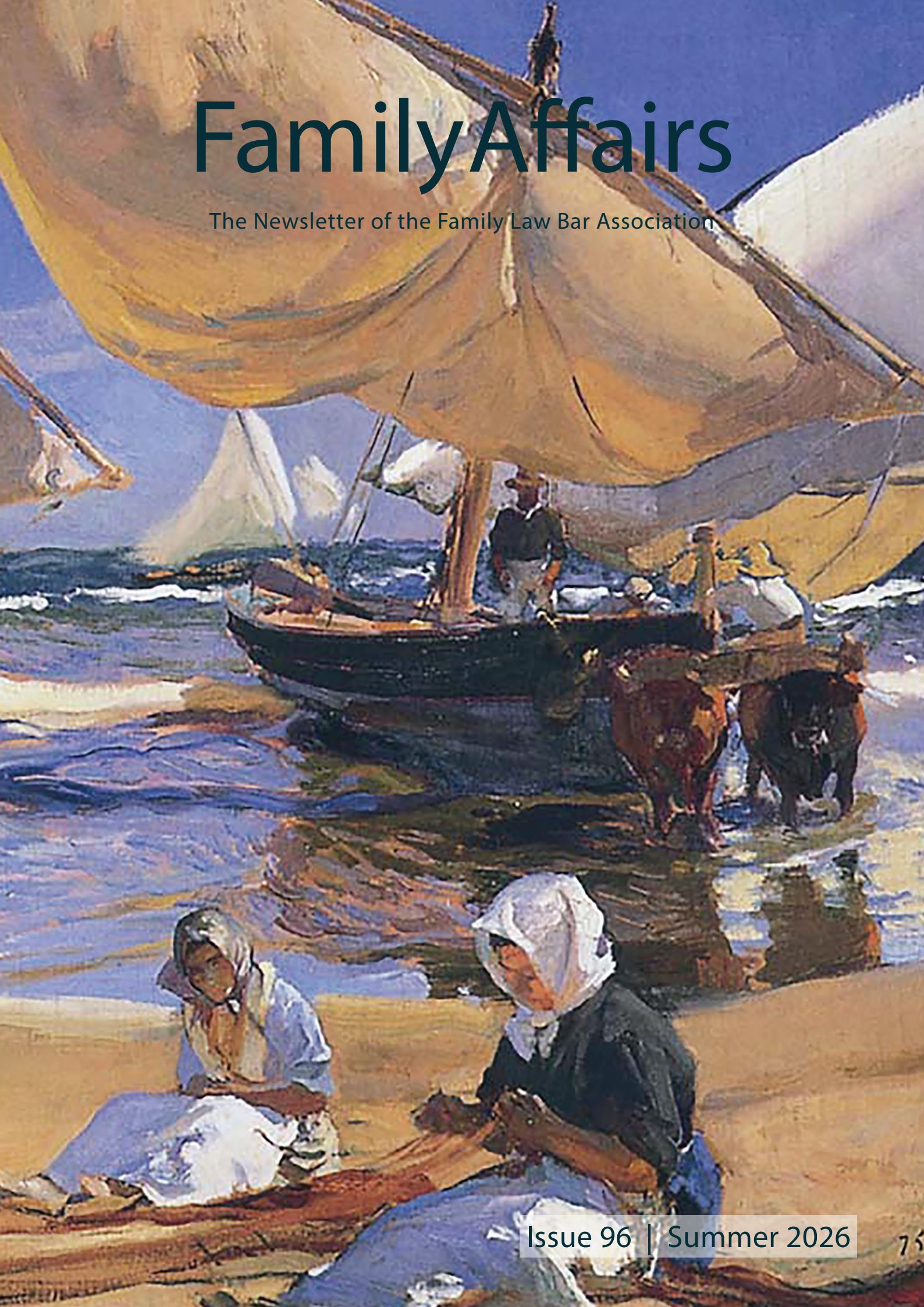


FamilyAffairs

The Newsletter of the Family Law Bar Association



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Editorial

Kate Burnell KC and
Samantha Hillas KC | Editors

'Summer afternoon – summer afternoon; to me those have always been the two most beautiful words in the English language.' (Henry James)

We opened our first ever *Family Affairs* editorial column with an LM Montgomery quotation about spring. Following with this quotation from Henry James seems apt on a number of levels: our second issue is both full of beautiful words and includes a write up of the FLBA's garden party on 26 June – the first of many (we hope) glorious afternoons as we head into summer.

Those '*beautiful words*' in this issue of *Family Affairs* are not ours. They belong to our contributors, to whom we offer our profuse thanks. As you will read in our editorial note which follows Sir James Munby's final piece for *Family Affairs* and to quote another renowned wordsmith (Sir Nicholas Mostyn), '*It is a tragedy that this rich vein now comes to an end*'. But from tragedy must emerge growth and we are blessed that a number of brilliant writers have stepped up, added to their already over-burdened workloads and provided us with some fantastic articles in this issue of *Family Affairs*.

Our thanks, too, to John Wilson KC for selecting an equally apt cover for our Summer issue: Joaquín Sorolla's *On the Beach at Valencia*, a favourite of John and Sue's. It oozes with those essential summer ingredients of sun, sea and sand and should put us in the mood for the long break even if most of us will likely be spending it running out of options to entertain the kids, catching up on tasks our pre-summer diaries have prevented us completing, or getting ahead of next term's busy calendar.

The summer vacation can offer most of us, if not all, the chance to reset and hopefully enjoy some good weather. It is important that we do so. Life at the coalface of the family Bar is not easy. Vicarious trauma is real. The demands of the day job are ever increasing; for some, those demands can become almost unmanageable. We can neglect our own emotional and physical health, we can neglect our families and friends and we can become short tempered or badly behaved (without meaning to) towards our colleagues, adding to their burdens. None of you need us to say that our work is important. Nor do you need reminding that our work is hard. It is also hugely



rewarding, it is interesting (and too many of us don't know what else we would do). Shelley Glaister-Young's article in this issue is an essential read. As we head into the summer break it is a timely reminder of what has changed – some for the better and some for the worse. Perhaps the summer break is an opportunity for us all to think about how we can make changes to benefit ourselves, our friends and family, our colleagues and our clients and make the family justice system better. Lying in the sun (or however you choose to relax) can be a good opportunity to see the bigger picture – we hope you take the time to do so.

Whatever your plans for this summer, we hope reading this issue of *Family Affairs* will feature somewhere. We would love you to share with us photographs of *Family Affairs* in far flung or other interesting places and may make a feature of them in the Winter issue when the endless days of sun are behind us (so more *Family Affairs* and fewer skimpy bikinis, please).

We hope featuring also in the Winter issue will be our long-awaited interview with Sir Andrew McFarlane as well as the usual case law updates, regional round ups and book reviews.

Welcome also are any ideas for future articles for *Family Affairs*. The FLBA has a huge membership and we know (from experience!) that many of you have loud voices and are capable, too, of generating many beautiful words. We would love to hear from you.

Happy reading.

Kate and Sam

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Chair's Column

Leslie Samuels KC | Chair of the FLBA

Well, if I thought the first few months of my term of office were busy, the last few months have surpassed that!

I must start with a list of 'thank you's'. The Spring issue of *Family Affairs* was magnificent. I am so grateful to Kate Burnell KC, Sam Hillas KC and the whole FA team for the work that went into this. Like the previous editions, edited by John Wilson KC and Philip Cayford KC, *Family Affairs* remains something that the FLBA can be genuinely proud of. I look forward to reading this Summer issue.

When I say I have been busy, I have not been alone in that. 'The Famous Five' WhatsApp Group (Lucy Reed KC, Tahmina Rahman, Greg Williams, our brilliant administrator Antje Barnes and me) pings many times a day, alongside the emails and individual contacts. I simply could not do this without the support and hard work of each of them.

Our first Cumberland Lodge (8-10 May) was a wonderful event. Set in Windsor Great Park, the weather (mostly) remained good and it was lovely to spend time in the gardens and surrounding countryside as well as in the lecture hall. Tahmina's programme was fantastic. We were delighted to be joined by Baroness Hilary Cass as our headline speaker alongside a first outing for our new President Sir Stephen Cobb. I am sure you will read a fuller description of the event elsewhere in this issue.



Another highlight was the opportunity to welcome Sir Stephen, on behalf of the Family Bar, at his swearing in at the Lady Chief Justice's Court on 14 May. A packed court, with many more online, were there to celebrate this fabulous occasion and to mark his meteoric rise to this position. I am pleased to say that Sir Stephen, the 9th President of the Family Division, was successfully sworn in and so is now fully in post.

At an equally memorable event, Sir Andrew McFarlane's valedictory took place at the same court on 30 March. As I said in my previous Chair's Column, Sir Andrew's judgments, guidance and 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.

We held an open meeting of the FLBA on 2 June to discuss the issue of fees (and we are

planning a follow up meeting as I write this). Many of you attended on 2 June and I hope found the information Lucy and I were able to provide helpful and thought provoking. Unsurprisingly, those who attended expressed strong opinions on the subject and there was a healthy discussion about the options available to us. As a first step, the Chair of the Bar, Kirsty Brimelow KC, has agreed to write to ministers on our behalf and that letter will have been sent (and hopefully replied to) by the time you read this column.

I have spoken individually and collectively to the leaders of other professional groups on this issue, including the judiciary. On each such occasion I emphasise the problems with the current fee schemes including, importantly, the lack of any inflationary uplift and the increasing amounts of unremunerated or poorly remunerated work. I am grateful to Dr Rose Holmes whose ongoing research through the Bar Council is beginning to identify how, in many respects, family legal aid work is now more poorly remunerated than criminal legal aid work. Our focus going forward will be on getting this message across to decision makers within the Ministry of Justice and government.

As I was writing this column, I was momentarily distracted by the June 2026 issue of *Counsel* magazine. Our very own Sam Hillas KC is on the front cover, and on reading her article I was struck by the following comments when she was talking about a colleague, who 'gets the ick' when people talk about 'being kind' at the family bar:

'Her second objection is that the legal aid Bar is completely knackered – burnt out and suffering from compassion fatigue. She resents the innumerable initiatives that put the onus on the exhausted lawyers to improve their wellbeing by "being kind" when they have just enough energy to get through the day as it is. I don't think she is wrong about this either. If we want a justice system populated by advocates who make thoughtful accommodations and care beyond just getting the job done then they have to be paid properly.'

With powerful advocates like Sam making these important points, it makes the task of the FLBA in raising the profile of fee issues so much easier.

Our subcommittees remain very active and I am enormously grateful for the hard work of their Chairs and those who otherwise contribute to committee work. We have produced consultation responses in the last few months on a diverse range of issues, including the use of artificial intelligence, social media use by children, transparency, new proposals relating to urgent public law applications and newborn babies, and proposals to remove parental responsibility (Jade's law). This would not be possible without teams of barristers willing to give up their free time, inevitably at evenings and weekends, to get to grips with the issues and produce a reasoned response. I know from speaking to those who receive our consultation responses how valued they are.

Jack McCabe and his excellent young bar subcommittee ran two workshops, the first on personal financial planning and the second on career progression 'from the bar to the bench'. Both events were well received and I am grateful to all those who spoke.

Our vulnerable witness training continues apace, as ever led by Siân Smith, Lorraine Cavanagh KC and Alison Moore. The next sessions will be in London on 10 October 2026, Manchester on 14 November 2026 and Birmingham on 5 December 2026. If you have not yet completed the training, please contact the team at advocacytraining@flba.co.uk to sign up for one of these sessions.

Our FLBA scholarship for 2026 has been launched. Under this scholarship we pay an amount of up to £25,000 to fund fees and/or living expenses for someone training to be a family law barrister. This represents a tangible step in our efforts to promote social mobility, equality and inclusion. The FLBA is proud of this important initiative and is pleased to continue partnering

with Bridging the Bar to configure the selection panel.

By the time you read this, we will already have enjoyed the FLBA summer garden party which takes place on 26 June. I hope to be able to report that the weather stayed dry!

When I reflect on my first 6 months in office, alongside the tiredness (I am certainly ready for a summer break), I feel a deep sense of pride in the Family Bar, in our cohesion, our collaborative working and our upholding of the principles of

justice and fairness in the work that we do. Most of our clients are in crisis in one way or another. Many are vulnerable. They come to us because they need our expertise, our experience and a steady hand to guide them through the litigation ahead. We help those clients through their crisis to the best of our abilities. We all work tirelessly, sometimes to the detriment of our own well-being. We should all feel immensely proud of the work we do.

Have a good summer!

Leslie

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The new (35th) edition of the essential **At A Glance**, the FLBA's flagship publication, is now available.

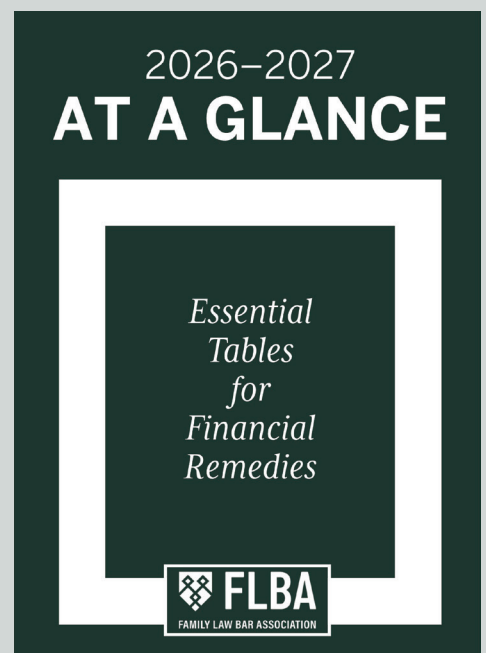
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Cumberland Lodge 2026

Friday Evening

Navpreeth Gihair | 1GC Family Law

For years I have heard that Cumberland Lodge is the highlight of the FLBA calendar. I had thought about attending, but had always been put off at the idea of giving up another weekend 'for the job' and having to spend it schmoozing judges and colleagues alike. I decided to finally test the hypothesis this year and made the trip to Windsor.

I have only been to Cumberland Lodge once before, during Bar school, for an advocacy weekend, so I felt a great sense of nostalgia pulling up to the car park on Friday afternoon. It was lovely to bump into familiar faces milling around the entrance as we figured out where our rooms



were, and more importantly what time the drinks were starting that evening.

We enjoyed welcome drinks on the lawn, given the surprisingly good weather for early May. It was lovely to see colleagues from across the country and enjoy the evening sun. The drinks were an opportunity for members of the Bar at all levels of call to spend time with one another and with members of the judiciary away from the daily pressures of court.

Dinner followed in an equally informal spirit. This provided an opportunity for us to meet the new President of the Family Division, Sir Stephen Cobb, who was merely days away from being sworn into office. Over dinner he spoke with us with genuine interest in who we were, how we experienced life at the Bar and ideas and aspirations we had for the

future. The absence of a seating plan created the perfect setting for members to relax and engage in effortless conversation with colleagues we might only meet otherwise in advocates' rooms, corridors and on the other side of a case. After dinner we made our way to the Mews building for the evening address. My thanks go to the chef who sourced special desserts for me and a few other members who unfortunately couldn't dig into the cheese and cake.

We were warmly welcomed by Leslie Samuels KC, the Chair of the FLBA. It was his first Cumberland Lodge as Chair and he provided us with a witty breakdown of how he prepared for the job of introducing the many impressive speakers who would be presenting over the weekend.

The highlight of the night was undoubtedly the keynote speech from Ms Justice Harris. It is tradition for one of the more recently appointed High Court Judges to give the Friday evening address. Ms Justice Harris took up her appointment on 30 September 2024. She spoke with a fondness about her own route to the Bench, being from a working class family in Coventry and then moving into academia in Durham and then Birmingham. As part of her academic work Ms Justice Harris studied aboriginal communities in Australia and latterly in Canada, which culminated in her authoring a book titled, *Aboriginal Child Welfare, Self-Government and the Rights of Indigenous Children: Protecting the Vulnerable under International Law*. It was fascinating to hear Ms Justice Harris describe the Naidanac tribe and their way of settling issues. Whenever there were arguments or disputes there would be a 'talking battle' to settle the matter. There was a 'Dispute Shaman' who would essentially referee the dispute. They would be addressed by 'Talking Specialists' who belonged to a special talking society, and could only participate in these rituals if they were a member of the special talking society. The Talking Specialists' dream was to one day become a Dream Shaman (does it sound familiar yet?).

At the start of the battle, all witnesses would participate in a Truth Telling Ceremony, where they held a piece of birch bark and promised to tell a true story. Incredibly, the battle ended when everyone had run out of things to say, unlike my experience at the Family Bar! The humorous description was actually a satirical outsider-style description of the Canadian legal culture portrayed through the lens of a legal scholar from South Alberta.

For all of us present, that theme had obvious resonance. Much of our work takes place where conflict, trauma and welfare concerns intersect. Ms Justice Harris' remarks invited us to look beyond the mechanics of orders, statements and hearings, and to ask whether our system does enough to create space for voice, understanding and durable resolution. She linked that broader reflection to current developments in the family justice system: the increasing embedding of non-court dispute resolution, the principle that court should be a last resort where appropriate, and the movement towards more child-focused courts following the Harm Panel report.

Knowing that tickets are limited, part of me wants to conclude that my hypothesis was supported and Cumberland Lodge is terribly overrated. That would, of course, be a lie.

The truth is that Cumberland Lodge is not another lost weekend. It is a reminder of the best of the job: the seriousness of the work, the incredible efforts of those who do it, and the value of stepping away from court for long enough to think about how we might create change. We may not be able to redesign the family justice system overnight, and we cannot remove the painful facts which bring many families before the court. But as Ms Justice Harris concluded, we can all, 'see if we can help to make things just a little better'.

Saturday

Samuel Lerner | St John's Buildings

The opening address was given by Leslie Samuels KC, Chair of the FLBA, marking both his first address and the 43rd annual conference at Cumberland Lodge. Leslie was keen to challenge the notion that the FLBA is London-centric and was clear that we are one association by outlining the range of work undertaken with members in the regions. Leslie addressed the impact of the cyber attack on the Legal Aid Agency, and the work undertaken by the FLBA to support members. He highlighted that the priority for the coming year will be implementation of the Harman report in full.

The incoming President of the Family Division, Sir Stephen Cobb, began by paying tribute to his predecessor, Sir Andrew McFarlane, calling him a popular and hard-working president, dedicated to the cause of family justice. Sir Stephen highlighted that the family justice system is a huge web of relationships: the Family Court and judiciary supported and maintained by a huge number of relationships between members of the family Bar, solicitors, local authorities, mental health services, intermediaries, Cafcass/Cafcass Cymru, and many more. In his role as President, a key aim will be to strengthen those relationships to improve the experiences of all who use the system. Sir Stephen discussed private law reforms focussing particularly on the digitisation of private law, and the roll out of the private law portal. Sir Stephen concluded by reminding delegates what we do, day in and day out, is special – we have trained hard to become barristers and we share passion for what we do and we make many sacrifices – but that none of us truly does it alone because we do it alongside colleagues who share our commitment, intelligence, humour and heart.



The floor turned over to Baroness Hilary Cass OBE, who spoke on the digital aspects of technology and the impacts of screen time on children and young people. Without wishing to be reductive, it was a crash course in the horrors and harms of digital technology delivered with evidence and authority, and there were points where the whole room gasped in unison. At the conclusion, the room erupted into the loudest and longest round of applause of the day, and if encores were the convention at conferences, another PowerPoint would gleefully have been welcomed.

Morgan Sirikanda KC spoke on the future of Part III applications, and the residence and divorce jurisdiction. He began by giving a critique of the Court of Appeal's judgment in *Potanina v Potanin*. He decried the use of the phrase 'divorce tourism' used in relation to wives' applications under Part III, which he argued to be as pejorative as 'gold-digger' given that wives have equal rights to make applications to the court. In relation to the residence and divorce jurisdiction, Morgan outlined the provision at s 5(2) Domicile and Matrimonial Proceedings Act 1973 and his talk exemplified his skill in statutory interpretation over the use of the coordinating conjunction *and*, and how different interpretations affect who is eligible to make applications.

Chris Barnes KC spoke on the topic of transparency in the Family Court. His position was that the Transparency project represents an incredible model for how change can be replicated

from within the system, and how an open-minded and enquiring atmosphere goes to the heart of transparency. He acknowledged that it has been difficult to engage the media in Family Court financial proceedings, which may be a structural problem, or because of a lack of understanding about the way that financial proceedings may hook the public into family problems. He argued that one of the most important features of reporting family proceedings is the ability for journalists to make links between cases, identifying themes and patterns, such as abuse perpetrated by military husbands, which allows themes to be properly understood.

Dr Rose Holmes gave an insightful talk into research carried out by the Bar Council. The findings, although unsurprising, still hit hard. The quantitative data indicates that the more legal aid work a barrister does, the lower their overall income will be, whilst the qualitative data suggests that: (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; and (3) the financial and systemic pressures on family barristers are having a detrimental effect on their well-being.

Darren Howe KC took an interesting perspective on well-being – rather than simply promoting it as a concept at the Bar, he acknowledged that for many it is nothing more than an illusion, and explored why previous initiatives have failed. The room very clearly resonated with his analogy: *‘being a barrister feels like getting punched in the face repeatedly, no matter what direction you turn in’*. Professor Jo Delahunty KC continued the theme by discussing judicial bullying and sexual harassment. It is important to note that this single sentence does not do justice to Professor Delahunty’s talk, which was personal, impassioned and rousing. The Chatham House Rule prevents me from disclosing the full extent of the talk. But it hit hard.

By this point, it would have been easy for our next speaker, Matthew Lee, to deliver a standard talk on artificial intelligence (AI) – a topic which now seemingly features at every conference. He did not take this option. Instead, he terrified the room with a candid exploration of the potential (inevitable?) and nefarious use of AI and its implications for the Family Court. The greatest understatement of the conference goes to Leslie Samuels KC, who concluded Matthew’s talk by saying *‘we’ve learned a huge amount, a lot of it very worrying’*.

The day’s talks were concluded by Lord Justice Peter Jackson, who gave moving and very personal tributes to Sir Stephen Brown, Sir James Munby and Judge Shirley Anwyl KC.

As delegates discussed the day’s issues over coffee and cakes, ruminating on pay and working conditions, well-being, generalised concerns about the impacts of social media on children, and the inevitability of the world being destroyed by AI (I have a tendency towards hyperbole), one thing became abundantly clear: Sir Stephen’s earlier comments about members of the Bar continuing to support each other could not ring more true.

The day ended with a superb meal in which plates and glasses overflowed, followed by the obligatory disco in the basement. I have written numerous drafts of this piece in order to reflect the majesty of the disco. It cannot be reduced to writing and must be experienced. For the very late revellers, of which I count myself, there was a chaotic eight person game of ping-pong, which involved running and dance breaks, and from which the winner was appointed to the High Court Bench. I am not convinced that was legally binding.

Sunday

Beatrice Munro | No5 Barristers' Chambers

The write-up mantle passed to me in the wee hours of Sunday morning, but the less said about highly competitive table tennis and stellar guitar-playing the better. What happens in the basement of Cumberland Lodge, stays in the basement of Cumberland Lodge.

Waking on Sunday with varying degrees of foggy heads, we refocused with the help of the excellent cooked breakfast. An intrepid group headed out to the Royal Chapel for its Sunday service, in hopes of spotting a Royal (unfortunately they were disappointed). Those remaining returned to the seminar suite for a compelling talk on the work of CFAB delivered by Michael Nwoye. This was an informative and thought-provoking session, helpful for its raising of questions to ask in international cases involving children. We learned about CFAB's role in solving problems raised by the challenging aspects of social work abroad.

As the lovely weather we had enjoyed across the previous 2 days did not hold for Sunday, plans to convene for the Juniors session *en plein air* were swiftly abandoned in favour of the more temperate bar. This was an accessible and open



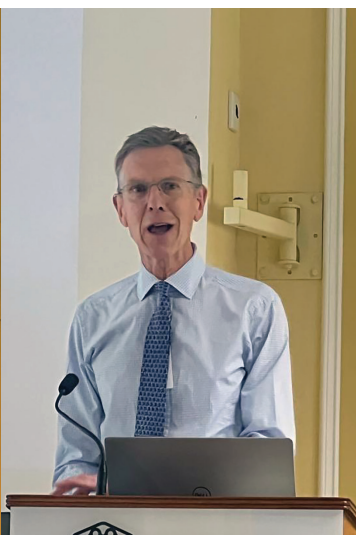
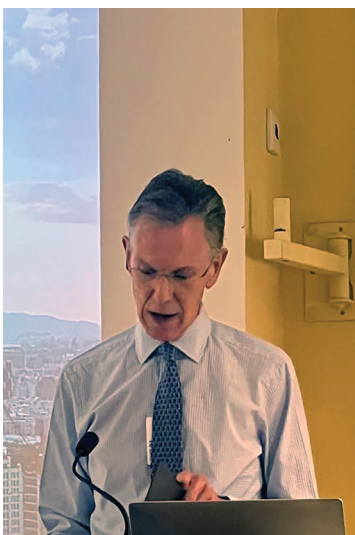
conversation between Juniors and attended by members of the senior leadership of the FLBA, led with sensitivity by Hannah Whitehouse and Poppy Sparrow. The discussion was wide-ranging, enabling comparisons and similarities to be drawn across Circuits. Such a transparent and thoughtful discussion was heartening.

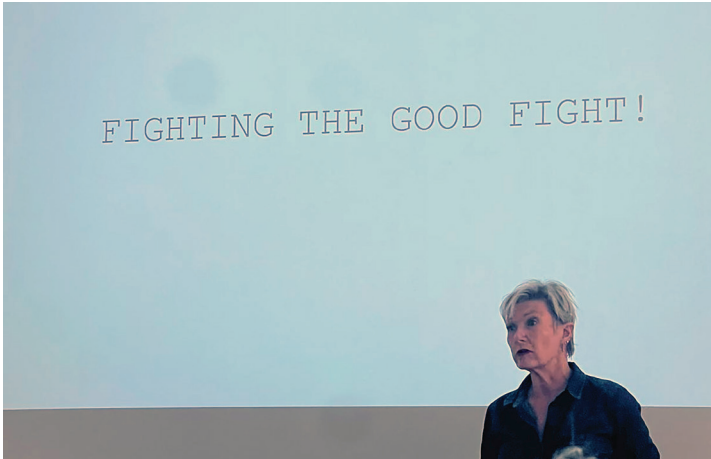
We then moved to lunch, the last meal of the weekend. Already, new bonds had formed and warm goodbyes were said. As a pupil and having never been to Cumberland Lodge before, I had entered the weekend with trepidation. I left the weekend having had a fantastic time, having enjoyed a very well-curated programme of speakers, made new connections, and thrown some serious dance moves. Until next year!





Cumberland Lodge 2026







Katharine Higgs and Mariella Steijger |
Pupils, Coram Chambers

The annual Garden Party returned after its fallow year on Friday 26 June, offering members of the Family Law Bar Association the occasion to gather and gossip in the glorious surroundings of the Middle Temple Garden on a hot Midsummer's evening. With the country under a Red Heat Alert and warnings of 'significant risk to life' dominating the headlines in what has been the hottest June since 1976, Britain had responded in its usual, measured fashion. Train tracks were melting and schools had shut their doors. Fortunately, the FLBA committee had anticipated events and members of the association were reassured that the usual dress code would be interpreted flexibly, and so jackets and ties were dispensed with in favour of hats and fans as the *de rigueur* accessories of the evening.

As always, the company was sublime. Lord Justice Cobb made his first garden party appearance as President. Also in attendance were Lord Justice Peter Jackson and Lord Justice Moylan, together with numerous other members of the judiciary and silks.



The conversation was lively and the fizz flowed freely, making for rather more pleasant hydration breaks than those interrupting the football. An impressive procession of canapés followed.

Some abandoned their shoes to roam the gardens with the grass between their toes and, as the sun set, the revelry continued, Middle Temple staff generously allowing the party to keep going into the night. For us, having just received the news that we had been successful in obtaining tenancies, it was a true celebration.

Tremendous thanks again to the FLBA team, especially Greg, Tahmina and Antje, whose endeavours resulted in a terrific evening; a wonderful herald of summer. We are already looking forward to 2028.





Photographs by Eamonn McCormack







The Illusion of Well-being

How Did it all Go so very Wrong in the Family Justice System?

Darren Howe KC | 1 Crown Office Row |
Chair of FLBA Wellbeing Subcommittee

The Mental Health Foundation defines the concept of well-being as *'the overall state of being comfortable, healthy, and happy. More than just the absence of illness, it is a holistic concept encompassing how you feel about yourself, your physical and mental health, and your sense of purpose and life satisfaction'*.



For those of us working in the family justice system, our experiences on an almost daily basis can make us feel uncomfortable and unhappy. Aggression and discourtesy from opponents and the Bench can undermine positive mental health. The poor fees we receive have not seen any increase for 30 years, and when we see others working in publicly funded areas of employment receiving significant increases in pay, it makes us wonder why we are so undervalued. Our sense of life satisfaction is so low that very many consider leaving, and then do leave, publicly funded work or leave the Bar altogether. Junior tenants in chambers start their careers wanting to save the world but once they experience the private fees available for some very simple cases, they have a change of mind and become private law/privately paying-only practitioners. Chambers struggle to cover the legal aid work coming in, with solicitors having to 'ring around' to find cover.

It is a depressing state of affairs that has occurred because of years of under-funding in the system that has run alongside an increase in

demand for the court's services to resolve conflict between parents and between parents and the state.

The reasons for the increase in work in the system need not be repeated here. LASPO was the disaster we predicted it to be, causing an increase in cases coming to court and then lengthy delays in the resolution of those cases once in the system. The number of public law cases increased massively. The statutory requirement for cases to finish in 26 weeks, and the demands of the PLO to restrict the number of hearings mean that barristers have to do more unpaid work than ever before. Judges under-listing cases is a real problem. Cases that need 5 days are listed to be heard in 3. Many courts sit longer hours, require advocates meetings as an alternative to court hearings, direct barristers to submit skeleton arguments for an issue the judge will then determine 'on the papers' and courts habitually order the preparation of documents for which we receive no fee and in timescales that mean the only opportunity we have to do this additional work is in our own

time. Our 'own time' is becoming more and more rare due to us being in court longer, then having an advocates' meeting or con and then having to prepare for the next day. Or, of course, preparing a position statement or case summary document to be filed by 11 am the following working day. We are all working regularly in the night hours and this impacts on our family life

Jo Delahunty KC and I spoke about the illusion of well-being at the Cumberland Lodge conference in May 2026. I read through a list of the types of things that happen in the Family Court which undermine our well-being. I asked for a show of hands from those in the audience if they had experienced the many issues we named on our PowerPoint slides. Unsurprisingly to us, but perhaps of some surprise to the senior judiciary present, hands went up when I read out the first issue and they stayed up until the list had been completed.

This very simple exercise demonstrated the scale of the problem. Our well-being has been spoken of by many in positions of power over a number of years but words have not translated into action. Good intentions have produced no changes and we have a simple choice to make. We do the work or we do not.

Successive governments of all colours have demonstrated to us that the tasks we perform have little political value for them and therefore addressing our needs is not a financial priority. In some courts there is a feeling that the judge is just 'going through the motions', wanting to get the care order made as quickly as possible, denying parents the opportunity to challenge their accusers and failing to recognise the importance of our role in a democratic society living under the rule of law. In many cases, we have to fight for our clients' right to a fair hearing, by drafting complex documents for which we receive no payment in an attempt to give effect to the wise words of the late Sir James Munby P in *Re S-W* [2015] EWCA Civ 27 at [58]-[59]:

'58 ... I am not suggesting that a parent has an absolute right to cross-examine every witness or to ask unlimited questions of a witness merely with a view to "testing the evidence" or in the hope, Micawber-like, that something may turn up. Case management judges have to strike the balance, ensuring that there is a fair trial, recognising that a fair trial does not entitle a parent, even in a care case, to explore every by-way, but also being alert to ensure that no parent is denied the right to put the essence of their case to witnesses on those parts of their evidence that may have a significant impact on the outcome.'

*59 Quite apart from the fundamentally important points of principle which are here in play, there is great danger in jumping too quickly to the view that nothing is likely to be achieved by hearing evidence or allowing cross-examination, in concluding that the outcome is obvious. My Lord has referred to what Megarry J said in *John v Rees*. The forensic context there was far removed from the one with which are here concerned, but the point is equally apposite. As I said in *Re TG*, para 72:*

"Most family judges will have had the experience of watching a seemingly solid care case brought by a local authority being demolished, crumbling away, at the hands of skilled and determined counsel."

What has happened, particularly since the end of COVID-19, has been an absence of collaboration and an increasing imposition of measures that place pressure on the barristers undertaking the court-facing work. Yes, the cases should conclude in 26 weeks but it is us who have to go 'over the top' wearing our tin hats and face the battery of bullets coming at us from the Bench. We take the flack when court directions are not met. It is us who have to relay the excuses of others, very often public agencies of one sort or another who have not done what the court expected. It is us trying as hard as the judges to get the cases heard quickly because that is what our clients want to happen, but our assessment of fairness and how contested issues should be determined is often not aligned with the views of an overburdened judge sitting in an under-resourced court under pressure to get the cases through the system as quickly as they can.

What can we do for ourselves to make our working day more tolerable?

The FLBA launched its Respectful Working Policy in 2022. It was relaunched in 2026. It is not just a 'policy' document to tick boxes. It is a reminder that how we treat each other can make a huge difference to our well-being at work. There is no excuse for a failure to treat each other with courtesy and respect. I know some clients, lay or professional, expect those they instruct to go in 'heavy' but we should be better than that. Respect your professional duties. You can be effective and courteous. I would say you are more effective when you are courteous. Judges, who have retained some self-awareness of the importance of respectful and courteous behaviour in court, should challenge us when our behaviours fall below that recommended by the FLBA Respectful Working Policy, which requires the following.

Approach

- We should listen to each other (the family and professionals) and **treat everyone with respect** and without judgement and **avoid using inflammatory language**.
- We should speak up when professionals interact or behave in a way that is disrespectful or unacceptable.
- We should seek to be balanced – giving due credit to positive work done by parents, children, Cafcass officers, social workers, lawyers and others.
- Criticism needs to be delivered in a constructive and respectful way, allowing for disagreement, robust challenge and holding people/organisations to account, without being unduly harsh or undermining individuals.
- Advocates should introduce themselves to family members at court.
- Professionals should avoid over-familiarity with each other in the court setting.
- Be mindful and come from a position of empathy and respect for everyone's social, cultural, racial, religious and sexual background or disability.

No barrister should act with aggression or be impolite when at court or to an opponent out of court.

Don't call your opponent disingenuous – this means *'not candid or sincere, typically by pretending that one knows less about something than one really does'* – so you are making an allegation of dishonesty.

Treating your opponent with respect includes not acting in underhand ways that then cause additional work often with no fee. If an issue was not raised in court before the judge, then don't try to sneak it into the order and don't be pressurised by your solicitor into so doing.

The FLBA Respectful Working Policy contains four principles:

• Principle 1

'To achieve the best outcomes for the children and families with whom we work, the court environment needs to be a safe and inclusive environment in which families and professionals can feel that their voices have been heard.'

• Principle 2

'Lawyers representing parties in Family Court proceedings should be courteous and respectful to their opponents, to litigants representing themselves, to parties and to witnesses. The imperative of courtesy includes the need to demonstrate understanding, tolerance and patience.'

• Principle 3

'The Family Court, Family Law Chambers and the Family Law Employed Bar should be free from harassment and bullying. Members of the Family Law Bar Association must ensure that their conduct does not expose others to harassment or bullying.'

• Principle 4

'If harassment or bullying occurs, the Family Law Bar Association will provide support to its members as described in this Policy.'

“Treating your opponent with respect includes not acting in underhand ways that then cause additional work often with no fee. If an issue was not raised in court before the judge, then don’t try to sneak it into the order and don’t be pressurised by your solicitor into so doing.”

If you see a colleague being disrespected by an opponent, when the time is right, check on them. Ask them if they are okay and tell them the behaviour you saw from the other advocate was not acceptable. Do the same if an opponent is picked on and bullied by a judge. If the bullying is serious, the most senior member of the Bar in court should intervene and comment for the purpose of the court recording that the judge is treating the advocate unfairly. This is not an easy thing to do and most keep their heads down, glad it is not them being shouted at, but we must be brave if we are to challenge these behaviours.

You may be surprised how important a few kind words to victims of disrespectful treatment can be. Knowing you did nothing wrong and your opponent or judge was in the wrong can be all that is required to rescue some well-being from that day’s time at work.

We have a network of ‘Respectful Working Mentors’ who will speak to any FLBA member who is concerned about how they are being treated, be that in court or out. The mentor will provide advice and guidance as they feel appropriate in the circumstances, including signposting the FLBA member to other sources of support. The mentor may speak on behalf of the member with a judge, or a leadership judge if the complaint is of judicial bullying and an informal approach is thought to be appropriate.

Importantly, any action taken by the mentor

will occur only following discussion and the express agreement of the member. It may be that all that is required is advice and reassurance. At all times, the decision-making concerning responses to the alleged harassment or bullying will remain with the member.

Should the FLBA member wish to make a formal complaint, the mentor will provide support to the FLBA member through any complaint procedure.

The FLBA has published a list of the Respectful Working Mentors on the FLBA website. Members can contact one of the mentors listed for another region if they are uncomfortable speaking to their local mentor.

Members may contact any member of the Wellbeing Subcommittee or any of the Officers of the FLBA who can then refer the member onto a Respectful Working Mentor.

We want members to feel heard and supported rather than rejected and blamed or, as is often the case, blaming themselves for what happened.

We still have the demands of rC66 to manage, but the unfairness caused by this rule is under review. What is required is:

‘Subject to your duty to keep the affairs of each client confidential and subject also to Rules rC67 and rC68, you must report to the Bar Standards Board if you have reasonable grounds to believe that there has been serious misconduct by a barrister or a registered European lawyer, a BSB entity, manager of a BSB entity or an authorised (non-BSB) individual who is working as a manager or an employee of a BSB entity.’

rC68 says:

‘You are not under a duty to report serious misconduct by others if:

1. You become aware of the facts giving rise to the belief that there has serious misconduct

from matters that are in the public domain and the circumstances are such that you reasonably consider it likely that the facts will have come to the attention of the Bar Standards Board; or

2. You are aware that the person that committed the serious misconduct has already reported the serious misconduct to the Bar Standards Board; or

3. The information or documents which led to you becoming aware of that other person's serious misconduct are subject to legal professional privilege; or

4. You become aware of such serious misconduct as a result of your work on a Bar Council advice line.'

What is the 'Bar Council advice line'?

Speak to the Bar Council Equality and Diversity team in confidence for support and advice about bullying, harassment or sexual harassment issues. This is available to all members of the profession, staff and members of chambers, employed barristers, pupils and Bar students. They can be contacted at: equality@barcouncil.org.uk for advice and you can also request a callback.

Respectful Working Mentors will speak with you about a complaint about another member of the Bar but may, pending rC66 being abolished or amended, refer you onto a member of the BCED helpline.

What is serious misconduct as set out in the Handbook?

gC96 says:

- dishonesty (CD3)
- assault or harassment (CD3 and/or CD5 and/or CD8)
- seeking to gain access without consent to instructions or other confidential information relating to the opposing party's case (CD3 and/or CD5)
- seeking to gain access without consent to confidential information relating to another member of chambers, member of staff or pupil (CD3 and/or CD5)
- encouraging a witness to give evidence which is untruthful or misleading (CD1 and/or CD3)
- knowingly or recklessly misleading, or attempting to mislead, the court or an opponent (CD1 and/or CD3)

- being drunk or under the influence of drugs in court (CD2 and/or CD7)
- director's disqualification proceedings are initiated against you
- a director's disqualification order is made against you
- winding up proceedings are initiated in respect of or against you
- you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you
- administration proceedings are initiated in respect of or against you
- a breach of rC67 above; for example, reporting, or threatening to report, another person as a litigation tactic or otherwise abusively; or merely to please a client or any other person or otherwise for an improper motive
- conduct that poses a serious risk to the public'

gC97 requires:

- 'If you believe (or suspect) that there has been serious misconduct, then the first step is to carefully consider all of the circumstances. The circumstances include:
 1. whether that person's instructions or other confidential matters might have a bearing on the assessment of their conduct;
 2. whether that person has been offered an opportunity to explain their conduct, and if not, why not;
 3. any explanation which has been or could be offered for that person's conduct;
 4. whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not.'

gC98 says:

- 'Having considered all of the circumstances, the duty to report arises if you have reasonable grounds to believe there has been serious misconduct. This will be so where, having given due consideration to the circumstances, including the matters identified at Guidance gC97, you have material before you which as it stands establishes a reasonably credible case of serious misconduct. Your duty under Rule rC66 is then to report the potential instance of serious misconduct so that

the Bar Standards Board can investigate whether or not there has in fact been misconduct.'

Your Respectful Working Mentor is very likely to:

- Ask if you wish to speak about the behaviour by a judge or behaviour by a barrister.
- If the concern is about behaviour by a judge, they will offer to assist.
- If the concern is about behaviour by a barrister, they will tell you that you have a duty under the 'Handbook' to report serious misconduct otherwise you yourself will be committing misconduct. However, you and they should consider gC97 and discuss this – it may be that you can discuss your complaint against a barrister and if hearing just one side of the story the Mentor may be satisfied that their reporting obligation will not arise without hearing the other side, but this is a very subjective decision and someone reviewing this action later may disagree with the view you took.

Bullying by judges

- The 'Statement of Expected Behaviour' was published on 19 January 2023.
- This Statement sets out the standards of behaviour expected from all judicial office holders in and outside the hearing room; with each other, staff and users.
- Treating people fairly, with courtesy and respect is reflected in the oath to '*do right to all manner of people ... without fear or favour, affection, or ill will*'.
- Judges all have a responsibility to help foster a positive working environment, where diversity is recognised and valued, and everyone is treated with dignity and respect. We are one judiciary; no one should feel that they are perceived as 'less than' because of their differences, personal or professional background, judicial office or jurisdiction.

Therefore, they should all:

- treat others fairly and respectfully;
- be mindful of the authority they have and be careful not to abuse it;
- be aware of how their words and behaviour can affect others;
- remain patient and tolerant when encountering difficult situations;
- act professionally and courteously, including under pressure, and avoid shouting or snapping;
- aim to ensure that no one in a hearing room is exposed to any display of bias or prejudice;
- build effective working relationships with, and provide support to, judicial colleagues and staff;
- welcome and support new colleagues; and
- be open to feedback if they have done something that may have caused discomfort or offence.

We know that despite this reminder the behaviour of some judges does not comply with the Statement of Expected Behaviour: some behaviour regularly falls short. Do speak to your Respectful Working Mentor about what you can do and they will discuss the options with you, including going to speak to the judge without naming you or needing to provide any information that might identify you. My experience is that there are often multiple complainants about judges who behave in unacceptable ways and the 'themes' of their conduct can be raised with them without naming one barrister.

If there is nothing that can be done other than to make a formal complaint then the rules of the Judicial Conduct Investigations Office (JCIO) are prescriptive.

'A complaint must be made within three months of the matter complained of. They will only extend this timescale in exceptional circumstances.'

Please note that:

- An ongoing case will not usually be considered as an exceptional reason to extend the time limit.
- If you inform them that you did not complain in time for medical reasons, they may ask you for proof of your medical condition.'

Have a look at the website www.complaints.judicialconduct.gov.uk/makeacomplaint/

Rule 8 of the Judicial Conduct Rules 2023 states that a complaint must:

- 'State the name of the person making the complaint;
- State the address or email address of the person making the complaint;
- Contain an allegation of misconduct on the part of an identified or identifiable person holding an office, which is supported by relevant details as specified in guidance published by the JCIO from time to time;
- State the date, or dates, that the alleged misconduct took place unless the JCIO decides that this is unnecessary taking into account all the circumstances of the complaint.'

An **allegation of misconduct** means that your complaint is about a judge's personal behaviour, not about a decision or order which they have made, or how they have managed a case. It means you believe that a judge's personal behaviour has fallen below the standards of conduct in the Guide to Judicial Conduct.

'Relevant details' means you need to be specific about what you are alleging the judge said or did which you believe was misconduct. It will not be enough to say: 'the judge was rude to me' or 'the judge shouted at me'.

If you are complaining about something a judge said, for example, rudeness, and/or something about a judge's tone or manner, such as shouting, laughing inappropriately, sarcasm (this may include complaints of bullying or harassment), the JCIO will want to know:

- The words the judge used that you want to complain about.
- If applicable, a description of the judge's tone or manner.
- If applicable, the context of the inappropriate laughter, for example, what the laughter was in response to and how it sounded.
- Where it happened.
- If your complaint is about something that happened in a hearing, they also need you to tell them the name of the court and the time(s) when the alleged misconduct happened (see guidance further below).

If you want to complain about a physical act, for example, a physical display of anger (this may include complaints of bullying or harassment), they will be expecting to see:

- A description of what the judge did.
- Where it happened.
- If your complaint is about something that happened in a hearing, they also need you to tell them the name of the court or tribunal and the time(s) when the alleged misconduct happened (see guidance further below).

The JCIO also sets out the following requirement:

'Please try to provide a time estimate for every instance of alleged misconduct that you are making a complaint about: for example, if your complaint is that the judge shouted at you on three occasions, you should provide three time estimates of when those incidents occurred.'

If you believe that there are exceptional reasons why you are unable to provide time estimates for the allegations, for example due to a disability, please provide this information along with your complaint. We will take this information into account when assessing your complaint.'

Our caseworkers will usually listen to a one-hour "window" of time based on the estimate

you have given, for example, if you stated: "the judge shouted at me 'Mr Smith be quiet' at approximately 10.00 am, the caseworker would listen to the recording from 9.30–10.30 am or if, for example, you stated: "the judge shouted at me 'Mr Smith' approximately half an hour before the lunch break", the caseworker would listen to the recording for one hour up until the lunchbreak.'

What we cannot do

We cannot change the burdens that fall on us in the publicly funded work we undertake. The rates for juniors are low and do not reflect a fair fee for the work required. It will take political will to change this and we must all do what we can to support the FLBA in its attempts to persuade government that we require increases in fees. So much of our well-being is caught up by the failure of the current fee system to properly remunerate us for all that we do. Our 'public duty' in undertaking this work is simply not recognised.

For all the tasks we are now performing for which we are not paid, we should tell the judge that we do not receive a fee for the work they have just ordered us to do, and have it recorded on the order. All family judges have been sent a copy of the document prepared by Leslie Samuels KC that tells them what we do and do not get paid for. Also, try to stand up for your right to have a family life. We spend much of our day speaking of Art 8, but in some courts it very rarely applies to us. If it is not possible to meet a deadline raised by the judge without cancelling important professional or personal family events, say so. We have become too accustomed to our personal lives being given little or no concern when some judges impose timescales.

All that we can do for now that will have immediate benefit is to be kinder to each other, recognising the challenges we all face and trying not to let our own frustrations bubble to the surface and make matters worse. Your FLBA Wellbeing Subcommittee will be working on some projects where we think we can provide some practical help and support. Do lean on your Respectful

Working Mentors. They are there to listen and provide advice and they are all very keen to assist.

Remember – you are not alone and there are many sources of support available:

- The FLBA Respectful Working Mentors:
 - FLBA website: www.flba.co.uk/officials/respectful-working-mentors/;
 - you, and your Respectful Working Mentors, can contact me at any time for advice or just to talk through a problem that has come your way: darren.howe@1cor.com.
- The FLBA Officers are available:
 - FLBA website: www.flba.co.uk/officials/officers/.
- The Bar Council, 'Bullying and harassment' support:
 - Bar Council website: www.barcouncil.org.uk/support-for-barristers/bullying-and-harassment.html.
- The Assistance Programme (AP):
 - anyone working in or around the Bar can call if they're feeling stressed or overwhelmed. The AP is run by Health Assured and provides fully funded, confidential support;
 - Wellbeing at the Bar website: www.wellbeingatthebar.org.uk/assistance-programme/;
 - Telephone: 0800 169 2040.
- LawCare:
 - LawCare is the mental health charity for the legal sector. Volunteers provide free and confidential emotional support. The helpline is open 9 am to 5 pm every weekday (except bank holidays);
 - LawCare website: <https://lawcare.org.uk/>.
 - Telephone: 0800 279 6888.

Known to the School, Unknown to the Court

Jack Woolcombe | Bar Training Course Graduate and
Paralegal, Expatriate Law

Before the Bar, I spent 4 years as a SEN teacher at a primary school, working across all year groups from nursery to Year 6 with children with autism, ADHD, and speech and language difficulties. I attended multi-disciplinary reviews alongside SENCOs and educational psychologists. That experience is the basis for what follows in this article.

Introduction

The Children Act 1989 requires the Family Court to ascertain the wishes and feelings of the child before making any decision about their upbringing. For a neurodivergent child, that demands something the court does not currently have: an understanding of how that specific child communicates, what their behaviour signals, and how to distinguish distress from compliance. That understanding exists. It is built over years, recorded in a legally mandated document, held in every school in England. The Family Court has no formal route to it.

Three developments in the opening months of 2026 sit in tension with each other in a way that has direct practical implications for private law proceedings involving neurodivergent children.

The SEND White Paper, 'Every Child Achieving and Thriving', published in February 2026, proposes making schools the fourth statutory safeguarding partner and introduces Individual Support Plans recording how every child with SEND communicates and what their needs are. *Hampshire County Council v GC & Anor* [2026]



EWCA Civ 20, decided by the Court of Appeal in January 2026, confirmed that decisions about a neurodivergent child cannot lawfully be taken without consulting the school. Child Focused Courts began their national rollout in March 2026, with Cafcass producing Child Impact Reports within 6 weeks to discharge the court's duty under s 1(3)(a) Children Act 1989 to ascertain a child's wishes and feelings.

The result is a structural gap between what the welfare checklist requires and what the Family Court currently receives in cases involving neurodivergent children.

The legal position

Section 1(3)(a) Children Act 1989 requires the court to have regard to the ascertainable wishes and feelings of the child, considering age and understanding. For a neurodivergent child, that statutory instruction is more than usually demanding. The Family Justice Council's neurodiversity guidance identifies masking explicitly: a neurodivergent child may present as settled or compliant when communicating

something entirely different to someone who knows how to read them. Frustration can present as aggression. Shutdown can present as cooperation. Distress can look like indifference. A single professional encounter is unlikely to detect it.

The Child Impact Report, produced by a Cafcass officer within 6 weeks of proceedings being issued, is the document through which the court now discharges its duty under s 1(3)(a). There is no SEND training mandated for officers completing it. No requirement to consult the child's school. No obligation to engage with any existing documentation about how that child communicates.

An Education, Health and Care Plan (EHCP) is not a form. Section A records the child's own views, wishes and feelings, and how they express them. It is produced through a process involving the SENCO, educational psychologist, speech and language therapist, and the support worker who works with that child daily. It is built over time, reviewed annually, updated as the child develops. For a neurodivergent child in private law proceedings, the EHCP is the most detailed and current record of how they communicate that exists anywhere. The Family Court has no mechanism to access it and no obligation to try.

Why this matters

Hampshire County Council v GC [2026] EWCA Civ 20 makes the tension concrete. The local authority had withdrawn a child's EHCP without consulting the school, in breach of the mandatory consultation requirements under the Special Educational Needs and Disability Regulations 2014. The Court of Appeal held that to be unlawful. In identifying the categories of child most affected, the court named three: children in care, children of armed forces personnel, and children of separated parents who split their time between households.

That final category warrants pause. SEND law already holds that decisions affecting a

neurodivergent child cannot be taken without consulting the school. The Family Court, making decisions of far greater consequence about where that child lives and who they spend time with, is not required to apply that principle. The same child. Two legal systems. One consults the school. The other does not.

The SEND White Paper deepens the problem. Every school in England will be legally required to produce an Individual Support Plan (ISP) for every child with SEND: a digital record, regularly reviewed, documenting how that child communicates, what they need, and how adults should interpret their behaviour. The ISP will be more detailed, more current and more legally mandated than any document currently produced in or for family proceedings. Meanwhile, the Children's Wellbeing and Schools Bill, currently passing through Parliament, creates a new legal duty for schools to share safeguarding-relevant information across agencies and makes schools the fourth statutory safeguarding partner. The policy intention is explicit: everything a school holds about a vulnerable child should flow into every decision made about that child's welfare. The Family Court is not in that architecture.

This is not a criticism of Cafcass. A Cafcass officer producing a Child Impact Report in 6 weeks, without SEND training and without the EHCP, is working within a system that has never required otherwise. That is the problem.

Practical steps

The fix is not complicated. When a Cafcass officer is directed to produce a Child Impact Report in a case involving a neurodivergent child with an EHCP or ISP, the court should direct engagement with the child's school and require the EHCP or ISP to be treated as a primary source before that report is filed. Practitioners acting for parents of neurodivergent children should be making that application as a matter of course. Where a Child Impact Report has been produced without reference to an existing EHCP, that gap should be

raised at the earliest opportunity and the court invited to direct supplementary enquiry.

The principle *Hampshire* established in SEND law should be applied here. The school is not a peripheral witness. For a neurodivergent child, it is the institution that holds the most accurate and current account of how that child communicates. Practitioners are well placed to ensure that account reaches the court.

Conclusion

Hampshire confirms the principle already exists in SEND law. The SEND White Paper is extending it. The Children's Wellbeing and Schools Bill is embedding it across safeguarding. The ask is simply that the Family Court be included.

The law says this child's wishes and feelings

are paramount. It has not yet decided to ask the people who know what those wishes and feelings actually are.

Notes

1. Children Act 1989, s 1(3)(a).
2. Family Justice Council, *Guidance on Neurodiversity in the Family Justice System for Practitioners* (January 2025).
3. *Hampshire County Council v GC & Anor* [2026] EWCA Civ 20; Special Educational Needs and Disability Regulations 2014 (SI 2014/1530), reg 31; Department for Education, 'Every Child Achieving and Thriving' (Cm 1508, February 2026).
4. Children's Wellbeing and Schools Bill 2024–25, cl 1.

Dates for the Diary

National Conference (Brighton)
Friday 16 (evening Junior Event)
and Saturday 17 October 2026

Committee Dinner
Friday 4 December 2026

Annual Dinner 2027
Friday 26 February 2027

Cumberland Lodge 2027
Friday 7 to Sunday 9 May 2027



Legal Updates:

Financial Remedies

Sophie Smith-Holland and Kate Pearson | St John's Chambers

In ***Collardeau v Fuchs (Contempt of Court: Sentencing)* [2026] EWFC 44**, the parties were married in 2012 and separated in 2020. There were two children of the marriage. The final financial remedy order gave effect to the parties' pre-nuptial agreement. H was ordered to pay the mortgage on the family home until the youngest child turned 21 and pay a lump sum to W of just under £19m within 14 days. H ceased paying the mortgage and didn't pay the lump sum. W made a series of applications seeking enforcement, and in 2025 succeeded in her application to both vary and enforce the order (*Collardeau v Fuchs* [2025] EWFC 307, summarised in the Winter 2025 issue¹). Prior to this, in March 2025, to preserve properties so as not to prejudice the enforcement and variation application, an order was made prohibiting H from selling a property known as ML1. A penal notice was attached. In June 2025, H sold ML1 with net proceeds of over US\$10m which he gave to a friend. In July 2025, W applied for committal, and in November 2025 the court found H to be in contempt. Just before the November hearing, H made a lump sum payment to W, and a further payment in January 2026, after which it was accepted that H had paid all sums due save a costs order not yet assessed. H sought to justify his actions because they led to compliance with the final financial remedy order and thus benefited W. H had not hidden the sale and had notified W's solicitors in July 2025. However, there was no doubt he knew of the prohibition of the sale, and that he knowingly acted in breach of an order. When considering sentence, the court was guided by [21]–[23] of Cobb J's judgment in *Re Hazeltine* [2024] EWHC 2982 (Fam). The court should assess the seriousness of the conduct by reference to the offender's culpability, and the harm caused, intended or likely to be caused.



Sophie Smith-Holland



Kate Pearson

The court must consider first whether a fine is a sufficient penalty, and if the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt. Due weight should be given to matters of mitigation, and the impact of committal on children in the contemnor's care. Any penalty is at the court's discretion. The court did not consider imprisonment appropriate, nor the sequestration of assets as this could have complicated applications in relation to the substantive proceedings. The court did not ultimately impose a penalty. A fine would not serve to ensure present or future compliance and it would not serve as a punishment unless it were disproportionately high. Otherwise, it would be nominal compared to the sums H had already paid and would serve no additional purpose. A costs order was made against H, summarily assessed at £100,000 inclusive of VAT. This was not the entirety of W's costs, and it was noted that W only succeeded in proving one of four allegations of breach.

***Kroupeevea v Kroupeevev* [2026] EWFC 85** was a decision of James Ewins KC (sitting as a deputy High Court Judge). H was in breach of an LSPO, MPS order and costs order, and committal orders had been activated. H had failed to provide proper disclosure. The judge found, drawing adverse

inferences against H, that a trust structure (the Rossini Trust/Waterford structure) comprised a nuptial settlement within the meaning of s 24(1)(c) Matrimonial Causes Act 1973. The judge further found that the trust, including all its directly owned and indirectly owned underlying entities and assets, including all subsidiary companies and investments were a nuptial settlement, variable by virtue of s 24(1)(c). The value of the Rossini Trust/Waterford structure was found to be £244.1m and H's personally held financial resources were £60.6m. All of the assets were matrimonial. W's sharing claim could not be precisely calculated due to H's non-disclosure. W was awarded £100.6m including the assets which the court considered could be most easily recovered. The court did not vary the nuptial settlement but adjourned the application so it could be restored if there were enforcement issues. It was recognised that there is no appellate authority on the point of the court deploying its powers of variation to extend through a corporate holding structure to the underlying assets. The court considered various first instance decisions which are authority for the proposition that an arrangement can be characterised as nuptial and is variable pursuant to s 24(1)(c) by virtue of the ongoing provision made by its underlying assets. Where an asset is making such continuing provision, the arrangement by which it does so, which may include an intermediate corporate entity or entities, constitutes a nuptial settlement comprising the nuptial property, all of which is variable. The court can, in circumstances where continuing provision is made to the parties to the marriage by an asset held through an intermediary company, define the nuptial arrangement to include both the nuptial asset(s) (or right(s) over the nuptial asset(s)) and the holding structure, and vary it accordingly. The court cannot impute nuptiality to any part of a settlement or arrangement that extends more widely than that which is making continuing (nuptial) provision. The statutory power to vary a nuptial settlement, including underlying assets held within a corporate structure, is subject to the requisite finding that continuing provision is being made from such underlying assets and

by identifying the arrangement by which that provision is made.

De La Sala & Anor v De La Sala & Others [2026] EWCA Civ 282 considered two appeals. H appealed the decision to set aside the consent final financial remedy order made in March 2022. It had been set aside due to a finding that there had been deliberate non-disclosure by H. H had failed to inform the court that he knew by late 2020 or early 2021 that he was likely to receive a substantial gift of money from W's mother and that the likely size of the first tranche of the gift was AUS\$20m. The second appeal, brought by W's mother, was against the court's dismissal of her application that the gifts she made to H should be repaid to her on the basis that she would not have given them to H if she had known there was a possibility W would benefit. W's mother argued the gifts were conditional in that there was a joint understanding W was not to benefit from them. W came from an exceptionally wealthy family, and both parties had been central to the family business, holding directorships. W became estranged from her family in 2017, but they retained very positive feelings about H. H advanced one ground of appeal, that the court should have found that the non-disclosure was not material, because W knew there would be substantial support from her parents to H. The court referred to the case of *Sharland v Sharland* [2015] UKSC 50 in which Baroness Hale made clear that where there is deliberate material non-disclosure, the burden of proof lies on the non-discloser to prove the material would have made no difference to the outcome. The maxim '*fraud unravels all*' was considered apt in this case. The court had been presented with a seriously distorted picture of the parties' financial circumstances, and the final order was premised upon this picture. In relation to W's mother's appeal, the court concluded that any mistaken belief on W's mother's part that W could not benefit from the gifts was not causative of the gifts. It did not follow that W's mother would not have wanted H to have the gifts if her desired outcome could not be achieved. The judge had been entitled to find it was not inequitable for

H to retain the gifts. Both appeals were dismissed.

In **K v K [2026] EWFC 83 (B)**, the parties had agreed a settlement at FDR. H changed his mind about the order and said the judge had had 28 days to change his mind. He applied to have the order set aside/varied. H relied on the ground of litigation capacity/vulnerability due to mental health and ADHD (and particularly that he is impulsive under duress). He also relied on unfairness – he said he was homeless, there had been coercive control, lack of representation and non-disclosure. The FDR transcript was considered and it was clear that H was emotional, but as the hearing progressed, his views remained steadfast and became increasingly more moderated in so far as his initial emotional dysregulation was concerned. The judge gave him ample opportunity to consider matters, to reflect and determine whether or not he wished to conclude matters at the FDR. The reference to 28 days was to determine which items of contents he wanted. The application was bound to fail, and was dismissed.

The judgment in **BY v CG (No 3: Costs) [2026] EWFC 50** dealt with the costs of the proceedings, applying FPR 2010 r 28.3. H's *Daniels v Walker* application, being an interim application, was governed by FPR 2010 r 28.2 (practitioners may refer to the Winter 2025 issue² for a summary of the previous judgment in this case concerning H's unsuccessful *Daniels v Walker* application). The court had to apply CPR 1998 r 44.2 save that the general rule that the unsuccessful party will be ordered to pay the costs of the successful party (i.e. costs follow the event) was disapplied. There was no presumption as to no order for costs either. This was a 'clean sheet' case. However, the case of *Gojkovic v Gojkovic (No 2)* [1991] 2 FLR 233 notes that there remains a starting point that costs prima facie following the event, but this is a soft presumption. The court concluded that H should pay W's costs regarding his unsuccessful *Daniels v Walker* application. Costs following the event was the starting point, and the fact his application was unsuccessful was a decisive factor in the exercise of

the court's discretion. The court did not, however, award the costs W sought for the additional expert reports and the attendance of the experts at the final hearing, which W said arose from H's *Daniels v Walker* application. The court had directed the expert evidence as necessary, having rejected H's application to instruct his own expert. The evidence was of relevance at the final hearing, and W had benefited from the uplift in the business valuation as a consequence of that evidence. A party is entitled to cross-examine an expert where they are putting a reasonable and arguable case; doing so did not constitute litigation misconduct by H. The court referred to *OG v AG (Financial Remedies: Conduct)* [2020] EWFC 52, [2021] 1 FLR 1105 per Mostyn J, that there are plenty of cases which are litigated to final hearing where neither party is guilty of conduct within the terms of FPR 2010 r 28.3(6). W was, however, partly successful in her application for 50% of her remaining legal costs, pursued on the grounds of H's litigation misconduct. The court found that H had given a knowingly inaccurate assessment of the value of the company in his Form E. The court made a costs order that was relatively modest compared to W's overall costs, observing that W had not negotiated openly and reasonably. The court referred to *WC v HC* [2022] EWFC 40 in which Peel J observed that sensible attempts to settle, or unreasonable failures to make such attempts, are a powerful factor when considering costs.

JK v LM [2026] EWFC 32 (B) was a medium length marriage, with two children aged 11 and 9. The assets in this case totalled just over £2.3m. This was a needs case, but with sufficient funds available for both parties to rehouse themselves and their two children whilst maintaining a reasonable standard of living. One dispute of fact concerned money W had borrowed from her mother. W's mother gave evidence and it was accepted that she was expecting and entitled to repayment of the funds lent. The court referred to *P v Q* [2022] EWFC 9(B) in which HHJ Hess set out the principles to be considered regarding categories of loans/obligations. A further dispute referred to sums W

argued should be added back to the matrimonial funds (total £194,000). Both parties had at times during the final hearing suggested that the other had misappropriated or hidden matrimonial funds. The court did not find that funds should be added back and referred to the high threshold for such claims. It was found that W's claim was for the most part an allegation that H had not always made sensible financial decisions. Overall, the court ordered a division of capital assets as to 49.2% to W and 50.8% to H, with W retaining the FMH and releasing H from the mortgage. The pension assets were divided 65%/35% in W's favour. This was based on CETV rather than income-generating potential and was therefore noted to be a rough estimate. W failed in her pursuit of an order for H to pay a 50% contribution towards various items of expenditure for the children over and above the CMS calculation. The court determined that the expenditure list did not fall within the exception for expenses in connection with '*instruction at an educational establishment*' (i.e. school fees: s 8(7) Child Support Act 1991, but note the judgment, in error, refers to s 9(7)).

BS v HC [2026] EWFC 20 (B) was a decision of HHJ Hess in respect of the extent to which H's pensions should be regarded as matrimonial or non-matrimonial. W had a pension with a CE of £35,363. H had two pensions with a total CE of £3.64m. There were disputes about the extent to which pensions should be treated as having accrued during the marriage, and whether the portion which accrued outside the marriage should be treated as having been subsequently 'matrimonialised'. In respect of pensions the question is often referred to as one of 'apportionment'. PAG2 provides methodologies for looking at the issue – the 'deferred pension method', 'the CE method' and 'the Straight-Line method'. The PODE used 'the service approach' (similar to the 'deferred pension method'), the 'funding approach' and 'the CE approach'. The PODE's view, with which HHJ Hess agreed, was that it was for the judge to decide the correct approach. HHJ Hess decided that the question should not be solely answered by reference to one

mathematical analysis – the search for a fairness requires a broader weighing of the competing arguments. Weighing all the relevant matters, HHJ Hess reached the broad conclusion that it was fair to regard 55% of H's pensions as having accrued during the marriage and 45% as having accrued outside the marriage. It was also fair to consider whether a higher figure could be introduced with reference to matrimonialisation. Both parties had made substantial contributions. W had contributed a gift of £1.5m which she could have kept separate, and a property of considerable value. H had made contributions (totalling £1.56m) from the sale of shares in the family business. H had also contributed £200k from the sale of a property and his significant income from 2009 to 2021. HHJ Hess considered the issue of matrimonialisation was different for pensions, as pension rights rarely become 'mingled' during a marriage. So, what does it take for it to be fair to treat such an asset as having been matrimonialised? HHJ Hess considered that the wording in *Standish* of '*actual use and enjoyment*' was too literal an interpretation. A common intention to put the asset into use and enjoyment in the future would give rise to matrimonialisation if that intention was relied upon by the other party to his or her detriment (at [34]). W relied on a conversation in 2013 when she received her gift of £1.5m. It was agreed there would be a purchase of a property. The issue arose as to whether it would be placed in W's sole name as she was paying for it, or joint names. HHJ Hess accepted W's evidence that there had been a conversation with words to the effect of '*it doesn't matter that I am not contributing to the purchase price because we will share everything equally in our marriage, everything comes and goes out of the same pot*'. There was no specific reference to pensions, and there were other assets to which H could have been, and probably was, referring, most obviously his company shares. HHJ Hess said it was a difficult question, but he had not been persuaded on the facts of this case that the words could fairly give rise to H's pension rights being matrimonialised. The consequence was only 55% of H's pensions should be taken into account

in respect of sharing, and this would be 27.5% of H's SIPP. W could seek more on the basis of need, but 27.5% would provide an annual income of c. £40,000 and she would have a Duxbury fund of £375,000 producing £25k p.a. net for 19 years or £20k p.a. net for 26 years. HHJ Hess concluded her reasonable needs were £60,000–£65,000 p.a. This was produced on the basis of equal sharing on non-pension assets, and a 27.5% PSO.

Re N (A Child) (Financial Provision: Contact Travel Costs) [2026] EWFC 18 (B) was M's Schedule 1 application in respect of the child, N. M sought periodical payments, including backdated payments. H had been paying initially £400 pcm and then £525 pcm. M was seeking periodical payments of £1,100, an order that F pay 70% towards other 'reasonable agreed child-related costs', a lump sum (for retrospective maintenance at £1,100 and deducting sums paid) of £11,740 and £6,093.50 in respect of nursery fees and some other orders. F had proposed payments based on the *James v Seymour* model arriving at £478 for 2026, £556 for 2027, £408 for 2028 and £162 thereafter. DDJ Vickers calculated the result of the applicable formula to find the child support starting point (CSSP) would be F's gross income within the £156,000, no adjustment for children in F's care, one subject child, adjustment for 1/7th shared care (84 nights) = £13,100 p.a./£1,091.67 per month. F sought for the costs incurred with travelling to spend to spend time with N, and the cost of him maintaining a policy of medical insurance for her benefit should be deducted from gross income in the same way as school fees are in the *Mostyn J* formula due to the reference in the appendix to the judgment to '*S is the amount of school fees and extras currently being paid*'. DDJ Vickers refused this concluding that extras related to school extras like uniform, etc. However, travel fees did need to be factored in but F had double – or even triple – accounted for the costs. DDJ Vickers ordered £700 which covered nursery costs and allowed £330 towards N's housing and living costs. The CSSP was reduced to take into account a portion of the travel and insurance costs.

Re A and Z (Service Out; MPS; LSPO) [2026] EWFC 64 was a decision of McKendrick J about what the title suggests. A was living in England and Z was living in State X in the United States. A had filed for divorce in the United Kingdom and Z had applied for divorce in the United States. Z sought permission to apply out of time to set aside an order permitting service out the jurisdiction of the divorce application by email and to set aside the order for service. A also sought to stay the divorce and financial remedy proceedings in the United Kingdom, MPS and LSPO. Z sought to instruct two experts in the law of the United States. The judge raised whether Z's application to extend time was an application for relief from sanctions, but it was determined it was not because the order did not provide for a sanction if the order was not the subject of an application to be varied or discharged within 7 days. The appropriate test to apply was FPR 2010 r 4.1(3)(a). Permission to extend time was granted. In respect of service, it was about more than making Z aware of the claim or application. It involved the exercise of sovereignty and respect for sovereignty. Comity requires due respect to US citizens and their courts. It was not possible, in the absence of a Part 25 expert, to resolve the factual dispute between the parties of whether service by email is permitted in X State. The judge set aside the permission for alternative service.

Kanabar v Kanabar [2026] EWCA Civ 582 considered the powers of the appellate court in cases where the appellant has died after being granted permission to appeal against a financial remedies order, and the course to be taken where the deceased has died intestate and no one is willing to apply for letters of administration. The case concerned an appeal against an order (made by 'the judge') that allowed an appeal against a financial remedy order (made by 'the district judge'). The deceased was H, his first wife was the appellant, A, and his widow, the second respondent, B. In the financial remedy proceedings between H and A, directions had been made inviting H's father to intervene due to issues relating to beneficial interest in properties. H's father sought to

intervene by email to the court but did not comply with the directions. The district judge refused H's father's application to intervene. He gave evidence at the final hearing, but the issue of beneficial interest was not fully considered. The final order provided for a slight departure from equality in A's favour, approximately 55%. H filed an appeal, but shortly after H died intestate. A and B attended the appeal hearing, B without representation. B confirmed that she did not want to take on the role of personal representative and said that following H's death she had found everything overwhelming. The judge cited *Unger & Anor (in substitution for Hasan) v Ul-Hasan (deceased) & Anor* [2023] UKSC 22 which states that '*procedurally, financial remedy appeal proceedings survive the death of a party ... so long as a suitable representative party is appointed to act on behalf of the estate of any deceased party*'. The judge concluded that in the absence of such representative, the appeal should still be heard on its merits. The appeal succeeded, among other reasons, because the underlying factual issue of beneficial interest had not been resolved. The district judge's order was set aside. A then filed a notice of appeal against the judge's order. Permission was granted and B was joined as a respondent to the appeal. B was in the process of obtaining letters of administration regarding H's estate but had not yet done so. At the appeal hearing, it transpired that H's father had since died. The main ground advanced by A was that the court had erred in not striking out the appeal in circumstances where H had died and none of those who would benefit from the success of the appeal were willing to administer his estate. The appeal was allowed on the basis that there was no legal personality able to pursue the appeal, and the right course should have been to strike out H's appeal. The judge could have adjourned the appeal to give more time for the family to apply for letters of administration, but his reasons for not doing so were justified as an adjournment had already been allowed for this. The court observed that there was considerable force in the views expressed by Mostyn J and Lord Leggatt in *Unger*, and the forthcoming government consultation

on matrimonial finance and cohabitation law may provide an opportunity for review of the circumstances in which financial remedy claims survive the death of a party.

Practitioners should also note the publication of the **Financial Remedies Guide** in March 2026³ and the **new standard orders** in May 2026⁴.

Notes

1. Sophie Smith-Holland and Kate Pearson, 'Financial Remedies Update', *Family Affairs*, Winter 2025, 61 at 65.
2. Sophie Smith-Holland and Kate Pearson, 'Financial Remedies Update', *Family Affairs*, Winter 2025, 61 at 67.
3. *The Financial Remedies Court of England & Wales: Financial Remedies Guide* (March 2026), www.judiciary.uk/guidance-and-resources/financial-remedies-guide-2026/
4. The full suite of up-to-date standard financial orders is available at www.judiciary.uk/guidance-and-resources/update-to-standard-orders/



Legal Updates:

Private Law Children

Sharon Segal KC | 1GC Family Law

News update

Cafcass film

Cafcass has launched the third film in its animated film 'Taking me seriously' series which seeks to help children and young people who are involved in Family Court proceedings. Titled 'Meeting your Cafcass Worker', this episode intends to support children to feel comfortable when they are talking about their experiences, hopes, wishes and feelings. The voices used are members of the Family Justice Young People's Board, all of whom have personal experience of Family Court proceedings: www.cafcass.gov.uk/new-animated-film-seeks-help-children-young-people-who-are-involved-family-court-proceedings.

Data trends

In April 2026, the Nuffield Family Justice Observatory published a report on trends in the family justice system having reviewed data from the Ministry of Justice. Private law applications outnumber public law applications by more than 3 to 1 and the number of private law cases in any one year has fluctuated more than in public law. Since 2011, applications have peaked at over 55,000 on three occasions: in 2013 (just before the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which then saw a drastic drop), before the COVID-19 pandemic in 2020, and in 2025: www.nuffieldfjo.org.uk/news/trends-in-the-family-justice-system-in-england-and-wales-in-2025. Cafcass reports **18,000 open private law children's cases** at the end of March 2026, involving **26,722 children**. This is +1,517 (+9.2%) more children's cases and +1,851 (+7.4%) more children compared to the same month last year: www.cafcass.gov.uk/about-us/our-data.



Case law

Pringle v Nervo [2026] EWCA Civ 266

This was an appeal by the appellant father, against the making of a costs order in which the judge ordered the father to pay 75% of the costs which had been incurred by the mother in private law proceedings. The issue on appeal was whether the judge was wrong to have made an order for costs given the high bar which requires a party's behaviour in respect of proceedings involving a child to have been '*reprehensible or unreasonable*' before an order for costs is made (*Re T (Children) (Care Proceedings: Costs)* [2012] UKSC 36, [2012] 4 All ER 1137).

At first instance, and at the DRA stage, there was no question of a fact-finding hearing being necessary to inform the outcome of the proceedings. Both parties were working towards developing a relationship between father and child and contact took place assisted by an independent social worker. There was no dispute that contact when it occurred had gone well. The mother changed her legal team and sought admissions or a fact-finding hearing to prove her allegations of coercive and controlling behaviour. The mother's application was refused; the father was asked to provide a list of admissions. The father accepted that he had led the mother to believe they were

in a committed, monogamous relationship, and that the mother had discovered the father was in a long-term relationship with another woman with whom he had one child and was expecting another. The father accepted this constituted domestic abuse of an emotional nature. There was an agreement in principle to contact taking place; a dispute over the frequency. A welfare hearing was listed; however, the change in approach by the mother meant that the father decided to withdraw his applications referencing his ongoing depression and anxiety. In making an order for costs the judge relied, amongst other things, upon the lateness of the father's application to withdraw. He made no reference to the mother's approach.

In allowing the father's appeal and substituting an order for no order as to costs, King LJ confirmed the general principle that there should be no order for costs in children cases absent reprehensible behaviour or an unreasonable stance being taken by a party in relation to the proceedings. It provides a test which is simple, flexible and well-established, and there is no reason to depart from it:

'All too often in private law family cases, parties make decisions or reach agreement very late in the day. Inevitably the lateness of these decisions may mean that costs have been incurred. If however, each time that this happened an order for costs was made, other than on the basis of the stringent test in Re T, one would see orders for costs being made more or less routinely in Children Act proceedings which would undermine the principle that, for the reasons given by Baroness Hale in Re S at [20 – 26], it is inappropriate as a general rule to make costs orders in children's cases.'

King LJ stated that:

'had the judge worked his way through CPR 44.2(4) in respect of each of the parties' conduct and in particular factored in the mother's late application for a finding of fact hearing which derailed the consensual progress of the case, he would have appreciated that this was not one of those rare cases where the making of an order for costs was appropriate.'

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

This was another appeal in respect of a costs order, in this case, made against the father by a circuit judge on an appeal from magistrates in private law proceedings. By the costs order, the judge ordered the father to pay the mother's costs of the appeal from the magistrates. The appeal from the magistrates in respect of which the order was made, concerned a final child arrangements order made by them. Both the mother and the father were dissatisfied with various procedural and substantive aspects of that order; the mother filed an appeal, the father cross-appealed. The mother had five grounds of appeal: (1) the magistrates erred in law by failing to provide adequate reasons to support their decision that an order for equal shared care was safe and in the child's best interests; (2) they also erred in law by failing adequately to consider or apply the relevant provisions of FPR 2010 PD 12J; (3) their refusal to adjourn the final hearing was unjust because of a serious procedural irregularity; (4) they also erred in law by adopting a linear approach in their evaluation of the competing welfare options; and (5) their decision to make an order for equal shared care was irrational and wrong. The mother's appeal was allowed; the magistrates decision set aside and the father's cross-appeal was dismissed. A costs order was made on the basis of the father's unreasonable conduct of the litigation (he knew the basis of the appeal, and he had the opportunity to take stock and decide whether it was reasonable to oppose the appeal).

In allowing the father's appeal, Sir Launcelot Henderson held, having considered FPR 2010 r 28.1 that *'as a matter of jurisdiction..., the discretion to order costs under the FPR could hardly be wider, with the only stated criterion being what the court considers to be just'*. The mere fact of resisting an appeal, even if brought on grounds which appear to be strong, is *'unlikely to amount to conduct which is unreasonable or reprehensible, even if with the benefit of hindsight, after the appellate court has given its ruling, the appeal may be characterised as a strong one. It is important in my judgment to guard against the*

dangers of being wise after the event'. The high bar of unreasonableness 'must involve a lot more than the mere fact of ending up on the losing side of an appeal where the welfare of a child is at stake and where the views of both parents as well as independent expert evidence need to be considered'.

As to the father's cross-appeal, it was incumbent on the father to raise by way of a respondent's notice all the further points which he wished to run so that the appellate court would be fully able to adjudicate on the matter in the round, *'it is also commonly the case that a litigant wishes to run arguments in the alternative which are mutually inconsistent, and it is not normally an abuse of process to do so'*. Peter Jackson LJ stated that this case and the very recent decision in *Pringle* (above) are *'unfortunate reminders of why satellite litigation about costs in child welfare cases is to be discouraged by maintaining the general principle that there should be no order for costs unless there has been reprehensible or unreasonable conduct in relation to the proceedings'*.

GI v K [2026] EWHC 480 (Fam)

This was an appeal by the mother in private law proceedings. The judge held that the child (aged 4) should continue to live with the father, with overnight contact to the mother. Holidays were to be shared. By way of background, the parents separated after an incident when the mother took an overdose in the bath. The father removed the child from the house, apparently leaving the mother in the bath, and without calling the emergency services. The mother spent 24 hours in hospital and then went to live with the maternal grandmother in London. The child then lived with the father in the family home.

Within the proceedings the mother made allegations of domestic abuse, including an incident of non-fatal strangulation in front of the child. The mother said that she had discovered that the father had a previous conviction for grievous bodily harm having stabbed a previous partner and received a prison sentence, many years before. The mother

called the police when the father refused to allow her to spend time with or hold the child, and they told the father that the mother had discovered his previous conviction. After the police left the father became verbally aggressive towards the mother and took the child from her. It was this incident that led to the mother taking an overdose.

The case was listed as a 'composite hearing', dealing with facts and welfare. The judge determined that the mother would not be permitted to advance her allegations of domestic abuse. He stated that the incidents referred to did not have *'great significance now'*.

In allowing the appeal, Lieven J stated that the allegations of domestic abuse were extremely serious. They included non-fatal strangulation and a course of abuse that the mother said led to her attempting to commit suicide. Very importantly there was evidence, referred to extensively by the social worker, that the alleged coercive control was continuing to have a significant impact on the mother and on the difficulties with co-parenting. Lieven J stated the judge was *'plainly wrong to conclude that the mother's allegations of domestic abuse, including coercive control were not relevant to the decisions that he had to make about the child's welfare'*. The judge did not consider the impact of domestic abuse on the child and not just the mother, *'the seriousness of the allegations are not themselves likely to be the critical factor, the critical factor is the nexus between the facts alleged and the current welfare decision'*.

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

The Court of Appeal heard three separate appeals, each relating to the attribution of parental responsibility and the status of 'father' with respect to a child. In two of the cases, the status of an individual who had been registered as 'father' in a child's birth register entry was subsequently challenged. The third case had an additional level of complexity arising from the fact that the mother had engaged in sexual intercourse with each of two identical male twins in the course of one week

at the time that conception must have occurred. As a result, whilst DNA testing established that the child's biological father was one of the twins, it was not possible to say which of them.

The court considered whether the definition of 'father' for the purposes of the Children Act 1989 was limited to a child's biological/genetic father, or whether it extended to others who have acted as the child's psychological/social father; and whether an entry as a child's 'father' in the birth register entry automatically attributes parental responsibility to a 'father' who is not, in fact, the biological/genetic father of that child.

The Court of Appeal held that the definition of 'father' for the purposes of the CA 1989 *'is the common law definition and is limited to a child's biological/genetic father. The definition does not, and cannot, extend to others who have acted as the child's psychological/social father'*. Where an individual is registered as a child's 'father' in their birth register entry, the parental responsibility attributed by such registration does not attach to that individual if they are not, in fact, the biological/genetic father of the child.

In order for parental responsibility to be acquired by registration on a birth certificate under s 4 CA 1989, two conditions must each be fulfilled: (1) The person must be the genetic/biological father of the child; and (2) That person must be registered as 'father' in the child's birth register entry. Where an individual who is not the legal father, and has not acquired parental responsibility through registration on a child's birth certificate, but has become a psychological or social parent to the child, their role in the child's life may be reflected by the making of a section 8 child arrangements order, together with the attribution of parental responsibility by an order under s 12.

The President held that whilst the question of the validity of a parental responsibility order made under s 4(1)(c) CA 1989 did not arise in the appeals, the Secretary of State was likely to be correct in the submission that, where such an order is made

with respect to an individual who is not the child's genetic father, the order will, in common with all court orders, be valid whilst it is in force but, where the issue is raised and non-paternity is established, the court must discharge it on the basis that it was made without jurisdiction.

Where there is a risk of child abduction and there is any uncertainty as to paternity, an individual registered as 'father' in a child's birth register entry would be well advised to apply to the court for orders under s 8 controlling the child's departure from the jurisdiction and, if justified on the facts, for parental responsibility under s 12 CA 1989. Where a court makes a declaration of non-parentage under s 55A, in a case where, hitherto the non-father had assumed that they had parental responsibility, the court should consider making interim orders to hold the situation and avoid the consequences of the abduction 'gap' identified in this case. Where a child has been removed or retained abroad in circumstances that would be wrongful under the Hague Convention if the left-behind 'parent' did have parental responsibility, but where that person had thought that they had parental responsibility but, in reality, they do not do so on subsequent proof of non-paternity, the court should look to other remedies either under the CA 1989, or by treating the circumstances as a non-Convention abduction case.

***Shropshire Council v Mother & Others* [2026] EWHC 510 (Fam)**

The applicant was the paternal aunt of a child placed with foster carers and subsequently made subject of a special guardianship order to them. She wished to share information with her MP as to the impact of s 14A(5)(d) CA 1989, which permits a local authority foster parent to apply for a special guardianship order without leave of the court when a child has lived with them for a period of at least one year. The issue of particular concern was the impact on family members who could provide good enough care for a child who has become settled in alternative care due to delays in the family justice system.

No accredited media attended the hearing and the question arose as to whether a judge sitting in the Family Court had jurisdiction to make an order dealing with publication of information from private Children Act 1989 proceedings heard in the Family Court in circumstances where publication is not provided for by the current rules on publication of information as contained within the FPR 2010 rr 12.73, 12.73A (enabling PD 12R) and 12.75.

The Family Court is a statutory court with limited jurisdiction, defined by s 31A Matrimonial and Family Proceedings Act 1984. The statutory scheme must be read alongside the President's Guidance governing allocation of work between courts. Harris J was satisfied that both the 2014 and 2018 President's Guidance¹ prima facie reserves an application to permit publication of information relating to Children Act 1989 proceedings heard in private, to the High Court.

The applicant argued that a transparency order could be treated as incidental or supplemental to the welfare proceedings, such that the Family Court could grant it in the exercise of its ordinary powers. That submission was rejected. The court held that an application seeking permission to publish information about Children Act 1989 proceedings heard in private was not properly categorised as incidental or supplementary to the substantive welfare proceedings. Harris J stated the conclusion may be regarded as '*less than satisfactory because it makes a transparency order less readily obtainable outside the parameters of the current rules*'. There may be:

'a strong argument founded in the principle of open justice for further changes to the rules and Guidance to facilitate the making of transparency orders in the Family Court in a much wider range of circumstances, however the court considered the those changes may be more properly be made by the Family Procedure Rule Committee following thorough consultation with all interested stake holders.'

However, even if the Family Court had jurisdiction to make such orders:

'there would be a good argument as a matter of allocation for such applications to continue to be allocated to a High Court judge given the emerging nature of this jurisprudence and the potential complexity, depending on the nature of the order sought, of extending the scope of transparency orders outside the current provisions of the FPR 2010. Such allocation guidance would again however be a matter for the Family Procedure Rule Committee.'

Re RN (Paternity: Unregulated Sperm Donor) [2026] EWHC 878 (Fam)

Robert Albon, who also uses the name 'Joe Donor', is publicly known as a sperm donor. He has appeared on and in the national media in this jurisdiction and abroad discussing the role he has undertaken. He makes the uncorroborated claim to be the father of more than 180 children around the world over the course of some 12 years. He sought a declaration that he was the father of 'N' pursuant to s 55A Family Law Act 1986; there was no dispute that he was the genetic father. The application was contested by N's mother and by the children's guardian.

Mr Albon's activities were considered in previous judgments: *A v B, C and D* [2023] EWFC 333 and *Re CA (Children of Unregulated Sperm Donor)* [2025] EWFC 130. Poole J's judgment in *Re CA* is highly critical of Mr Albon, who is described as not being '*a man troubled by self-doubt*', but being one who leaves personal turmoil in the wake of his intervention in the lives of, often, very vulnerable women.

Pursuant to s 55(A)(5), the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child. The President held that the weighing up of the relevant factors this section:

'is an exercise in proportionality, where the default position is that the application should proceed to determination and the priority

afforded to establishing and fixing the truth as to an individual's parentage and the principle of access to justice are fully in play, but where the best interests of a child may, in some cases, nevertheless require the court not to determine the application.'

The court did not refuse to determine the application on the basis that to do so would not be in N's best interests, however held that, pursuant to s 58(1) it would be manifestly contrary to public policy to endorse Mr Albon's activities, and his particular engagement around the conception of N, by making a declaration of parentage in this case.

The bar set by s 58(1) 'is a high one, but the clarity of the statutory provisions and the scale on which Mr Albon has operated outside those provisions make it manifest that what he has been doing is contrary to public policy as established by Parliament in the HFEA legislation'. By 'processing' and 'distributing' sperm, as defined by s 2 Human Fertilisation and Embryology Act 1990, Mr Albon acted in breach of s 4(1A) (an offence for any person to 'process or distribute any gametes intended for human application except in pursuance of a licence or a third-party agreement'). Parliament provided that where the sperm of a man, who has donated as part of the statutory scheme, is used for

the purposes of insemination within that scheme, that man is not to be treated as the father of the child (s 28(6) HFEA 1990 and s 41 HFEA 2008). The President stated:

'it seems most unlikely that Parliament would have taken a starkly different approach to a non-licensed donor who has acted as Mr Albon has done on so many occasions (whether as a formal "business" or in any event). I, therefore, hold that it would be contrary to public policy for Mr Albon to be treated as the father of N by the court granting a declaration of paternity naming him.'

This case does not mean that all applications for a declaration of parentage by those who donate sperm to assist in the conception of a child outside the HFEA scheme will be dismissed on public policy grounds, each case will be determined on their own facts as they arise; this case involved sperm donation on a wholly different scale.

Notes

1. The President issued new guidance on allocation on 31 March 2026, replacing the 2014 guidance: www.judiciary.uk/guidance-and-resources/allocation-guidance-relating-to-children-in-the-family-court/



Legal Updates:

Public Law Children

Victoria Green | 1 KBW

News round up

At the end of March the Department for Education published a press release confirming an amendment to the Children's Wellbeing and Schools Bill that will require all local authorities in England and Wales to promote and facilitate contact for children in care who are separated from their siblings. The intention is to put sibling contact on an equal footing with parental contact for children in care. The duty will also apply to half and step siblings, and will apply unless contact is not in a child's best interests. That was followed at the end of April by a publication from the Department for Education, entitled 'Stability measures for children looked after in England'. In that, they published the statistics for children looked after. It will, perhaps, surprise no one reading this that they reported 10% of those children in 2025 experienced high placement instability, i.e. three or more placements during the year, and the proportion of children looked after experiencing high social worker instability, i.e. three or more social workers during the year 2025, was 24%.

In terms of the latest statistics regarding court applications, Cafcass published their data to year end 31 March 2026, saying that the number of new children's cases received (5,691) represented the highest monthly demand since March 2021. In public law cases there had been a 4.7% increase in demand. At the same time the Nuffield Family Justice Observatory published analysis of the latest Ministry of Justice Family Court Statistics Quarterly data on deprivation of liberty applications. The data showed 1,440 DOLS applications were made in 2025, an increase of 12.5% from 1,280 applications in 2024.



Adoption

In *Re T (A Child) (Non-Agency Adoption)* [2026] EWHC 391 (Fam), McKendrick J was concerned with applications by foster carers in respect of a 3-year-old girl for an adoption order and an injunction under the inherent jurisdiction to prevent removal of that child from their care. The London Borough of Ealing had obtained care and placement orders in respect of the child in August 2023; they opposed the applications made by the foster carers and sought to place the child with her birth half-sister, who had already been placed with adoptive parents in the North of England. The child's mother was white British, and her father was from a country in Africa. She had never met her father, but last had contact with her mother in March 2025.

She was removed from her mother's care due to concerns about alcohol and substance misuse and domestic abuse. She had two maternal half siblings, a boy aged 19, and her half-sister, aged 4. The child's foster carers were of East African heritage, and she had been placed with them at just 5 days old. Between August 2023 and March 2025, the local authority had been unable to

identify a suitable adoptive placement for the child and her half-sister together.

Following a Together and Apart assessment, it had been concluded that the two children should be placed in separate adoptive placements because there was some evidence to suggest that the older child presented with competing needs, and the local authority had been unable to identify a placement of the sibling group of two. The foster carers complained that the local authority had refused to obtain a professional assessment on the subject of the impact of disrupting the child's attachment to them, when they had specifically asked to be considered as potential adopters. In June 2025, a deputy High Court Judge made an interim injunction preventing the removal of the child from the care of her foster carers. The following month, the half-sister moved to live with her adopters. A sibling assessment report was completed in November 2025, and Annex A report completed in December. Both recommended that the child should be adopted by her foster carers, and that was supported by the guardian. The local authority, however, continued to seek the removal of the child to be placed with her half-sister's prospective adopters.

McKendrick J raised concerns as to issues concerning fair notice to and service upon the mother, and whether proper consideration had been given to the joinder of the birth father, albeit that he did not have parental responsibility. Despite the proceedings having been issued in April 2025, the mother had not been served with either the injunction or adoption applications until very recently before the hearing before him. The mother had, however, indicated that she felt the child was very settled in her placement, and so was inclined to believe that she should remain with her foster carers, rather than joining her half-sister.

Insofar as the father was concerned, he was currently incarcerated and had only been given limited time after receiving notice of the hearing and application. However, he had never met the child nor sought contact, and the father's mental

health social worker had indicated that he had 'accepted' that adoption for the child was the best thing to provide her with a family. McKendrick J was satisfied that it was not necessary for the father to be joined as a party.

McKendrick J noted that this was an application for a 'private' adoption pursuant to s 47(1)–(2) Adoption and Children Act 2002. He noted that the child was already subject to a placement order, and that he was obliged to undertake a comparative welfare analysis of the advantages and disadvantages of each option for the long-term placement of the child. He referred to the *Statutory Guidance on Adoption For Local Authorities, Voluntary Adoption Agencies and Adoption Support Agencies* (July 2013), at paragraph 4.12, which provides as follows:

'Siblings should be adopted by the same prospective adopter unless there is good reason why they should not be. Where an agency is making a placement decision on two or more children from the same family, it should be based on a comprehensive assessment of the quality of prospective adopter to meet the needs of all the siblings being placed together. Where it is not possible for the siblings to be placed together the agency should consider carefully the need for the children to remain in contact with each other and the need for adoption support (see paragraph 27). Where a placement is sought for a child whose sibling(s) have already been adopted, it will be important to consider whether it is possible to place the child with the parents who have already adopted the sibling(s). It must be recognised however, that this could be placing too great a burden on the adoptive parent, and risk destabilising the existing adoptive family.'

He also considered the provisions under the ACA 2002 regarding post-adoption contact, and the obligation on the court pursuant to s 46(6) to consider whether there should be arrangements for allowing any person contact with the child. McKendrick J was critical of the long delay that had taken place in determining whether the child should be adopted by the foster carers, and said *'the fig leaf of an interim injunction is no substitute for swift welfare decision making, particularly in*

the field of adoption'. He determined that he was not deciding the case on the respective suitability of the two placements on the table, but rather on the basis of the detrimental impact of removing the child from the foster carers, their boys, their home and wider family. He was not persuaded about the impact on either child of losing their special status in the hierarchies of their respective homes, nor the potential additional needs of the older child and said '*an order of this court requiring the separation of siblings with the effect that they will grow up in separate homes cannot be determined by the pursuit of perfection*'. The fact that one child may have to adjust, according to the needs of another child he said was the very essence of family and sibling life and '*the court must be careful to guard against engineering the protection of a child from the rough and tumble of everyday life, that is the hallmark of growing up with the highs and lows of sibling relationships*'.

He noted that the law and guidance make clear the importance of the court promoting blood sibling relationships. However, ultimately he accepted to remove this child now from the only home she had ever had would be contrary to her welfare interests. This was therefore one of those limited cases where the siblings could not be placed together for good reason. Acknowledging the case put on behalf of the local authority, he said '*Identity is an integral part of what it means to be human. Fraternity is a cornerstone of the development of our identity*'. His concern was that as the children grew older, that it may be damaging for them, knowing they have been kept apart. That had been weighed in the balance. He therefore made the adoption order in favour of the foster carers, at the same time as also making a post-adoption contact order to limit or seek to manage the future risk of emotional harm.

In ***Re X and Y (Children: Adoption Order: Setting Aside)* [2026] UKSC 13**, the Supreme Court considered an appeal by an adoptive mother against a decision that the court has no power to set aside a validly made adoption order, other than by way of appeal. The appellant was the

adoptive mother of two children. They had been placed with her in 2012 when they were 5 and 4 years old after a prolonged period in foster care. In May 2013, the adoption order had been made. The children had maintained contact with their birth mother, which was facilitated and supported by the adoptive mother. In 2021, both children left their adoptive mother's home to return to live with their birth mother. One of the children then moved to live with her natural father the following year in 2022. It was said that the breakdown of the adoption was not due to any rejection of the children by the adoptive mother.

By February 2023, both children were beyond parental control, and the local authority issued care proceedings and sought interim supervision orders. Child arrangement orders were made for one child to live with her birth father (and spend time with her birth mother), and the other to live with the birth mother. By virtue of the child arrangements orders, each of the birth parents were conferred with parental responsibility in respect of the child who lived with them. In April 2023, the adoptive mother made an application in the High Court seeking revocation of the adoption order under the High Court's inherent jurisdiction. The children and the birth mother supported the application which was made on welfare grounds. Lieven J had accepted that there was a power to revoke a validly made adoption order under the inherent jurisdiction but said that it could not be used solely on grounds relating to the adopted child's welfare. Accordingly, as this was the only ground relied on, she held that she had no power to revoke the adoption orders and refused the application.

The adoptive mother appealed to the Court of Appeal, and the appeal was dismissed. It held that the court has no jurisdiction to set aside a validly made adoption order, whether under the inherent jurisdiction or otherwise. The appropriate avenue for seeking to set aside an adoption order, if there is an appealable error, is by way of an application for permission to appeal out of time, where the child's welfare could be considered. However, the

fact that an adoption has *'turned out badly and that revocation would serve the interests of the adopted person, whether a child or an adult, is not a reason for the court to supply a remedy that Parliament has chosen not to provide'*.

The adoptive mother then appealed to the Supreme Court. By that time, the two children were by then adults, and by virtue of s 49(4) ACA 2002 no further adoption application could be made in either of their cases. It also meant that neither were children in respect of whom the *parens patriae* jurisdiction could be applied, even if it had any application here. Notwithstanding the fact that no order could therefore be made under the inherent jurisdiction in this particular case, the Supreme Court determined that there were good reasons in the public interest for determining the appeal given the prospect that there may well be other cases that would raise the same issue.

The Supreme Court reviewed the legislative scheme for adoption, and specifically s 1(2) and (4), i.e. the paramountcy principle and welfare checklist. In their judgment, Lord Stevens and Lady Simler referred specifically to the consequences of an adoption, as set out at s 46 ACA 2002. They noted that, *'in contrast to both special guardianship orders and placement orders, the only provision made by the ACA 2002 to revoke an adoption order is in section 55 of the ACA 2002. Section 55 provides a narrowly focussed basis for revocation of an adoption order in circumstances of subsequent legitimization of the adopted child'*. That narrow exception is concerned with removing the perceived stigma of illegitimacy for an adopted child.

In their view, within the ACA 2002, there is a scheme of increasing permanence to the placement of children outside the care of their natural parents, starting with a placement order (which permits the restriction of parental responsibility of natural parents), then a special guardianship order (permitting a special guardian to exercise parental responsibility to the exclusion of birth parents),

and lastly an adoption order (that extinguishes the parental responsibility of natural parents).

Thus, the combined features:

'of the statutory scheme make plain that adoption is reserved for cases where the welfare of the child requires a level of intervention that involves removal of the child from their birth family, that, as a matter of law, is intended to be lifelong and to extinguish, in legal terms, natural family relationships so that it is as if the adopted child had been born to the adopter.'

The Supreme Court said that there are strong public policy reasons for the *'peculiar finality'* of an adoption order; *'In cases that do not involve adoption, there is no legal mechanism by which natural parents or children can extinguish the parent-child bond between them, however much they might wish to do so. The statutory scheme replicates this situation in respect of adoptive parents and adopted children'*. In the absence of any statutory mechanism by which to revoke the legally valid adoption orders made in this case, the adoptive mother's appeal depended entirely on her argument that the court has an inherent *parens patriae* jurisdiction to revoke a legally valid adoption order in exceptional circumstances of pressing need.

The Supreme Court said that it was necessary to go back to first principles and to consider the nature of the *parens patriae* jurisdiction. Where a matter is regulated by statute, use of the inherent jurisdiction is limited not only where the statute expressly says so, but also by implication by the very existence of the statute itself. To the extent that the protective jurisdiction survives in relation to children as a residual prerogative power, it does so in cases where the court is required in the Crown's residual function of protecting those who stand in need of protection from significant harm because no other statutory mechanism is available or adequate to achieve this purpose. Those powers are not and have not been concerned with the reordering of parental responsibility, and there

is no precedent in history for the use of that power to change the parental relationship in the manner contended for in this case. The Supreme Court said that, at best, the adoptive mother's case seemed to be that at least one if not both of the children needed to be protected from Parliament's failure to provide a statutory means for revoking the adoption order made in this case. That, they said, was not a proper basis on which to exercise the protective jurisdiction. The only measure precluded by the legislation is the ability for a natural or adoptive parent or child to extinguish the legal parent-child relationship, other than by way of adoption. This places adoptive parents and their children in the same position as natural parents and their children.

Thus, the Supreme Court concluded '*the court has no parens patriae powers that can be exercised to revoke a valid adoption order to extinguish and then transfer parental responsibility outside the statutory scheme in the ACA 2002*'. An adoption order can be appealed in the usual way if there is an appealable error, and there is precedent for time for an appeal to be extended months or even years out of time where appropriate. The Supreme Court clarified that where appeals out of time have referred to the court's inherent jurisdiction, that is not a reference to the *parens patriae* jurisdiction; the references were to the court's inherent powers to enable the court to act effectively in the administration of justice, i.e. as a procedural tool. A child's relationship to their adoptive parents is treated the same in law as a child's relationship to their natural parents once they have been adopted. If there are safeguarding concerns for either child, the same protective measures can be taken, and would apply. The Supreme Court therefore dismissed the appeal.

DOLS and parental responsibility

In *East Riding of Yorkshire Council v The Mother* [2026] EWHC 181 (Fam), Henke J was concerned with a DOLS application in respect of a 12-year-old girl with complex needs. The girl has autism with significant sensory processing needs.

She has demand avoidance behaviours, and can display a high level of emotional dysregulation, aggression, and violence at times. Her parents had accepted the support of the local authority, and had consented to her voluntary accommodation pursuant to s 20 Children Act 1989. In addition, they had specifically consented to her liberty being restricted. They, and all other parties, agreed that those restrictions were in her best interests.

The issue was whether it was lawful or not for the local authority to rely on the parents' consent to the ongoing arrangements for care and support, where it was accepted that the arrangements amounted to a confinement within the meaning of limb (a) of *Storck*. By the date of the DOLS application, the local authority had moved the girl to a placement called Rainbow Cottage.

The application first came before HHJ Wildblood KC in early October 2025. He initially granted the order, but adjourned the application to early November. When it returned before him at that point, he again adjourned the application for the issue referred to above specifically to be dealt with by Henke J.

Henke J noted that the restrictions in place at Rainbow Cottage were accepted by all to impact on the child's liberty. It was also accepted that the child was not *Gillick* competent to consent to the restrictions or interventions in her care. The parents had, however, filed a statement setting out that they were providing informed consent under their parental responsibility to the restrictions that were in place. It was their position that the restrictions were consistent with those that were in place when their daughter was living at home, and they did not believe it was necessary for the court to make an order. Whilst the child's needs were over and above anything the family could provide, they would only consent when they considered that to do so was necessary and in their daughter's best interests.

Henke J referred to Art 5 ECHR and said that:

'It is well settled (see Storck v Germany (App No 61603/00) (2006) 43 EHRR 6) that for Art 5 to be engaged, the following three elements must be present: (a) the objective component of confinement in a particular restricted place for a not negligible length of time; (b) the subjective component of lack of valid consent; and (c) the attribution of responsibility to the State.'

She referred to the recent authority of in *J v Bath and North East Somerset Council & Others* [2025] EWCA Civ 478, in which King LJ had concluded that a local authority cannot give 'valid consent' to the confinement of a child. She then went on to refer to several authorities that have considered whether a child's parent can give valid consent for the purposes of limb (b) of *Storck*, and in particular *Re D (A Child)* [2019] UKSC 42, in which the Supreme Court had considered the issue of whether a parent could consent to the confinement of a 16- or 17-year-old young person.

Ultimately, the court had concluded that it was not within the scope of the parental responsibility of D's parents to consent to a placement which deprived D of his liberty. The court had held that allowing parental consent to be used to prevent a deprivation of liberty arising would likely strip a young person of the safeguards afforded to anyone living in circumstances which amount to their deprivation of liberty by Art 5 ECHR and may risk them being placed in a more vulnerable position.

Henke J noted that *Re D* concerned children over 16, and went on to consider the first High Court case to consider limb (b) after *Re D (A Child)* [2019] UKSC 42, namely the decision of Knowles J in *Re Z (A Child: Deprivation of Liberty: Transition Plan)* [2020] EWHC 3038 (Fam). In that, Knowles J, had said 'Parents can, pursuant to the exercise of their parental responsibility, permit or authorise the use of reasonable force on a child particularly if the child will suffer immediate and significant harm by them not so acting' and 'the ambit of parental responsibility to delegate reasonable and measured chastisement of one's child is long-standing in the common law'.

Knowles J had considered that, coupled with the parents' consent, the statutory schemes of the CA 1989, the Education and Inspections Act 2006 and the Education Act 1996 in combination provided for staff at a school to use reasonable force in relation to a pupil for the purpose of preventing him committing an offence, causing personal injury (including to itself) or damaged property and engaging any behaviour prejudicial to the maintenance of good order and discipline. Since Z was under 16 years old, his parents could lawfully consent to him being deprived of his liberty as long as this was an appropriate exercise parental responsibility.

That said, some of the more extreme circumstances that may arise in specialist schools concerning children with significant behavioural problems could fall outside the boundaries of parental responsibility, whether delegated or not. Much would depend on the age of the child, the nature of intervention and the potential for injury to a child or other person, but there are limits to what a parent can reasonably authorise.

In that case, Z had made clear he was determined to resist any move out of his home to the residential school that had been identified for him. Z's safety and the safety of everyone involved had demanded a short and effective process which led seamlessly through the levels of intervention until Z was safely inside a car taking him to his new school. Knowles J said that it had been accepted by all that what was contemplated strained the boundaries of what was permitted by a parent with respect to the exercise of their parental responsibility, given that the level of restraint or force would be outside that which might be considered reasonable chastisement of the child. She therefore concluded that with respect to the subjective test in *Storck* it was neither permissible to rely on Z's consent nor that of his parents. Henke J referred also to the decision of Lieven J in *Lincolnshire CC v TGA & Others* [2022] EWHC 2323 (Fam), saying:

'the European Court of Human Rights had found deprivation of liberty as falling within the scope of parental responsibility: see Nielsen v Denmark Application No 10929/84 [1988] ECHR 2. The power of parents to exercise custody over their children, or in modern parlance, to deprive children of their liberty, had long been accepted by the common law.'

Thus, Henke J said a parent can consent to a deprivation of liberty for a child under 16, who lacks Gillick competence, where there is no dispute that such a deprivation is in the child's best interests. Henke J noted that by the time this application came before her, the local authority sought a declaration that there was appropriate and valid consent to the arrangements for the child's care and support from her parents, or alternatively, a deprivation of liberty order authorising such arrangements.

The restraint that had been used (linking arms) was when providing day-to-day care, such as when the child had become stuck in a cold bath or to mobilise her when she had become stuck and could not leave the closing contact centre. The guardian, however had argued that the measures imposed upon the child fell outside the scope of parental responsibility, and that such intrusive steps should not be left simply within the ambit of reg 20 Children's Homes (England) Regulations 2015 (SI 2015/541).

Henke J reviewed the restrictions which meant that the child is under complete supervision and control. It was accepted by all that the child was confined within the meaning of limb (a) of Storck. She noted that the parents had consented to the child's confinement and the specific restrictions because they wanted to keep their daughter safe and ensure her needs are met. They considered, as did all parties, that the measures were in the child welfare best interests and were necessary and proportionate. In considering whether the measures fell outside the scope of parental responsibility, Henke J said *'the extent of the*

zone of parental responsibility, in any particular case is to be ascertained by reference to general community standards in contemporary Britain'.

She concluded that in this case the measures proposed did fall within the zone of parental responsibility. The child's maturity and level of understanding were relevant to her parents' needs to make decisions for her, the child was autistic and not Gillick competent. The need for her continuous supervision and control fell squarely within the zone of parental responsibility in relation to a 12-year-old child who presented as this child does. The issue of physical restraint was less clear. The purpose of restraint and the circumstances in which restraint may be used, if necessary, in the child's case quite clearly went beyond the ambit of reg 20(1)(a) and (b).

However, Henke J did not agree with the guardian that it was outside the zone of parental responsibility; that was part and parcel of the need to ensure the child's safety and welfare. Without the use of restraint for the purposes that had been described, the child would not be safe. Henke J concluded that the appropriate exercise of parental responsibility by the child's parents together with the statutory scheme provided effective safeguards for the child on the facts of this case. Accordingly, the child was not being deprived of her liberty for the purposes of Art 5, and the court proceedings were not necessary.



Legal Updates:

Court of Protection

Andrew Bagchi KC | 1GC Family Law

In this update, amongst other cases, we consider an important development in the court's approach to disputes relating to medical treatment, guidance in relation to the instruction of experts and a case addressing the assessment of a person's capacity to engage in sexual relations. We start with an important decision of the Court of Appeal which may well find its way to the Supreme Court.

Townsend v Epsom and St Helier University Hospitals NHS Trust [2026] EWCA Civ 195 was an appeal from a decision of Theis J who had refused leave under s 50 Mental Capacity Act 2005 to make an application to require the continuation of dialysis treatment for their father and husband, Robert Barnor, who had suffered extensive brain damage following a collapse in April 2025. His condition was described by his treating clinicians as a terminal decline of consciousness, as distinct from a prolonged disorder of consciousness with potential for recovery, and the unanimous clinical view was that he had no prospect of regaining consciousness or achieving any meaningful recovery. He had pre-existing chronic kidney disease, which had been compounded by a severe acute kidney injury; dialysis had been required and, following an unsuccessful trial period off treatment, it had to be recommenced. The central line through which treatment was administered became blocked, a temporary vascath line was inserted on 30 January 2026, and on 6 February 2026 the clinical team reached the decision that they were not prepared to continue dialysis.

The critical legal question before the court was whether leave should be granted under s 50



MCA 2005 for that application to proceed. The applicant's case was essentially that the Trust's decision to withdraw dialysis was in substance a *best interests* decision dressed up as a clinical one; that proper process had not been followed, including the very late disclosure of second opinions obtained by the Trust; and that Art 2 ECHR required the court to scrutinise the decision. Reliance was placed on the Practice Guidance (Court of Protection: Serious Medical Treatment) [2020] EWCOP 2 issued by Hayden J, and in particular [8] and [9], which provide that where the way forward is finely balanced, or there is a lack of agreement from those with an interest in the person's welfare, an application to the Court of Protection must be made.

The Trust had contended that leave should be refused because the court had no jurisdiction to make the orders sought. Its argument was a principled one: a patient with capacity cannot compel a clinician to provide treatment the clinician is unwilling to offer, and the Court of Protection, acting as proxy for a person who lacks capacity, should not be placed in a better position than a person with capacity. The Official Solicitor, acting as advocate to the court, associated itself broadly with this analysis whilst also raising concern about

the delays in disclosure of information to the family.

Theis J refused leave and an expedited hearing was arranged to consider the family's appeal against the decision.

The decision of Baker LJ addressed the legal framework governing the relationship between clinical decision-making and the jurisdiction of the Court of Protection in cases involving the withdrawal or withholding of life-sustaining treatment.

Baker LJ set out a series of principles which are now clearly established by the case law and professional guidance. Most significantly, he confirmed that *'Any decision about the care and treatment of a mentally incapacitated adult, including the withdrawal of life-sustaining treatment, must be taken in the patient's best interests. There is no carve out for "clinical decisions"'*. The implications of this proposition are important: whilst it remains the case that *'in no circumstances can the Court compel the doctors to provide treatment that they consider clinically inappropriate'*, the decision as to what is in the patient's best interests is for the court, not the clinicians, whenever the matter comes before the court.

Baker LJ went on to identify the key principles applicable in such cases. Where all parties (including family members, the treating team and, if obtained, a second opinion) agree that it is not in the patient's best interests to continue life-sustaining treatment, then treatment can be withdrawn without a court application. Where, however, there is disagreement which cannot be resolved by discussion or mediation, the matter should be referred to the Court of Protection; and where a court application is required, the NHS commissioning body with overall responsibility for the patient should bring and fund it. Baker LJ also acknowledged that the case had generated considerable interest among professionals, and

that there were plainly arguments for a different approach in cases of prolonged disorders of consciousness in particular, but he emphasised that any change could only come about after careful assessment and consultation and might be addressed in the revised Code of Practice then anticipated.

The Court of Appeal decision effectively resolves the tension which had appeared in some earlier cases between the language of 'clinical decisions' on the one hand and 'best interests decisions' on the other. It confirms that the two are not separate categories and that the MCA 2005 framework, including the duty to act in the patient's best interests, applies to all decisions about care and treatment, without exception. The case also reinforces the importance of transparency and timely disclosure in the clinical decision-making process. As we note below, it was promptly cited and applied by Peel J in a subsequent case.

It is understood that an application made by the health body for permission to appeal to the Supreme Court is being considered by that court at the time of writing.

In **Royal Free London Hospital NHS Foundation Trust v RH** [2026] EWCOP 17 (T3), Peel J applied the decision of the Court of Appeal in *Townsend* to a case which involved RH, a 35-year-old man with a lifelong history of biliary atresia who underwent a liver transplant in December 2025. He suffered catastrophic post-operative complications including bowel perforations, peritonitis, multi-organ failure and an irresolvable large bile leak. By the time of the hearing, he was critically ill, permanently bed-bound, delirious, on multiple forms of invasive treatment, and – in the unanimous view of all clinicians and second opinion specialists – was dying with no prospect of recovery. RH lacked capacity by reason of sedation, delirium and fluctuating consciousness.

Peel J authorised a ceiling of care broadly reflecting the Trust's revised position: continuation

of renal replacement therapy (RRT) on a palliative basis; mechanical ventilation and vasopressors permissible for up to 24 hours solely to support RRT line replacement; but authorisation to withdraw or withhold those treatments in the event of severe deterioration unconnected with the procedure, or if the line could not be replaced. The application to withhold CPR was also approved. Peel J endorsed a move to a palliative care plan, finding that continued invasive escalation would be futile, would exacerbate suffering, and would deny RH the opportunity of peaceful time with his family away from the ICU. Peel J confirmed the view that all decisions about incapacitated adults – including clinical decisions – must be made in the patient's best interests under s 4 MCA 2005, and that where disagreement cannot be resolved the matter must go to court. Peel J noted that an application for permission to appeal to the Supreme Court is anticipated and declined to engage further with the wider implications of *Townsend*.

In ***Barking, Havering and Redbridge University Hospitals NHS Trust v AS* [2026] EWCOP 15 (T3)**, Peel J was concerned with AS, an 83-year-old woman who had suffered a massive stroke in September 2025. She was aphasic, extremely frail, had severely impaired swallowing function and, by the time of the hearing in March 2026, had a life expectancy assessed at a matter of weeks. Her weight had fallen from 50.3 kg in November 2025 to 36.9 kg by early March 2026. The Trust applied for a declaration that it was lawful and in her best interests to continue risk feeding without NG or PEG tube insertion, to cease blood tests, IV fluids and potassium, and to adopt a palliative care approach with a view to discharge.

The application was opposed by her family, represented by her son T, who contended that AS's deterioration was attributable to neglect rather than neurological injury, and that an NG tube should be immediately reinserted as a possible bridge to PEG feeding. The family placed considerable reliance on an Advance Statement signed by AS in June 2025, before her stroke, in

which she had said that if her health became very poorly she would wish all treatments to be used to prolong her life. Their position was also informed by their Muslim faith.

Peel J conducted a careful *best interests* analysis under s 4 MCA 2005, applying *Aintree University Hospital NHS Trust v James* [2013] UKSC 67. He acknowledged the genuine weight of the Advance Statement but set against it the fact that, after her stroke, AS had declined NG tube reinsertion on 5 December 2025, which he found to be an expression of her wish not to be subjected to the intolerable discomfort of the tube. He gave particular weight to the likelihood that AS would prefer to be at home surrounded by her family, a preference which reinsertion of an NG tube would make impossible. Having found that the burdens and risks of artificial feeding were likely to be intolerable and that the prospects of meaningful benefit were remote, Peel J acceded to the Trust's application and approved the palliative care plan, including the possibility of discharge home. This is a sensitive and carefully reasoned judgment in a genuinely painful case. Read alongside *Townsend*, it illustrates the importance of NHS trusts making timely applications to the court where a family is in disagreement with a proposed palliative approach, even where the clinical view is clear and unanimous.

In ***Bristol City Council v CC & Others* [2026] EWCOP 19 (T3)**, Theis J was considering the case of a 23-year-old man with a learning disability, psychosis and autistic traits, and a long history of serious violence and offending. He had been living with his grandmother with a professional care package for 15 months. The case concerned final capacity declarations regarding residence, care, contact and finances, and whether his arrangements amounted to a deprivation of liberty and is useful for an understanding of how the court will analyse such issues.

The case is prominent however for the guidance Theis J offered as Vice President of the Court of

Protection in relation to the instruction of experts, a process which had gone somewhat awry in the instant case. In particular, the court emphasised the following aspects relating to the contents of a letter of instruction:

'(1) A brief neutral statement of the essential facts of the case.

(2) A list of materials with which they are being provided for the purpose of the assessment the expert is undertaking.

(3) A core legal framework setting out the central principles of the MCA 2005, a summary of the relevant sections of the MCA 2005 should suffice and, if appropriate, to reflect, for example, the order in which a capacity assessment should be approached, as set out by the Supreme Court in A Local authority v JB [2021] UKSC 52. Any such references should be kept succinct and must be relevant.

(4) If assessing capacity, identification of the relevant decisions to be assessed, with the relevant information for each decision as agreed between the parties. If required there can be a brief explanation as to where the information derives, providing confirmation that what the relevant information consists of should ultimately be a matter for the relevant expert to determine when undertaking the assessment, and a reminder of the importance that the expert is not an arbiter of fact.

(5) Confirmation as to whether the proceedings are in public or private and details of any Transparency Order in place.

(6) Details of any person(s) the parties consider the expert should or may meet with, and remind the expert of the importance of there not being any unrecorded/informal discussions.

(7) The letter should clearly identify timescales for the report, dates of hearings/oral evidence, confirmation of who the report will be disclosed to, and a reminder about the ability to pose questions of clarification (rule 15.7. COPR 2017). It should also contain information about the expert's fees. Questions to the expert after the filing of their report should only be done in accordance with rule 15.7(2) COPR 2017

or by order of the court (rule 15.7(3) COPR 2017). In accordance with rule 15.7(2)(c) COPR 2017, any such questions must be for the purposes of clarification only.'

She went on to observe that if an expert is going to give oral evidence at a hearing, they should be provided with the following in advance of the hearing by the lead instructing party:

'(i) An updated court bundle at the same time as the bundle is lodged with the court.

(ii) A list of updating documents that have been filed since their instruction, which should highlight the specific documents that the parties consider that they should review in advance of the expert giving oral evidence.

(iii) Any further "loose leaf" documents filed immediately prior to the hearing, that the parties will likely refer to in the course of their questioning of the expert.'

In Lancashire County Council v BC [2026] EWCOP 18 (T3), Poole J heard a case concerning BC, who was a woman in her early 30s from an ultra-orthodox religious community, diagnosed with autism, complex PTSD, cerebral palsy and other conditions. She had experienced significant abuse throughout her life and was resident in a care home following detention under the Mental Health Act 1983. The outstanding issues were her capacity to make decisions about residence and engagement in sexual relations. The expert (Dr Camden-Smith) assessed BC as having capacity in a clinical assessment but identified a risk that she would suffer episodes of dissociation during sexual relations due to her complex PTSD – a state in which she would lose capacity in the moment. Poole J held that the presumption of capacity was not displaced: BC understood and could weigh all relevant information in a clinical assessment; the risk of dissociation was not inevitable; with therapy and joint work the risk would reduce; and requiring elimination of all such risk would set an unrealistically high bar. The possibility of losing capacity temporarily in the moment of sexual relations was insufficient to rebut the presumption. He observed as follows:

'Whilst capacity is assessed in relation to a matter "at the material time" – MCA 2005 s2(1) – decision-making about engagement in sexual relations might involve a number of different material times. BC might decide as a matter of a life choice that the only person she wishes to have sexual relations with is EF. That is not a decision taken in the throes of passion. However, a decision to have sexual relations in the next 30 minutes might well be made in wholly different circumstances. JB confirmed that the information relevant to a decision to engage in sexual relations includes both P's ability to give or withhold consent and that the other person has the capacity to consent and does in fact consent "throughout" the sexual activity. The giving or withholding of consent is not a single decision but a continuing one. Understanding that the other person has withdrawn their consent is required throughout sexual relations. The fact that BC might lose capacity during the course of sex does not mean that she does not have capacity at other material times to decide that she wants to have sex with a particular person or to embark on sexual relations at a particular time and place.'

He went on to make the following observations in relation to the approach to fluctuating capacity:

'In relation to the field of sexual relations, it is not helpful to address prospective temporary losses of capacity by way of anticipatory declarations. They could not practically be implemented when the anticipated loss of capacity might or might not occur in the throes of sexual intimacy. Nor is it possible to rely on MCA 2005 ss5 and 6 for the reasons already discussed. In the present case, a longitudinal analysis is not particularly helpful either because the anticipated loss of capacity would arise, not in relation to decision-making about an ongoing or recurring matter, but in relation to one-off decisions, for example whether to continue to consent to sexual intercourse whilst it is already taking place.'

Lastly, Poole J sounded an important note of caution about the width of capacity declarations. Categories such as 'contact with others' or 'residence' can cover many different kinds of decision, and in nuanced cases P may have capacity to make some decisions within a broad

category but not others. Courts must take care not to remove autonomy where capacity in fact exists for certain decisions within the category.

In *Nottinghamshire County Council v JW* [2026] EWCOP 13 (T2), HHJ Rogers (sitting in retirement) concluded, following what had become exceptionally protracted proceedings beginning in March 2024, that JW – a 57-year-old woman with borderline intellectual functioning – had capacity in all material areas of decision-making. The case raised important questions at the intersection of capacity law, the diagnostic threshold under the MCA 2005, and the impact of coercive and controlling behaviour.

JW had been diagnosed by the expert clinical psychologist, Dr Todd, as having borderline intellectual functioning with an IQ of 79, placing her at the 8th percentile. Her husband, SW, had subjected her to a course of coercive and controlling behaviour, findings confirmed on appeal by Poole J. The local authority's case was that this conduct – in combination with JW's intellectual deficit – meant that she lacked capacity in relation to decisions about residence, care and contact. The capacity issue fell to be determined by reference to the three-stage framework under s 2(1) MCA 2005 as explained by the Supreme Court in *A Local Authority v JB* [2021] UKSC 52: functional inability, qualifying diagnostic condition and the necessary causative nexus between the two.

On the functional limb, HHJ Rogers found clear evidence of JW using or weighing information in all areas. He was critical of the language in Dr Todd's reports – phrases such as 'minimises' and 'down plays' – as describing a reduction in the weight applied to a factor rather than its complete exclusion from the decision-making process: *'By definition "minimisation" is not the same as completely excluding something from the thought process'*. Applying *York City Council v C* [2013] EWCA Civ 478, he noted that a person may use or weigh material and still reach an unwise decision; the question is whether the decision-making

process is absent, not whether the outcome meets professional approval.

On the *diagnostic* limb, the judge was not satisfied that JW's condition amounted to a qualifying impairment. The Code of Practice identifies 'significant learning disabilities' as an example of a qualifying condition but makes no mention of borderline intellectual functioning, and the judge considered that omission telling. He declined to follow Dr Todd's suggestion that the word 'significant' added nothing, finding instead that it carried real meaning consistent with a legislative intent to promote autonomy. He also observed, with some force, that if those at the 8th percentile of intellectual functioning might lack capacity, some 1 in 12.5 of the general population would potentially fall within the Court of Protection's jurisdiction – an outcome plainly unintended by Parliament.

On the *causative nexus*, HHJ Rogers found that the only variable between those decisions

in which Dr Todd accepted JW had capacity and those in which he considered she did not was SW himself. It followed that the operative cause of any incapacity was SW's presence and influence, not JW's intellectual deficit: *'It does not seem to me too simplistic to conclude that the only reason therefore that, in the latter situation, JW is deemed incapacitous is "because of" SW. That is not the necessary statutory nexus'*. He therefore found capacity established on all three limbs and brought the proceedings to a close.

This is an important decision which reinforces the strictness with which the statutory test must be applied in borderline cases and is a salutary reminder that professional concern for a vulnerable person cannot substitute for rigorous application of the diagnostic and causative nexus requirements. The judge did not address the question of whether the inherent jurisdiction of the High Court might be invoked in relation to JW's position, although he noted that argument had been raised.



The FLBA congratulates our family barrister newlyweds, Mai-Ling Savage and Kate Grieve, and sends them all our love and hopes for a long and happy marriage.

Legal Updates: Cohabitation

Greg Williams | Coram Chambers

Only a short column for cohabitation aficionados this issue, as just two such cases have been reported since the Spring issue of *Family Affairs* went to press.

First, to the High Court sitting in Leeds. In ***Fotheringhame v Nelson* [2026] EWHC 632**, HHJ Klein (sitting as a High Court Judge) dismissed an appeal from Recorder Pritchard KC. The Recorder had decided that the property in dispute, 2 Greentop, Pudsey, Leeds, had been held by the parties on trust for themselves beneficially in the following shares: to the appellant – 80.7%, to the respondent – 19.3%. At the same time, the Recorder had permitted the appellant to buy out the respondent's interest in the property and further ordered the property's sale in default. The Recorder also dismissed the appellant's counterclaim by which she had sought to recover outstanding child maintenance payments from the respondent.

The parties had lived together from the early 1990s until 2003 and had previously owned a different property in their joint names. The original deposit for that first home had come from the appellant's mother, and the parties had had a joint mortgage. In 2000, that property was sold and the proceeds went into buying the Pudsey property. The Pudsey property transfer recorded the parties to be beneficial joint tenants, but had not been signed by either of them. Like the property before, the Pudsey property also required a mortgage, which was an endowment mortgage. Shortly after purchase, a partial lump sum payment was made to the building society in part redemption of the mortgage, funded by the appellant's inheritance



from her grandmother. In 2002, the parties took a joint loan, secured against the Pudsey property, to fund renovations. In 2003, the parties separated. The appellant remained living at the property with the parties' three children. She took on the property-related outgoings: the mortgage interest, council tax, repairs and maintenance, and payments into the joint endowment policy. The respondent's only direct household contribution after that point was child maintenance, though the appellant argued that payments of maintenance were outstanding. It was not until some 20 years later, in 2023, that the respondent began a claim, under the Trusts of Land and Appointment of Trustees Act 1996, to determine the extent of his beneficial interest in the property and sought for an order for sale.

The Recorder below made a number of factual findings, including that when the property was purchased, the parties' common intention was to hold the property on trust in equal shares between them so that they had an equal beneficial interest

but also that, following their separation, they formed a different common intention, namely that the size of their respective shares of the property would change. The Recorder cited *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776 in his judgment. HHJ Klein, hearing the appeal, observed that the Recorder could perhaps have developed his judgment a little more by referring to *Oxley v Hiscock* [2004] EWCA Civ 546, [2005] Fam 211, and indeed by expressing better his factual conclusions (at [16]). But as HHJ Klein explained ‘*It is clear to me that, in paragraphs 44 to 47 of the judgment, the judge was imputing to the parties their respective (changed) shares in the property because he could not determine the parties’ actual intention about the extent of the change to those shares based on the evidence or on inference.*’

Thus, the Recorder’s finding that the parties held the property as to 80.7% to the appellant and 19.3% to the respondent was an ‘imputation’ of the parties’ shares, being based on his assessment of their contributions to the property both before and after separation.

On appeal, Beth Darlington for the appellant contended, amongst other things, that the whole of the increase in the property’s value attributable to the general increase in property prices since 2003 should be allocated to the appellant, citing *Allen v Webster* [2024] EWHC 988 (Ch). Marshalling her arguments (permission to appeal having been granted on four grounds), Ms Darlington made two primary contentions: (1) in purporting to impute the parties’ shares to them, the Recorder had failed to take proper account that all of the mortgage interest payments and property outgoings had been paid by the appellant since separation, coupled with the fact that there were outstanding child maintenance payments; and (2) that the Recorder had wrongly categorised the appellant’s case as one in which the size of the respondent’s interest ‘reduced’ post-separation, when the appellant’s position had been that the presumption of joint tenancy in law and equity was displaced at the time of separation due to her greater contribution,

even before the parties’ intentions as to the size of their beneficial interests changed post separation.

HHJ Klein directed himself as to the approach appellate courts should take when called upon to assess a trial judge’s evaluation of facts, citing *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 and *Prescott v Potamianos* (also known as *Re Sprintroom*) [2019] EWCA Civ 932. The judge considered that the Recorder had taken these matters into account and therefore that the appellant would have to challenge the weight the judge attached to them if her appeal were to succeed. Such an appeal could only succeed, he said, if the weight the judge attached to a relevant head of expenditure was ‘rationally unsupportable’. Turning to the first argument/ground of appeal, the appellant’s complaint was that the Recorder had failed to expressly refer to a number of items of expenditure, as well as a failure to pay all the relevant child support, in reaching his conclusion. However, HHJ Klein, citing *Volpi v Volpi* [2022] EWCA Civ 464, said that the ‘*appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.*’ Though HHJ Klein accepted that child maintenance payments (or lack thereof) could be a relevant factor (recognising the decision in *Barnes v Phillips* [2015] EWCA Civ 1056, [2016] 2 FLR 1292), he was not persuaded that the point had been formulated below. For those reasons he dismissed this aspect of the appellant’s first argument. Second, in HHJ Klein’s view, the Recorder had based his finding as to the shares primarily on the appellant’s mortgage payments since separation. As to the criticism that the Recorder has failed to properly account for the appellant solely paying the buildings and contents insurance and council tax, HHJ Klein rationalised that council tax was primarily a liability for a person’s occupation, and the contents insurance was entirely to protect the appellant and the children’s personal belongings. The buildings

insurance payments (had it been found as a fact to have been paid solely by the appellant, which it was not) in any event could not to have been said to be a rationally unsupportable conclusion because in his view it favoured the appellant who was in any event found to be the 81.7% owner.

Turning to the second ground of appeal, the judge did not accept the appellant's contention that the judge had wrongly categorised her trial position. The judge found the Recorder had understood that the appellant had accepted the parties had equal shares in the property until the point of separation. The appellant contended on appeal that the Recorder's finding to that effect had led to the wrong imputation about the consequential shares post-separation. However, the judge did not accept the point and reasoned that even if the Recorder had mischaracterised the appellant's starting point, it did not necessarily follow that the Recorder's imputation as to the varied shares post-separation was consequently wrong. Accordingly, the appeal was dismissed.

To the second of our two cases now, and a rare cohabitation case not directly involving TLATA. **Kirishani v Major [2026] EWHC 835 (Ch)** was a High Court appeal from the decision of a circuit judge at the County Court at Central London concerning accounting and money claims following the breakdown of a romantic relationship.

The parties were a Ms Kirishani and a Mr Major. They had a relatively brief cohabiting relationship from mid-2016 and lived together in Ms Kirishani's flat until October 2018. At this point the relationship broke down, although Mr Major did not move out immediately and remained for some time because Ms Kirishani was away travelling.

As the appellate judge, Sir Anthony Mann, set out, at the heart of this appeal was the question of the extent to which the court will, or will not, infer an intention to create contractual relations in relation to dealings between unmarried

cohabitees, and whether or not it is right to find a presumption for cohabitees akin to what is said to be a presumption against an intention to create legal relations arising in respect of (for example) dealings between husband and wife.

At the trial, there had been three claims. The third of the three claims, about money in the sum of £8,888 which Ms Kirishani gave to Mr Major to invest, was not subject to the appeal. The judge below had recorded in his order that it was agreed that this was to be repaid, and found that it should be.

The two claims subject to the appeal were an expenses claim, and a rent claim. The expenses claim related to Ms Kirishani's claim that Mr Major had agreed to contribute equally to holidays and trips, which he did not then contribute to. She had valued this claim below as being worth approximately £20,000. Every time they went on holiday Ms Kirishani kept a spreadsheet. The rent claim was for Mr Major's occupation of her flat. For the first 3 months of his occupation it was agreed he had paid her £1,000 per month, but then no more. The claim was for £16,000 for the subsequent months of living together.

The trial judge, HHJ Gerald, had made a number of factual findings. He found the parties had an initially good relationship and had discussed the possibility of having children together. Mr Major was not in work but expected to come into money at some point. Ms Kirishani continued to fund their trips together and there was no evidence that at any time she threatened to discontinue them unless Mr Major paid his share. Though Ms Kirishani sent Mr Major spreadsheets which passed between them there was no demand for payment. As the trial judge found:

'It was obviously self-evident, because it [the spreadsheet] said so, how much the defendant owed the claimant; owed in the non-contractual, non-intentional sense of the word ... Indeed, it was he who after the relationship had broken down corrected the

spreadsheet to show the true amount of what he said he owed the claimant. Indeed, it was he who volunteered to repay by 1 April 2019'.

However, the trial judge found that this was an informal and voluntary arrangement which was not intended to be legally binding on the parties. Ms Kirishani had become 'vociferous' in her demands for payment only after separation.

The interesting legal issue in the case was that the trial judge proceeded to follow what he treated as a presumption against an intention to create legal relations which was said to operate in the case of husbands and wives and which in his view applied to this 'unmarried, co-habiting couple' (at [18]), 'parties who are in a budding relationship, in an established relationship, or in a relationship which is intended and hoped to be long-term and fruitful' (at [21]). Starting from that presumption, the judge below held that 'it is not a function of the law to intervene and to enter into those types of relationships unless there is the clearest of evidence to contradict that which would otherwise be the case. ... the whole nature of intimate cohabiting relationships, whether they be married or unmarried or otherwise, is that they are, essentially, self-regulated depending upon and in the context of mutual trust and affection'.

Permission to appeal was granted on one ground only, which had two sub-components. The contentions were: (1) that the judge had wrongly applied a presumption of non-intention to create legal relations before then wrongly requiring too high a standard of evidence to rebut that presumption; and (2) had failed to give any reasons in relation to the Rent Claim.

In relation to point (1), as Sir Anthony Mann explained, the judge below had started from the position of a presumption against an intention to create legal relations, and then found that there was insufficient evidence to rebut it. It appeared in passing that the judge below had found that starting presumption to be common ground

between the parties' trial counsel, though that had not, in fact, been the case. On appeal, in any event, the respondent's counsel sought to uphold the presumption which the appellant's counsel sought to challenge. Sir Anthony Mann, in his appellate judgment, considered that: 'Accordingly it is necessary for me to embark on a consideration of the extent to which the presumption exists and the extent to which it is capable of informing the result in the present case'.

As Sir Anthony Mann recounted, the presumption was said to flow from *Balfour v Balfour* [1919] 2 KB 571, a case where a husband had agreed to pay a sum for the maintenance of his wife in consideration for her agreeing not call on further support from him, an agreement found not to be contractually enforceable by the Court of Appeal. As Atkin LJ had put it in that case, 'the small Courts of this country would have to be multiplied one hundredfold if these arrangements were held to result in legal obligations. They are not sued upon, not because the parties are reluctant to enforce their legal rights when the agreement is broken, but because the parties, in the inception of the arrangement, never intended that they should be sued upon'.

The word 'presumption' was later used in *Jones v Padavatton* [1969] 1 WLR 328, a case between a mother and daughter and arrangements for the upkeep of the latter by the former.

In an interesting analysis at [34] and [35] of his judgment, Sir Anthony Mann reasoned that it is the nature of the relationship which is important, not the fact that the parties have gone through a ceremony of marriage or civil partnership. He opined that marriages were likely to have common characteristics so that the presumption would be likely to apply to many or most of them, but the same could not clearly be said about all cohabitantes. Cohabitation, he reasoned, was a word capable of describing a wide range of relationships from those very similar to a traditional marriage at one end to those such students or others sharing

accommodation purely for the sake of convenience at the other (though he accepted that the label may be slightly less appropriately applied to the latter).

Accordingly, in Sir Anthony Mann's judgment, saying that the presumption applies to all cohabitants as such would not be correct. It would depend on the nature of the relationship behind the cohabitation. The test for the intention to create legal relations is an objective one (at [36]).

Applying the objective test to the facts of this case, the judge determined that the judge below had found that on the basis of the evidence this was the sort of relationship to which the presumption would apply. The judge below, he held, was entitled to that view that this was the sort of domestic relationship to which the presumption would apply, and in Sir Anthony's view, that conclusion was only vulnerable to appeal if that view was one that was not properly open to the trial judge. Accordingly, although the judge erred in thinking that the parties were at one on the application of the presumption, he had reached his own view on it anyway. The judge below was entitled to find for the presumption if the evidence justified it, and the evidence that he summarised on the point did so justify it, so that the judge's decision on that point was therefore unimpeachable on appeal. There was then an ancillary point about the standard of evidence necessary to rebut any such presumption and whether it needed to be was required to be

'clear evidence' or just 'enough evidence'. The judge did not think that the trial judge's use below of the phrase 'clear evidence' was the wrong formulation, and that he did not think that the judge was saying anything more than that the 'burden of overcoming the presumption is not something that can be lightly discharged', which was 'the correct view'.

Turning to argument (2), that the judge below failed to give reasons for his decision on the rent issue, Sir Anthony Mann was obliged to consider closely the detail of the judgment. Though he acknowledged that the judge did not expressly refer to the rent claim in the part of his judgment detailing his reasoning, it was the appellate court's view that the judge had it in mind and meant his overall reasoning to apply to that arrangement as well as to the expenses arrangement. The judge was unlikely to have forgotten it, and his reasoning was capable of supporting both issues and should be taken to apply to both. Indeed, his sub-heading to that part of the judgment referred to 'the second and third elements' an indirect reference to both of the live claims before him, and so his reasoning was deemed to have applied to both issues. Lastly, the spreadsheets to which the judge had referred in his judgment included rent claim amounts, and so implicitly this must have been what the judge was referring to. That argument was therefore also rejected and accordingly the overall appeal was dismissed.



Legal Updates:

International Divorce and Financial Remedy

Lily Mottahedan | 1 Hare Court



This issue's international divorce and financial remedy update will focus on the Anglo-Italian jurisdiction and forum case of ***Ferrara v Ferrara* [2026] EWCA Civ 512** in the Court of Appeal. The case concerns first, the acquisition, and in this case (non-) abandonment, of a domicile of choice and, second, *forum non conveniens*.

This was an Italian husband's appeal from a first instance decision of Garrido J's in which he dismissed the husband's applications to: (1) dismiss the wife's English divorce application for want of jurisdiction arguing that contrary her petition, she was not domiciled in England and Wales; or, in the alternative, to (2) grant a stay on *forum non conveniens* grounds in favour of divorce proceedings he had issued in Italy.

Jurisdiction

The husband's position was that the wife had an Australian domicile of origin and this remained her domicile at the time of the application or in the alternative, she had an Italian domicile of choice following the family's move to Italy.

The wife's position was that she had an English domicile of origin as although she was born in Australia, she argued that her father had an English domicile at the time of her birth. In the alternative, she argued that she in any event

acquired an English domicile of choice when she moved to England and had not abandoned.

The judge found that the wife's primary case was '*inadequately evidenced*' but that she had acquired an English domicile of choice when she moved to London from Australia in 1992 and had not abandoned it when this family moved from London to Milan in 2019.

This was based on a variety of factors which demonstrated that England was the country with which she has had the closest connection throughout her adult life and certainly during the majority of the marriage. In fact, in the Italian proceedings, the wife sought permission to relocate with the children to London, and this application is yet to be determined.

The judge accepted her evidence, which was corroborated by contemporaneous email exchanges with her mother at the time of the move and to a degree by the husband in cross-examination, that she moved to Italy '*reluctantly*' at her husband's

behest and that she opposed the sale of their only family home (which was in London).

He further accepted that whilst she lost her 'residence' in London, she did not lose the 'intention' to remain there 'permanently and/or indefinitely'.

Indeed, to lose a domicile of choice, one must lose *both* residence and intention – losing one but not the other is insufficient.

On the facts therefore, the English court had jurisdiction to entertain her claim.

Forum

Having established that **both** England and Italy had jurisdiction in this matter, the next question was whether Italy was 'the more convenient' forum. Garrido J had found that Italy was **not** the more convenient forum notwithstanding the fact that the parties and their two children were habitually resident in Italy. He found that the fact of their habitual residence in Italy was 'undeniably significant' but 'of insufficient weight to offset the important factors at paragraph 23'. It is important to remember that in a forum dispute, the burden of proof is on the person arguing that the other forum is more convenient to make out their case. The husband failed to discharge that burden.

The 'paragraph 23' factors from the first instance judgment which occupied much of the appeal are set out below (verbatim from the judgment):

- (i) Even after the outcome of the appeal, the Italian court is not yet dealing substantively with the parties' divorce, and there are many likely hurdles in procedure and consequent delay before it will be able so to do and come to a final determination.
- (ii) In contrast, here the application can proceed to conditional order without significant delay and directions can be given to progress the application for a financial order to at least a first appointment next term.
- (iii) Mr Ferrara has shown himself to be well

capable of fully participating in proceedings here, including by giving evidence fluently in English, something that Mrs Ferrara is unable to match in Italy. The documents support her evidence that she was unable to effectively participate in proceedings in Italy in June 2024. Both interpretation of oral evidence and translation of documents will be required in Italy but not here.

(iv) Both parties' closest connections have been with England since 1992, representing most of Mr Ferrara's working life. I have not been persuaded that his business has lost its substantial connections with England, which relatively recently had its main trading centre in London and still has an office there.

(v) Mr Ferrara does not declare any substantial assets in Italy, which appear to be in Luxembourg. There are indications, although not more than that, of assets in or controlled in Jersey, and a likelihood that he has pension assets in England, which would not be subject to Italian orders.

(vi) The family home was owned in London until 2023, and there is no equivalent owned property in Italy.

(vii) Mrs Ferrara's working experience is anchored in London, and it is where she has the best chance of resuming employment.

(viii) The children's primary language is English, they attend an English-speaking school, and it has already been identified by the Italian court that they will require an interpreter if they are to participate in proceedings there.

(ix) Proceeding in Italy may well not prevent a future claim by Mrs Ferrara under part III of the MFPA 1984, that would lead to unnecessary duplication and delay.

(x) There is a mechanism to ensure that Mrs Ferrara can afford equality of arms in representation in proceedings here that is not mirrored in Italy.

(xi) It hardly needs saying that all the circumstances of the case will be addressed in proceedings here, including the enforceability of the separation of assets agreement upon which Mr Ferrara seeks to rely. In contrast, Mrs Ferrara would be prevented from challenging the agreement before the Italian court. Of course, this fact alone would not necessarily deny Mr Ferrara a stay, but it forms part of a much larger constellation of factors (above) that have led to him failing to discharge the burden placed on him.'

The grounds of appeal were described as

'extremely broad in its scope'. I therefore do not propose to summarise them here, but the overarching complaint was that the judgment was 'seriously deficient in its consideration of every aspect of the case'.

Historic versus current connections in a forum case

Their lordships agreed that *some* of the factors in the judge's list were not relevant to a forum dispute but that this did not undermine his overall assessment due to the strength of the other relevant factors.

Specifically, it was agreed and the wife's counsel's conceded, that the factor at (xii), namely the language the children speak and the schools they attend should not have been a relevant consideration. There was no evidence to suggest that the children are likely to be witnesses in the divorce and financial remedy proceedings be they in England or Italy.

There was, however, a disagreement between the judges as to whether historic connections (including that the parties mainly lived in England between 1992 and 2019) were relevant. In other words, whilst they all agreed that the point at (xii) was not relevant, they disagreed on whether he had taken into account further irrelevant points.

Moylan LJ when delivering the leading judgment considered the historic connections to be relevant. He approved HHJ Hess' summary of the applicable principles in *SA v FA* [2022] EWFC 115, [2022] 3 FCR 638 in which he said the *'court should take a broad view of all the facts and circumstances, not just those directly related to the litigation'*.

Miles LJ indicated he preferred not to express a view stating, at [184]:

'I think the point should be resolved in a case where the court has had the benefit of fully-researched and considered arguments.'

Arnold LJ, however, gave a detailed judgment indicating he agrees with the overall conclusions of Moylan LJ that Garrido J's ultimate conclusions were sound and supported by the evidence, but that nonetheless, Garrido J did take into account a number of further factors which were, in his view, irrelevant to the assessment of convenience and fairness in a forum dispute. At [147] he said:

'As Moylan LJ has explained, the issue of principle as to whether the parties' historical, as opposed to current, connections with the forum are relevant was barely argued at the hearing. Nor were all the relevant authorities cited. It follows that the views expressed by this Court can only be provisional.'

Nonetheless, he expressed his views as follows:

- First, although the judge was exercising the discretion conferred by s 5(6) and Sch 1, para 9 Divorce and Matrimonial Proceedings Act 1973, the House of Lords held in *De Dampierre v De Dampierre* [1988] AC 92 that those provisions should be applied in the same manner as the common law principle of forum non conveniens developed by the House of Lords in the sequence of cases culminating in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460.
- Second, he indicated that the voluminous case law shows that to answer the question of convenience, the focus has been on matters such as:

'(i) the governing law, (ii) the location of witnesses and the language they speak, (iii) the location and language of documents and (iv) the places where the parties reside or carry on business.'

In other words, the factors which are relevant *'to the ability of one forum or the other efficiently to determine a dispute which could be tried in either forum'*.

At [156], he said:

'It is difficult to see the relevance of a historic

connection of a party to one forum or the other if that connection no longer exists at the time of forum non conveniens enquiry.'

Accordingly, he considered that there were additional 'irrelevant' factors which had been taken into account namely: the fact that W's past work experience was anchored in London (in circumstances where she now lives in Milan), the fact that H had an office in London (unless this specifically impacted his ability to participate in proceedings), and the fact that the parties previously had a family home in London.

For what it's worth, save with respect to the point about past work experience, as this could impact which court is best placed to make an assessment as to the wife's earning capacity, I am of the view that his lordship was right to regard those other historic factors as not being relevant to the forum dispute. Divorce and financial remedy proceedings are inherently a forward-looking exercise and about setting parties up for new independent lives, the past is only relevant insofar as it could be said that it will inform those futures.

That said, I do not consider that his lordship's criticism of HHJ Hess' judgment is a fair one. Whilst it is right that in his summary of the law (which has been approved in several decisions of the High Court and now in the Court of Appeal), HHJ Hess invited the court to take a broad view of the circumstances, in *SA v FA* itself, his conclusion shows that it was in fact factors connected to the litigation (not non-litigation related connections to London, for example), which caused him to stay the English proceedings in favour of the proceedings in Abu Dhabi. The critical passage, by way of reminder, is at [24(i)] and reads:

'The parties have both been habitually resident in the UAE since February 2008 (that is for the last 14½ years) and have committed themselves in practical terms to continuing their habitual residence in the UAE until their children have ceased their secondary education, likely to be in 2028. By then they will have been habitually resident

in the UAE for 20 years. This is, for me, a strong factor in support of my conclusion that the UAE is the "natural forum" for the parties' divorce and financial remedies determination, the forum with which the parties have most real and substantial connection, being where they have resided for many years and are likely to continue to do so for many more. The fact that the wife has an ongoing domicile in England does not, for me, significantly detract from this. Those dealing with the case in the UAE will be much closer to the important issues of housing need and income need generally. At any hearing dealing with their case the likely witnesses will be the wife and the husband themselves, for both of whom it will be more convenient to be in the UAE – although it is, of course, possible to deal with hearings by way of a remote video platform, the policy direction in the English courts is ordinarily to deal with FDRs and final hearings on an attended basis.'

Nonetheless, until and unless the question of relevance of historic (or non-litigation) connections is adequately resolved by the Court of Appeal, practitioners should be aware that there is (provisionally) this disagreement between the judges of the Court of Appeal as to the relevance of those connections to a forum non conveniens dispute. The reality is that it is unlikely a forum dispute would ever be 'won' because of historic connections and so the real question is whether they feature as supporting factors in the balancing exercise or not. Hopefully, two of our FLBA members will one day get a chance to argue the points for and against in court to resolve the dispute once and for all.

Legal Updates:

International Child Abduction

Mani Singh Basi | 4PB



Summary return proceedings

Mr David Rees KC (sitting as a deputy High Court Judge) recently handed down a decision relating to a summary return decision concerning Dubai. The case is reported as ***Re HF, KF and LF (No 2) (Children; Inherent Jurisdiction; Return Order)*** [2026] EWHC 1035 (Fam). The judge was concerned with three children 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 [2]). An interesting feature of the case was that the court previously reported a decision considering a preliminary stage with the issue being that of the court's jurisdiction (reported as: *Re HF, KF and LF (Children) (Habitual Residence)* [2025] EWHC 3306 (Fam)). In the jurisdiction judgment, the parties gave oral evidence given the factual disputes in existence and the judge had to determine whether the provisions of s 2 Family Law Act 1986, with reference to the 1996 Hague Convention applied. 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.

Turning to the return order judgment, the judge was concerned with the welfare of the children. The judge heard oral evidence from the parents as

well as the High Court Cafcass officer. The court ultimately made a return order, considering 28 days as a reasonable period of time. The judge dealt with this at [68]-[69], stating:

'Taking all of these factors into account, I agree with Ms Cull-Fitzpatrick's conclusion, and I consider that the welfare of these children requires me to order their return to England pursuant to the inherent jurisdiction. Mr Basi asks for an order that the father cause or effect the return of the children to England within 28 days of my order and I consider that that is an appropriate period of time. I also consider that there should be a referral to the relevant local authority. Whilst I cannot order the father to return with them, I consider that if he were able to do so and to remain with them, even for a limited period of time, to enable a transition into the mother's care to be undertaken in a supported way, that would be extremely beneficial to the children. I would urge him to reconsider his position on this issue.'

The above highlights an important point in these cases about the parent being forced to return with children. Another key aspect of the judgment is FPR 2010 PD 12J was referred to in the context of transnational marriage abandonment as a consequence of the previous findings in the jurisdictional hearing. This was flagged at [18] where the judge acknowledged:

'Mr Basi also argues that this is a case to which Practice Direction 12J applies. He points to

my finding in the Jurisdiction Judgment that the father effectively stranded the mother and children in Pakistan and notes that paragraph 2B of that Practice Direction provides that domestic abuse includes transnational marriage abandonment.'

There have been a number of other summary return order judgments published in recent times, in the context of non-1980 Hague Convention signatories. Examples include: *AM v AF (Return Order: Dubai)* [2026] EWHC 511 (Fam) and *X v Y* [2026] EWHC 42 (Fam). Further, an important judgment dealing with the concept of transnational marriage abandonment and jurisdictional challenges is *Re C (A Child: Transnational Abandonment: Wardship)* [2026] EWHC 594 (Fam).

Fact-finding in 1980 Hague Convention proceedings

1980 Hague Convention cases are often concerned with two main issues. In cases where an applicant seeks a summary return but fails in the application, then proceedings may re-commence for the purposes of access pursuant to Art 21 1980 Hague Convention, which states:

'An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.'

Article 21 cases are particularly interesting when a summary return application fails by

virtue of Art 13b, i.e. when there are a number of allegations in existence which cannot necessarily be tested in the confines of a summary return application. However, when a party pursues Art 21, the focus is on welfare, i.e. the domestic legislation is utilised such as the Children Act 1989 and also FPR 2010 PD 12J. A useful judgment dealing with welfare in the context of a fact-finding hearing was published by Ms Victoria Butler-Cole KC (sitting as a deputy High Court Judge) in *H v O (Fact-Finding)* [2026] EWHC 715 (Fam). For context, it is important to highlight, as above, that this case originated as a summary return application which was considered by MacDonald J in *H v O & Others (Art 13(b) and Domestic Abuse)* [2025] EWHC 114 (Fam). In this case, his Lordship held that the respondent had made out the exception to summary return provided by Art 13(b) 1980 Hague Convention because there would be a grave risk of physical and psychological harm or an intolerable situation. In that judgment, his Lordship included an important passage in the context of Art 13b and the 1996 Hague Convention at [66], stating:

'Almost all, if not all, of the protective measures that the court is required to consider in this case comprise bare undertakings offered to the English court by the father. In circumstances where there is a need for caution when relying on undertakings as a protective measures, where there should not be a too ready acceptance of undertakings which are not enforceable in the requesting state and where, in the circumstances, the court needs sufficient evidence as to extent to which the undertakings will be effective both in terms of compliance and in terms of enforceability, there is a paucity of information before the court. There is, for example, no evidence before the court as to the extent to which the Dutch court would enforce undertakings given to the English court, or mirror those undertakings with orders of its own. Whilst both the United Kingdom and the Netherlands are parties to the 1996 Hague Convention, there in any event remains a lack of clarity as to whether undertakings given before, or injunctive orders made by the courts in one Contracting State will constitute necessary measures of protection taken in a case of urgency and enforceable in another Contracting State

under Art 11 of the 1996 Hague Convention.'

Turning to the fact-finding judgment, the competing positions were set out at [7] and [8] of the judgment, which were:

*'O alleges that her relationship with H was characterised by domestic abuse while they were in the Netherlands, including physical and sexual assault, and that towards the end of her time there, he also beat up the two older children.
H denies all the allegations and says that O has made them up to bolster her claim for asylum in England and her position in the proceedings before MacDonald J.'*

In the context of the above, the judge reviewed a number of key authorities concerning FPR 2010 PD 12J and in particular:

- *Re B-B (Domestic Abuse Fact Finding)* [2022] EWHC 108 (Fam);
- *Re A, B and C (Children)* [2021] EWCA Civ 45; and
- *Re A (A Child: Findings of Fact)* [2022] EWCA Civ 1652.

After hearing oral evidence, the judge made a number of findings. The judgment is useful reading to show the link between allegations that arise (and are included in evidence) in original summary return proceedings, and then the different nature in which evidence can be challenged in Article 21 proceedings. Another judgment dealing with findings of fact in Article 21 proceedings can be found in *F v M* [2026] EWHC 239 (Fam).

Disclosure of asylum documentation

An important decision relating to disclosure of asylum documentation in the context of international family proceedings is ***Re NG (A Child) (Disclosure of Asylum Documents) (No 1)*** [2026] EWHC 412 (Fam). This matter concerned an application brought by the father the inherent jurisdiction for the summary return of his child. The mother travelled to the United Kingdom with

the parties' child and applied for asylum in this jurisdiction. In the context of the proceedings, there were a number of serious allegations raised. In the case, an issue arose in this matter as to whether the respondent mother was entitled to withhold disclosure and inspection of documents in respect of her asylum application.

Consideration of whether to allow disclosure and inspection of asylum documentation involved a balancing exercise of a number of key components, such as:

- the public interest;
- the respondent and child's right to confidentiality;
- the child and the applicant father's rights pursuant to Art 6;
- confidentiality within the asylum process.

The judge considered the authorities, and summarised the principles at [12]:

'From these authorities, the following principles emerge:

- a. Parties engaged in family proceedings are subject to a duty of full and frank disclosure; that is to say making known to the other party the existence of potentially relevant material (President's Guidance, Appendix 2 para 11).*
- b. Obligations in relation to disclosure and inspection arise only when the relevance test is satisfied. Relevance can include "train of inquiry" points which are not merely fishing expeditions. (Durham County Council v Dunn [2012] EWCA Civ 1654 at [23]).*
- c. FPR 2010 r 21.3 provides the procedural framework for an application to withhold disclosure.*
- d. A respondent or child should not be compelled to disclose documentation from an asylum protection claim without the permission of the court. (President's Guidance, Appendix 2 para 11).*
- e. A person who seeks to withhold disclosure or inspection of a document must make an application backed by evidence. (R v Secretary of State for the Home Department (Disclosure of Asylum Documents) [2019]*

EWHC 3147 (Fam) at [77]).

f. When considering such an application the judge must conduct a balancing exercise having regard to the competing rights engaged. (*Durham County Council v Dunn* [2012] EWCA Civ 1654 at [23]).

g. The disclosure exercise in child abduction proceedings needs to balance the systemic importance of maintaining confidentiality in the asylum process together with the respondent parent's and child's rights to confidentiality in that process against the applicant parent's rights and the child's rights under Arts 6 and 8 ECHR. (President's Guidance, Appendix 2 para 15).

h. In carrying out the balancing exercise a relevant factor which will carry weight is whether the applicant in the abduction proceedings is the alleged actor of persecution in the asylum protection claim. (President's Guidance, Appendix 2 para 16 and *Re H (A Child) (Disclosure of Asylum Documents)* [2020] EWCA Civ 1001 at [55]).

i. However, the provision of the Immigration Rules do not prevent a court seized of family proceedings from ordering disclosure of asylum documents within those proceedings; absolute confidentiality only applies during the process of examination of the asylum application. (*Re H (A Child) (Disclosure of Asylum Documents)* [2020] EWCA Civ 1001 at [55] and *R v McGeough* [2015] UKSC 52 at [23]).

j. The denial of disclosure or inspection is limited to circumstances where such denial is strictly necessary. (*Durham County Council v Dunn* [2012] EWCA Civ 1654 at [23]).

k. In some cases the balance may need to be struck by a limited or restricted order which respects a protected interest by such things as redaction, confidentiality rings, anonymity in the proceedings or such other order. Such limitations or restrictions must satisfy the test of strict necessity. (*Durham County Council v Dunn* [2012] EWCA Civ 1654 at [23]).

The judgment requires reading in full, outlining the various competing factors and the balancing exercise. This judgment ultimately confirms that the Family Court is willing to allow broad disclosure but will control access to this cautiously and strictly to ensure that documents are not used for anything other than prosecuting one's case. The nature of the order is specifically outlined in [32]:

'a. The following matters should be redacted from the documents:

i. All Home Office / Border Force reference numbers;

ii. The names of any Home Office / Border Force employee or officer;

iii. Any address where any interview of the mother took place;

iv. Any address where the mother has stayed or is staying, unless it has already been disclosed by the mother within these proceedings;

v. The name and address of any organisation that has assisted the mother and child in the UK, unless it has already been disclosed by the mother within these proceedings;

vi. The specific matters relating to the mother's medical information that I have identified in the closed judgment.

b. The provision of the documents to the father is subject to the following restrictions which will take the form of injunctions and orders backed by a penal notice:

i. The father may not use the disclosed documents for any purpose other than for the prosecution of these proceedings without further order of the court.

ii. The documents are to be held by the father's legal representatives pending further order of the court and are not to be provided to the father in either hard or electronic copy. They may be shown to the father (either in hard form or by electronic screen sharing) but the father must not copy the documents or record the screen whilst documents are being shared with him.

iii. If the father withdraws instructions from his current legal representatives, they must immediately notify the court and seek directions as to the future custody of the disclosed documents.'

Child objections and 1980 Hague Convention

There have been a series of important decisions concerning the child objections defence in the context of 1980 Hague Convention cases. Ordinarily, such cases are of interest particularly when the gateway stage is established and the court is able to exercise its discretion to consider a whole host of issues, including welfare and the policy of the 1980 Hague Convention. Some recent decisions on this topic are:

- *Re Z (A Child) Retention from Hong Kong: Child's Objections* [2026] EWHC 996 (Fam);

- *F v M* [2026] EWHC 44 (Fam);
- *Re X (a Minor) (Hague Convention 1980, Article 13(b); Article 13(2))* [2026] EWHC 400 (Fam).

Important resource for international family law practitioners

The *Dictionary of International Family Law* was published in March 2026 and can be purchased

on the Class Legal website (www.classlegal.com). The *Dictionary* 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 written 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 remedy topics.

Westminster Watch (up North)

Michael Jones KC | Deans Court Chambers



So, after the debut 'Westminster Watch (up North)' in the Spring issue of *Family Affairs*, I remain in employment as a contributor. I can only therefore assume that the editorship was not inundated with complaints at the dive in quality of this section following me taking it over from Charles Hale KC (thanks for that readers!). What this means is that, for now at least, it falls to me to bring you an update from Westminster. Even though I have absolutely no links to Westminster and have only been there once. Luckily, the McDonalds just off the M56 Helsby junction now has wi-fi, meaning that I can conduct early morning research for this section whilst waiting in the drive-through (disclaimer: I was not using a device whilst driving, my mate had full control of the vehicle at all material times).

Kicking this update off is the news that the new Court and Tribunals Bill has passed through its second reading stage in the House of Commons. It is still, therefore, yet to reach the House of Lords; however, the government has still been making a great deal of the Bill in press releases, describing it as part of a government move 'to protect children from abusive parents'. The Bill will move to abolish the presumption of parental involvement with children. The relevant provision reads as follows:

'Welfare of the child: repeal of presumption of parental involvement
(1) In section 1 of the Children Act 1989 (welfare of the child), omit subsections (2A), (2B), (6) and (7) (which provide for a presumption, in certain

circumstances and for certain purposes, that the involvement of each parent in the life of a child will further the child's welfare).

(2) In consequence of the repeal made by subsection (1), omit section 11 of the Children and Families Act 2014.'

Whilst the government may be promoting this as a significant change to the law (assuming that it is passed through the Lords and receives Royal Assent in its current format), it is open to question whether these provisions will in isolation, protect children from abusive parents, as the government claims it will. Is it really going to significantly alter the approach taken by the courts following *Re H-N*, the line of authorities following it, and the provisions of the amended FPR 2010 PD 12J?

On the subject of private law, the recent analysis from the Nuffield Family Justice Observatory has shown a steep rise in private law applications to levels last seen in 2020. The Law Society has been pressing the government to invest more in the family justice system following receipt of these figures: there were 270,473 new cases in 2025, up 3% from 2024. Between October and December 2025, the highest increases were seen in private law (13%) and financial remedy cases (4%). Nearly half (47%) of private law family cases involved both parties acting as litigants in person. The roll out of the new Child Focused Family Courts is something that all of us are aware of and, perhaps unsurprisingly, it has been seized upon by the government as a way to ensure that children will 'get swifter justice' (their words on the press release, not mine). The expansion of the Pathfinder Courts, now referred to as Child Focused Courts was announced by the Deputy PM on 17 March. The government has committed £17m in funding for the next financial year to the roll out including in the creation of new social work posts (it is estimated that whilst under the pre-existing child arrangements programme 30% of children were seen by an FCA, this will rise to 80% under the new model).

"Even though I have absolutely no links to Westminster and have only been there once. Luckily, the McDonalds just off the M56 Helsby junction now has wi-fi, meaning that I can conduct early morning research for this section whilst waiting in the drive-through."

I was a little bothered by the fact that the press release for the roll out (featuring a speech by the Justice Secretary) didn't mention the time and effort invested by those working in the family justice system who were involved in the pathfinder pilot and the huge efforts of the former President of the Family Division. At least we are getting some level of monetary investment in the system. On the issue of cash investment, it was really pleasing to see that the government is investing over £1 billion as part of its mission to fight violence against women, with £550m being devoted to funding victim's' services and another £499m for funding safe housing provision for victims of abuse over the next 3 years. I do, however, think that this investment comes very late in the day and is long overdue.

A further update on something that is particularly important for me (because I know people who have told me firsthand about the effects of the closure of Surestart Centres under the previous government in my local area), is that the government has confirmed the opening of over 200 Best Start Family Hubs nationwide from the end of March 2026. The intention is that these will form the first wave of up to 1,000 hubs across all local authority areas by the end of 2028. There is also published guidance for local authorities on the hubs which is worth a read for those interested. I am really eager to see whether this investment in support services for families struggling with the cost of living has any long-term impact upon the volume of public law care cases issued on the basis of risks issues relating to neglect.

“Hopefully, by the time of the next issue some more interesting events will have happened in government that will merit inclusion in this column: in this respect, I still do not discount Andy Burnham being made PM and Bez from the Happy Mondays being appointed as Secretary of State for Justice”

As many of you will be aware, there have been some recent updates to the FPR 2010. I was debating whether this technically falls into the remit of Westminster Watch (up North) but Google tells me the MoJ is located in Westminster. So I have decided I can legitimately include FPR 2010 amendments in my Westminster update (I was running out of stuff to include in this issue!). Updates of note include:

1. Extension of the operation of the Family Mediation Voucher Scheme until 31 March 2029 (PD 36V) (good news).
2. The rolling out of a new pilot online procedure for using an online system to generate application in certain private law children cases (PD 36G).
3. Extension of the pilot scheme for ‘private law reform: investigative approach’ until 31 March 2027 (PD 36Z).
4. PD 36ZI will allow, where known, parties’ email addresses and telephone numbers to be provided to the police, except where a party has given notice that their details should not be revealed in accordance with FPR 2010 r 29.1.

Finally, there has been longstanding attention given to the proposal to restrict parental responsibility for those convicted of serious sexual offences. The Victims and Courts Act 2026 received Royal assent on 29 April 2026. Sections 3 and 4 of the Act amend the Children Act 1989 to

include new ss 10C-10G.

These provisions introduce duties upon the Crown Court to make a prohibited steps order restricting the exercise of parental responsibility of: (1) a person convicted of a serious sexual offence (s 10C); and (2) a person who has committed the offence of rape where the child in question was conceived as a result of that sexual assault (s 10E). Under s 10F, where the Crown Court believes that the child in question may have been conceived as a result of rape, the Crown Court must notify the relevant local authority at the time the offender is sentenced of the matters (if any) set out in s 10F(1). There is also a duty placed upon the relevant local authority to make an application to review a prohibited steps order if a verdict of acquittal is entered in relation to any offences covered by s 10C and s 10E, or where the sentence imposed in relation to an offence covered by s 10C is reduced on appeal so that it is no longer a life sentence or a term of imprisonment or detention of 4 years or more. The duty to apply to review is also engaged where there has been an application under s 10F and where there is an acquittal following appeal. The full list of sexual offences covered by s 10C is set out in the new Sch ZA1. A date for the implementation of these changes has yet to be confirmed at the time of writing.

That concludes this issue’s Westminster Watch (up North). Hopefully, by the time of the next issue some more interesting events will have happened in government that will merit inclusion in this column: in this respect, I still do not discount Andy Burnham being made PM and Bez from the Happy Mondays being appointed as Secretary of State for Justice.

Notes

1. www.gov.uk/government/publications/best-start-family-hubs-and-healthy-babies-guidance-for-local-authorities



Elsie Hueffer

A Resolute Suitor Unafraid to Seek Justice in Open Court

Sir James Munby

Edited by Sir Nicholas Mostyn

On 30 September 2025, Sir James sent John Wilson KC an incomplete and unedited draft of an article he was writing about Elsie Hueffer née Elsie Martindale. On 23 April 2026, the article was completed and edited by Sir Nicholas Mostyn. Sir James's original text was copiously cross-referenced to Hueffer's biographies. These references impeded easy reading of what is a gripping story and they have therefore been omitted. It is worth observing that the only reason that Sir James has been able to tell this remarkable story is because all the proceedings were heard in open court.

Elsie Martindale (1876–1949) and Ford Madox Hueffer (1873–1939), better known to posterity as Ford Madox Ford, both lived extraordinary lives. Hueffer is, of course, very well known as one of the twentieth century's greatest novelists and the author of *The Good Soldier* (1915) and *Parades End* (1924–1926), both dramatized for television and starring, respectively, Jeremy Brett (in 1981) and Benedict Cumberbatch (in 2012).

Elsie's life is very well documented in the three outstanding biographies of Hueffer/Ford:

- Arthur Mizener, *The Saddest Story: A Biography of Ford Madox Ford* (The Bodley Head, 1972)

- Thomas C Moser, *Life in the Fiction of Ford Madox Ford* (Princeton University Press, 1980)
- Max Saunders, *Ford Madox Ford: A Dual Life* (Oxford University Press, 1996)

Hueffer and Elsie met when they were children. As will be seen, they married in defiance of the wardship court. Thirty years of litigation followed: Elsie was to be a party to litigation in all three Divisions of the High Court.

Hueffer's three biographers are all distinguished academics, but their speciality is in each case English literature, and their grasp of the relevant legal principles is at times less than assured. This account is written from a lawyer's perspective.

Elsie Martindale was born on 28 September 1876; Ford Madox Hueffer on 17 December 1873. They met in 1884 when they were both boarders at the modern co-educational Pretoria House School in Folkestone. He was 10 and she was 7. She became his girlfriend and was known as 'the Captains' Wife'. He left in early 1889, when he was 15 and she was 12, but he continued to see her. In the summer of 1892 he began to court her seriously – he was 18 and she was 15 – and on 3 October 1892, shortly after her sixteenth birthday, gave her a ring, at the same time writing to her mother. Disapproving of their continuing relationship, on 4 March 1894 Elsie's father Dr Martindale forbade Hueffer to come to his house again. Elsie's response was to elope with Hueffer on 16 March 1894. Her parents began wardship proceedings: she was 17: *In re Martindale* [1894] 3 Ch 193. Mizener and Moser paint a fine and suitably dramatic account of the lead up to the proceedings including how the resourceful Elsie planned her elopement. Dr Martindale decided to send Elsie and her older sister Mary to Winchelsea, where they had their country house. Having to change trains at Ashford, Elsie gave Mary the slip, crossed to the opposite platform and boarded the up train from Dover to return to London before travelling on to Bath and then Gloucester.

The fullest and most authoritative account of the proceedings before North J is in the official law report at [1894] 3 Ch 193. Curiously, none of the biographies refers to that report.

The proceedings began in April 1894, a fact communicated to Hueffer by a letter from Elsie's father's solicitor the next day, incorrectly asserting that Elsie was a ward of court, which letter Hueffer was unwise enough to acknowledge. Elsie was subsequently made a ward of court on 11 April 1894. On 17 May 1894, she married Hueffer at Gloucester Register Office. The marriage certificate states their ages as being 24 and 21. In fact he was 20 and she was 17, though neither these misstatements nor the absence of parental or judicial consent invalidated the marriage: see *North J* [1894] 3 Ch 193 at 199. On 1 June 1894, and unaware of the marriage, North J granted an injunction restraining Hueffer from having any communication with the ward and requiring him to appear personally before the judge on 6 June 1894. He did so.

What happened at the hearing on 6 June 1894 was described by North J ([1894] 3 Ch 193 at 199):

'... to avoid the inconvenience of clearing the court and turning the audience into the adjoining passage, I took the parties concerned into my private room; but this was precisely the same thing as hearing them in this Court after the public had left. On that occasion an affidavit by Hueffer was produced in which he stated that he did not know, and had no reason to believe, that the young lady was a ward of Court – the falsity of which assertion is proved by his letter above mentioned. His solicitor also said that the parties had been married two or three weeks before; and I stated that, if proper evidence of the marriage was produced, the operation of my order would be stayed.'

By marrying, Hueffer and Elsie had thwarted her parents and stymied the court. The only risk to them was the rule that marrying a ward of court if done without the prior consent of the court was a criminal contempt: *Re Crump* (1963) 107 SJ 682 and *Egeneonu v Egeneonu* [2017] EWHC

43 (Fam), [2017] 2 FLR 1181, [2017] 4 WLR 100 at [48]–[50]. And seemingly this was so even absent knowledge that the ward was a ward: see the elderly authorities, more recently doubted, collected in *Oswald's Contempt of Court*, 3rd edn, p 80, and *Lowe and White, Wards of Court*, 2nd edn, paras 8-3, 8-4.

That this was not some theoretical risk was to be strikingly demonstrated some seventy years later in *Re Crump* (1963) 107 SJ 682. An order had been made restraining a ward from marrying her cousin. Despite this, they married, having produced to the registrar what purported to be a form of consent by the ward's parents but was in fact a forgery. The ward's parents having declined to take any action in the face of this *fait accompli*, the Attorney-General moved for the committal of both the ward and her husband to prison 'for intermarrying without obtaining the leave of the court'. Counsel for the Attorney-General submitted that 'it was proper for the Attorney-General to intervene since the marriage was *ipso facto* a

criminal contempt'. Faulks J sentenced both the ward and her husband to 28 days' imprisonment. This led to a great public furore. The Attorney-General was criticised for making the application: see (1963) 113 LJ 585; the Home Secretary for not ordering the release of the contemnors from prison: see [1963] Crim LR 666.

Hueffer, however, could not leave well alone. As Mizener explains:

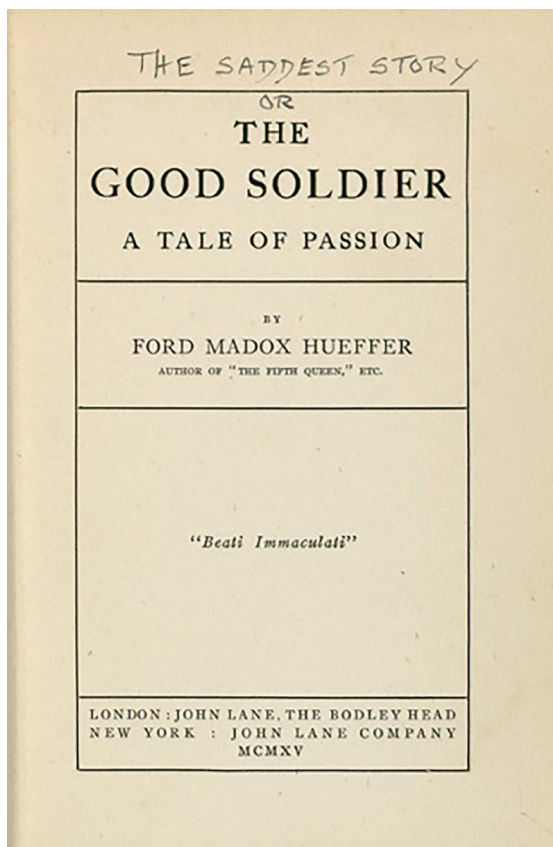
'He ... wanted to make the most of the romantic circumstances of his marriage, which struck him as a fine opportunity for advertising that rising young writer, Ford H Madox Hueffer. Immediately after his appearance in court on June 6 he sought out at his club a journalist friend named Perris and together they concocted a story that appeared that afternoon in The Star under the alluring head, "A Poet's Love Affair. A Chancery Court Chapter of "The Queen Who Flew."'" (The Queen Who Flew was the title of Ford's current book, a fairy story published a few weeks earlier.)'

This was shortly to transform the nature of the proceedings.

Reports of the hearing on 6 June appeared in the *Star* later the same day and in the *Morning* on 7 June, copied into the *Pall Mall Gazette* the same day, and in the *People* on 8 June 1894.

The case returned to court on 9 June 1894. North J's account of the proceedings continues:

'The certificate, when produced, showed that the lady had been represented by Hueffer to be over twenty-one years of age; but when the matter came before me again on the 9th, being satisfied that the false statements made by Hueffer to the registrar did not affect the validity of the marriage, although Hueffer had laid himself open to criminal proceedings under more than one head, I stayed the operation of the order. At the same time I declined to entertain any application to commit him for contempt, considering that if he was to suffer imprisonment it had better be by the sentence of a criminal Court in the proceedings to which he had exposed himself.'



In fact, no such proceedings were ever brought.

On 15 June, North J heard a motion for the committal for contempt of the publisher of the *Star* and on 22 June, five further motions for committal of the publishers of the *Morning*, the *Pall Mall Gazette* and the *People* and of Perris and Hueffer. All six motions were brought by Elsie's next friend – what would nowadays be called her litigation friend. He delivered a reserved judgment on 9 August 1894.

The judgment is important in relation to the law of contempt of court and was much considered in the later leading cases of *Scott v Scott* [1912] P 241, [1913] AC 417 and *In re F (A Minor) (Wardship: Appeal)* [1976] Fam 238. For present purposes it suffices to quote the key passages ([1894] 3 Ch 193 at 201, 202):

'I cannot conceive a clearer contempt of Court than that a party concerned, or any person, should proceed forthwith to make known to the world the very matter which the Court had deliberately, in the exercise of its discretion, decided ought not to be published.

... there was no contempt in announcing the fact that the ward had become the wife of Hueffer; the contempt was in purporting to give the public information, though meagre, of what the Judge had decided ought not to be disclosed, by determining to hear the case in private and excluding the public.'

So far as concerned the article in the *Star*, North J said ([1894] 3 Ch 193 at 202):

'I do not regard the contempt as a serious one. At the same time it was not mitigated by the line of defence which counsel adopted, the boldness of, which cannot be appreciated by anyone who did not hear it. At the same time, however, a proper apology was expressed if the Court should be of opinion that a contempt had been committed. Looking at all the circumstances, I think that justice will be met by ordering the printer of the Star to pay the costs of the motion to commit him. The Respondent Hueffer, who went from the Court to his journalist friend and instigated him to write the paragraph

in question and procure its insertion in the Star, is equally responsible for the publication of the paragraph, and he also must pay the costs of the motion against him.'

He went on:

*'With regard to the other motions, I am much surprised that they have been made at all. I consider them vexatious and an abuse of the process of the Court. In *Plating Company v Farquharson* 17 ChD 49 the Court pointed out that motions to commit where there was no real ground for committing the party were mere waste of time and ought to be discouraged. See also the observations of the Court of Appeal in *Hunt v Clarke* 37 WR 724 to the same effect. I should certainly not hesitate to commit where a real ground for committal is shown, as in the case of a deliberate contempt; but these four motions seem to me puerile. As regards Perris, the composer of the paragraph in question, I do not suggest for a moment that the part he has taken in the transaction might not have been sufficient to render him liable to committal, if the contempt had been a flagrant one. But I think that if action was necessary, the proceeding against the *Star* and Hueffer would have answered every purpose; and that it was not only unnecessary but vexatious to proceed against the writer. I therefore dismiss that motion with costs.'*

Continuing in relation to the other motions for committal he said:

*'The other three motions were against Mr. Hosker, the publisher of a paper called *Morning*; Mr. Hurst, the publisher of the *Pall Mall Gazette*; and Mr. Gray, the publisher of a paper called the *People*. The article in *Morning* of the 7th June does not show, and Mr. Hosker swears that he did not know, that the proceedings referred to were not in open Court; the article in the *Pall Mall Gazette* of the same day states on its face that it was; and that in the *People* of the 10th June also was simply copied from that in *Morning*, and they were inserted without any knowledge or means of knowledge that the proceedings had been in private. I dismiss these three motions with costs. I have hesitated somewhat about the costs because of the line of defence adopted on behalf of the Respondents; but, disapproving as I do of*

these motions having been launched at all, I think the costs should follow the result. I may add this, however, for the guidance of these Respondents in future, that, if they really had done what their counsel asserted their right to do with impunity, I should certainly have committed every one of them.'

As Mizener comments Hueffer and Perris 'were probably lucky to get off with costs'.

There is one final point. Mizener asserts that:

'Since Elsie was now Ford's wife, no parent or trustee could, in her name, move to have Ford committed for contempt, so that Dr Martindale was deprived of even this consolation.'

Not so, though in part what Mizener says reflects submissions by counsel who had appeared on 23 June 1894 for Hueffer and his wife ([1894] 3 Ch 193 at 197):

'After the marriage the wife has the right to say that her name shall not be used in an application to commit her husband without her consent which she has not given: In re Potter Law Report 7 Eq 484; In re Sampson and Wall 25 ChD 482.'

The application to commit Hueffer for contempt in relation to the newspaper reports failed for reasons having nothing to do with the point being taken by counsel; and North J left over for the future any proceedings to commit Hueffer for having married Elsie. If Dr Martindale wanted to press the point, his remedy, since this was a criminal contempt, was either to move for committal himself or to seek to set the Attorney General in motion.

There were two children of the marriage, Christina born on 3 July 1897 and Katharine born on 16 April 1900. By 1908, indeed probably long before, the marriage was in serious difficulties. Certainly by 1905, and perhaps as early as 1903, Hueffer was having an affair with Elsie's older sister Mary (she had been born on 12 June 1873) which Elsie was to discover, perhaps in 1903,

perhaps in 1905, when a telegram from Hueffer to Mary was delivered to her by mistake; the affair nonetheless continued.

On 21 March 1907, Hueffer met the writer and novelist Violet Hunt. She had been born on 28 September 1862 and was therefore 11 years older than Hueffer. Mizener gives a full account of her previous life and of the beginnings of her relationship with Hueffer. The relationship seems to have taken off in October 1908. As Saunders says 'by June 1909 their friendship had developed into an affair which was to last a decade, with disastrous consequences for both of them'. We are told how:

'On June 10, 1909, to save him and, with luck, to gain a husband, Violet became his mistress.'

On 17 May 1909, on the platform at Smeeth station, Hueffer had asked Elsie for a divorce; her response was that he should return home. At the end of June 1909, Violet took Hueffer to her lawyer, C O Humphreys 'to ask him to arrange a divorce'. As we shall see, he was to act for Hueffer in the ensuing litigation.

Elsie sought an order for restitution of her conjugal rights. The court file is preserved in The National Archives. It shows that on 16 September 1909 Elsie filed a petition dated 15 September 1909 seeking a decree of restitution of conjugal rights together with her affidavit in support sworn on 15 September 1909. Both, in accordance with the practice of the era, were short and to the point. The affidavit set out the interchange of correspondence between the parties on which the petition was founded. Elsie had written to Hueffer on 26 August 1909 from Kitcat, Aldington, Hythe, to 84 Holland Park Avenue, his address in London:

*'Dear Ford,
I am writing to you to ask you if you will return to me and live here as we did when first we married.
This divided existence is very unbearable to me and I ask you now for the last time to*

come down to me here and to be the kind and affectionate husband that you were at first.

Yours affectionately
Elsie Hueffer'

He replied on 7 September 1909 from 84 Holland Park Avenue:

'Dear Elsie,
I received on my return your letter which has followed me about or I should have replied sooner. I am afraid however that it can make no difference.

There are reasons which make it impossible and it would be unfair of me to lead you to hope that our former relations could be restored.

This I think is quite definite and in future it would be better for you to send any communications you may desire or to call upon my solicitors [details]. I am sorry to appear brutal but this seems to me to be the only way.

Yrs
Ford Madox Hueffer'

The petition followed nine days later.

Elsie followed this up with her petition for alimony filed on 5 October 1909, the same day as the Registrar gave his certificate under Rule 206 that the proceedings were correct and the pleadings in order. Hueffer did not defend the petition, though on 13 October 1910 Humphreys on his behalf had entered an appearance to the alimony petition and filed his alimony answer.

So far so good. Hueffer seems to have been assuming that this was merely the first step towards a divorce. Proceedings for restitution of conjugal rights were recognised as a route to a consensual divorce where a husband, as in Hueffer's case, had no grounds for divorcing his wife. Section 5 Matrimonial Causes Act 1884 provided that non-compliance with a decree of restitution constituted desertion, entitling a wife to petition immediately for divorce without having to prove the desertion for 2 years required by s 27 Matrimonial Causes Act 1857. The chronology would suggest that the proceedings had been planned and agreed by the



Ford Madox Ford

parties, the carefully contrived correspondence gives every sign of having been at least vetted if not indeed drafted by the solicitors, and initially at least matters proceeded smoothly. But Elsie may not have shared Hueffer's agenda. She seems to have been at best ambivalent about divorce.

Then on 14 October 1909 disaster struck. Moser puts it laconically:

'On October 14, at Charing Cross Station, Elsie caught the two [Violet and Hueffer] getting off the boat-train together after a clandestine vacation in France.'

Mizener gives much more detail of how on 14 October, Elsie, Edmée Van der Noot (who had been employed as the children's governess in 1906) and Elsie's solicitor, William Sturges, visited 84 Holland Park Avenue (not merely Hueffer's home but also the office of the *English Review* of which he was the editor) and, having interrogated Hueffer's secretary, discovered the details of the travel arrangements; of how Elsie, Edmée and Sturges were waiting for them at Charing Cross; and of how, when he saw Elsie, Hueffer said to Violet *'it's all up, old girl. You will see. There'll be no divorce'*.

Elsie was granted her decree by Bargrave

Deane J on 11 January 1910. Hueffer was ordered within 14 days of service of the order to return home to Elsie and render to her conjugal rights.

The hearing was widely reported, albeit in fairly low key. Typical of many reports, though probably the most detailed, was the one in the *Gloucestershire Echo* on 17 January 1910:

'Having unsuccessfully endeavoured to win back the affections of her husband, Joseph Leopold Ford Hermann Madox Hueffer, author, of Holland Park-avenue, W., Mrs Elsie Hueffer, formerly Martindale, sought a decree of restitution of conjugal rights in the Divorce Court. For petitioner, Mr. le Bas said the marriage took place in 1894 at a registry office at Gloucester. Mr. and Mrs. Hueffer lived at Hythe and other places until 1907, when they came London. There were two children. After six months in London, Mrs. Hueffer, whose health was not good, returned, under the doctor's orders, to the country. Since that time they had not lived together. In 1908 Mrs. Hueffer was very ill, and her husband went once or twice see her, the last occasion being in May, 1909. At various times Mrs. Hueffer endeavoured to get him to return, but he did not do so, and in July sent a message by a third person to say he never intended to live with her again, and that he handed over the custody of the children to her. Mrs. Hueffer then consulted her solicitors, and the usual letter was written to respondent on August 26. 1909. On Sept. 7 he replied he was not coming back, and on the 15th this petition was filed. Petitioner said she was now living at Aldington, near Hythe. The message that Mr. Hueffer sent her was that he did not wish to see her again, and that it was only due her to give her the children.—His lordship pronounced a decree nisi of restitution, with costs, ordering the husband to return within 14 days.'

Hueffer did not comply with the order.

On 10 March 1910, Elsie filed her petition for periodical payments: see s 2 Matrimonial Causes Act 1884. It stated that Hueffer had been served with the order on 19 January 1910, that he had failed to comply with it, and that he was accordingly guilty of desertion. On 30 March 1910, Hueffer filed his permanent alimony answer; Elsie's

reply followed on 4 May 1910. In the meantime, on 28 April 1910, Sir Samuel Evans P had ordered Hueffer to pay Elsie £3 pw from the date of the decree until an order was made on her petition for periodical payments and, in respect of the period since the decree, to pay £25 on account within 10 days.

Hueffer was anxious to be divorced, to regularise his relationship with Violet Hunt, but of course had no grounds for divorcing Elsie. She could have divorced Hueffer very easily, taking advantage of s 5 Matrimonial Causes Act 1884 and of his adultery with Violet. Initially, Elsie seems to have wavered but then became adamant in her opposition to any divorce. Hueffer's response was two-fold. He stopped making the payments required by the order of 28 April 1910 and he conceived a plan for obtaining a divorce in Germany.

We are told in the biographies of hearings on 16 May 1910 and 13 July 1910, at which Elsie came face to face with Hueffer. But there is no reference to either hearing in the court file. We are told that on the latter occasion Hueffer, having been summoned to Marylebone Police Court, was sent to Brixton Prison for 10 days for not paying Elsie, though the newspapers, usually so avid to report his activities, contain no reports of this.

In August 1910, Hueffer and Hunt left for Germany. Their plan, suggested by Hueffer's German aunt, his father's elder sister Emma Goesen, was for Hueffer to be naturalised as a German and then obtain a divorce from Elsie in a German court. Violet had to return to England at the end of September, but Hueffer spent a long time in Germany, where he retained a German lawyer, but nothing seems to have come of the plan. No evidence has ever emerged that he obtained a divorce, let alone that he married Violet: the most are undocumented stories that they married in Hanover or 'in a hotel room in France'. Violet was to spend the rest of her life professing the belief that they had married though evidence to support the accuracy of that belief is lacking.

Indeed, we are told that, following her return to England in September 1910, Violet received this daunting legal advice, organised by two of her good friends to whom she described Hueffer's plan:

'No doubt in Baden the pair would be married. For one thing it might – though here I was doubtful – leave Ford open to a charge of bigamy in England. Anyway there was no question that under English law the lady would be Hueffer's mistress, not his wife ... Nothing availed. Ford, she insisted, must be right ... The plan was wonderful.'

In fact, as Saunders correctly notes, the plan was always doomed to failure because a German divorce would not have been recognised in England. As it happens the relevant principles had very recently been established at the highest level (see *Le Mesurier v Le Mesurier & Others* [1895] AC 517, *The Trial of Earl Russell* [1901] AC 416 and *Bater v Bater*, otherwise *Lowe* [1906] P 209) and were set out with clarity in the first edition of Rayden's *Practice and Law in the Divorce Division*, published in 1910. Saunders, who was not a lawyer, suggests that 'the international laws of divorce and domicile are not without their own degree of fictionality and haze'. Legal fictions perhaps; haze no.

Rayden set out the key principle as stated in *Le Mesurier*:

'The English Courts do not recognize, as possessing extraterritorial validity, any decree of dissolution of marriage unless pronounced, or recognized, in a country, in which, at the date of the suit, the parties were domiciled.'

The acquisition by Hueffer of German nationality would therefore not suffice. So, whatever did or not happen in Germany, and whatever view German law might take as to his marriage with Hunt (if it ever took place), Elsie, as a matter of English law was and remained Hueffer's wife.

Saunders shows a less than secure under-

standing of the relevant English law. He tells us that Hueffer had been informally warned by a family friend, John Westlake, against his scheme, but commenting on a later letter written by Violet Hunt says 'Hunt ... says that Westlake had advised that German domicile (though she presumably means nationality) would protect Ford from a charge of bigamy'. Not so: Westlake, who had been Whewell professor of international law at the University of Cambridge from 1888 to 1908 and was a recognised authority on private international law (he had published the pioneering and immensely influential *Private International Law* in 1858), surely had domicile in mind as the key consideration. He also says of Violet 'If she knew that the causes for divorce would not be valid in England, she must have realized that the divorce itself would not be either'. Not so: as Rayden correctly put it (p 272, para 21, citing *Bater v Bater*):

'It is immaterial that a foreign decree, of dissolution of marriage, was granted for reasons which would not entitle a petitioner to a decree in England.'

He is, however, on much firmer ground when he says that bigamy became the central issue. As Rayden explains (p 271, para 18, citing Russell), a British subject, divorced in a country in which he is not domiciled, who remarries in consequence, would be convicted of bigamy if tried here.

On 14 October 1910, the *London Opinion* published an obviously well informed and legally perceptive squib:

'A piquant sensation is fluttering the literary world. Some time ago, a distinguished novelist bearing a foreign-looking patronymic, became separated from his wife. His wife did not divorce him. A few weeks ago he married a well-known lady novelist. The marriage took place on the Continent. It is alleged to be valid there, but not in England! ... The question is whether either of the parties is guilty of bigamy. It is a delicate problem. As both parties are domiciled in England, it is possible that there may be exciting complications. According to British law, the

first wife is still married to her husband. According to the law of the husband's native country, the second wife is married to him. The result is that the happy man has two legal wives.'

As Saunders comments, the *London Opinion* had not merely drawn attention to the question of bigamy; it gave 'the earliest warning that their bid for respectability was about to bring them notoriety instead'.

On 13 March 1911, the President ordered that Elsie was to have custody of the children, with access to be agreed.

The 1911 census, taken on 2 April 1911, provides a surprisingly unexpected insight into Elsie's character. She was living at Kitcat, Aldington, Hythe, in Kent with Edmée Van der Noot, described as her 'companion'. Elsie describes herself as 'Head [of Family] + Wife', as being 'Married' and by occupation 'Author's wife living apart'. Against her signature at the foot of the form she has added 'N.B. As a woman householder I desire to protest at my not having a Parliamentary Vote'. The census shows that both daughters were boarders at a school in Hastings.

To Elsie's extreme annoyance, Violet, both in society and in the media, was soon being called Mrs Hueffer. Elsie could not bring proceedings for jactitation – false boasting of marriage – because such a suit could be brought only by one of the parties to the pretended marriage: *In re Campbell v Corley, ex p Campbell* (1862) 31 LJ(PMA) 60. So, while Hueffer could in theory have brought such a claim, Elsie could not. (I say in theory because any claim by Hueffer, even if he had been minded to bring such a suit, would almost certainly have been defeated on the basis that he had encouraged or acquiesced in the boasting: *Lord Hawke v Corri, calling herself Lady Hawke* (1820) 2 Hag 280 and *Thompson v Rourke* [1893] P 70.) But, as she was soon so successfully to demonstrate, it was open to Elsie to bring proceedings for libel.

Her first target was the *Daily Mirror*, which on 21 October 1911, under the headline 'AUTHOR WEDS. / Mr. Ford Madox Hueffer Married Abroad to Well-known Lady Novelist', had published an interview with Hueffer:

"The Daily Mirror is able to announce that Mr. Ford Madox Hueffer, the famous novelist, has been married on the Continent to Miss Violet Hunt, the well-known authoress ... Mr. Hueffer was seen at the Red House, Spa, Belgium, yesterday, before starting for his daily motor-car ride with the second Mrs. Hueffer.

"I don't want to advertise myself," he told The Daily Mirror, "but it happens that both my wife and myself have books appearing to-day. Messrs. Duckworth publish mine and hers is published by Stanley Paul in her maiden name, Violet Hunt. I married her in Germany after divorcing my former wife on a technical ground, desertion, as I had a perfect right to do, being domiciled in Germany. I am heir to large entailed estates in Prussia, and have therefore retained my German nationality. I was born in England, but when I was of age, of course, I could elect which nationality I should have, my father being German, and I chose to be German. I offered myself for service with the German army, but was not required to serve, and I attended Bonn University. My former wife brought an action against me for restitution of conjugal rights. Then we agreed upon a separation order, she having the custody of our two daughters, now fifteen and sixteen."

Mr. Hueffer further said that he was now lecturing in German universities upon history ...

Like her husband, Miss Violet Hunt is now well known in England as a writer, having published a number of novels and other books ... Miss Hunt was one of the early members of the women's suffrage movement. In February, 1908, she took an active part in the suffragettes' self-denial week, taking up her stand with a collecting-box outside Kensington High-street Station.'

On another page the newspaper published

large portraits of Miss Hunt and Hueffer, under the strapline 'LITERARY WEDDING : MR. FORD MADOX FORD AND MISS VIOLET HUNT' and captioned 'Mr. Ford Madox Hueffer and Miss Violet Hunt, whose marriage is announced to-day'.

Saunders tells us that Elsie's solicitor advised her to deny Hueffer's statement as a libel and claim damages, and that Hueffer wrote to them 'regretting the publishing given his re-marriage by the press, as he had wished to spare his client "mortification"'. But Elsie went ahead.

The *Daily Mirror* apologised, thus avoiding proceedings, though having to pay her £350 in damages. On 9 January 1912, the *Daily Mirror* published the following notice under the headline 'MRS. FORD MADOX HUEFFER. / A Withdrawal and Apology':

'The Daily Mirror in its issue of October 21, 1911, stated that Mr. Ford Madox Hueffer had divorced his wife on a technical ground, desertion, in Germany.

Messrs. William Sturges and Co., solicitors for Mrs. Ford Madox Hueffer (nee Elsie Martindale), of Kitcat, Aldington, Hythe, Kent, have informed The Daily Mirror that their client has no knowledge of any such proceedings, and that the statement to the said effect is without foundation.

The Daily Mirror accordingly wholly withdraws the statement complained of and tenders its apologies to Mrs. Hueffer and its sincere regret that the article in question should have been inserted.'

Less than 3 months later, on 3 April 1912, the *Throne* published what Elsie said was a libel:

'Messrs. Chatto and Windus have in the press a book which forms an interesting link between the modern school of fiction and that of a generation or so ago in the waning days of the three-volume novel, those good old days as they are now regarded in the book trade, though the three-volume novel, be it remembered, had just as many critics in its own time as the 6s. novel of to-day. The forthcoming book is a romance entitled The Governess, by Mrs. Alfred Hunt, one of the popular novelists of the old days, and her

daughter, Miss Violet Hunt (now Mrs. Ford Madox Hueffer) one of the successful of the "modern school".'

Two pictures were published, one of Violet's mother Mrs Alfred Hunt and the other of Violet herself. Underneath them appeared the words:

'On the left Mrs. Alfred Hunt, who is joint authoress with her daughter, Miss Violet Hunt (now Mrs. Ford Madox Hueffer) (right), of a forthcoming novel The Governess, which links the modern school of fiction with the old three-volume days.'

Hueffer had written the preface to the book, in which he called Violet 'Mrs Hueffer'. As Saunders comments 'It is hard not to feel that these continued announcements of being married were their most egregious acta of self-destructive provocation'.

Violet and Hueffer were in a very difficult position, well summarised by Mizener:

'They knew Ford had put his foot in it with his interview with the Daily Mirror ... But they had committed themselves to carrying through the bluff that Violet was Mrs Hueffer and could hardly start now avoiding the use of the name ... They had thus put themselves in a trap that Elsie could spring at any moment.'

This time Elsie sued. The case came on for trial on 6 and 7 February 1913, before Avory J and a common jury, and was very widely reported. The fullest, though incomplete, report is in the law reports published in *The Times* on 7 and 8 February 1913, but there was much reporting elsewhere. One of the longer reports, which well brings out the flavour of the proceedings, was in the *Weekly Despatch* of Sunday, 9 February 1913, published under the headline 'NOVELIST'S WIFE'S LIBEL SUIT. / £300 Damages Awarded to Mrs. F. M. Hueffer. / RIGHT TO A NAME' and describing the case as 'A singular libel action, taken by a lady to assert her right to be recognised as the wife of a well-known literary man'.

I start with *The Times* of 7 February 1913:

'This was an action for libel. The defendants admitted publication, denied that the words referred to the plaintiff, and said they were fair comment.

Mr. Holman Gregory and Mr. S. L. Porter appeared for the plaintiff; and Mr. Wild, K.C., and Mr. Eustace Hills for the defendants.'

Gregory's opening speech was then set out at some length:

'Mr. Gregory said that the plaintiff was Mrs. Elsie Ford Madox Hueffer, and the defendants the proprietors of the Throne newspaper. The plaintiff was married to Mr. Joseph Leopold Ford Madox Hueffer, the well-known novelist, in 1894. They lived together for a considerable time, two daughters being born, one in 1897 and the other in 1900. Mr. Hueffer was a Roman Catholic, and the two daughters were brought up in that faith. In 1909 Mr. Hueffer left the plaintiff for some reason, not her fault. Attempts were made to get him to come back, but failed. A petition was begun, and in January 1910 an order was made by the President of the Divorce Court that he should return to his wife. This order Mr. Hueffer did not obey. In April, 1910, he was ordered to pay to the plaintiff as alimony £25 within three weeks, and £3 per week thereafter. He refused to obey this order on the ground that his wife was in a position to divorce him, but would not.

As a matter of fact, the plaintiff not only had very strong objection to divorce, but considered that it would not be right for her to prejudice the future of her daughters, who belonged to a Church which did not recognise divorce unless the consent of the Pope had been obtained. Mr. Hueffer refused to pay the money and actually went to prison for not doing so. Negotiations through a Mr. Byles, who, he was instructed, was the manager of the Throne, were commenced with a view to an arrangement as to the support of the plaintiff and her daughters, which continued until May, 1912. Mr. Hueffer was an Englishman, his father being a naturalised Englishman, and he himself having been born in England. But in 1911 he threatened to go to Germany, get naturalised, and then seek a divorce on the ground that the plaintiff had deserted him. He (counsel) did not think he had done so; no papers were ever served on the plaintiff, and enquiries had elicited no particulars of any divorce proceedings in Germany.

At the end of 1911 the plaintiff was surprised to see in a newspaper an announcement that Mr. Hueffer had married a Miss Violet Hunt. She proceeded against that paper, the well-known paper the Daily Mirror, and obtained damages and a withdrawal published in the paper, which must have been seen by the defendants. The above-mentioned negotiations broke down, and shortly afterwards the libel complained of was published.'

Gregory stated that in the Throne of 3 April 1912, there appeared the following words (as set out above), and continued:

'Think (said counsel) of the position in which this placed the plaintiff. Since 1894 she had moved in Society and in literary circles as the wife of Mr. Ford Madox Hueffer. In April 1912 the Throne said that somebody else was entitled to that position. People reading it would think that either the plaintiff was not his wife at all or that she was divorced. She, poor lady, who had suffered enough in this world at the hands of her husband, stood to be persecuted by people announcing to the world in their periodicals that she had no right to the title of Mrs. Hueffer at all. This exposed her to ridicule, hatred, and contempt, in the language of the law, and was a libel. She had to bring this action—no other course was possible. She did not seek extravagant damages, but wished to reinstate herself in the eyes of the world.

When the defendants were written to, their solicitors replied that the portrait was that of a lady known in literary circles as Mrs. Ford Madox Hueffer, and that they could not publish an apology as demanded, as that would expose them to an action for libel by that lady. This was said, although Mr. Hueffer was actually under an order by an English Court of justice to return to the plaintiff, and to pay her a weekly sum for the support of herself and daughters.'

The report in *The Times* of the hearing on 7 February 1913 began with Elsie's evidence. The longest account of this, however, was in the *Weekly Despatch*:

'Mrs. Elsie Hueffer in the witness-box explained that her husband's full name was Joseph Leopold Ford Hermann Madox Hueffer. She was married to him in May 1894 at Gloucester, and there were two girls

of the marriage. Recounting her matrimonial troubles, Mrs. Hueffer said that for some years prior to 1908 she suffered from illness, and on the orders of her doctor went to live in the country. In August 1909 her husband informed her that he had no intention of living with her any more. Accordingly, in the September following she filed a petition for restitution of conjugal rights. The order was made in January 1910, but Mr. Hueffer had never complied with it. She obtained an order for alimony. In answer her husband urged her to divorce him, saying he would give her alimony if she would do so. Mrs. Hueffer, however, said she objected to divorce. "I have, and had, strong personal objections to divorce, and I did not and do not think it in the best interests of my children." In addition, divorce is forbidden by the Roman Catholic Church.'

This last point is intriguing. We are told that the two children were received into the Catholic Church in July 1906 while staying in Germany with their German Catholic relatives. Hueffer himself had been received in November 1892. But we are also told that Elsie not only remained a Protestant but deeply regretted her daughters' conversion. Both Gregory and Elsie were very careful and seemingly correct in their choice of language, in striking contrast to Hawke KC in 1925 (see below).

The report in the *Weekly Despatch* continues:

'Answering her counsel (Mr. Gregory, K.C.) further, Mrs. Hueffer said she had never been served by her husband with any papers relating to divorce—either divorce in this country, in Germany, or elsewhere. Mr. Gregory recalled to Mrs. Hueffer an article in The Daily Mirror of October 1911, which announced that Miss Violet Hunt and Mr. Hueffer had been married in Germany, and included what was described as an interview with Mr. Hueffer, in which that gentleman said he had been married to Miss Violet Hunt in Germany after divorcing his wife on a technical ground—desertion—in Germany. Mrs. Hueffer said she caused The Daily Mirror to be communicated with, and a full apology was published. Mrs. Hueffer went on to say that she had caused inquiries to be made in Germany and elsewhere, and as far as she could ascertain there had been no proceedings for divorce between herself and

husband. Her husband, she said, paid her £3 a week alimony for herself and two children up to June 1912.

Mr. Wild, K.C., in cross-examination, asked Mrs. Hueffer, "What is your complaint?" Mrs. Hueffer: My complaint is that she is not Mrs. Ford Madox Hueffer. Is that your only complaint?—It implies various things: either that I am divorced or have divorced or that my marriage was not a legal marriage.

I suppose you know as a fact that Miss Violet Hunt is living with your husband?—I don't know it is a fact, but I suppose so. And so do you know that in addition to this matter of The Daily Mirror there was an announcement of their wedding in a number of society papers about October 1911. Mrs. Hueffer answered that she saw one. Mr. Wild quoted paragraphs, some with pictures of Miss Violet Hunt and Mr. Hueffer, from the Sphere (who referred to the "marriage" in Germany as "a romantic literary alliance"), Sketch, and Modern Society. Mr. Wild: Don't you know that your husband and Miss Violet Hunt go into society and are received as Mr. and Mrs. Ford Madox Hueffer?—I have heard rumours of it. I have heard that they are announced as Mr. and Mrs. Hueffer, and I know that people object. His Lordship (to Mr. Wild): When you say "received," you mean that they are announced. Mr. Wild: Perhaps I ought to have said they are announced. Mr. Wild went on to quote from more papers which published matters in regard to the alleged marriage.'

The *Times* then turned to the evidence for the defendant:

'Mr. Frank Mumby, who wrote the article, said it was based on the matter supplied by the publishers. The reason why he referred to Miss Violet Hunt in this way was that the introduction was written by Mr. Ford Madox Hueffer, and it seemed necessary for him to explain the reason for the association. [The report in the Dublin Evening Herald of 7 February 1913 adds that he "said if he had known Miss Hunt was not the wife of Ford Madox Hueffer he would not have written what he did. He now knew it was an apparently untrue statement."] Mr. Arthur E. J. Legge said that in the autumn of 1911 he sent Miss Hunt a wedding present. Mr. Wild, K.C.: Has it ever been returned?—Never. (Laughter.)'

The report continues with the concluding speeches:

'Mr. Wild then addressed the jury. He asked what people were to do when a woman passed as a man's wife and was widely reputed to be such. What on earth were they to call her? This action ought never to have been brought. It was a fight between two women, and Mrs. Hueffer had succeeded in stamping Miss Hunt, in fact, if not directly, as an adulteress. The Throne, with its innocent incidental reference to Miss Hunt as Mrs. Hueffer in the course of a purely literary notice, was a mere cat paw in the game. Mr. Holman Gregory, in reply, asked what would be the position of Mrs. Hueffer if she allowed the papers to go on publishing photographs of another woman as Mrs. Ford Madox Hueffer and to refer to that other woman as such. Who would she herself be supposed to be, if she did not stop it? Had she not suffered enough in being left to keep and educate two children on £3 a week without being compelled to endure insult as well as injury? As for damages, the plaintiff had no desire to make a profit out of this action, but she did desire to clear her name, and for such substantial damages as would show that they thought she was justified in bringing the action.'

Then the summing up:

'Mr. Justice Avory, in summing up, said that the plaintiff claimed that she had been held up to ridicule or contempt, that something had been written of her that would cause her to be shunned in society. The defendants replied that they had said nothing about her at all, but had simply described another woman by a name by which she was known. It was for the jury to say whether people reading the words and knowing the plaintiff and the circumstances of the case would naturally infer that she was a divorced woman. Even if so, it was for them to say whether the inference would be defamatory. She might have been the innocent party claiming the divorce ... It was true, as Mr. Wild had urged, that when the defendants were called on by the plaintiff to explain that their statement that Miss Violet Hunt was not Mrs. Hueffer, they were placed on the horns of a dilemma. But that was not the plaintiff's fault. It was also true that since October 1911, Miss Hunt had been passing as Mr. Hueffer's wife and

she had acquired a reputation as being his wife; but the question was not what people who saw the portrait and read the words would think of Miss Hunt, but what they would think of the real Mrs. Hueffer.

On the question of damages he related to the jury the circumstances of the case of Mr. Artemus Jones, and cited from the judgement of the Lord Chancellor in that case ([1910] AC. 20, at p. 25). If the words were defamatory, the question of intention to defame was irrelevant.

The jury returned a verdict for the plaintiff and assessed the damages at £300, and judgement was entered accordingly, with costs.

Mr. Wild applied for a stay of execution on the ground, inter alia, that the words were incapable of a defamatory meaning.

After argument, his Lordship granted a stay on terms that notice of appeal be given and the damages paid into Court within ten days, with the usual undertaking as to costs.'

It will be appreciated that neither Hueffer nor Miss Hunt were parties, nor had they been called to give evidence. So neither had any opportunity to influence let alone determine the account given to the court. Miss Hunt, however, was represented by counsel holding a watching brief. The report in *The Times* on 8 February 1913 concludes with this:

'Mr. Storry Deans said, on behalf of a lady whose name had been mentioned on both sides, that she wished him to state that she believed herself to be Mrs. Ford Madox Hueffer and intends so to call herself.

Mr. Justice Avory.—I cannot hear you any further. I cannot hear these ex parte statements. I decline to allow this Court to be made a medium of advertisement.'

We are told by Mizener and Saunders that according to Comyns Beaumont, the editor of the *Throne*, Hueffer and Hunt had promised Byles that they were married and that they would testify to it in court: 'our defence was vitiated by the disappearance of Hueffer and his lady friend'. The reality, of course, was that there was no way that Hueffer and Hunt could ever have given such evidence, even if there had in fact been a marriage: to do so would simply have been to invite a prosecution for bigamy. Beaumont and Byles must

have been very naïve to believe that they would. In fact Hueffer decamped to Boulogne.

As Saunders tells us the case was a considerable scandal; it affected Hueffer's public image for a very long time; and it 'meant the end of their [Hueffer and Hunt's] striving for social "respectability"'. The result left Hueffer 'devastated' and 'So unstrung he was unable to speak'. Violet was to describe the debacle in her memoirs as Hueffer's 'funeral'. Worse, he 'realized that Hunt realized as early as 1913 – merely months after the Throne case – that he was staying with her out of a sense of duty rather than love'; by 1915 their relationship was 'essentially doomed'. The verdict left Violet 'staggered'; she had not for a moment thought that the Throne would lose. One is left staggered that she could ever have believed that without their evidence the Throne could win.

Unable to face returning to England, Hueffer and Violet drifted about the south of France, not returning until May 1913:

'Ford and Violet had had no serious social difficulties before Elsie sued the Throne, though it was an open secret among those who knew them that their story of the German divorce did not hold water. The trouble began when this fact became public knowledge; then everyone felt obliged to express horrified surprise.'

Three months after the trial, in May 1913, Elsie was back in court, this time suing Hueffer in the West London County Court for arrears of maintenance. There were reports in many London and provincial newspapers. Typical of many, though with a more elaborate headline than most, was the report which appeared in the Middlesbrough North-Eastern Daily Gazette on 28 May 1913 under the headline 'NOVELIST'S TWO WIVES. / Mr Madox Heuffer's Tangled Matrimonial Affairs. / TWO WOMEN IN COURT. / First Wife Gets Order For Maintenance Arrears':

'At West London County Court Frederic Hermann Ford Madox Hueffer, of South Lodge, Campden Hill, author, appeared in

answer to a summons for being in arrears to the extent of £93 on a maintenance order, granted to his wife, Elsie Hueffer. of "Kitcat," Aldrington, Hythe.

Mr McKenna, for the plaintiff, said that an order for the restitution of conjugal rights was made in the Probate Division in 1910. The order on which the arrears accumulated was for the payment of £3 per week.

The defendant's counsel said that of course the Court knew that there were two Mrs Heuffers – the plaintiff and another wife, whom the defendant married abroad. The defendant was a well known author, and had published twelve novels since 1910, as well as a series of articles. He had issued a summons for collusion, which was to be heard next Tuesday at the Divorce Court.

Judge Selfe: Is there any reason why the papers should not be sent to the King's Proctor?

Counsel: The King's Proctor has not yet intervened.

The Judge: What right has the second wife to call herself Mrs Heuffer?

Counsel: The second marriage took place in Germany. The whole proceedings are extraordinary, and I ask for an adjournment. His Honour refused to adjourn the case, and made an order for £93.—Both Mrs Heuffers were present in court.'

Counsel's reference to a summons for collusion is puzzling. There is no trace of any 'summons for collusion' on the divorce court file. What it does show is that on 24 May 1913 new solicitors went on the record for Hueffer and that on 18 June 1913 he filed two 'affidavits on Summons' – they are no longer on the file – and that on 11 July 1913 the President ordered Hueffer to pay Elsie's costs as taxed at £129.5.0. On 25 July 1913, Hueffer filed an affidavit of documents, presumably as to his financial affairs – again, it is no longer on the file – and on 1 August 1913 the President made another financial order. It recited that 'on the Judgment Summons against Respondent not being enforced for a month and on payment within a month of arrears of alimony due on May 24th 1913 assessed at £138'. Hueffer was ordered to pay to Elsie as from 24 May 1913 quarterly alimony at the rate of £22 per annum together with 30/- a week for the maintenance of the children when in Elsie's custody for the holidays and £20 a year for

their clothing. On 27 October 1913, the President ordered Hueffer to pay Elsie's costs as taxed at £33.11.8. There is nothing more on the file.

It is not altogether easy to work out from the court file exactly what was going on. What was the 'Summons' in relation to which Hueffer filed the affidavits on 18 June 1913? Why was Hueffer filing an affidavit of documents on 25 July 1913? What was the 'Judgment Summons' referred to in the order of 1 August 1913 but as to which there is no other reference to be found in the file?

And how, if at all, does all this relate to what Saunders refers to as a 'bankruptcy hearing' on 22 July 1913? He quotes the diary of Hueffer's friend Olive Garnett:

'Elsie attended before the registrars & her counsel got further adjournment to examine F's accounts. F & V.H appeared.'

It will be noted that Garnett does not refer to bankruptcy or to the Bankruptcy Court. The diary entry as quoted by Moser includes '[in Bankruptcy Court]' after the word 'registrars', presumably an editorial insert by Moser. But where did this come from. Mizener provides no elucidation, stating baldly and without elaboration that 'He then found himself forced into bankruptcy' – this in 1912.

What is striking about all this is that none of them provides any supporting evidence at all for there ever having been either bankruptcy proceedings let alone an actual bankruptcy.

Violet Hunt in her curious memoir published in New York in 1926, *I Have This to Say: The Story of My Flurried Years*, p 198, and speaking of 1912–1913, says:

'The Throne affair wasn't the only thing. There was bankruptcy—another spectre, so it seems to be to most people. I don't think Joseph Leopold [Hueffer] minded the idea much. It was minded for him.'

Moser says that by this time Hueffer's 'finances

were a shambles' and that he was being pressed by his close friend Arthur Marwod for repayment of the 400 guineas Marwood had lent him for Elsie's surgery in May 1908 – 'the operation that would finally bring her to health'.

If Hueffer was defaulting in what he owed Elsie, bankruptcy will indeed have been a very real spectre, being a recognised means of enforcing orders for alimony. In Hueffer's case we can assume that bankruptcy remained no more than a spectre. Certainly he was never made bankrupt because if he had the proceedings would have been recorded in the *London Gazette* and that is silent.

And how, one wonders, does all this relate to a hearing on 28 March 1913 recorded by Moser:

'... summons proceedings ... F sent excuse. V.H. present.'

Trying to make sense of all this, it would seem that Elsie had issued a Judgment Summons; that on 18 June 1913 Hueffer filed his two affidavits; that there was then the hearing on 22 July 1913 (not a bankruptcy hearing but a hearing in the Divorce Registry) which led to Hueffer filing his affidavit of documents on 25 July 1913; and that the Judgment Summons was disposed of by the President on 1 August 1913. That would make sense, though it remains puzzling that there is no reference on the court file to any hearing on 22 July 1913.

Saunders tells us that the hearing on 22 July 1913 must have been the last time that Hueffer and Elsie saw each other. During 1913 he gradually recognised that his relationship with Violet no more satisfied his 'mad passion to find an ultimately satisfying woman' than had his marriage to Elsie.

In June 1916, shortly before he left for France where he fought as a second lieutenant with the 9th Battalion of the Welch Regiment, Hueffer saw his children for what turned out to be the last time. In September 1916, Christina entered a Convent.

Hueffer's relationship with Violet had been strained for some time, not helped by his discovery, perhaps in 1915, that she had syphilis. In October 1917, she had introduced him to the Australian painter Stella Bowen; she became his mistress in June 1919 and bore his child, Esther Julia Ford, born on 29 November 1920. Hueffer and Stella were to separate in 1928.

1919 was to be a defining year for Hueffer. In June 1919 he changed his name by deed poll dated 4 June 1919 and enrolled in the Central Office on 24 June 1919 to 'Ford Madox Ford'. Saunders speculates about the seeming significance to Hueffer in this context of the date 28 June 1919. There is no particular mystery for it was on 28 June 1919 that Hueffer gave the formal notice of his change of name as published in the *London Gazette* on 4 July 1919, though Saunders may nonetheless be correct in his speculation that:

'he wanted the story of Ford Madox Ford to begin on this date: it was the day the Treaty of Versailles was signed.'

Mizener, quoting a letter Hueffer sent to his literary agent Pinker – 'I do not see why I shd go on being subject to the attacks of blackmailers indefinitely' – says that 'he was not going to risk another lawsuit by having Stella called Mrs Hueffer'.

As for Violet 'she essentially ceased to exist for Ford after he left her in 1919'. In August 1920 there was to be an embarrassing meeting when Violet visited Elsie for no particular reason.

In February 1925 Elsie was again in court bringing libel proceedings, this time against Violet in relation to a letter from her published in the *Weekly Westminster* on January 19, 1924:

'Sir,—May I point out to you an error in your list of Prize Poems, and the names of the volumes whence they are culled. My husband never published a book called "From Ireland and other Poems" with Messrs. Duckworth. It ought to run "From Inland,

and other Poems." The book is now out of print. —VIOLET HUNT HUEFFER.'

Hueffer feared the worst, writing to his former friend and colleague, the writer Joseph Conrad, on 21 May 1924:

'You ought, I think to be advised of this: Mesdames Elsie and Violet Hueffer are about to burst into new and even more violent litigation as to their right to use my abandoned patronymic ... a good deal of mud is certain to be showered over me.'

Again, there was much reporting. I set out the law report in *The Times* of 10 February 1925, adding some details from the reports the same day in the *Daily News*, published under the headline 'WIFE'S ACTION. / AUTHOR AND TWO WOMEN. / INJUNCTION AGAINST A WRITER, and the *Shields Daily Gazette*':

'This was a claim by Mrs. Elsie Hueffer, of Appledore, Kent, the wife of Mr. Ford Madox Hueffer, an author against Miss Violet Hunt, of 80 Campden Hill Road, W., for damages and an injunction in respect of an alleged libel contained in a letter published in the Weekly Westminster on January 19, 1924. The letter complained of was as follows [set out as above].

The plaintiff alleged that that meant that she had not been married to, or, if married, had been divorced by, Mr. Ford Madox Hueffer, and that she had been guilty of a matrimonial offence. The defendant admitted publication, and that the words in their natural and ordinary meaning were defamatory of the plaintiff, but she denied the innuendoes. She disclaimed any intention to repeat the libel, she brought £50 into Court, and submitted to an injunction.

Mr. J. A. Hawke, K.C., who appeared with Mr. S. L. Porter for the plaintiff, said that the plaintiff married Mr. Hueffer in 1894, and they lived together till 1909, when he left her. Since then she had supported the two children of the marriage. Mrs. Hueffer obtained a decree of restitution of conjugal rights [The Daily News added: "It was never complied with. There were possible grounds for divorce,"], but, as she was a Roman Catholic, she regarded marriage as a bond severable only by death, and took no steps for a divorce.'

What Hawke said was not what Gregory had said in 1913: Hawke had misunderstood his instructions and Elsie was not in court to correct him:

'Shortly after he left her, Mr. Hueffer went to live with Miss Hunt, and, no doubt, many people thought that they were man and wife. Newspapers had published matter referring to Miss Hunt as Mrs. Hueffer, and, in the interests of herself and her children, Mrs. Hueffer felt that she could not pass the matter by. [The Daily News said this: "In 1910 or 1911, said counsel, Mr. Hueffer set up a house with Miss Hunt, a single woman, in Campden Hill, and they lived together. From time to time newspapers and periodicals had published a statement that Miss Hunt was Mrs. Ford Madox Hueffer. In justice to herself and her children, Mrs. Hueffer could not allow any such statements to be made. It had been a matter of constant annoyance to Mrs. Hueffer for ten years. In January, in the 'Bookman' Miss Hunt described herself as Mr. Hueffer's wife. The newspaper published a disclaimer. About the same time she wrote to the 'Weekly Westminster Gazette'."] The Weekly Westminster had published the letter in all innocence, but Mrs. Hueffer had issued a writ against Miss Hunt, and had obtained an interim injunction, which he now asked should be made perpetual. It was agreed that as Mrs. Hueffer did not desire to make money out of the case, any balance of the £50 paid into Court which might remain after indemnifying her in respect of costs would be returned to the defendant. Mr. Storry Deans said that, in justice to his client, it must be said that she had not formed a perfectly lawless association with the plaintiff's husband. Mr. Hueffer, who had now adopted another name and lived in another country, had represented that he was a German, and had obtained a divorce in Germany [The report in the Shields Daily Gazette added "and purported to marry the defendant."]. [The Daily News added: "at the time she lived with this man she believed she was married to him."] Miss Hunt now knew that she was not lawfully married to Mr. Hueffer. She had never intended to suggest, nor did she suggest, that Mrs. Hueffer was other than a virtuous woman in every sense. [The Daily News added: "Both of the women had been badly treated."] [Mr Justice Lawrence] made perpetual an injunction restraining Miss Hunt from

describing herself as the wife of Mr. Hueffer, or suggesting that Mrs. Hueffer was not his wife.'

This seems to have been the final litigation. By then Elsie had been involved in litigation for over thirty years.

In January 1929 Ford wrote to Elsie's solicitors again seeking a divorce. He wanted to marry an American woman who was prepared to be his wife but not his mistress. He probably did not help his case by the tone of his letter or by the statement of his solemn resolve not to pay Elsie any money until she '*completed these proceedings*'. Their reply was blunt: '*Our client tells us that she wishes the matrimonial position to be left as it is*'. That was that. Elsie had plenty of grounds for divorcing him, he had none for divorcing her. It was his last indirect contact with her.

Long before then, in 1916, he had seen his two older children for the last time. They were never reconciled.

We catch a sad glimpse of Ford in 1932. Mizener describes him then as '*anxious to stay close to Julie, especially as he believed his two older daughters had rejected him*'. Julie was to remain faithful to the end.

Christina, who had entered the Convent in 1916, died in 1984. Katharine married an Irish painter, Charles Lamb, in Dublin in 1927. They had five children (Mizener, p 389). She died in 1978.

Hueffer had died on 26 June 1939, so in the National Register, compiled on 29 September 1939 in accordance with the National Registration Act 1939, Elsie is correctly recorded as being a widow. She was living with her sister Mary in Tenterden. She died on 29 January 1949. Violet had died on 16 January 1942 '*no longer knowing what was going on around her*' and Stella on 30 October 1947. Mary seems to have died in 1949.

Editors' note: We will always cherish the memory of a happy afternoon with Sir James Munby following the FLBA's Cumberland Lodge weekend a few years ago. Everyone else had left. The staff were working quietly in the background restoring order. Neither we nor Sir James were in any particular hurry to embark upon our journeys home. We installed ourselves in a sunny spot in the garden with a leftover bottle of wine and listened to Sir James recount story after fascinating story, ideas in the pipeline for future *Family Affairs* articles and found out more about the painstaking research undertaken by Sir James to bring each of those ideas to life. When we took over as editors of *Family Affairs* in 2025, we felt a certain confidence – and even joked about the fact – that, even if all else went wrong and we had no other contributions, we could rely on filling a fair few pages of *Family Affairs* with one of the excellent articles penned by Sir James.

It was with much sadness that we learned the news of Sir James's death. Not because it left a huge hole at the heart of *Family Affairs*, but because he was a kind, clever and compassionate man who was never too busy to talk to us, even as baby barristers who knew nothing and no one.

On taking over *Family Affairs*, we were delighted to discover, courtesy of John Wilson KC and Sir James's son Thomas, that there existed two

further, as yet unprinted articles, and we resolved immediately to ensure they would be printed in our first two issues of 2026. We hope you have enjoyed reading them as much as we have. We thank John and Thomas for bringing them to our attention and we thank Sir James's family for permission to publish them in our first two issues. We could think of no better tribute than to ask his friend Sir Nicholas Mostyn to edit the articles prior to publication. He has done so beautifully and we extend our thanks to him also.

Sadly, and unless any further articles are unearthed, we will have to find other content to fill our pages. That is a tall order. Sir James' articles were always fascinating, always incredibly well researched and the loss is felt keenly. To quote Sir Nicholas: *'It is a tragedy that this rich vein now comes to an end.'*

Notes

1. He was named at birth Joseph Leopold Ford Hermann Madox Hueffer.
2. The report in *Reynolds's Newspaper* on the same day adds at this point: *'Replying further, Mrs. Hueffer said that six months after the order for restitution of conjugal rights, her husband threatened to go to Germany, become naturalised, and obtain a divorce on the grounds of desertion.'*



Regional News

Manchester

Manchester's FLBA committee is busy arranging a seminar for family barristers and solicitors in direct response to the Harman Report. The seminar will be delivered by Lorraine Cavanagh KC (of St John's Buildings) with support from the family judiciary at Manchester's Civil Justice Centre.

The training will go beyond how practitioners can respond to instances of judicial bullying and will enable full and frank discussion across the profession to ensure that everyone is working in a supportive and collegiate environment.

Details of the seminar will be circulated via the regional FLBA mailing list shortly for those interested.

In addition, there are two significant valedictorys in the Manchester calendar.

HHJ Coppel, a stalwart of Manchester's FLBA, enjoyed a suitably well-attended valedictory at Vernon Street, Liverpool earlier this month. HHJ Coppel was called to the Bar (Inner Temple) in 1976. She was appointed an Assistant Recorder in 1996, a Recorder in 2000 and a Circuit Judge in 2007. We wish HHJ Coppel the very best in her retirement.

Likewise, HHJ Jordan's valedictory is scheduled for 2 July at Manchester's Civil Justice Centre. HHJ Jordan was admitted as a solicitor in 1978. He was

appointed a Deputy District Judge in 1995, a District Judge in 1999, and a Recorder in 2008. HHJ Jordan will be remembered for his no-nonsense approach and a characteristically dry sense of humour.

*Toby Craddock
Deans Court Chambers*

Kent and Sussex

The Kent and Sussex FLBA enjoyed a rowdy drinks and nibbles event to celebrate HHJ Farquhar on his retirement on 5 June at Helm Gallery in Brighton. We will miss his sense of humour and give grateful thanks for all he has contributed during his 13 years in Sussex. We welcomed four new district judges at the same time and a good time was had by all.

We look forward to the 5 June Law Society ball at the Grand. A

busy time for us all and setting us up nicely after the summer break for a fabulous FLBA National Conference in Brighton on 17 October 2026. Join us ...

*Delia Monoprio and Laura Bayley
1 Crown Office Row*

North East

News from the NEONE (North East of (the) North East) as I think from now I will now refer to our remote end of the provinces, hardly occurs without a joint FLBA/CoPPA event given the enthusiasm with which Mrs Justice Theis encourages such events. This was I believe our third and was held in Court 001 at Barras Bridge due to Northumbria Uni having concluded its term (yes – I know – it was only May!). We therefore held it as a hybrid event and with speeches from His Honour Judge Smith, District Judge Temple and Brett Davies (Spire



Justin Gray, Lizzie Lugg, Oluwapelumi Adeola and Lauren Hartley at Cumberland Lodge

Barristers) covering various aspects of 'The Transition between Children and Adult Services'. A delayed start due to IT issues meant we veritably romped through the material but it was extremely helpful indeed for those of us operating on both sides of that often indistinct threshold.

Lauren Hartly (regional secretary), Justin Gray (former chair), myself and Oluwapelumi Amanda Adeola (newly recruited committee member) had an absolute blast at Cumberland Lodge. The venue is as always gorgeous – assisted by glorious weather – and the sessions were brilliant. I say it each year to our local Bar that they should come down with me, and I think four people is a record, but if anyone from NEONE ;) is reading this, then I repeat the recommendation. Mind, one has to be quick these days, it sold out so quickly that Lauren H and I had to join the waiting list for a couple of days. I am very much looking forward to meeting up with our newest committee member, recruited whilst at CL, because her enthusiasm and experience through Resolution is just what we need.

When I started at the Bar, there was a ferocious Circuit Judge called Helen Paling. She sat in both crime and family and we were all somewhat fearful of appearing before her. As I read her obituary, she having recently passed away, and with the recent re-sharing of our Respectful Working Mentors' (Nick Stonor KC, Cath Fagan, Chris McKee) details, I pondered on what Judge Paling would have made of it all. In fact, I suspect she would have been very supportive

because whilst I would quake in my boots outside her court, the terror she instilled came about from her reputation as a judge rather than her approach to me as a junior barrister. She was a firm tribunal but I do not recall her being mean or impatient or unfairly critical. She was one of those women who was called to the Bar when few others were there and only the second woman appointed to the Bench on Circuit. Even in 1994 when I joined, the NEONE was hardly enlightened so I cannot imagine what she had had to contend with. She may have handed out a canny few scoops of porridge over the years, but she lead the way for young women like me to succeed in this career and I and others owe her a great deal.

Which leads me to the final bit of news. I have wondered whether to mention it at all, but if I don't then I do Tim Donnelly and Victoria Hajba-Ward a disservice. We three from Dere Street Barristers managed to drag ourselves through the painful process and were appointed as Recorders to the NE Circuit. Congratulations Tim and Victoria, they are both going to be excellent judges.

Lizzie Lugg

Dere Street Chambers

East Midlands

So far in 2026 we've had a lot of moving and shaking at a judicial level. HHJ Patel has moved as DFJ from Leicestershire to Northamptonshire. The East Midlands FLBA were pleased to contribute towards her farewell dinner. Leicestershire has welcomed HHJ Weston KC from Lincoln as the

new DFJ, and Lincolnshire likewise welcomes HHJ Gillespie as their new DFJ.

We wish Notts DFJ HHJ Reece a speedy recovery from illness. Nottingham also welcomes the return of HHJ Mason.

The East Midlands FLBA is pleased to contribute towards HHJ Hale's upcoming retirement drinks on 19 June. Photos to follow!

Some recent good news for the local family Bar to report. Congratulations to Ruth Richards of KCH Garden Square for winning Barrister of the Year at the Notts Law Society awards and to Jenna Allen of 2 New Street for the winning the same at the Leicestershire Law Society dinner.

In Nottingham, St Mary's Family will host three conferences at Cleaver & Wake this year, as has become traditional. The Public Law conference was a sell out in May – as was the St Ives inaugural event at Trent Bridge cricket ground – with the Private Law and Financial Remedy conference to take place in September and November.

Those who've missed out on FIFA World Cup tickets, fear not! – the EMFLBA intend to organise an event or two for later in the year.

Andrew Wren

St Mary's Family

In Conversation: Pro Bono in Family Law and the Reality of Family Justice

Jasmine Knapman | 29 Bedford Row and
Avaia Williams | Parklane Plowden



What drives you to undertake pro bono work in family law?

AW – It may sound cheesy, but I genuinely enjoy the feeling of ‘giving back’ by engaging in pro bono work. The job we do when we are paid is hard enough, so it can seem odd to then do it for free as it were, but I think that slight altruism of pro bono can give you a boost that you may not sometimes get with paid cases. I do also think it is important to give back and support the system. Coming from quite a disadvantaged background myself, I know what a difference can be made by some dedicated support from somebody who knows how the system works.

Family law is very complex and intimidating to those without knowledge or expertise in this area of law. Litigants in person cannot just go to court and see how it works; the family justice system isn't as spoken about or even dramatised as areas like criminal, and so most people start with very little understanding of it works. More often, litigants

in person actually have misconceptions about the Family Court – the assistance of a pro bono barrister starts with reassurance and giving those people a little breathing space.

JK – We are all sadly well-accustomed with the difficulties faced by litigants-in-person (and by the court as a result). I feel some sense of a professional as well as moral obligation to help, in a very small way, to plug what is now a gaping legal aid hole.

Like many others, I'm sure, I wanted to join the Bar to give a voice to the most disadvantaged people in society. Pro bono work can offer an opportunity to do just that, and to exercise autonomy over our own practices, speaking up on behalf of those who may otherwise be left feeling unable to advocate for themselves. It isn't a one-way street – my pro bono clients have been amongst the most inspiring and interesting clients I have had, and I have learnt a lot from them in turn.

What personal experiences have shaped your views?

AW – I grew up on an estate in the Midlands known as ‘The Slum of Birmingham’, and had a rocky start to life. I left school at 16 and eventually found myself in a homeless hostel for 18 months; I have seen the effects of domestic abuse, substance misuse,

advocate



Celebrating 30 years

mental health and those usual factors we see in almost every case, both within my family but also my community growing up. When I finally decided the Bar was the route for me, I made a pledge that I would use that privilege and position to try to help others and be part of positive change. Whilst this is inherently something that exists by virtue of the role of a barrister, I think those who come seeking pro bono support are in the most vulnerable positions – they are in the same difficulty as those clients we otherwise interact with, but they are facing it entirely alone. I am fortunate enough to have been able to escape that cycle and now feel I am in a place where I should support others who continue to struggle.

JK – My family have been assisted by a barrister pro bono in the past, so I have seen ‘from the other side’ what a difference it can make to have someone guiding you through an otherwise unfamiliar and emotionally fraught process. That’s part of what drives me to undertake pro bono work.

Do you see pro bono work as a professional obligation?

AW – This is a question that has caused much debate when I talk about my pro bono practice, but I do genuinely believe that there is an obligation on the profession to engage in pro bono work. This comes with a caveat, that being that every professional who works in the family system is already engaging in pro bono work: skeleton arguments, questions to experts, *Re W* questions, poring over thousands of pages of police or medical disclosure, matters which are either entirely without recompense or paid poorly at best. I am sure many have seen the benefit of an otherwise litigant in person being represented pro bono. It helps to narrow issues, allows focus, protects victims of domestic abuse and supports parties to fully engage. Judges are assisted and the time dedicated to proceedings is overall better allocated – these benefits flow more widely to all in the family justice system, and those who benefit from that, even tangentially, should ensure they are putting back into that as well.

So, whilst the proper route is to adequately fund the justice system and to target problem areas at their source, unfortunately that is unlikely to happen, and so it is incumbent upon the profession to act and be part of that change on the ground. Pro bono is a necessity, but it should not be.

JK – I would echo what Avi says. In the system *as it is now*, I do personally see pro bono work as a professional obligation, but that doesn’t change my view that we should be striving to *change* the system so that pro bono representation will not be so necessary in the future.

It may not be listed within the BSB Code of Conduct, but we all seek to uphold the rule of law and it’s tricky to see how the rule of law can be upheld (in the ‘equality before the law’ sense) where some litigants-in-person find themselves pitched against a well-armed legal team. That is only compounded in an area like family law, which can be unpredictable and inaccessible due to the breadth of judicial discretion.

There may be some truth to the objection that it should fall on the government, not individual barristers, to ‘fix’ the gaps in the justice system. However, this approach doesn’t help the litigants-in-person who are facing extreme difficulty *now*, and I hope that we can choose a sense of collective responsibility over playing a ‘blame game’. If every barrister did just one pro bono case a year, that would make a phenomenal difference.

Are there any particular areas of family law that are most in need of pro bono assistance right now?

AW – Sadly, I think all areas that otherwise don’t receive automatic support are being impacted. From finance cases with international elements, to external relocation, to complex custody disputes – there is no area more in need than others. The family law case list is often one of the largest for Advocate. From the tip of Newcastle down to the depths of Plymouth, it is a problem that exists in every area, both jurisdictionally and geographically.

There is an upside to practitioners, especially those at the very junior end - that means pro bono is an opportunity to be exposed to interesting cases with complexities or issues that you may not otherwise see in your day to day practice. Pro bono gives the chance to hit the ground running and focus your practice area from day one - it is why I would encourage every pupil to sign up for the Advocate Pupil Pledge!

What specific advocacy skills or insights have you developed through your pro bono experiences in family law?

AW - Two things are really clear to me when acting pro bono. First, our clients mostly come without solicitor support. They are still preparing their own statements, corresponding with other represented parties, and overall remain alone in the wider context of proceedings. This brings with it the need to shape your advocacy to be as simple as it possibly can be. Things which are likely to have been touched upon and explained behind the scenes where there is full representation simply don't happen; clients will not know the process of a family case, they won't know the next hearing that will likely be listed, they don't know the role of Cafcass or the judge. They likely don't know how to structure a statement or what are key elements of a case, and so in your advocacy you need to ensure you are breaking everything down.

Second is the pastoral and control element. Again, clients are unlikely to have much wider support, and so they tend to unload. It is a relief for pro bono clients to 'finally' get support from a barrister, which can come with an effective problem explosion; they will want to talk about everything, and you are the only one to give guidance. It is important to offer empathy and emotional support, but equally to ensure the client knows what is really in issue in the case and where you can target your expertise.

JK - The ability to build an effective argument from what may be imperfect written evidence is key to successful pro bono advocacy since, as Avi said, you often come onto a case at a later stage where litigants

have already filed all their evidence in person. You may need to effectively concede points which were hitherto pursued by the litigant due to a lack of understanding (and develop the ability to explain this to your client prior to the hearing) and be more creative in how you frame your case.

What are the primary barriers that family barristers face when considering pro bono work? How can these be effectively addressed and overcome?

AW - I think the biggest issue that is faced is the lack of solicitor support; there are skills in client care and litigation that barristers just do not have. Pro bono is akin to being direct access, and so for those who don't otherwise do this, it can be a bit of a leap.

JK - I agree; particularly where you aren't already direct access qualified, it can be daunting to be 'flying solo'. What I have found helpful is explaining the parameters of my role very clearly when I first make contact with the client, establishing: (1) the further information I will need from the client, and when I will need it; (2) any written work I will be carrying out and timescales for the same (both court-ordered deadlines, and when the client can expect a first draft); and (3) when I will meet the client for conferences and/or hearings. In my experience, pro bono clients are very respectful of our time and Advocate makes clear that, as barristers, we aren't taking over the day-to-day running of the case but carrying out a specific piece of work.

There is also a broader professional practice point about how you fit pro bono work alongside your paid work. My clerks have been fantastic at supporting timetabling, etc - early communication is key in this regard.

How does Advocate support family barristers in taking on pro bono cases (e.g. How did you interact with the caseworkers? Did you utilise the mentoring scheme)?

JK - One of Advocate's case reviewers will review the papers before they reach you, and provide a helpful summary highlighting the key issues,

potential problems which the client will face and suggested timeframes. Advocate's caseworkers are extremely responsive and are available throughout the case to deal with any issues which may arise.

Can you share any success stories or case studies from your experience that highlight the impact of Advocate on family law matters?

AW – I like to think all of the cases I have acted on pro bono are success stories, not because the client gets the outcome they want every time, but because the client has at least felt they have had a fair shot, that their case has been well put, and this can make the outcome – even where negative – easier for the client to process and understand. That being said, there are those cases where you see the real necessity of pro bono work.

I recently acted for a mother seeking to discharge a special guardianship order (SGO). Her 15-year-old son had voted with his feet and had been living with her for almost 8 months by the time of the hearing. The Child Impact Report (Birmingham Pathfinder) was also clear on recommendations that the SGO should be discharged and there were real risks to the child's mental health of not doing so given the limits this would put on his mother's ability. Unfortunately, the magistrates did not agree – had my client not been represented, she would not have known what the law required of decision making. She would not have known how to prepare grounds of appeal or what documents to file. She would not have known that there was an issue of law capable of being appealed in the first place. Pro bono representation at that final hearing allowed the mother to be informed about the issue capable of being appealed. I was able to prepare the grounds of appeal and skeleton argument, and represent her at the appeal hearing. The judge immediately allowed the appeal (as I'm sure would have been the obvious outcome to most readers) and discharged the SGO rather than remitting the matter. Cases like this show the risk of injustice to parties of not having a lawyer – magistrates and judges don't always get it right, but how on earth would a lay person know that?

JK – As Avi so beautifully put it, every one of my Advocate cases has felt like a 'success' because, no matter the result, the client has at least left the court building understanding the decision and feeling like their position had been fully put forward.

A hearing which stands out to me is a final hearing whereby I acted for the mother responding to the father's application for a CAO. This was the father's third application within less than 3.5 years. My client succeeded in obtaining a section 91(14) order, meaning she could leave court for the last time with a sense of finality and certainty in respect of her children's future. There are of course certain principles which apply to the making of section 91(14) orders, which are unlikely to be readily understandable to a litigant-in-person. It's easy to see how this option may never have been put forward to the Bench without professional involvement.

What message would you like to share with fellow family barristers who may be reluctant to engage in pro bono work? How can they benefit from getting involved with Advocate?

AW – Jasmine said it really well, there is a collective responsibility here, it is easy to get into finger pointing and think 'well, I shouldn't have to pick up the slack', and I do understand that feeling, but it doesn't then address the problem that is otherwise being chronically forgotten. Pro bono gives back to you much more than you put in, it is not simply the hours that you give. The exposure to courts in different cities and circuits can expose you to new ways of thinking that can help you approach cases differently in the future; you are likely able to act on cases beyond your call or in practice areas where you may not get the opportunity in your day-to-day practice. It is great for those wanting to branch out into other areas or more heavily focus on their practice area; pro bono gives you exposure to other advocates, solicitors and judges. I have received paid instructions on the back of those I have appeared against in a pro bono capacity. Those further ahead in their career, perhaps looking at judicial appointment or Silk (and I say this from a place of relative ignorance), can equally benefit from pro bono work

due to the experiences and exposure which it brings.

JK – In addition to the above, I would reiterate that even one pro bono hearing a year will make a massive difference – I won't pretend that I'm doing pro bono work every week, but every case really does count.

Getting involved with Advocate gives you the opportunity to choose your cases when you would normally be bound by the 'cab rank' rule, to act as

'direct access' counsel when you would normally be too junior to do so, and to put your professional skills and experience to communal gain.

You will not be on your own; in fact, taking on a case with Advocate means you have a network of wonderfully supportive caseworkers and mentors at your fingertips.

I can say, with my hand on my heart, that it has been the highlight of my career to date.

BOOK REVIEW:

Baby at the Bar

Emma Price and Emma-Louise Fenelon
(Bloomsbury Professional, 2026)

Fenella Cool | 36 Family



Baby at the Bar is an advice-filled guide to navigating every aspect of parenting at the self-employed Bar. Emma Price and Emma-Louise Fenelon cover everything from managing a practice whilst undergoing fertility treatment and coping with first-trimester nausea, to the importance of communicating openly with clerks and planning for the first significant tax bill following a return from parental leave. The authors have included the experiences and advice of over 250 barristers, both male and female, across all practice areas and call brackets.

The advice throughout is constructive, pragmatic and supported by the experiences of the barristers they interviewed. The authors do not sugarcoat the realities of raising children whilst juggling the challenges of a career at the Bar. Both authors speak openly about their own experiences, sharing horror stories alongside

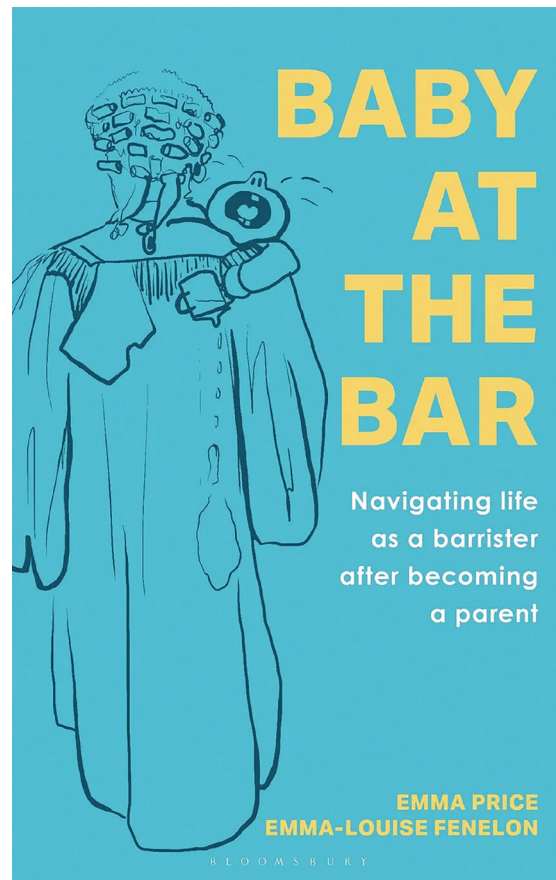
the practical strategies that helped them survive pregnancy, early parenthood and beyond. At the end of each chapter, they thoughtfully compile practical advice not only for barristers themselves, but also for chambers and the wider justice system. Although this helps readers focus on the chapters which are most relevant to them, it also leads to some repetition in the quotations drawn from the authors' research.

Particularly valuable are the sections dealing with the practical realities that are rarely discussed openly at the Bar: managing cashflow during and immediately after parental leave, the impact on the hours available to work, handling childcare emergencies and rebuilding confidence on returning to court. The pair highlight that the competing demands of parenthood and life at the Bar continue well beyond the sleepless nights of the baby years.

The research Price and Fenelon have undertaken demonstrates that the profession has improved in its acceptance that many barristers balance the demands of parenthood alongside busy practices. However, some of the accounts gathered in the book are a shocking reminder that there remains considerable room for improvement. There are clerks, judges and leaders who would benefit from reading this book to understand the significant impact of decisions such as extending sitting hours at the last minute or requiring work to be turned around overnight.

The book made me reflect on how fortunate I have been, as a family barrister working in a comparatively female-dominated area of practice and at a forward-thinking set. The nature of our work means that most of our clients are parents and therefore have a greater understanding of the disruption caused by a sick child or the dreaded nursery call.

This book makes you feel as though you have been taken out after court by a group of kind and sensible parent barristers who have taken the time



to talk through all your worries and questions and then offer the benefit of their experience and wisdom. As a parent of two young children, it reassured me that I am not alone in finding certain aspects of parenting at the Bar particularly difficult: the tiredness, the ever-present guilt of never feeling able to give enough attention either to my children or my practice and the constant worry about making nursery pick-up. The book will also be useful to junior barristers and those considering starting a family, offering a realistic yet reassuring insight into the practicalities of combining parenthood with life at the Bar.

At a time when the Bar is grappling more openly with issues of retention, well-being and diversity, this book is even more important. It is valuable not only as a source of support for individual barristers, but also as a prompt to chambers and the wider profession to think more seriously about what meaningful change should look like.

BOOK REVIEW:

One of Your Number

LJ Shepherd

(Pushkin Vertigo, 2026)

Jenna Lucas | Pump
Court Chambers



LJ Shepherd's *One of Your Number* begins with a premise that will make any barrister sit bolt upright, spill their coffee, and mutter, '*grounds for an adjournment*'. Twelve jurors are sent to deliberate in the trial of a nurse accused of murdering patients with lethal doses of adrenaline. Before they can even elect the inevitable foreperson who says '*Let's just go round the table*', Britain comes under chemical attack, the court building is locked down, and the defendant escapes custody. A splattering of additional untimely deaths follow.

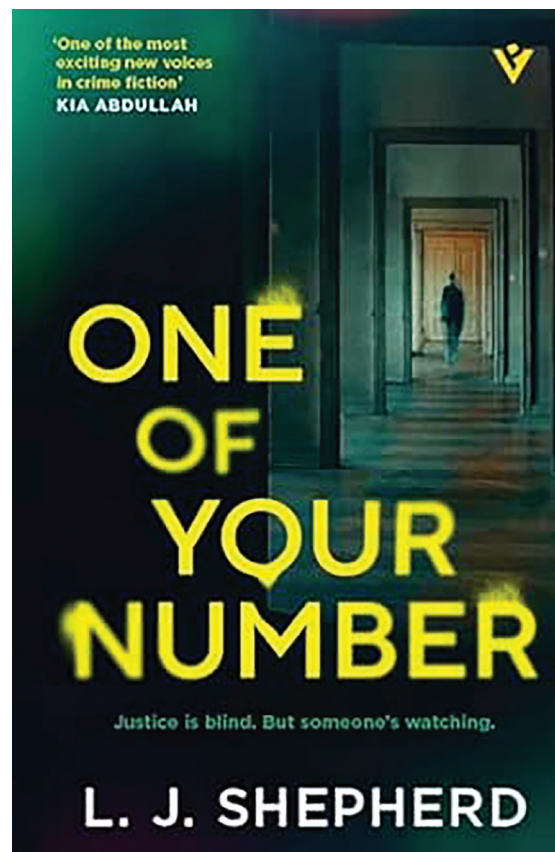
Shepherd takes the already combustible ingredients of the jury system and adds a dash of national emergency, a pinch of psychological warfare, and the sort of health and safety nightmare that would keep HMCTS mandarins awake for years.

The novel is, first and foremost, a tightly wound thriller. Shepherd, a human rights barrister, understands precisely how much tension can be squeezed from a courtroom environment before anyone even starts hurtling down corridors. The legal detail is lightly worn but convincing, which is refreshing in a genre where cross-examination often bears little resemblance to anything seen outside an episode of *Suits*; the expert witness evidence is unapologetically robust and the

defence attempts to dismantle it prove something of a damp squib. Reassuringly familiar.

What elevates the book beyond a standard 'locked-room' thriller is its fascination with justice itself – particularly the messy human machinery behind it and how it can be delivered through many different avenues. Shepherd aptly taps into the fact that jurors are not blank slates, arriving with their own prejudices, foibles, anxieties and, in the protagonist Leonie's case, secrets substantial enough to make a *voir dire* look hopelessly optimistic. Lawyers will recognise the uncomfortable truth at the heart of the story: the legal system depends heavily on ordinary people behaving rationally under extraordinary pressure. Shepherd's contribution is to ask what happens when they do not.

The result is deliciously claustrophobic. The court becomes less a temple of justice than a pressure cooker with fluorescent lighting and an absence of fresh air. Some may experience at



least mild flashbacks of days spent at East London Family Court.

There is also a sly humour running through the novel, intentional or otherwise. I particularly enjoyed imagining the inevitable procedural fallout once order is restored. Somewhere in the background lurks the prospect of a truly heroic abuse of process application (disclosure issues alone are unfathomable). One can almost hear the Court of Appeal judgment: *'Whilst the escape of the defendant during a capital-wide chemical attack was regrettable ...'*

Shepherd never allows the legal framework to swamp the pace; why let the law ruin a good case or, indeed, a good book? The twists come quickly, trust disintegrates convincingly, and the narrative keeps tightening until the final pages. The book understands that suspense works best when readers are forced to confront moral ambiguity rather than merely guess the culprit.

Nearly everyone here has an agenda, and the pursuit of those agendas brings a remarkable and entertaining amount of moral wreckage.

If there is criticism, it is that the scenario occasionally requires the reader (particularly a lawyer) to suspend disbelief with the enthusiasm of a junior barrister clutching tenuous authorities with only *obiter dicta* at 1 am; the alleged presence of a tablecloth in the jury deliberation room alone would have caused me a raised eyebrow (had I not the benefit of a brilliant facial aesthetician). But thrillers of this sort live or die by momentum, and Shepherd maintains hers exquisitely.

For lawyers, the book offers the pleasure of seeing familiar rituals transformed into something genuinely sinister. For everyone else, it is simply an intelligent, propulsive thriller. Either way, it makes jury service seem considerably more exciting than the usual complaints about sandwiches and parking.

BOOK REVIEW:

The Road to Equal Partnership

Professor Sharon Thompson
(Bristol University Press, 2026)

Calum Smith | 1 Hare Court



Reforming the law on financial remedies has been a topic of discussion for the best part of 40 years. But only recently has the prospect of reform moved from possible to probable. Professor Thompson's book, *The Road to Equal Partnership*, provides clear direction towards a reformed law on financial remedies that gives caregivers an equal start in unmarried life, without being unfairly burdened by decisions made during their marriage.

Professor Thompson is a Professor of Law at Cardiff University, with over a decade of experience researching the law of divorce, property and financial remedies, often from a feminist perspective. Her book, *The Road to Equal Partnership*, adds to her corpus of legal research and, where the Law Commission's Scoping Report focussed on the shape of reform, it provides

substance, making practical and pragmatic recommendations for incremental reform pending more wholesale change in the future.

As the title implies, the road to reform is a journey, and likely a very long one. But like any good road, if you remain on course, you will eventually reach your destination. The book provides a clear path towards reform which many (but perhaps not Baroness Deech) will agree would result in a fairer law on financial remedies; identifying the current inadequacies of the law, and recommending ‘*incremental reforms*’ which can be implemented promptly to ensure that both spouses have an equal start to unmarried life pending wholesale reform in years to come.

The book’s premise is that the law fails to properly recognise the economic impact of caregiving during the marriage, and that the notion of equal sharing does not produce equal or equitable outcomes. Its structure is simple. The reasons for reform are identified, proposals for reform are made, and, at each stage, they are justified as improving fairness.

The book makes four proposals for reform which, it argues, would better protect caregivers from inequality on divorce: (1) make nuptial agreements binding, with appropriate safeguards (primarily the refinement of the needs principle); (2) define ‘*needs*’ in the face of the statute; (3) introduce a presumption of some co-owned property during the marriage; and (4) add a new objective to the statute, while diluting the clean break principle.

Professor Thompson argues that nuptial agreements are predicated on a power imbalance, and that reform will need to ensure that they are not used to perpetuate inequality, exploitation and abuse. The book argues that agreements should be vitiated where domestic abuse is proved, whether the abuse is proximate to the signing of the agreement or not; and that needs should be assessed consistently and not be unfairly constrained by the presence of an agreement.



Introducing a statutory definition of needs is intended to make the law more accessible to laypersons and to ensure that caregivers are directed to consider their needs in retirement, rather than just their and the children’s immediate housing needs. Professor Thompson argues that with no statutory purpose of needs-based provision, coupled with misinformation propounded by the media that an equal division of the assets is invariably fair, the law is inaccessible to those unable or unwilling to pay for lawyers, and that disproportionately disadvantages caregivers who may have a need for a greater share of the assets or ongoing maintenance.

The third area for reform concerns the categorisation of property and the risk of unfairness created by the demarcation of matrimonial and non-matrimonial property, which, the book observes, much like the concepts of needs, sharing and compensation, are judge-made laws, buried in dense case law and absent from the statute.

The lack of objective, purpose or real guidance in the Matrimonial Causes Act 1973 is a legitimate complaint, but I struggled to align myself with the suggestion that the concepts of matrimonial and non-matrimonial property and/or matrimonialisation are discriminatory against caregivers. The book describes the risk of discrimination in this context as ‘conceivable’, which sets a pretty low bar for reform.

Professor Thompson compares the court’s assessment of Mr Standish’s contribution to the resources in that case to special contribution, which ‘reassert[s] the primacy of financial contributions and discriminates against non-financial, caregiving contributions’. That analysis does not appear to give due consideration to the authorities, and the statute, that permit (or mandate) the court to consider contributions to the welfare of the family during *and after* the marriage. It may be argued that the categorisation of property, and in particular the concept of matrimonialisation, is not discriminatory; but instead reflects a proper non-discriminatory application of s 25(2)(f) Matrimonial Causes Act 1973. And although contributions after the marriage will influence the court’s assessment of need (and perhaps compensation) rather than sharing, there must be a demarcation between assets generated during, or on either side of, a marriage. Without it, financial remedy law risks becoming a free-for-all.

It is further argued that proving the matrimonialisation of an asset places an unfair evidential burden on the party seeking to argue that it has been matrimonialised. That, too, in my view, is unlikely to be discriminatory towards caregivers. If an asset has been used and enjoyed by the caregiver and treated as shared over the course of a marriage, the evidential burden should not weigh too heavily on their shoulders, for *they* have treated it as theirs and shared that intention with their spouse. For that reason, I was not totally persuaded that the argument that Standish represents a ‘further retreat’ from the principle of equal partnership propounded in *White* is correct. That said, it is not totally without merit. The recent

decision of HHJ Hess in *BS v HC* [2026] EWFC 20 (B) makes clear the challenges a spouse may face proving that an asset (in that case, a pension) had been matrimonialised.

Professor Thompson proposes that co-ownership of *some* property during the marriage, but not on separation, could protect against inequality during the marriage by bolstering the value of domestic contributions in financial remedy proceedings. Although the proposal for co-ownership of property was first put forward by the Law Commission in 1988, and therefore must have at least *prima facie* legitimacy, my feeling whilst reading this section of the book was that these proposals for reform would be quite complicated to implement, and may have little corresponding impact on promoting an ‘equal partnership’.

Having spent some time contemplating the need for reform in the light of reading the book, it seemed to me that many of the very legitimate complaints about unfair outcomes in financial remedy proceedings are more likely to reflect judicial inconsistency and caprice than the inadequacy of the law. I identified no criticism of the law that could not, on the right day, before the right judge, be remedied by the current law, which, in my view, is sufficiently broad to protect caregivers from unfair outcomes. That is because the concepts of needs, sharing and compensation already provide a legal framework for achieving a truly equal start in life after marriage. However, what the law is, and how it is applied, are two separate matters. *The Road to Equal Partnership* has given me reason to believe that academic research should more often inform one’s advocacy to avoid the unfairness that exists within a legal system that has the capacity to be fair to all.

The answer may be education rather than reform; or further discussion about why compensation has been suppressed so much when, as the book recognises, ‘*relationship-generated disadvantage experienced by the primary caregiver ... is anything but exceptional*’.

So Long ... For Now

Shelly Glaister-Young | 42BR Barristers

I'm writing this on 8 May 2026. Pupillage offer day. I've got one eye on my phone, watching for updates from the aspiring barristers I've cheered through this season's application marathon. Statistically, it will be a day for both celebration and commiseration, although obviously I'm hoping for more of the former. No matter how many times I watch my mentees and Bridging the Bar pod members go through it, I never feel less anxious, protective, hopeful or proud. This season has been slightly different, though, being the first time supporting those at the start of their career as I prepare to take a break from mine. It's led me to reflect on how much has changed since I was where they are now.

I came to the Bar when 'fair recruitment' was a threat to autonomy, and 'marking criteria' held less sway than the 'vibes' (a term that back then was still awaiting its resurgence). One memorable interview saw me pitted against half of chambers in a series of quick-fire questions coming at random from anyone present who happened to be paying attention. Others were going about their business, chatting, smoking out of the window. I'm sure at least one person made a telephone call.

After two rounds of what was then called OLPAS and a year as a paralegal, I was 'selected' by a pupil master who was friends with the family law partner I worked for. He personally picked up the tab for my pupillage award (£6,000 + £6,000 guaranteed earnings), which only served to exacerbate his inappropriate wielding of the power imbalance between us. On my first visit to his home – for he never worked in chambers – I was shown the bedroom where I was expected to sleep. Not long after, my husband (then boyfriend) bought my first laptop, giving me the capacity to



work elsewhere.

It's hard to imagine now, in the era of paperless working, the strictures created by a lack of operational independence. Before smartphones, before e-bundles and portals, before 99% of the Bar carried a slightly battered space grey MacBook Air, you needed access to a desktop computer, a landline, a fax machine, a DX box, stationery. All of which were of course available in chambers, if I were ever allowed to go there. Thanks to husband-purchased-laptop, I managed to avoid the intended after-hours homework sessions, but I remained on a short leash and subjected to late-night emails laden with declarations of love and boundary violating expressions of affection. Horror stories for another time.

Reflecting on my experience of pupillage, I wonder whether time, technology and cognizance have curbed the worst manifestations of our uniquely intimate training setup. From my perspective, things seem better ... right?

“I’ve heard there was actually a time when the court drafted its own orders, but that may be urban legend. Certainly by the time I was up and barristering, advocates were entrusted to convey the court’s intention all by ourselves, for better or worse. Sometimes there was Latin.”

Unfortunately, the Harman Report reminds me abuses of power haven’t stopped happening. They’ve just stopped happening to me.

As I prepare for my sabbatical to return to study, two decades exactly since I stepped out of Second Six, the job is in many ways unrecognisable from the one I started out in. That I’m now entering my Barrister Elder Era is something the enthusiastic junior juniors prolific on LinkedIn never fail to remind me. One such poster declared their discovery that historically – h i s t o r i c a l l y – barristers’ briefs were tied with pink ribbon. I laugh cried in the same manner when my emotions were provoked by an influencer’s Instagram reel about their vintage digital camera.

When did I become the ‘Back in My Day’ person? Yes, pink ribbons bound our briefs. We handwrote short endorsements on the backsheets; no lengthy typed attendance notes. When I started in crime and family, my clerks would call me in the morning to send me to the magistrates’ court with nothing but the name of my client. On arrival at court, I would give the name to the court office and be handed the few sheets of paper that constituted my instructions and the case papers, hot off the court fax machine. Time travel forward a few years and a significant proportion of my brief fee would be extorted for the privilege of the court printing the first sheet, and 50p for every page thereafter.

This trip down nostalgia lane isn’t intended to paint the past one way or another, though. Some things were better and some things were worse. Having to go into chambers to collect and return

papers meant always having easy access to people of all levels of seniority and camaraderie that isn’t wholly replicated by a WhatsApp group chat. Advocacy was much more a by-the-seat-of-your-pants affair. A 1,000-page bundle for a county court case – the Family Court didn’t even exist – was exceptional not the norm, but paper working and a real-life Red Book was functional weight training.

A striking reminder of evolution came in the form of another recent LinkedIn post about drafting court orders. The author (rightly) pointed out Bar School doesn’t teach us how to draft orders and proceeded (helpfully) to link to the relevant practice directions and pro forma orders. Well, Back in My Day, let me tell you, there were no pro forma orders. We had a pen and a blue Counsel’s Notebook with the easy tear pages, and we ... drafted orders. I’ve heard there was actually a time when the court drafted its own orders, but that may be urban legend. Certainly by the time I was up and barristering, advocates were entrusted to convey the court’s intention all by ourselves, for better or worse. Sometimes there was Latin.

I have vivid memories of the introduction of the first pro forma to appear in my practice. Brentford County Court rolled out a template for an *ex parte* – ahem, without notice non-molestation order – which in its early implementation was used as a tick-box document by the resident judges. As is often the case with changes made in the creaking and highly traditional justice system of England and Wales, there were teething difficulties. During one hearing before a notoriously cranky circuit judge, the judge became incensed I had not arrived with a handwritten draft. He stood up, declared his disinclination to hear me and started towards his chambers, all the way admonishing me for not paying heed to proper procedure and practice directions. He did ultimately hear the application, after I scrambled to explain the court was now using a tick-box template.

Another now long-retired judge, who seemed persistently bored and intent on amusing himself

by toying with advocates, would use the tick box form only if I presented him with a handwritten draft, pushing my draft to one side as he whipped out the pro forma with a flourish. If I attended expecting him to use the pro forma, he would ask for a handwritten order. In the context of technological progress, that same judge once delighted at being shown evidence on my first-generation iPad and invited me to incorporate that novel event into the order.

Nowadays, I can't recall the last time I freestyled an order. There's a template for every eventuality. Pro forma orders have largely standardised drafting (even if some court centres insist on developing their own versions), simplified language and have the potential to make our lives easier. I say potential, because many of us still fondly recall leaving court with a photocopied approved order in our hand without the prospect of days (or weeks!) arguing semantics and recitals by email.

So it is the years fly by. You absorb the practical changes to your way of working that sneak up on you like your seniority. Before you know it, you're quipping about the redundant Superman changing booths at the Royal Courts of Justice to a brilliant but bemused young legal assistant who, after 3 weeks of bad jokes and bench hopping in the corridors of our most esteemed but unfit-for-purpose office, breaks it to you they only just found out the empty wooden cubicles used to be telephone boxes. Yes, once upon a time we had to call the clerks from a public telephone after we finished in court, to be told whether to return to chambers or head to another court. Once upon a time, travel took planning and I traversed the country armed with an entire satchel-load of paper maps and my trusty A-Z. Now, I purchase train tickets on the fly as I run through the platform barriers and the Trainline app tells me how many ecopoints I've scored. Life has sped up, at work and at home.

I can't talk about change without considering

"So it is the years fly by. You absorb the practical changes to your way of working that sneak up on you like your seniority. Before you know it, you're quipping about the redundant Superman changing booths at the Royal Courts of Justice to a brilliant but bemused young legal assistant"

the impact of the COVID-19 pandemic. For a profession famously ponderous to modernise, COVID-19 was the rug pulled from under our feet. Nonetheless, the family justice system responded with remarkable speed, energy and adaptability, with then President of the Family Division, Sir Andrew McFarlane, at the helm to steer us through uncharted waters. It was a time I hope never to see the likes of again, but the combined effort of front-line professionals, lawyers, court staff and the judiciary was – to use an overused but entirely justified word – unprecedented, as we strove to keep the Family Court moving. And keep it moving we did, but at what cost?

The President was quick to ask the Nuffield Family Justice Observatory to undertake rapid consultation of what was happening on the ground and the period saw research into the impact on families involved in remote hearings, the capacity for self-representing and vulnerable parties to engage fairly in proceedings and the effectiveness of virtual contact. A literature review falls outside the scope of this article, but I know I'm not alone in feeling uneasy about where the balance between avoiding delay and fairness sometimes fell. We were doing our best in extraordinary circumstances, but listening to a judge deliver a decision over the telephone to remove children from their parents, parents whose cases had been put for them by lawyers they'd never met or seen, whilst they sat in the isolation of their home waiting for their children to be taken, is a clear example of when, in my view, we got it wrong.

The cost on practitioners must also be counted. Pre-COVID-19, Sir Andrew McFarlane candidly reflected on the pressures already present in the system in his June 2019 article for 'Wellbeing at the Bar':

'I have been plain, when speaking at National events and during my current round of visits to each Family Court centre, that the need to hit the 26 week target is not something that I am presently concerned about; in terms of my own wellbeing, it is not a matter that keeps me awake. Judges and courts should do a full day's work, but no more. Time must be kept for the lawyers, the court staff and the judges to do work on other cases and, importantly, to have a life outside their work. We are all playing a long game in terms of our careers, our health, and our private and family lives. The current unprecedented pressure in the Family Court is not about to go away. It is unreasonable and unsustainable to expect courts to operate for more than a full day. To do so not only causes undue pressure on the individuals concerned, it also serves to mask the level to which the resources do not match the current workload.'

When he wrote those words, Sir Andrew was not to know the 'unprecedented pressure in the Family Court' was not only 'not about to go away', within a year it would get much, much worse. When COVID-19 hit, he issued guidance in 'The Road Ahead' on 9 June 2020, in which he praised the hard work and 'can do' approach of all those involved in the family justice system, whilst recognising the demand on them would be for the long haul. He concluded by saying, 'The song "He Ain't Heavy", which starts with the words "The road is long", includes the phrase "We'll get there". If, in the context of Family Justice, "there" means a return to more ordinary working, I am sure that we will get there – even though the road will undoubtedly be long'.

However, as we returned to more ordinary working, the post-COVID-19 era brought with it a focus shift in response to 'stubborn' backlog and delays. When relaunching the PLO in 'A View from the President's Chambers' on 29 November 2022, Sir Andrew said, 'It is now clear to me that there is

a need for a radical resetting of the culture within the Family Court so that the system reconnects with the strictures of the PLO and, once again, aims to meet the statutory requirement of completing each public law case within 26 weeks'.

The means to achieve this in a world where further resources are unlikely to be forthcoming lies in stretching those already in place or improving efficiency. In respect of the former, the gains in technological efficiency made during COVID-19 now see us tied to our electronic devices around the clock. In respect of the latter, you may recall some of the robustly critical responses to the Suspected Inflicted Head Injury Service (SIHIS) for children pilot; again, we find ourselves balancing delay against fairness. In the meantime, working conditions at the legal aid end of the Family Bar have become intolerable, as the December 2025 Bar Council report *System Overload: A Report on Family Legal Aid* attests.

It's within this context I decided to step away for a year. Since making the decision to take a break from the Bar, I've felt less resentful of it. Talking to my father about that, he said it's because I no longer feel trapped. He's probably right, and I wonder if a return to academia will reinvigorate my vocation because one thing that hasn't changed in 20 years is my firm belief the job needs doing.

When trying to decide how to wind up this piece, I had a realisation that for all the changes that have occurred at the Bar in the last 20 years, there have probably been far more in education. Although, oddly, the thing making me most anxious about my imminent studenthood is someone telling me I'll have to write exam answers by hand. I hope they're pulling my leg. These days I can hardly hold a pen long enough to write my Christmas cards. Perhaps I had better start sending my solicitors handwritten endorsements, to get in some practice!

Letter to My Younger Self

Nicholas Allen KC | 29 Bedford Row

Dear Nick,

It's October 1996 with you – but June 2026 as I write this letter to you. You have just turned 24 and I am (well you are) now approaching 54.

Much will change in those 30 years (turns out you actually enjoy running) and much does not (you're still a massive *Doctor Who* fan).

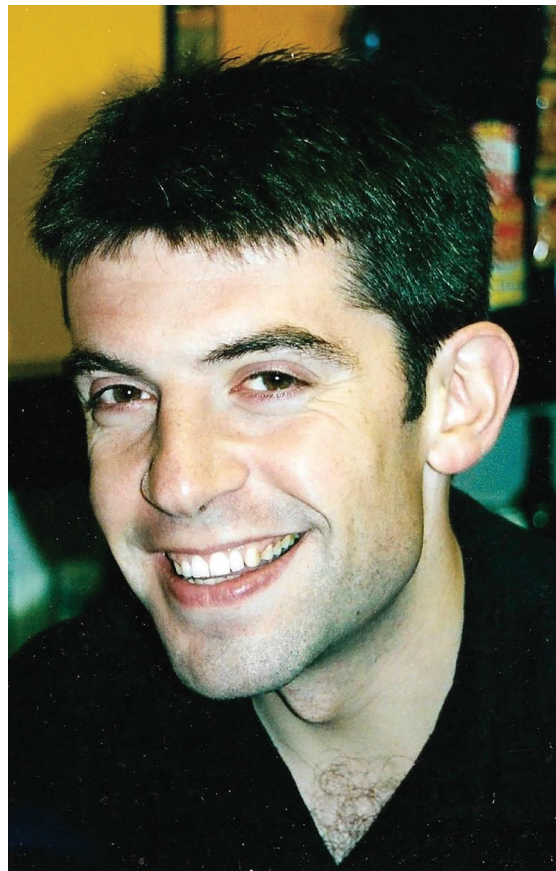
I thought I'd choose to write to you now as I know you're just about to start your pupillage at 29 Bedford Row.

There is one moment of your pupillage – next June for you in fact – that I still remember as if it were yesterday.

You started coming out to friends last year whilst you were studying in the US but you're not yet out to Mum, Dad or Penny and I know you've decided only to come out in chambers during pupillage if you have to.

So it's next June during your Second Six and not that long before your tenancy decision. You'll walk back into chambers from court one afternoon and a Silk will see you in the hallway and ask to see you in his room. Your heart will be in your mouth. When in his room he'll say *'It's come to my attention that something is worrying you. I want you to know that it shouldn't'*. You won't have the courage to ask him what it was, you'll mumble your thanks, and leave his room.

You'll assume he was referring to your sexuality (in fact, you never ask him and he never says). You will go home that night and barely sleep.



You have always said to yourself that if you were going to come out in chambers the first person you would tell was your First Six pupil master. You'll decide that you have no choice but to tell him as you won't want him to hear it from others first. So first thing you will do the following day is to go into his room. You'll say that there is something you want to say. He will ask if he can continue to unpack his bag. You'll say 'no'. He will look up in surprise. You will swallow hard and tell him you are gay. He will give you a hug, say it is no big issue, and say that the two of you should go out for lunch that day. You will not be able to have asked for a better response from the – much later to become – Mr Justice Francis (but don't tell him about that appointment by the way – that doesn't happen for him until 2016).

You will find chambers – and the Bar more generally – to be a very supportive environment. You will find that homophobia is extremely rare – restricted to the throwaway line from the odd colleague at the chambers Christmas party who has had too much to drink. You don't know it

yet but there are two junior tenants a few years ahead of you who are out and who have done the trailblazing for you. One of your fellow pupils is also gay and he will become a tenant at the same time as you – chambers will take on the two gay pupils over the two straight ones next summer.

Your practice will initially be a mixed civil and family one as that is the mix of chambers' work at the present time. You will – somewhat strangely – develop something of a niche practice acting for landlords bringing possession proceedings under the Housing Act 1988. There is little about the mandatory possession grounds that you won't know. This will take you the Court of Appeal twice – first in *Capital Prime Plus v Wills* in 1999 (on your own – not bad for someone only 2 years into tenancy!) and again in 2001 (*Stirling v Leadenhall Residential 2 Limited*). You'll also do a fair amount of TLATA work for a few years – much to the amusement of your university friends (you're still good friends with many of them by the way) who will always remind you that you only got 37% in land law 4 years ago.

29 Bedford Row will become a family-only set in 2002 when its civil practitioners leave. You'll find that to be a very unsettling time as the number of you in chambers halves (from 48 to 24) but the outgoings don't. It's a tough few months – but be reassured that chambers comes through the other side more strongly.

What happens next? Well, you'll eventually specialise in financial remedy work (yes, I know it isn't a good start when Nick Francis asks you on your first day as a pupil if you've heard of s 25 MCA 1973 and you say 'no', but telling the truth is always the best option and we all have to start somewhere). You will become a pupil supervisor in 2005 (they drop the 'master' and 'mistress' titles in a few years' time) and nothing will make you happier when you see your pupils become successful practitioners. Six of them are with you in chambers and one has just been appointed a Deputy District Judge at 32 – one of the youngest appointments ever (and yes, I can tell you, that will make you feel old). One of your favourite

photographs taken at your Silk's party will be the one with (almost) all your former pupils.

You will apply first to sit as a Family Court Recorder, then to be Queen's Counsel (although you're King's Counsel now) and then to be a Deputy High Court Judge. But despite all this you'll still have that imposter syndrome you have now (turns out most people do). Being gay also won't be an issue: for you, 1988 when Martin Bowley QC was forced to resign as a Crown Court Recorder when his sexuality was exposed by *The Sun*, is only 8 years ago. To me now it genuinely feels like a different world.

In 2002 you'll join the Management Board of 29 Bedford Row – you always have liked to be on committees and the good news is you'll be on a lot of them. Nineteen years later in January 2021 you will become Joint Head of Chambers. And Middle Temple – where you were Called just over a year ago – will elect you as a Bencher. If all this feels rather too grown up to be true now it's a feeling that doesn't go away.

And don't worry too much about relationships by the way. They will start, they will end, and some people won't text back after they promise to do so. But you'll meet Alex in 2007 – and he'll be the man for you.

Oh and also don't worry too much about *Doctor Who*: yes, the 1989 cancellation still feels fairly fresh and the TV movie that has just been shown on BBC1 with Paul McGann doesn't lead to it coming back. But patience is a virtue and in March 2005 it will: and someone called David Tennant will eventually replace Tom Baker in your affections as your favourite Doctor.

But I won't tell you anything else – whether about your career, life or, indeed, *Doctor Who*. Why not? Well as someone called River Song will first say in May 2008: 'Spoilers!'.

With much love,

Nick

Malt Whisky Galore

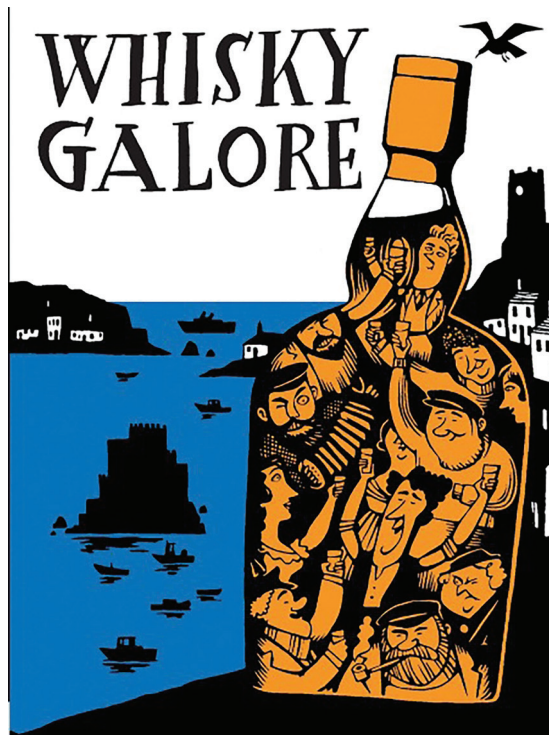
Michael Sternberg OBE KC | 4PB

I once had a very elderly relation called Yoe. He was fighting in the Great War with the Austro-Hungarian army, roughly about the time as my maternal grandfather was serving in the heroic retreat of Corps II from Mons in 1914, under General Smith-Dorrien. Yoe always maintained 'Whisky is a noble drink'. He was completely correct. Recently, I discovered a number of noble malt whiskies which I feel I must bring to your attention. It's a long time since I have written in this column about whisky, so if you were expecting an article about summer white wines to sip as you watched Wimbledon or Henley, or while at Lords, please do forgive me and wait until next year.

There are now, broadly speaking, two kinds of whisky drinkers. The first actually drinks whisky. The second kind mostly worries about 'mouthfeel', 'journeys', 'expressions' and 'storytelling'.

Whisky, unlike wine, has retained (so far) a welcome resistance to total democratic collapse. Wine criticism now sometimes resembles a branch of Californian psychotherapy. Whisky still permits you to say, 'This is splendid stuff', without immediately being asked if you can detect 'guava', 'pencil shavings' or 'regret'. Another great virtue of malt whisky is that, at its best, it combines seriousness with the possibility of cheerfulness. One can think while drinking it, but one need not. It improves solitude without making company unbearable.

But it is also now ubiquitous. Every island, valley, puddle and former sheep shed in Scotland now seems to possess a distillery. Some are excellent. Some appear to have been designed



by Scandinavian architects who hate humanity. Yet among the endless bottles with Gaelic names and labels depicting antlers, storms and Norse runes, there do remain malt whiskies of genuine character which don't break the bank: bottles which reward drinking rather than collecting. Let me tell you of some.

First, **Arran 10-Year-Old**, at £38, which may be the most agreeable surprise in modern Scotch. Arran itself resembles Scotland designed by a romantic landscape painter after two glasses of something strong: mountains, sea, castles, weather moving theatrically across the horizon and sheep apparently engaged in philosophical inquiry. The whisky possesses something of this freshness. It is lively without vulgarity, and fruity without descending into confectionery. Many younger whiskies taste exactly as they are: impatient. Arran 10 tastes energetic in the attractive sense which was once applied to fast bowlers. There is power in it. Apples appear early, followed by citrus and

“Another great virtue of malt whisky is that, at its best, it combines seriousness with the possibility of cheerfulness. One can think while drinking it, but one need not.”

vanilla and a certain clean maritime brightness. You feel that if this whisky were a couple, they would arrive 25 minutes late for dinner, with only a poor excuse, but would then compensate with excellent stories.

Arran also performs the increasingly rare miracle of remaining affordable while being genuinely good. This my learned friends should not be underestimated. Whisky prices have risen to such absurd heights that you might suspect certain distillers now expect customers to finance the education of their children. Once a bottle acquires a three-figure price tag, nervousness enters the room. Nobody wants to pour it freely. But Arran 10 can actually be drunk.

Then there is **Tomatin 12-Year-Old** at around £40, which possesses the admirable quality of seeming entirely uninterested in fashion. Tomatin has never inspired any sort of feverish cult worship. This is very much to its credit. It remains Highland whisky in the old sense: civilised, rounded, dependable and deeply comforting.

If Arran is a brisk sea breeze, Tomatin is a leather armchair beside a decent fire, while rain taps at the windows of a London club. Honey, malt, a little spice, some sherry sweetness and an altogether reassuring warmth emerge from the glass. One feels calmer merely smelling it. It has no desire to astonish anybody.

The modern drinks industry has disastrously confused surprise with pleasure. Much must now be ‘disruptive’. Beer contains mangoes. Gin tastes of forests. Wine sometimes resembles a chemistry experiment. But Tomatin 12 has the confidence to

taste simply of whisky. One could imagine a bottle of Tomatin 12 surviving almost any social occasion: gloomy Christmases, literary festivals, grim legal conferences about if we need a new Children Act, and conversations beginning with the words, ‘What you really must understand about crypto ...’. It is a companionable whisky.

Now to **Deanston 12-Year-Old** at £42 to £55. Deanston is one of those distilleries whose whisky seems to possess a distinct architectural quality. There’s structure in it. Originally a cotton mill, the distillery retains something industrious and muscular. The whisky itself has a pleasant waxiness, with cereal notes, honey and a slightly nutty depth. Indeed, Deanston is particularly suited to that endangered institution: the serious evening discussion lubricated by alcohol but not yet destroyed by it. Two glasses of Deanston encourage thought. Four encourage constitutional reform. Six may lead (*horribile dictu*) to amateur singing. Its great merit is its balance.

If Deanston is serious without pomposity, then **Glen Scotia 15-Year-Old** at £65 is eccentric in the best Scottish tradition. Campbeltown whiskies have always possessed something faintly maritime, and Glen Scotia carries traces of salt, oil, spice and dark fruit, all held together with admirable swagger. Campbeltown was once the whisky capital of the world before it was reduced after Prohibition to a few surviving distilleries. This historical melancholy seems somehow present in the whisky itself. Glen Scotia tastes as though it remembers things. There is a slight coastal roughness beneath the richness. One imagines harbours, old ropes, wet tweed, storms approaching over grey water and strong men saying ‘Aye’ with terminal finality. Yet it never becomes brutal. The 15 years in cask have civilised it wonderfully. This is whisky for winter evenings and for slightly dangerous company. One would not serve Glen Scotia to people who ask for ice and cola. It deserves stronger company than that: journalists, retired Special Boat Service officers and judges who sit regularly in the Central Criminal Court.

“Two glasses of Deanston encourage thought. Four encourage constitutional reform. Six may lead (horribile dictu) to amateur singing.”

Finally, we arrive at **The Glendronach 21-Year-Old Parliament**, whose very name sounds less like a whisky and more like a constitutional crisis. Parliament is one of those bottles which makes you briefly understand why otherwise sensible people began collecting whisky instead of drinking it. It achieves genuine richness without descending into ostentatiousness. Matured in sherry casks, it arrives full of dark fruits, chocolate, spice, tobacco and old wood. One does not gulp Parliament. One consults it. The whisky has what used to be called ‘breeding’. Every element appears integrated and mature. Alas, Parliament is horribly expensive. I’m embarrassed to tell you how much it costs so I won’t. But unlike many luxury spirits it at least tastes expensive.

The supreme test of any whisky is simple. Do you want another glass? Not a larger investment portfolio. Not a nonfungible token. Not membership of an online community. Just Another Glass. All five whiskies considered here pass that test in different ways. Arran 10 charms; Tomatin 12 comforts; Deanston 12 steadies; Glen Scotia 15 intrigues; Glendronach 21 seduces. Together they demonstrate the extraordinary range of malt whisky at its best: from bright youthfulness to brooding maturity. And whisky does something increasingly rare in modern life: it rewards slowness. You cannot sensibly rush good malt whisky. It encourages lingering, conversation, recollection and occasionally truth.

There are, admittedly, dangers. It may produce sentimentality, argument, improbable confidences and possible embarrassing late-night emails. Yet compared to many contemporary enthusiasms these seem manageable defects. Besides, malt whisky drinkers retain certain civilising instincts which are absent elsewhere. They still believe

in sitting down. They still regard conversation as preferable to messaging. You can’t imagine anyone drinking Glendronach 21 while wearing virtual reality goggles. And perhaps this is malt whisky’s deepest appeal. In an age devoted to speed, distraction and self-advertisement, a good malt insists quietly upon the opposite virtues: patience, reflection, companionship and pleasure, all without hysteria: which, when you think about it carefully, may be the best Scottish achievement of all. I have also noticed that malt whiskies often produce melancholy in reflective people. They remind one too vividly that time passes, also that much of life vanishes – almost before one has had enough leisure to observe it properly. A glass of Glendronach 21 on a summer evening may provoke memories which you imagined safely buried. But perhaps that’s part of its charm. In the end, malt whisky has less to do with taste than with mood. People speak of flavours, but what they really remember are occasions. A bottle opened after good news. A glass shared with an old friend. Malt whisky accompanies life very well because it neither demands nor distracts. It waits patiently. And perhaps, my learned friends, this is why, despite all changes in fashion, it continues to endure. A good malt offers warmth, companionship, and the temporary illusion that the world is a rather more civilised place than you feared.

And there are certainly far worse illusions.

Crossword No. 61

*Enjoy with
a long, iced
drink. It
should be
a summer
breeze.*

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 11 September 2026. As usual the prize for the winner will be a half case of claret.

Solution | No. 60

The winner of the last crossword competition was:

Mike Horton KC of Coram Chambers
A half case of claret has been sent to him.

1	F	A	M	I	L	Y	4	A	F	F	A	6	R	7	S
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21								22				

Across

1. Firm, good men might be reserved. (5)
4. Pull scam before endless online abuse (7)
8. And not half normal! (3)
9. Les Champs-Élysées, for example, has a local bread followed by, initially, vintage Armagnac, Ricard, Dubonnet (9)
10. Comments in the year of Britain, Liverpool and St Ives. Modern, too! (9)
12. Consume American drug (3)
13. He arranged bet foolishly in the RCJ! (3, 4, 6)
15. The Spanish are defeated without Enrique starting (3)
16. I hear a grass intended shock... (9)
17. the grass here is full of seeds in summer (9)
20. What he was before 'judge' (3)
21. Dr Yeats badly messed up! (7)
22. Tech dept chap turned to give a kind of wave (5)

Down

1. Reach out to Italian with sensitivity (7)
2. Unknown folk band remove leading lyricist (9)
3. Blubber can be found in walrus obviously (3)
4. Rescinded one part of indictment; kept on bail or in custody having changed the first and second. (13)
5. Not one for sharing! (5, 4)
6. Initially rebuked every accusation - but guilty (3)
7. Scoop found in salad leaves (5)
11. Have telly interference? You can watch the match here in South London (3, 6)
12. Seeing someone in this state reddens us badly! (9)
14. Has innate skill, but makes a hash of a turn before a learner... (7)
15. Rules about starting now? Plenty of these in 17! (5)
18. Broken arm scar? (3)
19. Union head. (3)

