

## Radicalisation: Safeguarding and the Family Courts

13 November 2015

Professionals from a range of organisations came together in November 2015 for a one day event to share knowledge and experience on the role of the family courts in safeguarding children and young people at risk of radicalisation.

Speakers considered the rise and causes of violent extremism and different views were put forward on the role of ideology in this process, thereby illustrating the complex and multifaceted nature of the issue. Ideology was seen by some as the hook that draws some young people in to developing extreme radicalised views. Others however, suggested that there is no single root cause of radicalisation and research has shown various different factors can play a part including: ideology; socialisation – the role of family and friends; an individual's quest for significance; altruism; and, the need for self-respect / identity / belonging.

As a result of the threat of radicalisation, social care services, the family courts and counter terrorism teams have forged new working relationships in order to safeguard children and young people. In his judgement, [\*London Borough of Tower Hamlets v M & Others \[2015\] EWHC 869 \(Fam\)\*](#), Justice Hayden set out nine principles which should be considered when making an application for a ward of Court. These principles are:

- (i) *The lawyers should take care to draft, at very least in outline, the scope and ambit of the orders they seek and in respect of whom they seek it. This should be undertaken before coming to court. That will not only expedite the subsequent service of the orders on those concerned, it is also a crucial forensic discipline, compelling the lawyers to think in a properly focused manner about the specific orders they seek;*
- (ii) *Thought should be given, from the very outset, as to how quickly the case can be restored on notice. This is the essential requisite of fairness in the process, now buttressed by Article 6 of the European Convention on Human Rights;*
- (iii) *Even though these cases will, of necessity, be brought before the court in circumstances of urgency, they nonetheless require the instruction of senior and experienced lawyers. The issues have profound consequences, not limited to the individuals concerned, and will frequently require a delicate balancing of competing and potentially conflicting rights and interests;*
- (iv) *All involved must recognise that in this particular process it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations, but it must be recognised that the decision the court is being asked to take can only be arrived at against an informed understanding of that wider canvas. It is essential that the court be provided with that material in appropriate detail;*
- (v) *It will never be satisfactory, in applications of this kind, merely to offer verbal assurance, through counsel or any other individual, that the police, security forces or those involved in counter terrorism, are aware of and support the application. There must in future always be 'hard' evidence, i.e evidence which is cogent and coherent, placed before the court and capable of being subject to appropriate scrutiny. The format of the evidence may vary from case to case. It may require a police presence in court. There may be the need for police/counter terrorism officers to be represented, written and sworn statements may sometimes suffice. On occasion evidence may be received by secure telephone or video link;*
- (vi) *Justified interference with the Article 8 rights of a minor will always require public scrutiny at some stage in the process. In both cases this week, the press*

*attended. It was only necessary for them to withdraw on one occasion, at the request of a very senior police officer present in court, supported by the local authority. The request was made because sensitive issues of policy and national security arose. Transparency, that is to say the attendance of accredited press officials in court, remains the presumption here, as it now is in all aspects of the work of the family justice system;*

- (vii) Recognising that there will be an urgency to these applications, careful attention, in advance of the hearing, should be given to the framework of reporting restrictions required to protect the child from publicity. In this exercise, it should be remembered that some of the families involved may already have excited a degree of press coverage. Indeed, they may, on occasion, have sought it out. There is a risk that identification of the children might be revealed by piecing together information already in the public domain, i.e. the 'jigsaw effect'. As, in paragraph 1 above, and for similar reasons, the restrictions contended for should be drafted before coming to court;*
- (viii) Though it may appear trite to say so, an evaluation of the reporting restrictions, as I have been reminded by the press this morning, should always have at the forefront of the exercise the reality that publicity is not confined to the conventional or recognised media outlets, but extends, with inevitably greater challenges, to the wide range of social media likely to be the primary sources of information for these children, their peers and those with whom they interact more generally;*
- (ix) The importance of coordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved, simply cannot be overstated. An ongoing dialogue in which each party respects, and I make no apology for repeating the word respect, the contribution of the other, is most likely to achieve good and informed decision making.*

In addition to this, the President of the Family Division has issued guidance in relation to [radicalisation cases in the family courts](#). In this, Justice Munby categorised the different types of cases coming before the courts: children planning, attempting or being groomed to travel to Syria; parents planning or attempting to travel to Syria with their children; children at risk of being radicalised (within the home or by outside influences); and, children at risk of being involved in terrorist activities. All such cases will now be heard by High Court Judges of the Family Division.

All partners agreed that agencies must work together to safeguard children and the relationships between children's social care and counter terrorism teams are new and rapidly evolving. The different approaches to information sharing adopted by social care professionals and the police / counter terrorism teams were apparent and have been a particular area of focus. There is an inherent conflict between highly sensitive counter terrorism intelligence that cannot be disclosed for fear it will jeopardise a criminal case (which may have a much larger focus than one family) and social work practice of working with families in an open and transparent way. Within his recent guidance, Justice Munby stressed the need for appropriate information sharing:

*Judges hearing cases falling within the description in paragraph 1 above will wish to be alert to:*

- a. the need to protect the Article 6 rights of all the parties;*
- b. the fact that much of the information gathered by the police and other agencies will not be relevant to the issues before the court;*

- c. *the fact that some of the information gathered by the police and other agencies is highly sensitive and such that its disclosure may damage the public interest or even put lives at risk;*
- d. *the need to avoid inappropriately wide or inadequately defined requests for disclosure of information or documents by the police or other agencies;*
- e. *the need to avoid seeking disclosure from the police or other agencies of information or material which may be subject to PII, or the disclosure of which might compromise ongoing investigations, damage the public interest or put lives at risk, unless the judge is satisfied that such disclosure is “necessary to enable the court to resolve the proceedings justly” within the meaning given to those words when used in, for example, sections 32(5) and 38(7A) of the Children Act 1989 and section 13(6) of the Children and Families Act 2014;*
- f. *the need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court by the police or other agencies;*
- g. *the need to consider any PII issues and whether there is a need for a closed hearing or use of a special advocate;*
- h. *the need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings or (ii) any transcripts;*
- i. *the need to ensure that the operational requirements of the police and other agencies are not inadvertently compromised or inhibited either because a child is a ward of court or because of any order made by the court;*
- j. *the assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert counsel.*

Justice Hayden has also previously stressed the importance of a coordinated strategy on behalf of all parties involved in cases of radicalisation, based on mutual respect and ongoing dialogue. It will be essential that the relationship and dialogue between local authorities and counter terrorism teams is developed prior to, as well as during, any case before the High Court to ensure children and young people are adequately protected throughout the process, from initial investigation through to court proceedings.

The judiciary have been clear that robust risk assessments must form an integral part of cases coming before the High Court. Although the Channel [vulnerability assessment framework](#) is widely used to guide decisions about the support needs for people who are vulnerable to radicalisation, this is not a suitable risk assessment for the purposes of the Family Court. As a basis for a risk assessment deemed suitable for the court, the Metropolitan Police Counter Terrorism Unit (SO15) has used elements from the London Child Risk Assessment Model (CRAM), along with consideration of the child’s potential to travel and their vulnerability to radicalisation. This is an evolving model and has been accepted to date.

Additional key learning from partners included the need for early contact between the police and local authority, involving case officers in strategy meetings, the need to appoint a disclosure officer to coordinate disclosures where a case is ongoing, and the need for all parties attending the Family Court to be appropriately briefed to give evidence.