, 33, declared her love for Alex Wilkinson after working with him at the Department for Culture, Media, and Sport (DCMS). Prosecutor Jennifer Gatland said she changed her name to give the impression they were married and posted 104 love songs dedicated to Mr Wilkinson on social media. Ms Gatland described how Israel-Wilkinson sat outside the department's Parliament Street office on May 27 last year with a placard which said: "This is not a protest. Waiting for my Wilko." Ms Gatland said:*

*!This caused significant distress for Mr Wilkinson who had to change his routine, entrances and so forth. The defendant has also created social media pages claiming they are married and declaring her love for him. It seems she has also changed her name from Rayner Sultan to Ray-Israel-Wilkinson to give the impression they are married."*

*"I felt quite violated"*

*Mr Wilkinson, a Deputy Director for Analysis, told Westminster Magistrates' Court she began to contact him shortly after leaving the department and insisted on meeting with him face-to-face. "I wasn't comfortable because we didn't have any meaningful relationship," said Mr Wilkinson. "She is a former colleague. I felt quite violated. She was writing about how she was in love with me and insinuating that we'd had some romantic connection when we hadn't."*

*Israel-Wilkinson was arrested for harassing*

> *Mr Wilkinson but continued to sit outside the office despite bail conditions prohibiting her. In August 2021 she was sectioned and taken to hospital where she continued to email Mr Wilkinson. Israel-Wilkinson, of Milton Keynes, denied stalking Mr Wilkinson, between June 16 2021 and October 20 2021. She did not attend her trial and was convicted in her absence by District Judge Timothy Godfrey who issued a warrant for her arrest. He said:*
>
> > *"It is plain to me that Mr Wilkinson's reaction to the unwarranted attention has principally been concern for her welfare and mental health. It is also apparent that the defendant's stalking behaviour has ground Mr Wilkinson down and has had an impact on him emotionally."'*

The report of the case in *The Times* on 16 February 2022 adds the detail that the biography on the defendant's Twitter account read '*Please help my @alexwilko85 contact me. He is forced by evil souls to ostracise me. He loves me as much as I love him. My Wilko is unhappy. Please*'. Her twitter page claimed that GCHQ was trying to stop them being together.

Eventually, in July 2022 she was sentenced at a hearing which, unsurprisingly, attracted much publicity. The report in *The Mirror* of 5 July 2022 was typical:

> *'Since being detained, Westminster Magistrates Court heard she has begun medication and treatment for her mental illness and a custodial sentence would not be appropriate given her condition.*
>
> > *Sentencing her to a hospital order, District Judge Colin Witcher said:*
> >
> > *"You were convicted in this matter of stalking without fear of violence and the case makes deeply unattractive reading.*
> >
> > *Emailing him, posting about him on social media, attending outside his place of work and it continued even in breach of your police bail when you returned with a banner.*
> >
> > *The conduct went on and on and I make it absolutely plain that but for the medical reports, this would have been a Category A offence and I would have had no hesitation in sending you to prison.*
> >
> > *The impact caused great distress and there is evidence before me that he changed his lifestyle."*
>
> *After reading "detailed medical reports", the judge decided that whilst a prison sentence would not be beneficial, a sentence in the community would "not deal adequately with the public's safety".*
>
> *Israel-Wilkinson, of Milton Keynes, was handed an indefinite hospital order under Section 37 of the Mental Health Act and made the subject of an indefinite restraining order.'*

According to a report in the *Daily Mail* on 1 September 2022, her appeal was due to be heard at Southwark Crown Court on 27 October 2022. I can find no further reports. Is it perhaps reasonable to suppose – this, of course, is speculation – that the media's seeming silence shows that the appeal, if pursued, was unsuccessful?

Little changes other than the technologies used by the deluded and the remedies provided by the law for the victim.

The circumstances of this case are strikingly reminiscent of those in *Malhotra v Pinfield-Welles* 54 years earlier, except that here the stalker was a woman, not a man, that here there was more obvious evidence of delusional mental health issues, and that here the stalker resorted to the use of social media rather than the newspaper 'agony' column.

And what of the law? The remedy used here was a prosecution for the criminal offence of stalking: see sections 2A and 4A Protection from Harassment Act 1997 as inserted by section 111 Protection of Freedoms Act 2012 (and see also the Stalking Protection Act 2019).

**Envoi**

This account of jactitation illuminates, I hope, a curious and largely forgotten corner in the history

of family law. But, as so often with family law, the cases are most interesting for the light they shine on the, often fascinating, lives of those, particularly women, caught up in the toils of the law. The women here come from many different eras and many different backgrounds. The one thing they have in common is their involvement in a jactitation suit, but many of their stories reflects themes and experiences which are timeless.

From Tudor London there is the story of Margaret Robinson, kidnapped and forced into marriage at the age of 12. Almost 400 years later, from modern suburban London there is the story of Neelam Malhotra, stalked and harassed by a besotted admirer. And from Regency London there is the story of Augusta Corri, the mistress of Lord Hawke who was happy to flaunt her in polite society as his wife until, it seems, he tired and sought to dispose of her. Then there are the victims of vicious antisemitism. Leah Smith, the illiterate Jew from Russian Poland who, like so many, ended up in this country as the victim, no doubt, of a Tsarist pogrom; perhaps like many others they had hoped to get to the United States but, having landed at Hull to take the train to Liverpool and the new world, could not afford to get any further than Leeds. And Mrs Igra (the report does not tell us her name), victimised by the Gestapo and a Nazi judge because she was married to a Jew.

But the most powerful are surely the stories of those three determined women, so very different in their background, the Duchess of Kingston, Eleanor Thompson and Ellen Foley. The Duchess moved in the highest, indeed Royal, circles. She was famous in her day and is famous still today. Eleanor and Ellen are forgotten, not least because so little of their remarkable stories can be found in the law reports of their cases. Eleanor, born in Australia, who took her extraordinary and ultimately unsuccessful fight to recover her children to the Court of Appeal on no fewer than 13 occasions (almost always as a litigant in person), ended up a drunken prostitute in an asylum for the pauper insane. Ellen, the servant seduced by her socially respectable employer's son, who, having fought long and hard to vindicate herself and their daughter, managed by sheer determination and after a long fight to outwit both of them, having made her faithless and worthless husband (as she had proved him to be) bankrupt and then made a new life for herself in the New World, where she long outlived him.

**Postscript by Sir Nicholas Mostyn**

In my tribute on page 7 I describe the extraordinary feat of Sir James in putting together his vast work on the astonishing fate of *Scott v Scott*. My admiration is greatly enhanced when I reflect that while he was preparing that work, he was simultaneously writing this remarkable sequence of essays about the obscure remedy of jactitation of marriage. This final instalment[5] is 17,500 words long. In it he cites 26 authorities stretching back to 1476, numerous academic texts, newspaper reports, Law Commission reports and correspondence. His industry in shining a spotlight from every possible angle on this strange procedure is breathtaking. Superficially, the essay is an historical homage to a weird form of relief which faded into history a long time ago, but this would be a faulty perspective, for as Sir James correctly shows little has changed other than the technologies used by the deluded and the remedies provided by the law for the victim.

I was particularly pleased to see the extensive reference to Lord Justice Cumming-Bruce, as he became. His son Edward was a close friend of mine at school and went on to marry my cousin. As a schoolboy and university student, I was introduced on a number of occasions to Lord Justice Cumming- Bruce, and I can confirm his wit, common charm, and intelligence described by Sir James. I was also delighted to see that Sir James included here what I am quite sure was a practical joke played on me by my then pupil master Peter Singer.

5 Published in two parts: the first in Family Affairs, Issue 94, Winter 2025, 23–40 and the second part in this issue.

# Regional News

**Kent and Sussex**

The interminable rain has not dampened our spirits.

In Sussex, the Quality Circle held another fantastic and informative meeting in February, chaired by Anna Glinski from the Centre of Expertise on Child Sexual Abuse, with over 150 attendees from across the family justice spectrum. We look forward to the session on 21 April, where we will be in person at Brighton Town Hall discussing 'Family Time and the experience of the child'.

The Sussex Family Justice Board, alongside the Quality Circle, are delivering a training programme for all magistrates and legal advisers, delivered by skilled social care employees and legal colleagues from the regional consortium as part of our ongoing commitment to collaboration and sharing key knowledge and skills.

'Do not normalise delay' was the takeaway line from the South East Circuit Teams Event at the end of January, with over 450 attending. We heard directly from young family justice board members with direct experience of court proceedings as children. There was an intro and outro from the President, and our Presider Judges Henke J and Arbuthnot J outlined the strategy, protocol and ambition for public and private law practice across the system. A big shout-out to the Kent Family Justice Board for their contributions.

Inspired by Darren Howe KC, Laura Bayley, Delia Minoprio and Meghan Daniels are delighted to be part of the network of Respectful Working Mentors in Kent and Sussex.

We will be sad to say goodbye to HHJ Stuart Farquhar on 5 June at his valedictory. He has made a significant contribution to family justice, in particular in the area of financial remedy work and in the Court of Protection. We hope to see as many as possible for a drinks celebration in Brighton in late May, not only to say au revoir to HHJ Farquhar, but also to welcome a fresh batch of District Judges.

All luck goes out to our local family law pupils in Kent and Sussex who will soon be on their feet for their second sixes!

*Delia Monoprio and*
*Laura Bayley*
*1 Crown Office Row*

**North East**

Events in Newcastle are like buses. Nothing happens for ages and then they all come at once. I am not exaggerating – the two events to report occurred on consecutive evenings on 5 and 6 February 2026 though each very VERY different in vibe.

The first was a repeat joint venture with CoPPA. I am fairly sure the Chair of CoPPA Newcastle would smart a little at the suggestion of it having been a joint affair. Mrs Justice Theis as VC of the COP 'encouraged' DJ Temple (local COP lead judge) to arrange the event and I was contacted to assist in my FLBA capacity. My contribution was extremely limited. I stalked the CoPPA chair when he could not be contacted (who goes on holiday without turning on their OOO these days?) but once he was located, all I had to do was encourage FLBA members to attend – acquire a free CPD point – listen to an interesting presentation by each Theis J, DJ Temple and our DFJ, HHJ Stephen Smith – and then chug some vino! I wish all FLBA events were so easy. The lovely Carole Burrell in the Law Department at Northumbria University provided the accommodation and the refreshments. There was an excellent turnout, including many students. It says something for the otherwise much maligned youth of today that I heard not one audible yawn as DJ Temple 'romped' through the relevant forms needed to issue an application in the Court of Protection.[1]

I was unable to stop to chat for as long as I might otherwise have done because the evening of 5 February was the last opportunity to rehearse the revels for the event taking place on 6 February. As we always do, we convened this mess at the Northern Counties Club. I like them because they do not demand deposits and they allow me to finalise numbers much, much later than any normal hotel or restaurant. We also have the place to ourselves, which is probably the reason why revels have lasted as long as they have.

The purpose of our gathering was multi-purposed. My deficiency in organising anything meant that we had quite a few major changes to mark. First and foremost was the retirement of HHJ Andrew Hardy. Andrew Hardy has been known to anyone who has worked in family law in Sunderland and Newcastle forever. He was a solicitor who was appointed as a DDJ, then DJ and then he made the move onto the Circuit Bench. He was also responsible for setting up our FDAC and had done so with considerable success until the funds were withdrawn. He is generally quite a shy man who tends to keep himself to himself. When he

was appointed as a CJ and invited to attend a mess, it was incredibly difficult to write rude or funny lyrics about him because he is just so NICE! Fortunately, I have never let that get in my way and so we just made some stuff up – but comedic lyrics never land as well as when they hit the nail on the head. By the time he retired however we had much more fodder, but we focused on one particular and notable feature of his court. The searing temperature and his refusal to work in anything other than a tropical climate. For this reason, the Bar were invited to attend 'The Hot Mess![2] Also invited as a special guest was HHJ Stephen Smith, who was appointed as DFJ in March 25, and of course the Honourable Mr Justice Poole, who departed as our Family Presiding Judge at the tail end of 2025. Three very different judges. Three not so very different songs. John Craggs who has fast become the choir master for our unruly songsters did a marvellous duet with Justin Gray morphing before our eyes into Bing Crosby (Mr Justice Poole) and Frank Sinatra (HHJ Stephen Smith), the former imparting tips to the latter for coping with both us and, more particularly, our local judiciary. Otherwise, the mess attendees were entertained with a Backstreet Boys tune; our fresh faced DFJ would not in fact look out of place in a boy band (obviously on a reunion tour), and Rebecca Cowell brought the house down with her '90s moves and swagger. We ended off with the Tom Jones/Cerys Matthews version of 'Baby its Cold Outside', reworked to 'Your Honour its Hot in Here'. No prizes for guessing who that was directed towards. Fiona Walker launched herself fully robed into the room with a later re-costuming into the kit Andrew Hardy really prefers – cycling gear! The evening was finished off with a hilarious speech by Mr Justice Poole, who we have absolutely revelled in having as our liaison judge. Sadly, there are no photos of our gift to Judge Hardy – a purple cycling jersey which has on the back 'Retired and Admired – Pass with Care!'. It may have organised a bit later than ideal, but we hope the wait was worth it.

Also, congratulations to Victoria Hajiba-Ward, who was recently appointed as a DDJ and congratulations (?) too to HHJ Murray (DFJ Middlesbrough) on the launch of his website. Harvey was always a bit of a geek when at the Bar so to learn that he had launched his own website for Cleveland and South Durham Family Justice didn't really come as much of a surprise. If anyone was going to do it, it would be him. He is the kind of man who does masters

Top to bottom
Col 1 : COPPA Bar students His Honour Andrew Hardy HHJ Nathan Adams.

Col 2: Julian Bailey and Patricia Burke Stephen Ainsley

Col 3: Lizzie Lugg and Ami Dodd; Molly McNestry; Tori Putnam and Shona Upton; Joanna Garvey-Smith; Georgina Hey and Eddie Jackson; Grace Atkinson.

Col 4: Mr Justice Nigel Poole and Rebecca Cowell; Kate Wood; Lee Mason and Urmila Roy; HHJ Stephen Smith; John Craggs and Paul Fleming.

degrees for funzies. The website is an impressive thing and I commend it to anyone stepping foot in a court in Middlesbrough and its environs. You can find it at https://www.clevelanddfj.co.uk.

*Elizabeth Lugg*
*Dere Street Barristers*

*Notes:*
*1) Embarrassing admission; I actually found that part rather riveting!*
*2) The judicial invitations did not carry this title – we didn't want anyone to get into trouble if an audit was carried out by HMCTS.*

**Manchester**

The beginning of the year has seen our newly elected Leader of the Northern Circuit, and newly minted editor of *Family Affairs*, Samantha Hillas KC, put her trademark stamp on Bar Mess. From Liverpool and Manchester to Preston and Carlisle, Sam's inaugural tour of Circuit has been a huge success and a source of pride for family practitioners.

On 22 January, Sam and the rest of Circuit celebrated the career of HHJ Catherine O'Leary, who retired last year. HHJ O'Leary was called to the Bar in 1979, appointed a Deputy District Judge in 1992, a District Judge in 1998, and a Recorder in 2002. She was appointed a Circuit Judge in 2009 and a Deputy High Court Judge in 2010.

In her speech, Sam recognised that HHJ O'Leary was 'very glamorous – even by Liverpool standards!' and that she devoted her considerable talents to unpicking the thorniest of disputes in the courts of Lancashire, Liverpool and, latterly, Manchester. Needless to say, HHJ O'Leary will be sorely missed and we can only hope that she can persuaded to continue sitting in retirement.

Away from Bar Mess, members of the FLBA's Regional Committee in Manchester continue to contribute to initiatives both inside and outside the courtroom. On 26 February, Callum Brook and Helen Crowell of St John's Buildings recently delivered a public law update to members of the judiciary, solicitor colleagues and Cafcass children's guardians. Further seminars will follow, and we are all looking forward to attending the annual dinner at Lincoln's Inn on 27 February.

*Toby Craddock*
*Deans Court Chambers*

# Dates for the Diary

Cumberland Lodge
8th - 10th May

National Conference Brighton
17th October

Garden Party
26th June

Committee Dinner
4th December

# Connecting Families to pro bono help: Support Advocate during Authorisation to Practise

**As you complete your Authorisation to Practise this Spring, you will have the opportunity to tick the box to donate to Advocate. That small act of generosity helps ensure that families facing some of the most complex and life-altering proceedings are not left to navigate the courts and the system alone.**

Every day, **Advocate** hear from families facing life-changing legal proceedings. These cases are diverse and can be deeply challenging to navigate: intervenor applications, child relocation, contact disputes, child abduction, serious domestic abuse and child abuse allegations, sperm donor responsibility, and more. However, many parents in these cases go unrepresented in court, leading to them feeling voiceless, isolated, and overwhelmed.

**Advocate**, the Bar's pro bono charity, exist to help families in precisely these situations. Established 30 years ago by barristers across England and Wales who believed access to justice should not depend on means, **Advocate** connect those in urgent need of legal assistance with barristers who generously volunteer their time and expertise for free.

Family law is one of their most common areas of need, accounting for over 30% of their cases. Behind every case is a parent or carer confronting a situation that will shape their family's future.

Take Bryan, a single dad who had received a final court order stripping him of his parental responsibility, changing his child's surname without his consent, and restricting him to indirect contact only. He was desperate not to lose his relationship with his child. Alone, and without the means to challenge this decision, Bryan turned to **Advocate** for help. **Advocate** brought together a team of exceptional barristers to support him at every key stage. Thanks to their collaborative efforts, Bryan was granted supervised direct contact with his child, with a plan to move towards unsupervised contact in due course. The outcome restored not only contact, but also hope.

Every year, parents like Bryan face life-changing hearings alone, simply because they cannot afford legal advice or representation. **Advocate** exist to ensure that a lack of means does not determine a family's future.

**Advocate** volunteers see the impact first-hand. As Mani Singh Basi of 4PB reflects:

> *'Whether it is through my role as a Case Reviewer, or as a barrister embarking upon cases directly for Advocate, I have seen time*

*and time again the fundamental role they have in achieving justice for those that desperately need it. Advocate help those who really need it and make a meaningful and often life-changing difference to the individuals they help.'*

If you can, please consider ticking the box to donate to **Advocate** when completing your Authorisation to Practise this spring. The generosity of the family Bar enables **Advocate** to continue securing momentous outcomes for families across England and Wales.

As one parent recently supported by **Advocate** shared:

*'Having [the barrister] by my side gave me courage and confidence during what felt like an overwhelming journey. She understood not only the legal complexities but also the emotional toll this process has taken on me and my children. For that, I will be forever grateful.'*

Find out more about **Advocate** on their website: www.weareadvocate.org.uk

# FLBA Scholarship Fund

Alice Hunter | Bar School student, pupillage commencing October 2026
Roheema Yasmin | Pupil, 4 Field Court

Scholarships are often life-changing. They can make a significant difference and alter people's pathways into our profession. As a recipient of scholarships along the way, I understand their importance. That is why it is such a privilege and a pleasure to head up the FLBA Scholarship Committee with Mani Singh Basi and Srishti Suresh at my side.

Alice Hunter

Roheema Yasmin

Special thanks must go to Mrs Justice Morgan who returns every year from Circuit (sunny Wales which is always hard to leave!) to sit on our interview panel. She arrives equipped with impeccable knowledge about the candidates and immaculate Schedules. Last year, she kindly arranged for the finalists to marshal with High Court Judges and this experience was invaluable so thank you to them.

The architect of the FLBA scholarship is Philip Marshall KC, who rightly identified that as an association we should be fostering and promoting future talent and helping to knock down barriers towards progression, a significant barrier being finances. That is what the scholarship provides. It opens doors that might otherwise remain closed and enables candidates to pursue their dream of a career at the Bar.

Every year, the excitement starts to build in March/April as the scholarship is launched at the end of May with the aim of finding a worthy recipient or recipients. Last year we widened the criteria and had 50 applications. There were so many deserving candidates and it was very difficult to select the final interviewees and our two scholars. We also owe our thanks to members of the FLBA committee and others, who helped sift through the applications to get us to our final interviews in July.

The best part about this work is that it is so

rewarding to see applicants who will ultimately represent the future of the Bar. Their enthusiasm, drive and motivation is inspiring and their journeys often difficult. It is a reminder that as a profession we should be giving back and lifting those who want to join us but can't always see the end point. This is why we need the scholarship and why it matters so much.

All we ask is that you spread the word far and wide on social media so that we can continue to identify those who are committed to a career at the Family Bar and need a helping hand along the way.

This year's scholars are Roheema and Alice. Below is a synopsis of what difference the FLBA scholarship has made to their lives thus far.

> *'Receiving the FLBA scholarship was transformative for me at an important stage in my career. The financial support not only enabled me to move to London from Manchester to commence pupillage with greater stability but also covered costs in relation to my Call to the Bar ceremony, Bar Course graduation ceremony and accommodation. As part of my scholarship, I also completed a marshalling placement with Mr Justice Poole on a highly complex and interesting case, where I observed advocacy at its highest level. I am grateful to the FLBA for its confidence in me and making my transition into pupillage possible.'*

> *'One of the greatest barriers I faced in changing careers to become a barrister was balancing the financial pressures of studying for my future alongside the immediate demands of everyday life. The scholarship from the FLBA made an instrumental difference, allowing me to focus fully on completing the Bar Course. The additional opportunity to marshal with a High Court Judge was invaluable; witnessing the execution of difficult decisions with precision, thoughtfulness, and compassion was truly inspiring. I deeply appreciate not only the generosity of the award but also the strong, supportive community of family law barristers that the FLBA is fostering. It is encouraging to be part of a profession so clearly committed to nurturing and investing in its future.'*

# Letter from Northern Ireland

Dear colleagues

Greetings from Northern Ireland and, more specifically, a reflection inspired by a recent decision of the Court of Appeal in Northern Ireland in *B v B* [2025] NICA 27.

This wasn't just another ancillary relief appeal. It felt more like a judicial intervention – a scholarly but unmistakably urgent reminder of what happens when parties hide behind litigation, and view resolution as surrender.

What follows is an informal reflection, but one grounded in a serious point: you should not bypass the FDR process.

For those less familiar with the Northern Irish arena, the FDR hearing – the FDR – is not a procedural inconvenience. It is, when used properly, the system's circuit breaker.

At its core, the FDR is a court-mandated settlement hearing designed to stop a case from spiralling into a full trial, reduce both parties' costs and limit acrimony between the parties. If an agreement can be reached, the court will make a binding financial consent order. If an agreement cannot be reached, the court will list the financial application for a final financial hearing before a different judge.

Here's how it works:

**(1) Neutral evaluation**

A judge (often a Master) reviews the parties' strongest arguments – their 'best day in court' positions.

Then comes the moment of truth: a non-binding indication.

It is evaluative, candid, and often sobering for clients.

**(2) The without prejudice shield**
The FDR process is privileged. Concessions made in that forum cannot be used later if the case proceeds to trial except for arguments relating to the parties' costs from FDR to hearing.

**(3) The objective**
To shift the parties from a binary win/lose mindset towards something far more aligned with matrimonial law's purpose: a needs-based, proportionate resolution.

The *B v B* case stands as a stark example of what happens when the FDR mechanism is bypassed or ignored.

In *B v B*, the litigation stretched across years over what was, in substance, a short marriage. Among the features:

- An attempt to set aside a prenuptial agreement on grounds of coercion, which the trial judge found had no evidential foundation.
- Expensive forensic accounting exercise to value business shares that ultimately turned out to be of nominal value.

The financial consequences were sobering.

The parties incurred approximately £243,000 in costs – nearly 40% of the total family net equity.
Forty percent of the pot. Gone.

The Court of Appeal did not conceal its frustration. The proceedings, it noted, were 'not a model of how ancillary relief should be dealt with'. The litigation was 'disproportionate to the recoverable assets'.

That is a judicial understatement and a reminder to all involved that unchecked costs can hollow out the very relief sought.

There is a temptation particularly in emotionally charged financial remedy cases to equate toughness with tenacity in a case

When we encourage clients to press on without proportionate evaluation, we risk leading them into an arena where depletion of value is the only guaranteed outcome.

The FDR exists precisely to prevent this.

The Court of Appeal reaffirmed it as an 'extremely successful mechanism' for reducing acrimony and preserving the asset base particularly where children's welfare, ultimately depends on that preservation.

Perhaps the most important takeaway is this – professional courage in matrimonial law is rarely found in the final hearing.

It lies in:
- giving realistic advice before positions calcify;
- embracing judicial indication rather than resisting it;
- recognising when forensic ambition outweighs financial sense;
- protecting the 'pot' instead of feeding the process.

Settlement is not capitulation. It is often the more sophisticated and prudent strategy.

The FDR is not a procedural hurdle; it is the jurisprudential heartbeat of modern ancillary relief.

When we engage fully with it, we practise matrimonial law with balance and practicality. When we ignore it, we risk turning the resolution of matrimonial disputes into a costly battle of attrition.

*B v B* is both a cautionary tale and a timely reminder that the FDR process should be embraced fully, not as a formality, but as a vital tool to achieve proportionate, sensible, and cost-conscious resolutions in matrimonial law.

*Warm regards*

*Joanna Burns*
*Caldwell & Robinson Solicitors*
*Belfast, Derry-Londonderry & Dublin*

# Letter from South Wales

Dear colleagues

Back in October last year, members of the Wales and Chester Circuit laced up their running shoes and took on the Cardiff Half Marathon, raising valuable funds for local charity Big Moose whilst vying for the corporate challenge trophy.

Big Moose is a mental health charity providing therapy and early intervention to people who are struggling with their mental health. It has grown from a small Facebook page to a community of thousands of people all over the world, and has provided incredible support for those struggling. The charity aims to educate younger generations, working with schools and local communities to drive understanding and prevention of mental health crises, as well as providing immediate intervention and support.

There is an increasing focus on wellbeing at the Bar, and ensuring that barristers, pupils and staff alike are supported to thrive within the legal profession. The ethos and sentiments of Big Moose align with the importance of ensuring wellbeing at the Bar, and the Wales and Chester Circuit looks forward to continuing its commitment to wellbeing, with events planned for International Women's Day as well as talks focused on improving the experiences of those at the Bar.

A team of 22 circuit members took part in the half marathon, placing 3rd out of 78 teams in the corporate challenge and, most importantly, raising over £6,000 for charity! It represents a fantastic effort by all involved, and the money raised will support those most in need now and in the future. Llongfarchiadau (congratulations) to all involved!

*Melissa Jones*
*30 Park Place*
*Cardiff*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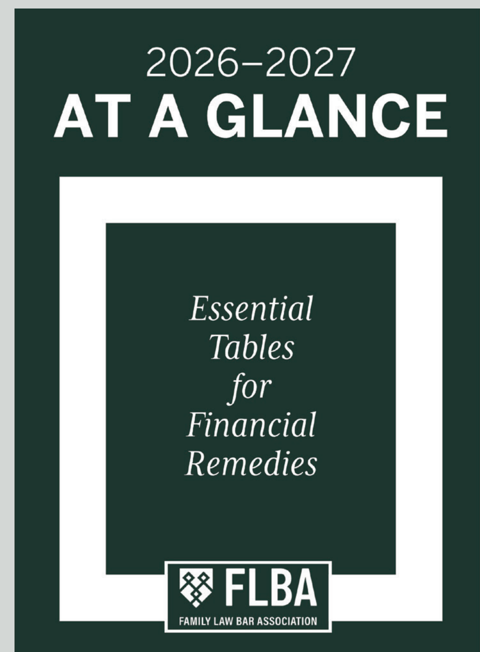


# Section 32 Reports in Irish Family Law: Assessors' Perspectives on Challenges in the Assessment Process

Sarah Jane Judge BL |
Member of the Bar of Ireland and barrister practising in Ireland

*In this article, Sarah Jane Judge BL, an Irish barrister based in Drogheda, sets out the limitations with the process of assessment of children pursuant to s 32 Guardianship of Infants Act 1964. Based on evidence drawn from interviews with authors of such assessment reports. Sarah Jane identifies shortcomings in the legal and regulatory framework underpinning both welfare and wishes and feelings reports and makes recommendations for reform.*

Section 32 assessments are powerful tools for legal practitioners in addressing custody and access disputes in family law proceedings in Ireland. Nevertheless, in recent years, various studies have identified structural and procedural challenges in the execution of s 32 assessments and the legal and regulatory framework governing same.[1] This article does not intend to revisit the findings of these extensive studies. Instead, it draws on qualitative interview data from three experienced and well-established s 32 assessors in order to examine and understand the reality of conducting these assessments.[2] It is hoped that these insights from assessors can assist practitioners in avoiding and addressing these challenges going forward. Five areas of discussion are addressed:

- legislative and regulatory framework;
- the restrictive nature of s 32(1)(b) reports;
- s 32 reports and parental coaching;
- the qualifications, supervision and regulation of s 32 assessors;
- consistency of approach within the s 32 assessment process;
- fee structure for s 32 assessments.

**Legislative and regulatory framework**

Section 32 Guardianship of Infants Act 1964[3] allows a court to direct two distinct yet complementary expert reports. Under s 32(1)(a), the court may 'give directions for procuring from an expert a report, in writing, on any question affecting the welfare of the child'.[4] Section 32(1)(b) allows the court to '*appoint an expert to determine and convey the child's views*'.[5] A court may also order a dual report addressing both the welfare and the voice of the child.

Section 32(10) bestows upon the Minister for Justice, Home Affairs and Migration the power to specify, by regulation, the qualifications, experience, fees, and expenses applicable to experts appointed under s 32. The Guardianship of Infants

Act 1964 (Child's Views Experts) Regulations 2018 (SI 2018/587) (the 2018 Regulations) provide five permissible professions that may complete a s 32(1)(b) report. These are psychiatrists,[6] psychologists,[7] social workers,[8] social care workers[9] and teachers.[10] All of the aforesaid professionals must have been engaged in their role for a 'relevant period' of not less than 5 years within the 10 years immediately preceding their appointment by the court to complete the s 32 assessment.[11] This does not have to be a consecutive and continuous period. It includes periods that, when taken together, amount to the said relevant period.[12]

The 2018 Regulations do not apply to the assessments conducted and reports completed pursuant to s 32(1)(a). Assessors appointed under s 32(1)(a) are not subject to minimum qualification requirements; mandatory supervision frameworks; continuing professional development standards, or fee regulation. Similarly, no legislative or regulatory guidance is provided in respect of dual-purpose reports.

In an attempt to bridge this legislative and regulatory lacuna, the Family Law Courts Development Committee issued guidelines in relation to the conduct of assessment and preparation of reports under s 32(1)(a).[13] McGowan advises that these Guidelines emphasise transparency of process; disclosure of all materials and evidence; impartiality of the assessor; clear communication of timelines, costs and the in-camera rule.[14] However, as stated by O'Mahony, these Guidelines do not appear to be published online.[15] This raises concerns regarding their availability of the Guidelines to assessors and legal professionals.[16]

**The restrictive nature of s 32(1)(b) reports**

Assessors described the procedural and evidential limitations placed on them when completing a s 32(1)(b) assessment. In such assessments, the assessor is unable to consider contextual information or include their opinions in their subsequent s 32(1)(b) Report. As one assessor explained:

> *'First of all, you don't interview the parents for that process unless it's stipulated in the letter of instruction. You're not able to couch any worries or concerns and you're going blindly to this adolescent, typically. You don't know who's explained what to them (or) what process they think is going to happen. You really are so blind. The best way I could describe it is as if you are going out like a reporter and that's it.'*

The Assessor further explained that the lack of contextual information or assessor opinion requires the presiding judge to identify possible anomalies in the child's views, as provided to the assessor. However, the nature of a judge's previous areas of practice may hinder their ability to identify such irregularities. This is particularly concerning in cases where parental coaching of the child may have arisen:

> *'Recently, I had an assessment where the child was living, very happily, for years with Mom and went to live with Dad for a very short period of time and then no longer wants to have any contact with Mom. You would hope that any judge would (think) this is a bit strange. But I think if you have a judge that you know is used to dealing, maybe, with criminal cases they may not pick up on it and there's nowhere for me to write in my report 'I'm really worried about this' because, straight away, the other side are going to state 'we never asked you for that, you haven't done what was asked of you. You were asked to complete a wishes and feelings report and here you are giving your professional opinion.'*

The rendering of the s 32(1)(b) assessor to the role of 'reporter' undermines the value of such an assessment and the subsequent report. The absence of contextual information when conducting the assessment and later in the report itself arguably reduces the s 32(1)(b) assessment to the taking of a statement of a child. The constraining of the assessor to a purely descriptive role is particularly problematic when issues such as parental coaching arise.

**Section 32 reports and parental coaching**

The advent, identification and reporting of

parental couching was noted as a significant and pervasive challenge in the assessment process across all assessor interviews. Commenting on the prevailing presence of parental coaching one assessor stated:

> *'I take it as read that there is coaching'*

Another assessor described how parental coaching can arise and the importance of informed questioning by the assessor to identify same:

> *'You do see it [parental coaching]. I think the problem is that people think that the process is quite simple. They say to [the child] "when [the assessor] asks you where you want to live, this is what you're going to say". That's why the way that you're asking questions becomes so important because the child has an expectation about what's coming and how it's going to be questioned. And when you don't go down that road, sometimes you'll actually see the child start to panic midway through the interview.'*

Elaborating on the anxiety a coached child may feel when the assessor deviates from what the child is coached to expect and say, the assessor provided the following analogy:

> *'I describe it as when you go into your Irish Oral [examination], you have your story ready on something but you are asked something completely different, and you (realise) that's not what we were going to talk about.'*

The management and reporting of parental coaching presents dilemmas for assessors. They appear to be faced with the difficult task of protecting the child; maintaining the integrity of the assessment process and remaining within the scope of their role.[17] One assessor noted the tension that can arise between full transparency and child protection where parental coaching is apparent:

> *'Where there's coaching, there's also a question for practitioners about whether you reveal the full interview [with the child] ... disclosing the interview often puts a child at risk ... because the [coaching) mother or the father inevitably reads snapshots of what [the child] has said and goes home and says, what did you say that to [the assessor] for?'*

The assessor further explained that, following a case where parental coaching was identified, they provided a summary as opposed to a detailed account of the children's views in their report. This was done in order to protect the child from potential parental recrimination:

> *'Recently I just put in a summary because [one parent] was just going to tear those children to pieces.'*

However, the provision of a summary as opposed to a comprehensive account of the views of the child raises concerns regarding the transparency of the assessment process. Furthermore, it hinders the ability of the parties to cross-examine both the findings of the assessor and/or the basis upon which the assessor believes that parental coaching took place.

With all expert independent reports, full transparency is an evidential imperative. However, the advent of parental coaching within s 32 assessments provides a fundamental tension between the requirement for a transparent assessment process and creating a risk to the child in question. As highlighted by the assessors interviewed, the current framework does not appear to adequately address how assessors should manage this tension or what procedural mechanisms should exist to protect children when coaching is identified. As an interim measure, judges should consider giving direction to the parties in respect of the s 32 assessment process prior to the commencement of same. While this direction should explain the assessment process to the parties, it should specifically address the implications of parental coaching by either party and the significance of the in-camera rule.

**The qualifications, supervision and regulation of s 32 assessors**

All assessors interviewed emphasised the absence of robust qualifications and experience requirements for s 32 assessors. No legislative qualification requirements arise for s 32(1)(a) assessors. Although minimum requirements

arise for s 32(1)(b) assessors, these vary with regard to qualification level and consistency of relevant experience. No requirement exists for the continuing professional development or clinical supervision of s 32(1)(a) assessors. Furthermore, a centralised complaints mechanism or regulatory body for assessors does not exist.

All interviewees noted the correlation between a lack of expertise and poor practice in s 32 assessments. One assessor highlighted the crucial role of experience as well as relevant qualification. Particular reference was made to how such experience is drawn on in the court environment:

> *'I know more recently that a few social care workers have started doing assessments and I don't agree with that. I think it's not only about qualifications, it should be about experience ... If you end up in Court with the full legal suite of people lined out, applying pressure to normal people and if they're not exposed and trained in that specific area, you're going to have massive problems ... we've all seen it where people just buckle in the box.'*

Another interviewee highlighted the need for assessors to have knowledge of child-centric theories and models of best practice when assessing the welfare of the child. While the assessor accepts that social workers are likely to have such training, this is not a certainty across all professions who may be engaged to complete s 32 reports. In describing such training, the assessor pointed to the importance of training in attachment theory:

> *'Social workers will probably have ... training on attachment theory. I've done a Masters through my job and attachment is like a plug. There are three wires in the plug. The child is the wire and each parent is the other wires. When a wire's missing, the plug doesn't work right. Attachment affects brain development, affects your whole life ... Social workers generally need good attachment training.'*

Significant concern arose across all interviewees regarding the traumatic impact for a child where reassessment is required. The need for reassessment can be caused by a lack of assessor expertise or experience. As stated by one assessor:

> *'If you had a terrible assessor who you had serious questions over their practice the amount of damage that that [assessment] could potentially could do is actually quite frightening.'*

Reflecting on what a amounts to a 'good assessment', one assessor opined:

> *'I think as an assessor, a good assessment is one that doesn't necessarily need to be repeated. It's one that kind of stands the test of time. I don't think it's helpful for children to be ... constantly reassessed. I don't agree with that. I just think children need to be left to live their lives as best as possible. And a good assessment process is that where you get in and you get out with minimum disruption.'*

Another assessor highlighted that a competent assessor also has the ability and willingness to revisit and or/adapt their recommendations should there be a change in the circumstances of the relevant parties.

All interviewees recommended the establishment of a panel of assessors for the completion of 32 assessments. This panel would provide quality assurance in respect of assessor expertise and experience and provide for the regulation of all assessors. The establishment of a panel of assessors for the completion of s 32(1)(a) reports was recommended by the Department of Justice in 2024.[18] Such a panel has yet to be introduced. In the short term, one assessor recommended that judges and legal representatives should engage in greater scrutiny of the qualifications and experience of s 32 assessors prior to their appointment to a case. Highlighting the infrequency of such enquiries, the assessor reflected that they could not recall the last time that they were required to outline their relevant qualifications or experience to a legal representative or a court.

**Consistency of approach within the s 32 assessment process**

All assessors interviewed recognised a lack of

consistency in how s 32 assessments are conducted. Indeed, all three assessors appear to adopt differing approaches to assessment. One assessor commented that, in their view, a robust and effective assessment must involve visiting the child in the homes of both parents:

> *'You need to get out and see what it's like in that house. You need to see what it's like across both of those parents' houses.'*

Another assessor stated that they include quotations directly from the child in their report. However, the assessor noted that this approach is not favoured by other assessors. Regarding the legislative changes required to ensure a consistent approach across s 32 reports, one assessor advised that a reporting framework is needed. This suggested framework would detail what particular issues a s 32(1)(a) report should address:

> *'For a consistent model, I think there probably needs to be a framework that the judge or the court can require in order to make a determination. For example, what is the quality of parental contact? Are there any concerns in respect of each parent? ... Are there any welfare issues? So that the court can have a good understanding about the context in which this report is needed.'*

All assessors interviewed noted the importance of having all relevant information pertaining to the child's daily life both prior to and during the assessment process. This includes speaking with all agencies and services engaged with the child, including, schools, therapists and the Child and Family Agency. As stated by one assessor:

> *'You need to be looking at what else is happening in that child's life. How are they doing in school? Are they going to therapy? What does that therapist say about their progress?'*

Difficulties appear to arise when such information is not forthcoming. Interviewees reported experiences of being unable to secure background information from TUSLA[19] in respect of the child or parents refusing to allow such information to be provided. In this regard, all three assessors pointed to the importance of the parties' joint letter of instruction to the assessor prior to the commencement of the assessment process. All interviewees highlighted that where such letters address what information an assessor can access, delays in the assessment process can be avoided. One assessor explained:

> *'It would probably be really helpful if there was a template in terms of the letter of instruction and that it was dispatched out to all of the solicitors, so they knew exactly [what to include].'*

The assessor further suggested that the implementation of a standardised letter of instruction together with establishing a of panel of assessors would lead to extensive improvements in the assessment process:

> *'I would say with that [the establishments of a panel of assessors] and a standardised letter of instruction, we'd have a whole different climate.'*

Another assessor suggested that assessor's themselves should write to the parties' legal representatives upon appointment outlining what information they require and what enquiries they intend to carry out during the assessment process. This would allow both parties to decide, from the outset, whether they are prepared to fully engage with the manner in which the assessor intends to conduct the assessment.

**Fee structure for s 32 assessments**

All assessors interviewed raised concerns regarding the fees charged by s 32 assessors. The 2018 Regulations specify a fee structure for s 32(1)(b) reports.[20] The Department of Justice has previously highlighted that this fee structure acts as a disincentive for assessors in light of the level of work involved in completing such assessments and reports.[21] One assessor also expressed frustration with the fees paid by the Legal Aid Board in respect of s 32 assessments:

> *'It is (too low). I was with someone this morning and she came here, she came to meet me at half*

*nine and she walked out at twenty to twelve. Two hours and Ten minutes. She's legally aided so I will actually get peanuts for it.'*

A fee structure for s 32(1)(a) assessments and reports does not exist. As a result, assessors dictate their own fees with rates varying significantly between assessors. In circumstances where a dual-purpose report is ordered, assessors appear to dictate their own fees. Previous studies have highlighted that elevated assessor fees act as a significant obstacle to many parties seeking to obtain same.[22]

The legislative and regulatory gap in respect of assessor fees for all forms of s 32 reports was identified across all interviews. Whilst all three assessors expressed no objection to the introduction of a robust regulatory fee scheme, each described the need for adequate pay in light of the workload involved in such assessments and reports. As one assessor stated:

*'I have no difficulty with the fees being set, but they need to recognise the amount of work for the assessor.'*

**Recommendations for reform**

The legal, regulatory and procedural flaws pertaining to s 32 assessments are clear. The 2018 Regulations are ineffective in providing oversight and governance of s 32 assessments. The appointment, regulation, minimum qualifications and experience requirements for s 32 assessors all require legislative intervention. A centrally managed panel of s 32 assessors should be established to ensure assessor competency, availability, supervision and regulation. Furthermore, legislative guidelines are needed as to how s 32(1)(b) assessors can report concerns such as parental coaching. Such guidelines will help to ensure that the wishes and feelings of the child are conveyed to the court while not compromising child safety and welfare. A unified and adequate fee structure is also needed for all s 32 assessments. This will allow transparency and consistency across assessors and address the financial obstacles that many parties face in obtaining such reports.

Until such reforms are considered and implemented, practitioners play a central role in ensuring that the assessment process remains transparent and effective. The benefit of s 32(1)(b) reports should be considered prior to seeking the same along with the merits of obtaining a dual report. The contents of joint letters of instruction are imperative in ensuring expediency in the assessment process and avoiding unnecessary delays for families and children. Furthermore, in the absence of an expert panel of assessors, enquiries by legal representatives and the judiciary into the qualifications and experience of assessors are crucial in ascertaining the assessor's suitability prior to their appointment to a given case.

**Conclusion**

The empirical accounts of assessors reveal that s 32 reports currently operate within a disjointed regulatory regime. Robust safeguards for s 32(1)(b) reports sit alongside striking gaps in those applicable to reports completed pursuant to s 32(1)(a). The restrictive nature of s 32(1)(b) reports; the absence of comprehensive legislative guidelines for s 32(1)(a) reports; a lack of minimum qualifications and experience for assessors and inconsistent fee regimes all serve to undermine both the best interests of children and the voice of the child. The recommendations arising from a s 32 report can have profound and long-term consequences for the parties and their children. It therefore would be reasonable to assume that the procedural mandates, structures and systems regulating the completion of these reports would be regulated, supervised and transparent.[23]

**Notes**

1. See C O'Mahony and L O'Driscoll, The Voice of the Child in Private Family Law Proceedings: A Comparative Review', Child Law Clinic, School of Law, University College Cork, 2023. Department of Justice, Home Affairs and Migration, Review of the Role of Expert Reports in the Family Law Process, 2024. (Department of Justice, Home Affairs and Migration, Review of the Role of Expert Reports); C O'Mahony, Ascertaining the Views of Children in Guardianship, Custody

and Access Proceedings in Ireland, Child Law Clinic, School of Law, University College Cork, 2025. Available at: https://research.ucc.ie/en/publications/ascertaining-the-views-of-children-in-guardianship-custody-and-ac/ (O'Mahony, Ascertaining the Views of Children); S McCaughren and S Holt, 'Rethinking court-appointed experts as a medium through which to hear the voice of the child in family law cases' (2023) 26(4) Irish Journal of Family Law 77–83.
2. Three assessors were interviewed as part of the empirical research completed for this article. All three assessors are actively involved in s 32 assessments, and each have in excess of 10 years' professional experience in the areas of social work and child protection. Three of the assessors also act as guardian ad litem in childcare cases. Each interview was conducted according to a standardised question and answer format which incorporated eight areas for discussion. The identity of each assessor is anonymous.
3. Guardianship of Infants Act 1964, as amended by the Children and Family Relationships Act 2015.
4. Guardianship of Infants Act 1964, as amended by the Children and Family Relationships Act 2005, s 32(1)(a).
5. Guardianship of Infants Act 1964, as amended by the Children and Family Relationships Act 2005, s 32(1)(b).
6. 2018 Regulations, reg 3(1)(a). Available at: https://www.irishstatutebook.ie/eli/2018/si/587/made/en/print
7. 2018 Regulations, reg 3(2)(b).
8. 2018 Regulations, reg 3(1)(d).
9. 2018 Regulations, reg 3(1)(c).
10. 2018 Regulations, reg 3(1)(e).
11. 2018 Regulations, reg 3(2)(a).
12. 2018 Regulations, reg 3(2)(b).
13. D McGowan, 'Hopscotch hotchpotch', *Law Society Gazette*, 10 April 2020. Available at: https://www.lawsociety.ie/gazette/in-depth/voice-of-the-child
14. D McGowan, 'Hopscotch hotchpotch', *Law Society Gazette*, 10 April 2020. Available at: https://www.lawsociety.ie/gazette/in-depth/voice-of-the-child. See also, Courts Service of Ireland (2023), Practice Directions, District No. 20 Mallow, Fermoy & Midleton: In the matter of SECTION 32.1 (a/b) of the Guardianship of Infants Act 1964 & In the matter of S.I. 587 of 2018, DC25. Available at: https://courts.ie/practice-directions/full-practice-direction?id=6e8a5ca2-dbbf-40f8-a3eb-2b88752ad31e.
15. O'Mahony and O'Driscoll, *The Voice of the Child*, at p 20.
16. O'Mahony and O'Driscoll, *The Voice of the Child*, at p 20.
17. As stated, that scope depends on the form of report that has been ordered by the court, with s 32(1)(b) assessors being unable to share any opinion regarding the presence of parental coaching in their report.
18. See Department of Justice, Home Affairs and Migration, *Review of the Role of Expert Reports*, at p 50.
19. The Child and Family Agency.
20. 2018 Regulations, reg 7 provides that an assessor may charge a maximum fee of €240 where they '*ascertain the maturity of the child*' or if they '*ascertain whether or not the child is capable of forming his or her views on the relevant matters and reports to the court accordingly*'. Regulations 8 and 9 provide that the assessor may charge up to €325 if they ascertain the views of the child either generally or on any specific questions on which the court may seek the child's views, and furnish to the court a report, which shall put before the court any views expressed by the child in relation to the relevant matters. Regulation 10(b) provides that an assessor may also charge expenses for appearing as a witness in the proceedings, up to a maximum of €250. See https://www.irishstatutebook.ie/eli/2018/si/587/made/en/print.
21. Department of Justice, Home Affairs and Migration, *Review of the Role of Expert Reports*, at p 42.
22. O'Mahony and O'Driscoll, *The Voice of the Child*, at pp 21–22. Department of Justice, Home Affairs and Migration, *Review of the Role of Expert Reports*, pp 36–37. O'Mahony, Ascertaining the Views of Children, at p 19.
23. Sincerest thanks are extended to the assessors who engaged in the interviews as part of the completion of this article.

# We Set the Bar: Fighting for Equality, Empowerment and Change within the Legal Profession

## Jo Delahunty KC
## (Bristol University Press, 2026)

*By Sir James Munby*

*A fundamentally important book to be read by the leaders of the profession who for too long have tolerated the abuses and the failings it catalogues in such pitiless detail and by the politicians who for too long have starved the family justice system and the legal aid fund of the necessary resources. Read, and act!*

*An often angry and impassioned but sadly all too justifiable denunciation of what is so wrong with the Bar and the family justice system – the continuing failures to stamp out sexual harassment and to improve the position of women and ethnic minorities both at the Bar and on the Bench and the cost and corner cutting tolerated by those, including the judges, who ought to know better. A tremendously powerful read. Much of the time I did not know whether to weep or to rage. But the overall message is resolutely positive, delivered by someone who really understands what the Bar and the family justice system are actually about, and concluding with a detailed and very necessary call to arms.*

*What is so depressing is that it all still needs to be said – and the people who most need to read it probably won't.*

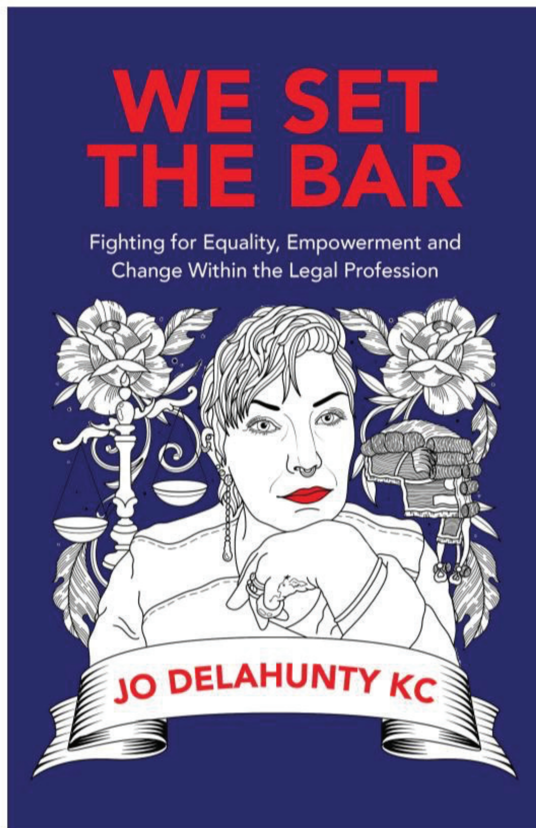
*The autobiographical sections give insights into the Bar over the last 40 years that will be of lasting value.*

Leslie Samuels KC | Pump Court Chambers, Chair of the FLBA

It is tempting to say too much in a book review, so that by the end of the review having rehearsed the narrative, the reader considers it unnecessary to read the book itself. I must try to avoid that temptation. This is a book that any barrister, aspiring barrister or anyone with an interest in the Bar and family justice *must* read.

Jo Delahunty KC is a force of nature. To know her is a joy, to argue with her less so. She is a phenomenal advocate, a giant of the Family Law Bar. Her forensic skills are second to none. She is the 'go to' advocate in cases where serious injury or abuse of children is alleged. In this book she has laid bare how she came to the Bar and the challenges that she and others have faced. She describes this book as her '*love letter to the legal aid Bar*'. To '*the fourth emergency service*'. To a justice system she loves and has devoted 40 years of her life to. A system she cares passionately about because it engages with those most disadvantaged within society.

The book begins by charting her journey to Oxford University and then the Bar. It is not a conventional journey. She describes growing up in East Finchley, the daughter of a mother abandoned by her father when she was 6 months pregnant. She sets out how by '*ambition, luck, doggedness and blissful ignorance*' she succeeded in obtaining a place at Oxford and then a pupillage, in a planning set. How she has been supported all the way first




by her mother and then '*The Boyfriend*' (now her husband Jonathan). She generously attributes her success, in part, to those who have befriended and supported her along the way. Many names will be familiar, some less so. She is kind about those who (misguidedly) attempted to discourage her or point her in other directions. She says *'The Bar didn't welcome me – it erected barriers against me'*.

Jo gives an accurate account of life in North London in the 1970s and early 1980s. A world where life chances were likely determined by your parentage, your class and your family's connections. A world where a woman's place was in the home bringing up the family and where career ambitions were limited traditional female roles such as teaching or secretarial work. Women could not obtain financial services such as mortgages, credit cards or HP agreements without the sponsorship of a man. She describes her political activism and despair at the social division which was a product of Thatcher's Britain. She railed against being asked to describe her father's occupation on an application form.

I would add that it was also a country that was deeply racist. It was a casual, entrenched racism passed intergenerationally and through peer groups. It was everywhere, in common language describing black people as 'N's' or popping down to the 'P' shop. It was on prime time television manifesting in shows such as the *Black and White Minstrel Show* or *Love Thy Neighbour*. It was a world (some may say with parallels to today) where racism had a measure of political and institutional support. Violence towards those perceived to be 'different' was never far from the surface. I was attacked in the street as a child for being 'different'. 'Those people' did not belong in the country, let alone at the Bar.

Jo looks at the system now for entry to the Bar. She rightly highlights the positive initiatives that have been put in place by her, and others, to encourage entry from all parts of the community, such as Bridging the Bar. She talks of the outreach work she undertakes, for example talking to students at schools. Remarkable given the demands of her practice, lecturing and writing. But she worries that the excess of demand over supply for pupillage continues to discriminate against those without connections or who have to earn money to fund their education and training.

As I read this, I wondered whether the steps we have taken at the Bar to promote fairness and equality have had unintended consequences and whether those consequences may be as bad as the

***"This is a book that any barrister, aspiring barrister or anyone with an interest in the Bar and family justice must read."***

***"The Bar didn't welcome me – it erected barriers against me."***

problems those initiatives were designed to tackle. The abolition of 4th and 7th term entry at Oxford and Cambridge, the expansion of the university sector, the introduction of funded pupillages, the BSB advertising requirements have all been introduced with the best of motives, but what has been the result? Only those with the highest exam grades can get into the top universities, but what of those who have ADHD like Jo or some other additional need? I would never have got into Cambridge had there not been 4th term entry, coming from a school that did not encourage university admission never mind Oxbridge. The expansion of the university sector has led to the student loan system, saddling our young with enormous (and growing) debt. Funding and advertising requirements mean that sets such as mine, which took five pupils when there were 30 tenants, now take four pupils when we are 120 strong.

Jo describes the work she does and some of the cases she has been involved in. The work of the family barrister requires her to become '*a mini expert*' in all sorts of disciplines. It requires her to cross examine those who are experts in their fields. Cross examination is a fundamental right for those that are accused and yet she is troubled that increasingly this is something '*we will have to fight for as it is a right that some judges are prepared to sacrifice on the altar of speed and brevity*'. She is worried that the Bar is now seen as not as '*problem solvers but problem makers*'. The work she undertakes is '*both a burden and a privilege*'. It is often grim. It takes its physical and emotional toil, on her and on others, as she puts her own health and wellbeing behind the interests of her client. She rightly recognises the work undertaken by Cyrus Larizadeh KC in campaigning for better recognition of the impact of stress on the Bar. She highlights the working hours of starting early in the morning (and sometimes in the middle of the night) and working through until late in the evening; the sacrifice involved for the barrister's own family; the battle with exhaustion and guilt; the mental health issues, substance abuse and self harm. All this when legal aid fees, ravaged by inflation, are worth half today of what they were when set 30 years ago. So why does she do it? Because the job of the family barrister '*is the most dynamic, passionate, life affirming, valuable, entertaining, energising and inspirational job one can possibly do*'. And why legal aid work? '*Because it is the ethical glue that holds our "justice" system together*'.

Jo is at her most passionate when she tells the stories of others who have come to the Bar, or survived at the Bar, against the odds. It is compelling reading. Passion turns to anger when she speaks of women who have suffered harassment, and often sexual harassment, from older men. These are women often at the beginning of their career when the power imbalance is most acute. She speaks of the reluctance of women to come forward fearing it will blight their careers and, even when they do, the '*slap on the wrist*' approach to men who perpetrate this abuse. These are problems not just of the past but also the present which '*blight the healthy development of our profession, and the young who aspire to join it*'. She describes the Bar as '*a petri dish for bullying and harassment*'.

Jo is not wrong in her description and analysis. I, alongside other men, are shamed by association with those who prey on the young and the vulnerable. We have all heard (and on occasion witnessed) what Jo has experienced and heard. Jo is right when she says we all have a duty to act and '*Set the Bar*'.

Jo then turns her attention to the power dynamic inside the courtroom. To the small minority of judges who abuse their positions of power to bully, belittle and undermine advocates. Quoting Judith Trustman, who wrote about this in 2018 in *Counsel* magazine, she explores what bullying in this context means:

***"Jo reminds us of the path women have had to tread towards emancipation and equality, to be allowed to practice at the Bar and on the Bench, but also how far there is to go."***

> *'behaviours such as shouting at counsel, deliberately saying things to embarrass or humiliate them; asking them to justify themselves in circumstances that are unfair; unfairly calling into question their professionalism; accusing them of incompetence; using various facial expressions to demean or intimidate them; refusing to give them time to formulate an argument or response in circumstances where it is unfair to them and their client to do so.'*

She talks of the demeaning and morale-sapping impact of that behaviour on the advocate (particularly when coupled with the exhaustion, guilt and lack of proper remuneration). The impact that a complaint, or even suggestion of a complaint, may have upon that barrister's future career path. But worse, the potential impact on the dynamics of the case. The barrister who experiences this losing confidence in their own abilities, the client who witnesses it looking to appease the angry judge and the barrister and client on the other side emboldened to take a stance or make submissions they otherwise might not have.

In her concluding chapters Jo reminds us of the path women have had to tread towards emancipation and equality, to be allowed to practice at the Bar and on the Bench, but also how far there is to go to achieve parity of income and opportunity. It is no different for black barristers or disabled barristers or those from socially disadvantaged groups. She celebrates *'Champions for Change'* such as the past Chair of the Bar, Barbara Mills KC, and the current Chair, Kirsty Brimelow KC. She celebrates those sets that have promoted initiatives to advance diversity and inclusion, and those barristers who are role models for aspiring barristers. She celebrates the individuality that diversity brings to the profession. She sets out her call for action for all leaders across the Bar.

Jo's final words are reserved for the family justice system itself and the impact this has had upon her physically, emotionally and intellectually:

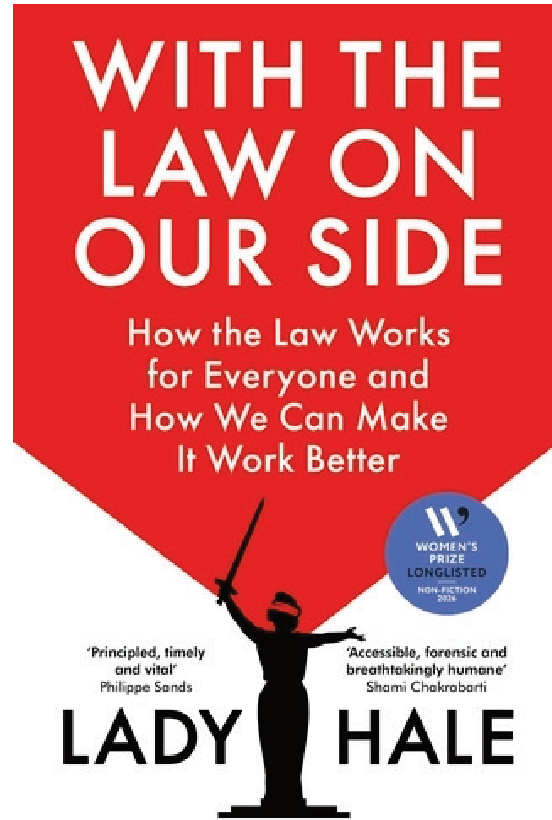
> *'I am tired. Tired of having to fight harder and more often for what I believe to be the unarguable and inalienable rights for the families I represent to have a trial that reflects the seriousness of the consequences for them. I am tired from the relentless volume of the material I have to consume to get to the bones of the case. I am tired of the sleepless nights worrying about emails I have not replied to, the skeleton arguments I have yet to write, the cross-examination lines yet to finesse. I am tired of the travel away from home. I am tired of waiting to be paid for work done many years ago, upon which I pay tax as an aged debt, but have no idea when the funds will be mine, losing value all the time I wait. I am tired of being a post-menopausal woman whose body is slacker and slower than my brain is.*
> *I am tired of it all, except the buzz and the prospect of success. For reasons that defy logic I cannot give up the Bar.'*

This is a book that needs to be read. And when you have read it, read it again.

# With the Law on Our Side

## Lady Hale (Bodley Head, 2025)

Emily Otvos | Pupil Barrister at 4PB




Even Lady Hale could not have predicted that the launch of *With the Law on Our Side* would coincide with the most significant overhauling of the justice system in a generation. The government's attack on jury trials is but the latest proposed remedy attempting to plaster over the repeated cuts to the system during the last 15 years. Exposing this political reality lies at the heart of Lady Hale's book: amidst the captivating personal stories of cases in courts and tribunals up and down the country runs a prevailing narrative of despair at a system starved of the resources it needs to function.

This sorry state of affairs comes as no surprise to lawyers, who are all too familiar with ever-mounting backlogs, overflowing prisons and the exponential numbers of litigants in person. But lawyers are not the principal target readership of Lady Hale's book. Rather, her '*citizen's guidebook to the law*' aims to demystify the inner workings of our complex legal system primarily for those who may think it will never concern them. Seeking instead to dispel this '*out of sight out of mind*' mentality, Lady Hale implores a need to care deeply about and fight for maintaining a legal framework which is '*important to each and every one of us*'.

**"[Lady Hale's] '***citizen's guidebook to the law***' aims to demystify the inner workings of our complex legal system primarily for those who may think it will never concern them."**

In the first part of the book, Lady Hale takes the reader on her journey up and down the country, from the illustrious Royal Courts of Justice to Middlesbrough's Combined Court Centre, from Employment and Social Security tribunals to local magistrates' courts in York, observing the proceedings as a lay member of the public. We are invited to sit alongside her and are provided a window into the run-of-the-mill cases which will never make headlines. The unfairly dismissed claimant who had been watched on CCTV at work by her employer, the victim of a major road traffic

***"If not 'ours' whose 'side' is the law really on?"***

accident fighting for his disability benefits, the 6-year-old car crash victim seeking damages from her mother's insurance. The stories are raw and real, their characters all united by some aspect of vulnerability – of age, income, mental health needs or power imbalances – which, despite best efforts, is not always adequately accommodated by the court's structures.

Lady Hale's innate ability to generate a sense of understanding for the seemingly least deserving is clear – the drug dealer, the radicalised young adult bombmaker, the alleged perpetrator of domestic violence against whom a non-molestation order has been made. She reinforces the need for judges to examine the circumstances of the person beyond the claim/crime and gives an insight into how she approached those before her when on the bench. Whilst she remarks that the magistrates she observes in the Family Court are '*doing a good job*', her experience does not include the all too familiar issues of reallocation and lack of jurisdiction, nor concerns regarding proposals for the expansion of the use of volunteer magistrates who largely derive from a similar class and ethnic pool, with potential consequences of bias.

In the second part, Lady Hale maps the ways in which the law has developed to protect and promote the rights of specific groups in society: school children, disabled people, LGBTQ+ people, workers, women and medical patients. These developments have produced a number of the basic laws which govern our daily lives – the primacy of wheelchairs versus buggies on buses, the right to sue your healthcare provider, equal pay, part-time workers' access to pension schemes, etc. Each chapter follows the same structure – a handful of stories from seminal cases summated clearly and captivatingly, before turning the onus onto the reader through a series of questions inviting us to consider what we would decide and why, only then revealing the case outcome. This not only allows the reader to glean the key legal principle determined, but also provides a glimpse into the judicial decision-making Lady Hale undertook throughout her career – and how she approached the cases before her with consistent fairness, honesty and care.

The last part situates our current system within its long jurisprudence, examining how the structures of our tripartite executive, legislative and judiciary sometimes function cohesively together and sometimes at high points of clash. Lady Hale's stark warning that those in power '*seem to have forgotten the rule of law is a two-way street*' follows an outlining of recent governmental attempts to circumvent enshrined lawmaking procedures, many of which Lady Hale herself was centrally involved in – from the proroguing of Parliament to the Rwanda Bill.

With the prevalence of such attempts, it can be tempting to question: if not 'ours' whose 'side' is the law really on? Who does it favour and who does it oppress? Do most people feel the law is indeed on their side? In such a polarising political environment, this book makes clear just how fragile the rights we hold central are, how quickly they can be taken away, and how legal knowledge and understanding is fundamental to ensuring their protection.

# A Lament for Bordeaux

Michael Sternberg OBE KC | 4PB

Consumption of red Bordeaux in the UK has fallen by something approaching 40% over the past 25 years. This fact is usually presented as a footnote to a discussion about 'changing lifestyles', which is a modern way of saying that people have decided to stop doing something enjoyable and are terribly keen to believe it makes them better.

One sees the change most clearly in restaurants. The last time a sommelier recommended a top-growth Bordeaux to me, he did so in the tone which one might use when suggesting a cigar to a non-smoker. His voice dropped. He warned me that it was 'rather full-bodied' and 'not inexpensive,' and added, helpfully, he thought, that many guests now preferred something 'lighter'. This was said with the air of a man trying to save me from a small but embarrassing mistake.

I ordered it anyway, partly out of contrariness and partly because I wanted to see what would happen. The bottle was produced with all the usual ceremony. It was decanted, tasted and we all approved. Then it sat there, like an overdressed guest at a barbecue. Nothing was wrong with the wine. Nothing was wrong with the service. But the wine was no longer in charge of the evening. It had been demoted, hanging a bit like a masterpiece in a corridor.

This would have puzzled the people who made it. The good wines of Bordeaux were created by vignerons who assumed that time existed and that people would use it. They expected the drinker to wait, to listen, and to adjust himself to the wine rather than the other way round. A serious claret was not designed to be 'fitted in'. It was designed to take over.

*Jeremiah Lamenting the Destruction of Jerusalem* by Rembrandt van Rijn c. 1630.

To lay down a case of Bordeaux or even buy a single bottle was usually therefore not just an economic act. It was a declaration of faith – in your own future, in the stability of dinner, and in the idea that tradition was rewarding. These wines were slow because seriousness is slow. They did not flatter the impatient. They improved, stubbornly, while you did other things.

Taste, in those days, was not improvised weekly. It was learned and handed on. Most drank claret not only because they liked it, but also because they understood that with the right foods it was a delicious thing to like. This did not prevent pleasure; it organised it.

After about 2016, a different moral tone set in. Appetite became suspect. Desire had to justify itself. With drugs to suppress hunger, diets to suppress joy, and a growing industry devoted to removing alcohol from drinks, which by the way exist largely because alcohol exists, the aim became clear: pleasure without consequences.

*"Pleasure which must apologise in advance is rarely worth the effort."*

This is said to be healthy. Perhaps it is. But it is also dull. Pleasure which must apologise in advance is rarely worth the effort. Bordeaux does not apologise. It contains alcohol. It has tannin; it has calories; taken to excess it gives you a really bad hangover. And it also asks you to slow down and sit still. In the present climate, this may count as a provocation.

The decline in consumption sadly has not spared the lesser wines either. Along with the famous châteaux, the French wines which people used to drink almost without thinking about it have started to disappear: the cru bourgeois, the Bordeaux Supérieur, the Cahors, the plain wines that once appeared on everyday tables because that was where they belonged. These were not luxury items. They were habits. Their disappearance marks not refinement, but nervousness. A society which no longer drinks ordinary French wines has not become sophisticated. It has become unsure of itself. Is anything lost? Obviously. But it let me point you to two bottles which might just remind you what claret is for.

Take **Château Poujeaux 2015**. It is not a show-off wine. It does not shout nor posture. It tastes of blackcurrant, tobacco and something pleasantly mineral. It has grip, but not aggression. You can drink it now, or you may leave it alone for a few years without any fear. It behaves like wine used to behave and it's good value at **£30** a bottle from the Wine Society, which by the way includes duty, VAT and delivery.

Or, also from the Wine Society, consider **Château Verdignan, Haut-Médoc 2010**. This comes from a really strong vintage and has matured sensibly. It has dark fruit, structure and a clear sense that it comes from somewhere in particular. It costs less (**£23**) than many bottles which pretend to be interesting just by being a bit different. It's a steal – please buy it and see.

Neither wine claims to be revolutionary. Neither asks for indulgence. They merely ask to be drunk, and you will enjoy them, I promise you.

Much is now made of 'lightness'. Lighter bodies, lighter meals, lighter wines. Even experience itself has been put on a diet. Drinks are designed to refresh briefly and then to disappear politely. You finish your glass and you move on, untouched.

Bordeaux was never designed to disappear. It lingered. It altered the evening. It assumed that dinner was something to engage with, not to escape from. This BTW is now in some quarters described as 'heavy'.

What has changed is not consumption but nerve. The modern drinker wants control at all times. The drinker wants pleasure with an exit strategy. Great wine does not offer one. It requires you to give up managing yourself for only a while and pay attention. So, for the moment, good Bordeaux waits. It has not been rejected. It has simply been postponed in favour of things which ask less and give even less in return.

Bordeaux will certainly survive as an occasional indulgence, to be brought out when something important happens, and that would not be a disgrace. These wines were never meant for people in a hurry.

Perhaps one evening in the 2030s, when health advice has contradicted itself for the fiftieth time and 'lightness' has begun to pall, someone will order a proper claret – maybe a Pontet Canet or a Pichon Baron without any explanation and discover that actually nothing terrible happens. Until then, the silence will be striking. And my learned friends, this tells you more about us than it does about the wine.

# Christmas Quiz: Answers

**In the news during 2025**

1) P L 14 e = Pope Leo XIV elected
2) 204 v t i Y S Y = 204 votes to impeach Yoon Suk Yeol
3) 0T h t r w 35.8 d C i F,K = The highest temperature recorded was 35.8 degrees Celsius in Faversham, Kent
4) 39 p c t f S = 39 per cent tariffs for Switzerland
5) T U K r P a a s s o 21 S = The United Kingdom recognised Palestine as a sovereign state on 21st September
6) 19 c i C T = 19 celebrities in Celebrity Traitors
7) C C b t 10 P o I = Catherine Connolly became the 10th President of Ireland
8) A w 5 O = Anora won 5 Oscars
9) A M M i 1 h a 41 m l = A Minecraft Movie is 1 hour and 41 minutes long
10) K D H h o 325,000,000 v = KPop Demon Hunters has over 325,000,000 views
11) K L p a S B 59 = Kendrick Lamar performed at Super Bowl LIX
12) O O d a 76 Ozzy Osbourne died aged 76
13) T L o a S i T S 12 s a = The Life of a Showgirl is Taylor Swift's 12th studio album
14) M A s i t 96 m a I = Michelle Agyemang scored in the 96th minute against Italy
15) S W h w 3 W E i a r = Sarina Wiegman has won 3 Women's Euros in a row
16) 48 t a t W C n y = 48 teams at the World Cup next year
17) o 2,000,000 p a t N H C = Over 2,000,000 people attended the Notting Hill Carnival

**Geography, Science & Nature**

18) S a I r t b n t M i 2023 = Switzerland and Italy redrew their borders near the Matterhorn in 2023
19) H h 8 m i = Hawaii has 8 major islands
20) P s 2 c u s i 1903 = Panama spanned 2 continents until secession in 1903
21) L i t o c t l e a 4000 f = Lesotho is the only country that lies entirely above 4000 feet
22) C B d t s o M i 2 = Chesapeake Bay divides the state of Maryland into 2
23) F i k a t L o 1000 l = Finland is known as the Land of 1000 lakes
24) t M i m a f t E b 4 c p y = the Moon is moving away from the Earth by 4 centimeters per year
25) O h 3 h = Octopuses have 3 hearts
26) t b B i t W h a 31 c w = The biggest Butterfly in the World has a 31 centimeter wingspan
27) a b h 300 b, a a h 206 b = a baby has 300 bones, an adult has 206 bones
28) S t 4 t f i w t i a = Sound travels 4 times faster in water than in air
29) w c 70 p o p E = water covers 70 percent of planet Earth
30) H h 23 p o c = Humans have 23 pairs of chromosomes
31) 0.001m i a m = 0.001 meters is a millimeter
32) 2 G G a2 I G I t S S = 2 Gas Giants and 2 Ice Giants in the Solar System
33) E n I a 2.718 π r i a s l = Euler's number is approximately 2.718 π radians in a straight line
34) 4 g a: H, O, G a C = 4 great apes: Humans, Orangutans, Gorillas and Chimpanzees
35) 6 q: u, d, s, c, b a t = 6 quarks: up, down, strange, charm, bottom and top
36) 7 N g: H, N, A, K, X, R a O = 7 Noble gases: Helium, Neon, Argon, Krypton, Xenon, Radon and Oganesson
37) T a n o O i 8 = The atomic number of Oxygen is 8

**Films**

38) L, S a 2 S B = Lock, Stock and 2 Smoking Barrels
39) P 2 = Paddington 2
40) 3 C: R = Three Colours: Red
41) L o π = Life of Pi
42) 4 W a a F = Four Weddings and a Funeral
43) C f 5 t 7 (C d 5 a 7) = Cleo from 5 to 7 (Cleo de 5 a 7)
44) 8 M = 8 Mile
45) 45 D 9 = District 9
46) 10 T I H A Y = 10 Things I Hate About You
47) O 11 = Ocean's Eleven
48) 12 Y a S = 12 Years a Slave
49) 24 H P P = 24 Hour Party People
50) 28 D L = 28 Days Later
51) T 400 B (L q c c) = The 400 Blows (Les quatre cents coups)
52) (500) D o S = (500) Days of Summer

**General**

53) 26 s i t 2012 L O = 26 sites in the 2012 London Olympics
54) 8 f i a m = 8 furlongs in a mile
55) a s h 8 1 = a spider has 8 legs
56) 12 m o a j = 12 members of a jury
57) 26 l o t a = 26 letters of the alphabet
58) 8 k o E c H = 8 kings of England called Henry
59) 13 s o t A f = 13 stripes on the American flag
60) 24 t z = 24 time zones
61) 1 w s = 1 way street
62) 12 n o a c f = 12 numbers on a clock face
63) 225 s o a S b = 225 squares on a Scrabble board
64) 6 p o a p t = 6 pockets on a pool table
65) 7 a o m = 7 ages of man
66) 10 C = 10 Commandments
67) 21 g s = 21 gun salute
68) 5 l i a l = 5 lines in a limerick
69) 90 d i a r a = 90 degrees in a right angle
70) 101 d i F = 101 departments in France
71) m t 330 d I H = more than 330 departments in Harrods

72) 4 q i a G = 4 quarts in a Gallon
73) A n o g i 79 = Atomic number of gold is 79
74) H M S V i a 104 g s = HMS Victory is a 104 gun ship
75) a d h 1 h = a dromedary has 1 hump
76) a b h 2 h = a bactrian has 2 humps
77) T e p t 13 c = The equator passes through 13 countries
78) 20 b i a N = 20 bottles in a Nebuchanezzar
79) 16 p o a c b = 16 pawns on a chess board

**Links & Sequences: from music, mathematics, sport, politics & law**

80) ***Which first name is missing from this group of names: Victoria, Geri, Emma, Mel and ?***
*Mel, members of the Spice Girls*
81) ***Which country is missing from this group: Belgium France, Germany, Italy, Netherlands and ?***
*Luxembourg, founder members of the EU*
82) ***What is the missing first name in the sequence: Brandon, Dominic, Alex, ? and David***
*Shabana, recent Lord Chancellors*
83) ***Which first name is missing from this group of names: Greg, Charlotte, James and ?***
*Leslie, Elected Executive Officers of the FLBA as at Christmas 2025*
84) ***What is the next number in the sequence: 13, 21, 34, 55 and ?***
*89, the Fibonacci sequence*
85) 85 Which first name is missing from this group of names: Ruth, Emma, Alistair, Frances, Gwynneth, Sarah, Nicholas and ? Sonia, Family Presiding Judges
86) ***What is the next first name in the sequence: Ralf, Erik, Ruud and ?***
*Ruben, Manchester United Managers*
87) ***What is the next number in the sequence: 139469, 173854 and ?***
*234096, salaries of DJ, CJ & HCJ in £ in 2025/26*
88) ***What is the next first name in the sequence: Andrew, James, Nicholas, Mark, and ?***
*Elizabeth, Presidents of the Family Division, going backwards*
89) ***What is the next number in the sequence: 258, 232, 262, 202 and ?***
*411, Labour seats at successive general elections*
90) ***What is the next first name in the sequence: Chris, Dylan, Owen, Jamie and ?***
*Maro, English Rugby union Captains*
91) ***What is the next number in the sequence: 2253, 1106, 1139, 49 and ?***
*619, recent PMs number of days in office*
92) ***Which first name is missing from this group of names: Edward, Richard, Timothy, Rebecca and ?***
*Thomas, Counsel in the UKSC in Standish*
93) ***Which is the missing first name in the sequence: Robert, Arthur, Henry, ? and David***
*Herbert Asquith, early 20th century PMs*
94) ***Which first name is missing from this group of names: Tito, Jermaine, Jackie, Marlon and ?***
*Michael, Jackson 5*
95) ***What is the next number in the sequence: 800, 708, 704, 619 and ?***
*604, top five test match wicket takers*
96) ***What is the next first name in the sequence: George, John, Stephen and ?***
*Elizabeth, Presidents of the Family Division, going forwards*
97) ***What is the next first name in the sequence: Spencer, Frank, John, William and ?***
*Herbert, the first Wimbledon singles winners*
98) ***Which country is missing from this group: France, Germany, Italy, Spain and ?***
*England, World cup winners from Europe*
99) ***Which first name is missing from this group of names: Donald, Robin, David, Brian and ?***
*Lennie, Members of the House of Lords in White v White*
100) ***What is the next number in the sequence: minus 15, minus 20, minus13, minus 9 and ?***
*Minus 17, sub-par scores to win the last five British Golf opens*

# Crossword No. 60

## *Weather changes moods…. So bloomin' get on with the Spring Crossword*

***by Pippa 'N' Kumar***

We are grateful, once again, to Pippa n' Kumar for this issue's crossword. The answers to the current crossword should be sent to the Family Affairs editors (faeditors@flba.co.uk) by 4 pm on Friday 22 May 2026. As usual the prize for the winner will be a half case of claret.

The winner of the last crossword competition was (again):

***Hugh Merry of 12CP, Southampton***

A half case of claret has been sent to him.

| 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ■ | | ■ | | ■ | | ■ | | ■ | | ■ | |
| 8 | | | | | ■ | 9 | | | | | | |
| | ■ | | ■ | | ■ | | ■ | ■ | ■ | | ■ | |
| 10 | | | ■ | 11 | | | | 12 | | | | |
| | ■ | | ■ | | ■ | | ■ | | ■ | ■ | ■ | |
| 13 | | | | | | ■ | 14 | | | 15 | | |
| | ■ | ■ | ■ | | ■ | 16 | ■ | | ■ | | ■ | |
| 17 | | 18 | | | | | | | ■ | 19 | | |
| | ■ | | ■ | ■ | ■ | | ■ | | ■ | | ■ | |
| 20 | | | | 21 | | | ■ | 22 | | | | |
| | ■ | | ■ | | ■ | | ■ | | ■ | | ■ | |
| 23 | | | | | | | | | | | | ■ |

**Across**

1. As I film affray… shaking…. This is in your hands now! (6, 7)
8. Texas family, for example, about gain (5)
9. In the heart of Bangor, I'll assume, lies a creature (7)
10. Spot atomic number before computer studies! (3)
11. Began short, awful read. Used to preserve memories… (9)
13. Unexceptional, and not postgraduate learner! (6)
14. Democratic representative backed capital growth that's no longer straight? (6)
17. Indefinitely signed off after this university (4-5)
19. Took the prize back at once! (3)
20. American prosecutor by desk? Age can be verified! (7)
22. I can be found in the seated area of church…. innocent (5)
23. What landlord does smashing up espresso sign (12)

Down

1. Ford Energizer! Redesign necessary to stop slippery movements! (8, 5)
2. Fellow with nothing inside is more sweaty. (7)
3. Part of sporting fixture delayed? Lay down… (9)
4. Inflames French city (6)
5. German for coat? (3)
6. Dwelling can be seen up in cool gite! (5)
7. Judgment starts: "Some trusts are constructive. Kernott (varying) determines ownership when declarations express nothing." (5, 1, 6)
12. Sends email or text message about boss which set out the case (9)
15. A short hearing, say (7)
16. Stick poster in this place (6)
18. Prevent from asserting French is short for work? (5)
21. Coach an extra player up! (3)

# Solution | No. 59

| 1 L | O | 2 C | U | 3 S | ■ | 4 C | H | 5 R | I | 6 S | T | 7 M | A | 8 S |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| O | ■ | O | ■ | Q | ■ | R | ■ | I | ■ | A | ■ | O | ■ | E |
| 9 N | U | R | T | U | R | I | N | G | ■ | 10 V | A | L | E | T |
| G | ■ | ■ | ■ | A | ■ | T | ■ | H | ■ | I | ■ | E | ■ | S |
| 11 J | U | 12 R | I | S | D | I | C | T | I | O | N | S | ■ | ■ |
| U | ■ | E | ■ | H | ■ | C | ■ | ■ | ■ | U | ■ | T | ■ | 13 R |
| 14 M | U | L | E | ■ | 15 D | I | N | 16 N | E | R | W | A | R | E |
| P | ■ | U | ■ | 17 S | ■ | S | ■ | O | ■ | S | ■ | T | ■ | F |
| 18 E | X | C | I | T | E | M | E | N | T | ■ | 19 P | I | E | R |
| R | ■ | T | ■ | A | ■ | ■ | ■ | A | ■ | 20 S | ■ | O | ■ | E |
| ■ | ■ | 21 A | N | N | O | 22 U | N | C | E | M | E | N | T | S |
| 23 B | ■ | N | ■ | D | ■ | N | ■ | I | ■ | A | ■ | ■ | ■ | H |
| 24 L | A | T | H | I | ■ | 25 M | A | D | E | L | E | 26 I | N | E |
| I | ■ | L | ■ | S | ■ | E | ■ | I | ■ | L | ■ | L | ■ | R |
| 27 P | S | Y | C | H | O | T | I | C | ■ | 28 S | I | L | K | S |