

Radicalisation: Safeguarding & the Family Courts

**Conference Provider: the London Borough
of Tower Hamlets**

13 November 2015

Venue: Coin Street Conference Centre

CPD: 6 hours

Presenters include:

Charles Farr OBE – Director General for the Office of Security
and Counter Terrorism at the Home Office
Professor Andrew Silke – University of East London
Jo Delahunty QC – 4 Paper Buildings

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Section A
Delegate Pack



Profiles of some of today's speakers

Charles Farr, Director General, Office for Security and Counter Terrorism, Home Office

Charles Farr was appointed Director General of the newly-formed Office for Security and Counter-Terrorism (OSCT) at the Home Office in June 2007. Charles joined the Diplomatic Service in 1985 and has served at British Embassies in South Africa and Jordan. He was awarded an OBE in the Queen's 2002 New Years Honours list for his service overseas for the Foreign and Commonwealth Office and a CMG in 2009. Since 2003, he has held a number of senior posts across Whitehall concerned with Security and Counter Terrorism. As Director General of OSCT, Charles is responsible for the cross Government UK counter-terrorist strategy, CONTEST and cross Government work on organised crime.

OSCT was established in March 2007. OSCT co-ordinates the development, direction and implementation of CONTEST; delivers parts of the strategy which directly fall to the Home Office; oversees, on behalf of the Home Secretary, the Security Service and Police counter-terrorist work. OSCT was responsible for Olympic Security Programme in 2012. Since 2013 OSCT has also been responsible for organised crime work and for oversight of the National Crime Agency.

Professor Andrew Silke, Head of Criminology and Director of Terrorism Studies at the University of East London

Professor Andrew Silke is internationally recognised as a leading expert on terrorism in general and terrorist psychology in particular. He has a background in criminology and forensic psychology and has worked both in academia and for government. He has written and edited several books on terrorism and counter-terrorism including *The Psychology of Counter-terrorism* (published 2011) and *Prisons, Terrorism and Extremism* (published in 2014). Professor Silke's expertise has also been recognised by the courts and he has provided expert advice and testimony in many terrorism-related cases.

Professor Silke served on the British Psychological Society's working group on the Psychological Risk Assessment of those Convicted or Detained under Terrorist Related Offences. He serves by invitation on the United Nations Roster of Terrorism Experts. He is a member of the European Commission's *Radicalisation Awareness Network Centre of Excellence* (RAN CoE) which works with practitioners to develop state-of-the-art knowledge to prevent and counter radicalisation to violent extremism. Prior to this, he served both on the European Commission's *European Network of Experts on Radicalisation* and on the Commission's *Expert Group on Violent Radicalisation*. He has provided invited briefings on terrorism-related issues to Select Committees of the House of Commons and was appointed in 2009 as a Specialist Advisor to the House of Commons Communities and Local Government Committee for its inquiry into the UK Government's programme for preventing violent extremism. In 2010 he gave invited oral testimony before the Canadian Special Senate Committee on Anti-terrorism. He is a member of the UK Government's Cabinet Office National Risk Assessment Behavioural Science Expert Group. He is the Head of Criminology at the University of East London and also the Programme Director for Terrorism Studies.

Sarah Williams – Team Leader of the Social Care Team, Legal Services at the London Borough of Tower Hamlets

Sarah Williams graduated with an LLB and BSc in Psychology from the University of Otago in New Zealand in 2000. She was admitted as a Barrister and Solicitor of the High Court of New Zealand in 2000 and has subsequently been admitted as a Solicitor in England and Wales. Sarah began practicing as a child protection lawyer in the UK in 2002, working for various local authorities and has been managing the Social Care Team at Tower Hamlets since 2013. Sarah has guest lectured at Middlesex University and her reported cases include *R (on the application of S) v Lewisham, Hackney and Lambeth* [2008] EWCH 1290 (Admin) and *B v London Borough of Lewisham* [2008] EWHC 738 (Admin), *MF v London Borough of Brent & Ors* [2013] EWHC 1838 (Fam) and *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam). Sarah recently published an article in the Family Law Week; "*Radicalisation: a proportionate response*".

Lee Maitland – Senior Lawyer, Legal Services at the London Borough of Tower Hamlets

Lee Maitland graduated with her LLB from the University of Bristol in 1996 where she was the winner of the Blackstone prize. Following her graduation she worked at the University and collaborated on a number of research projects. Publications include *The Admissibility and Sufficiency of Evidence in*

Child Abuse Prosecutions, Commissioned by the Home Office; Literature review of sexual offences as they apply to children, Commissioned by the Home Office; The Judiciary in the Magistrates' Court, Commissioned jointly by the Lord Chancellor's Department and the Home Office. Lee began practicing as a family lawyer in private practice in 2003 transferring to local authority, as a child protection lawyer, in February 2007. She has worked in local government ever since. She was admitted to the role of solicitors in 2006 (having previously been a FILEX) and became a member of the Law Society Children Panel in 2008. Lee now works closely with the specialist social work team which has been set up within CSC at LBTH to deal with cases where radicalisation is a presenting issue. Lee has conducted a number of cases currently before the High Court, Family Division, where the main presenting issue is radicalisation.



Jo Delahunty QC

A formidable advocate, and fascinating to watch and learn from.

Legal 500 2015

Top Tier

Experience

Year of Call: 1986

Year of Silk: 2006

Education

MA (Oxon) Jurisprudence

Appointments

Public Law Family Recorder (South Eastern Circuit) 2009

Benchers the Honourable Society of Middle temple 2011

Profile

Jo was made winner of the Jordans family silk 2013, is identified as a Top rank Silk by chambers and Partners and ranked as a top tier silk by the legal 500. Jo is currently acting on behalf of 75 bereaved families in the Hillsborough Inquest, tasked with dealing with the adequacy of the emergency medical response and establishing whether better care could have saved.

Jo specializes in contentious and highly complex cases at High Court level and above involving allegations of severe child abuse. She is noted for her *'sharp forensic eye and extraordinary memory'* and her ability to *'dissect extremely complex medical concepts with ease'*. In a highly competitive and specialist silk field, Jo has gained a reputation for 'formidable' advocacy and tactical trial management. and has many recent successful reported cases to her credit and is able to move with forensic ease between highly specialized cross examination of medical experts in NAHI/ Inflicted death cases to sensitive cross examination of a child or vulnerable adult where allegations of sexual abuse arise.

Jo specialises in cases involving:

- The death of/catastrophic injuries to a child (TRIAD cases)/Non Accidental Head Injury (NAHI)/Shaken baby allegations
- Vitamin D/Rickets/genetic disorders and congenital malformations affecting a child's potential vulnerability to injury 'Al Alas/Wray' (JDQC acted for the mother) [click here](#).
- Sexual abuse (Intergenerational/ Inter sibling/ maternal rape/ genital mutilation/ internet exploitation
- Ritualized child abuse/cultural practices
- Fabricated Induced Illness (FII) allegations
- Disability of a child
- Cases involving cross examination of a child or vulnerable adult
- Child protection cases involving concurrent criminal prosecution for trafficking/ attempted murder/ child cruelty and neglect/ sex offences
- Relitigation/ challenge to old findings of fact based on emerging science/ fresh factual evidence.

Complex private law proceedings involving allegations of physical and emotional abuse and neglect (alcoholism/ psychiatric issues) involving transfer of residence applications are a natural corollary to her practice.

Jo also deals with adoption matters.

Jo commands a high professional reputation for;

- Forensic insight and tactical skill
- 'rapier like', highly effective, cross examination
- her 'phenomenal work rate and razor sharp mind'
- her willingness to tackle complex medical concepts and challenging scientific research
- assured negotiation skills
- pro-active client care
- a clear and frank analysis of the strengths and weaknesses of the case and the determination to achieve the best for the client

Jo has had numerous articles published in legal journals : most recently on issues arising from two cases in 2012 which attracted nationwide publicity in The broadsheets , TV and radio as well as the tabloid press : Al Alas/ Wray (The 'rickets / Vit D case) and Ben Butler case (NAHI findings overturned) For further information [click here](#)

Jo has also gained acclaim for her seminars delivered, by invitation, to Barristers and Solicitors and medical professionals in family law matters. Her session for Jordan's at their annual Public Law conference in 2012 was described as 'excellent' 'spell-binding' 'brilliant' by audience members following in the tracks of that set in her Butterworth's speech that preceded it 'fascinating' 'most inspiring and challenging' . Jo has spoken on joint platforms with fellow originations and speakers who are as passionate about child protection issues as she is: notably the Association of Lawyers for Children, The Criminal Bar Association and the Academy of Experts.

ARTICLES: 2012 ONWARD ONLY

L B Islington v Al Alas and Wray; the vitamin D and rickets case 'June 2012 FAM Law 659'

'What Price Justice? Experts or Treating Clinicians' July 2012 FAM Law 882

In Defence of Experts 'Counsel' August 2012

'In Defence of Experts' The TEDR (Experts and Dispute Resolver) TEDR [20120 Vol 17 No 2 24

'A Miscarriage of Justice - Corrected : the difference Expert Evidence can make to outcome' Nov 2012 Fam Law 1344

'Relitigation in Family Cases: the emerging law and practice' Jan 2013 Fam Law 40

SEMINARS

2010

ALC Annual Conference Nov 2010 'The Child as a Witness: Whose Right is it Anyway'

Grand Stand Seminar Park Lane Plowden Leeds 24.3.10 'Children Giving Evidence: Where the Unwary Tread'

2011

Jordan's Annual Public Law Update 15.3.11 'Children in Care Proceedings : putting the new law into context : RE W explained and explored'

"excellent", "engaging", "excellent delivery-engaging-excellent notes" " spoke without notes for her full session: excellent delivery and informative content"

Grandstand Seminar Park Lane Plowden: York. 22.9.2011 'The Child in the Witness Box: preparation for trial and cross examination: Practical Guide' Speaking with Prof Martin Conway on 'Children and Memories'

Leicestershire and Rutland Family Justice Council Annual Conference' on 18.11.11

Panel Debate on a panel with HHJ Lea, Prof Judith Masson with guest speaker King J

2012

Middle Temple inaugural Women's Forum launch: 6th March

"brilliant" "inspirational"

Butterworth Public Child Care Law Conference. Annual Public Law update 26.6.12

"Fascinating" "Most inspiring and challenging" "Delivery was so impressive! Will impact my practice on NAI" "Excellent as always"

'Brilliant/re-balancing material.'

ALC and CBA: joint seminar 4.7.12 "Child injury and Expert Evidence; the Lessons of Al Alas" Chaired by Martha Cover: Chair of ALC

Speaking with Mike Turner QC and Anya Lewis (leading and junior counsel for Chana Al Alas in the criminal trial and JDQC and Kate Purkiss (leading and junior counsel for Chana Al Alas in the care trial)

Jordan's; Annual Child Care Conference 20.9.12:

"excellent" "Brilliant - should have had more time" "Informative and well-delivered" "Spellbinding"

"It was a genuine pleasure to hear Jo Delahunty QC (who is like the most charming intelligent surgical scalpel you will ever meet) speak on

the Al Alas Wray case as she was leading counsel for one of the parents, and so had a wealth of useful insights and tactics to put forward."

FLBA: autumn series lectures Oct 2013 'Expert and Medical Evidence in Child Protections Cases: A Practical Guide'

"Formidable" "inspiring"

Park Lane Plowden Grandstand Seminar: York 18th, 10, 12, speaking on platform with Dr Willie Reardon: Consultant Geneticist.

2013

17th April 2013:

Middle temple women's forum hosted a session designed to encourage women to expand their career horizons by taking judicial office and Jo Delahunty QC was on the discussion panel along with The Rt Hon Lady Justice Black DBE, The Hon Mr Justice Coleridge, Judge Siobhan McGrath, HHJ Rosalind Coe QQ, Martin Forde QC and Rachel Langdale QC

Delivered:

8th May. Experts Forum: The Academy of Experts; 3 Gray's Inn Square: Speaker: 'The Value of an Expert '

14th May: Butterworth's Annual Child Law Conference 'De Bunking the myth: 'Parents don't win care cases'

FLBA nationwide training tour on the Presidents Family modernisation Programme : 10/11 th Sept (manchester, birmingham)

Nagalro : Chair of their Annual conference : 23rd Sept

Park Lane Plowden Grand Stand annual seminar 2013

4PB Public Law Seminar (Chair) 10th October - (notes available on the seminar archive page

Professional Memberships

Hillsborough Inquest

Family Law Bar Association

Association of Lawyers for Children

Association of Women Barristers

FLBA National committee member 2010 - and is the FLBA chair of Fees sub committee 2012 -

The Middle Temple Women's Forum (steering committee)

Centre for Child and Family Reform (CCFLR) committee 2012 -

Jo is a Patron of AMEND (The Association for Multiple Endocrine Disorders)

Recommendations

'the decision of the children's solicitor and junior counsel to instruct Miss Delahunty QC was, in my view, both wise and responsible ' per Lord Justice McFarlane Re A (2012) EWCA Civ 1477

Directories

Specialises in serious cases where sexual and physical abuse are alleged. She is the only family law practitioner to be involved in the Hillsborough Inquest.

Strengths: "She is deservedly pre-eminent. She has a brilliant mind, and is one of the few who is as good a fearsome cross-examiner as she is arguing the law in the Supreme Court." "She is very detailed in her approach and has an immaculate knowledge of the papers."

Recent work: Has been acting on behalf of 75 families in the Hillsborough Inquest to try and determine whether the medical response was acceptable.

Chambers & Partners 2016 - Band 1

A formidable advocate, and fascinating to watch and learn from.

Legal 500 2015 Top Tier

A dedicated children lawyer who focuses on difficult public law matters and care proceedings concerning allegations of sexual and emotional abuse. Also handles cases involving the death of children.

Expertise: "A first port of call for care work," "she is extremely hard-working, knowledgeable and very committed to the client that she represents. Jo is a very tactical and effective advocate, who is good to observe and learn from."

Chambers & Partners 2015 - Band 1



Chris Barnes

Experience

Year of Call: 2008

Education

St John's College, Cambridge (2003-6)

City University (2006/7)

Inns of Court School of Law (2007/8)

MA (Cantab) History

GDL

BVC

Profile

Chris specialises in proceedings relating to children whether public, private or international. He is regularly instructed by local authorities, parents, guardians and other interested parties at all levels including the Family Court, High Court and Court of Appeal.

Chris is particularly well regarded for his work in public law care proceedings and has experience of cases involving sexual abuse and serious inflicted injury acting in his own right and as a led Junior.

Chris is always aware of the sensitive nature of proceedings relating to children and whilst he is a tenacious advocate he ensures that his clients – whether parents or professionals – are calmly advised, supported and represented through the litigation process.

Chris has experience of public and private law proceedings with an international dimension and has recently acted for a Local Authority in applications under wardship to prevent travel to Syria. He is interested in novel applications of established remedies and is able to accommodate the demands of urgent applications and provide advice rapidly where required.

Chris has lectured extensively on the impact of Re B and Re B-S and has a particular interest in contentious applications relating to adoption, the revocation of placement order or discharge of care orders. He has recently acted for a parent resisting a contested adoption order application having set aside care and placement orders out of time in the Court of Appeal.

Chris undertakes work for the Bar Pro Bono unit and is committed to ensuring that where his clients may be more vulnerable – by virtue of language, disability or geographical location – are properly protected and represented before the Court.

Away from work Chris is a dedicated runner and recently completed his first marathon. He helped set up a local Junior parkrun and is himself a committed [parkrunner](#) .

Professional Memberships

Honourable Society of Gray's Inn

Family Law Bar Association

Association of Lawyers for Children

Recommendations

"All the legal teams in these proceedings have worked tirelessly to ensure this hearing has remained effective. The challenges caused by the volume of disclosure and the management of ensuring only what was relevant was in the court bundle have been considerable... The local authority are to be commended for taking the necessary steps to ensure sufficient resources were available to manage this case. The court is particularly grateful to Miss Taylor and Mr Barnes for their part in the considerable logistical arrangements of this case." – Judgment from a High Court Judge following a lengthy fact-finding concerning the death of a child acting as a second Junior for the Local Authority

"The parties have all been ably represented. I understand that those who represent Mother only had funding for this final hearing confirmed last week. I am bound to say that I have been greatly assisted by counsel for Mother, whose penetrating cross examination enabled the court to hear the full detail of the Local Authority's difficulties in a way that might not otherwise have been achieved." – Judgment from a Circuit Judge following a final hearing representing a mother seeking the discharge of a care order

Practice areas

- [Private Law](#)
- [Public Law](#)
- [International](#)
- [Court of Protection](#)

Direct Access

- [Direct Access](#)

Cases

Re W (Adoption Application: Reunification with Family of Origin) [2015]
[2015] EWHC 2039 (Fam)

Re H (Children) (2015)
[2015] EWCA Civ 583

Tower Hamlets London Borough Council v M & Others (2015)
[2015] EWHC 869 (Fam)

SR (A Child: Habitual Residence) [2015]
[2015] EWHC 742 (Fam)

X (Discharge of Care Order)
[2014] EWFC B217

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

Radicalisation: a proportionate response

This article was published in the Family Law Week on 29 October 2015

Sarah Williams, Legal Team Leader, Social Care Team, at London Borough of Tower Hamlets, considers the high-profile cases recently heard in the Family Division of the High Court where children or families have been considered at risk of radicalisation and, in some cases, travelling to Syria or Iraq, together with the judicial responses to those cases.

In February 2015, three schoolgirls from East London travelled from London to Syria to join the so called 'Islamic State' (IS). Though far from the first young men or women to make this journey, the widespread media attention surrounding the case heightened the public's awareness of a serious issue that police, local authorities and schools have increasingly been facing. Whilst further Government measures have just been announced with the intention of tackling the spread of violent extremism, the courts will continue to play a key role in safeguarding young people at risk.

The leading cases that have since come before the courts fall broadly into three categories. First, cases where the identified risk is that older children have become radicalised themselves, including the possibility of attempting to travel unaccompanied to Syria or Iraq. Second, where parents have allegedly attempted to travel to IS-held territories with their children, placing them at risk of physical as well as emotional harm. Finally, where concerns are held that parents or older siblings hold extremist ideologies and may be indoctrinating children into those beliefs, placing them at risk of emotional and psychological harm.

The first category is often addressed through wardship proceedings or other orders under the court's inherent jurisdiction. The latter two categories are typically the subject of care proceedings under [section 31 of the Children Act 1989](#), though there may be additional orders sought under the court's inherent jurisdiction to remove passports or prohibit travel. In circumstances where families are obstructing social services from assessing the child's welfare, an interim supervision order or child assessment order¹ may facilitate an assessment whilst taking a least interventionist approach.

An additional layer of complexity in children's cases involving allegations of extremism is in providing sufficient evidence that any proposed legal interventions are necessary and proportionate, without the risk of compromising ongoing police investigations that may relate to national security. All such cases must therefore involve close partnership working between counter terrorism police, local authorities and the courts in identifying what evidence can be disclosed into proceedings and timescales for further disclosures.

The President's Guidance

Guidance on Radicalisation Cases in the Family Courts, ('the Guidance') has been issued in October by Sir James Munby, President of the Family Division, to assist the court and practitioners with these complex cases. Importantly, whether issued under the inherent jurisdiction of the High Court or as care proceedings, all cases are now to be heard by a High Court judge if radicalisation is identified as an issue in the case,

other than in exceptional circumstances. It highlights that while proceedings will typically be brought by the local authority, there is no reason that the police could not seek orders under the court's inherent jurisdiction in appropriate circumstances.

The Guidance explores the issue of police disclosure and public interest immunity (PII) at length, identifying:

"...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"..." [para. 7(e)]

Judges should ensure that police investigations are not compromised by the legal requirement for leave of the court to be obtained for officers to interview a ward of court². It is of note that this requirement does not apply where police urgently need to interview a warded child who is the victim of a serious offence or suspected of a criminal act³.

The Guidance also sets out the need to consider the role of the media in these cases, stating that the press should be excluded from hearings only as a last resort. Protection for minors can be provided through use of reporting restrictions and 'anti-tipping-off' orders. It is important that those representing family members prepare their clients for what may be intrusive, if anonymised, media attention, given the heightened public interest in such cases.

Defining radicalisation

Article 9 of the European Convention on Human Rights⁴ provides that everyone has the right to freedom of thought, conscience and religion. This overlaps with the right to freedom of expression under Article 10 and to freedom of association under Article 11. However, these rights are subject to such legal limitations as are necessary in the interests of public safety, or to protect the rights and freedom of others. The question therefore arises as to how to determine when those rights to freedom of conscience and religion will cross a legal line by impacting on the safety of children.

The first major family court case to consider the issue of radicalisation was decided in March 2014. The judgment of Holman J in private law proceedings [**M \(Children\) \[2014\] EWHC 667 \(Fam\)**](#) gave this thoughtful analysis:

"'Radicalising' is a vague and non-specific word which different people may use to mean different things. There is quite a lot of material in this case to the effect that the elder of these children are committed Muslims who like to attend, and do attend, at a mosque and wish to display religious observance. This nation and our culture are tolerant of religious diversity, and there can be no objection whatsoever to any child being exposed, often quite intensively, to the religious practices and observance of the child's parent or parents. If and insofar as what is meant in this case by "radicalising" means no more than that a set of Muslim beliefs and practices is being strongly instilled in these children, that cannot be regarded as in any way objectionable or inappropriate. On the other hand, if by

"radicalising" is meant, as appears in paragraph 12 of the draft addendum report that I have already quoted, "negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism" then clearly that is a very different matter altogether. If any child is being indoctrinated or infected with thoughts involving the possibility of "terrorism" or, indeed, hatred for their native country, which is England, or another religion, such as Christianity which is the religion of their grandparents and now, again, their mother, then that is potentially very abusive indeed and of the utmost gravity."

Holman J's definition of radicalisation as *"negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism"* is a helpful one, distinguishing traditionalist beliefs from those connected to violent extremism.

[Section 26 of the Counter-Terrorism and Security Act 2015](#) has now placed a duty on specified authorities, including local authorities and schools, to have *"due regard to the need to prevent people from being drawn into terrorism"* in the exercise of their functions. The supporting [Prevent Duty Guidance](#)⁵, provides this definition:

"Radicalisation' refers to the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups." [page 21]

Wardship: a measured response

The ancient prerogative of the High Court's inherent jurisdiction to make orders about any matters that are not covered in legislation, has long been used to safeguard children through wardship. The court may make any order to promote the welfare of a child as long as this is not prohibited by statute, in particular [section 100 of the Children Act 1989](#) ('the Act'), which prevents use of wardship to resolve any issue which can be dealt with under the Act. Practice Direction 12D explains the nature of wardship. Custody of the child vests in the court and no important steps can be taken without the court's consent.

In [Re Y \(A Minor: Wardship\) \[2015\] EWHC 2098 \(Fam\)](#), Hayden J expressed his clear view that where there was a risk that a young person may travel to Syria, wardship was a proportionate response to the *"very specific nature of the risk contemplated."* This enabled him to remove the young man's passport. Hayden J commented:

"...In the case of a minor the protective obligation to the minor himself weighs in the balance in a way that simply does not apply when considering an adult. When balancing the competing rights and interest required under the Human Rights Act, to my mind the balance falls down clearly in protecting this young man, ultimately from himself." [para 13]

In a subsequent hearing on the same case, Hayden J referred to wardship as a 'light touch' intervention in a case where there was a 'high risk of very serious harm'⁶.

This was further explored in [London Borough of Tower Hamlets v M and ors \[2015\] EWHC 869 \(Fam\)](#), where an application was brought under the court's inherent jurisdiction in respect of five girls for passport orders. During the initial hearing of the

case (unreported), Hayden J noted that, although there may be a low risk that the girls would attempt to travel to Syria, the consequences if they were to do so would be of the utmost gravity, potentially placing their lives at risk. In his view, this low risk of very serious harm warranted the court intervening to safeguard the children's welfare.

Hayden J invited the local authority to apply for wardship orders, as the authority of the High Court was recognised internationally which may be of assistance if the children left the jurisdiction, and would vest parental responsibility solely in the High Court. He considered this to be a proportionate response in light of the concerns.

Hayden J provided guidance in preparing ex parte applications and reinforced the importance of cooperation between agencies and that, even when issued in urgent circumstances, it was incumbent on the local authority to present the case with a high degree of candour. To summarise the core principles outlined at paragraph 18 of the judgment:

- (i) 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, before coming to court.
- (ii) Thought must be given to how quickly the case can be restored on notice.
- (iii) Instruction of senior, experienced counsel is essential.
- (iv) The interest of the individual child that is paramount and cannot be eclipsed by wider considerations of counter terrorism policy or operations, with that material provided in appropriate detail.
- (v) The need for direct evidence that police, security forces or those involved in counter terrorism, are aware of and support the application and the need for hard evidence capable of scrutiny, either by court attendance or sworn statement.
- (vi) Press attendance at hearings is likely.
- (vii) Reporting restriction orders should be drafted in advance of hearings.
- (viii) Include consideration of social media.
- (vi) A co-ordinated strategy, an ongoing dialogue and respect between different safeguarding agencies are crucial.

Interestingly, at a subsequent hearing of the case, the court gave leave for the press to identify the name of the school attended by four of the five girls as he considered that the public interest in this information outweighed the risk that it would result in identification of the children involved. This reinforces the need for the local authority to give consideration to the broader publicity issues when bringing proceedings and to ensure a comprehensive communications strategy is in place.

In [*Re M \(Children\)* \[2015\] EWHC 1433 \(Fam\)](#), Baker J held that wardship orders were an appropriate response in circumstances where the parents and four children

had been detained in Turkey, allegedly on their way to Syria. The matter subsequently came before Munby P when the family returned to the UK. He confirmed well established authority that wardship could apply even where the children were outside the jurisdiction of the UK, but discharged reporting restrictions as these had been designed to avoid the risk of the parents recognising that the case related to their children and thus preventing their return.

In confirming that ex parte orders had been warranted, Munby P referred to his earlier judgment of *X Council v B (Emergency Protection Orders)* [2004] EWHC 2015 (Fam):

"...there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on.' The point is obvious: if the parents were alerted to what the court was doing, the chance that they would return the children voluntarily must have been significantly diminished." [para. 36]

On 20 October 2015, with the agreement of the local authority and the guardian, Munby P discharged the wardship orders following an assessment by an independent social worker which advised that '*...the intervention of the state has been a wake-up call for this couple*' who were now fully cooperating with professionals⁷.

When making submissions on the scope of a wardship order, the parties should carefully consider whether to seek to limit the court's authority to specific issues relevant to the welfare concerns. For example, the order may be drafted so that the exercise of parental responsibility in relation to particular issues are reserved to the court (such as control of passports and travel outside England and Wales), and that save those matters specifically reserved, exercise of parental responsibility is delegated to the parents. The level of risk should be kept under review to ensure that the orders in place are proportionate in the circumstances of the case.

The threshold criteria in care proceedings

The 'threshold criteria' for making a care or supervision order are set out in section 31(2) of the Children Act 1989, namely that the court must be satisfied that the child concerned is suffering, or is likely to suffer, significant harm attributable to the care given to the child not being what it would be reasonable to expect a parent to give to him; or the child being beyond parental control. The threshold criteria on an interim basis require a lower standard in that the local authority is required to show reasonable grounds to believe that threshold is met⁸.

When considering whether allegations of extremist ideologies reach the threshold criteria, it is relevant to consider the authority of Munby P in [*Re A \(A Child\) \(Rev 1\)* \[2015\] EWFC 11](#). Although this related to a parent who was alleged to be a former member of the English Defence League (rather than supporting IS as in the majority of the cases discussed in this article), the distinction made by the President between the 'morality' of supporting such groups and significant harm applies in all cases:

"The mere fact, if fact it be, that the father was a member, probably only for a short time, of the [English Defence League] is neither here nor there, whatever

one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly "immoral" aspects of the father's behaviour... Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings." [para 71]

The issue for the court therefore is not the moral aspect of an extremist ideology, of any religious or political persuasion, but rather whether there is evidence that this ideology presents a current or future risk to the children that meets the threshold for significant harm. A distinction must be made between holding a particular personal view and imposing that view on a child, and whether that view poses a risk to the child, for example by advocating violence or taking the child to live in a warzone.

In the case of [London Borough of Tower Hamlets v B \[2015\] EWHC 2491 \(Fam\)](#), Hayden J took the view that the threshold criteria were made out in circumstances where there was evidence that older siblings in the family had already been radicalised as a consequence of the parents' own extremist views. This had resulted in one child, a 15-year-old known as B, attempting to travel to Syria. Hayden J found:

"I have no hesitation in concluding that B has been subjected to serious emotional harm, and, at the very least, continues to be at risk of such in her parent's care. I can see no way in which her psychological, emotional and intellectual integrity can be protected by her remaining in this household. The farrago of sophisticated dishonesty displayed by her parents makes such a placement entirely unsustainable.

I return to the comparator of sexual abuse. If it were sexual risk that were here being contemplated, I do not believe that any professional would advocate such a placement for a moment. The violation contemplated here is not to the body but it is to the mind. It is every bit as insidious, and I do not say that lightly. It involves harm of similar magnitude and complexion." [para.28-29]

Removing a child from the care of their parents at an interim stage

Even where the interim or final threshold criteria are made out, the court must be satisfied that it is in the best interests of the child to make an order. The threshold for removing a child from the care of their parents pending final determination of care proceedings was authoritatively clarified by Thorpe LJ in [Re LA \(Care: Chronic Neglect\) \[2009\] EWCA Civ 822](#), quoting the case of *Re K and H* [2006] 1 FLR 2043:

"... at an interim stage the removal of children from their parents is not to be sanctioned unless the child's safety requires interim protection." [para. 7]

The President addressed the issue of interim removal in a case where the parents were alleged to have attempted to travel with the children to Syria in his judgment of [Re X \(Children\); Re Y \(Children\) \[2015\] EWHC 2265 \(Fam\)](#). There, Munby P considered that the risk to the children arose primarily from the risk of flight: in *Re X (Children)* the local authority specified that it did not rely on this as a ground for interim removal; in *Re Y (Children)*, Munby P judged the risk of harm from radicalisation pending final determination of the case to be of 'marginal impact'. He considered that by fitting the parents with electronic tags that could monitor their whereabouts, this

would mitigate the risk of flight sufficiently to enable the children to be returned to their parents in the interim. It was necessary for the parents to consent to being tagged.

The subsequent judgment of *Re X (Children); Re Y (Children) (No. 2)* provided guidance on the wording for an electronic tagging order. Munby P provided more details in his risk analysis resulting in the children's return to their parents' care, which he explained as:

"...two linked inquiries: how great is the risk that the parents will, if so minded, be able to flee with the children, and is that a degree of risk which the court is, in all the circumstances, prepared to accept as tolerable?" [para. 86]

"...my considered assessment is that the degree of that risk is very small, indeed, so small that it is counter-balanced by the children's welfare needs to be returned to parental care." [para.89]

However, the issue of interim or final threshold was not addressed in his judgments on these cases. As such, the case was listed for a fact finding hearing, the outcome of which is imminent.

In the case *LB Tower Hamlets v B* [2015] set out above, the court had no hesitation in concluding that B, who had already been radicalised, should be immediately removed from the care of her parents. Hayden J distinguished the issue of interim removal in respect of B from Munby P's decision in X & Y:

"...The risk here though is not primarily or indeed exclusively one of flight; it is of psychological and emotional harm from which tagging cannot protect her. Only a safe and neutral environment free from these powerful influences can, for the time being, secure her welfare interests and accordingly I endorse the Local Authority's proposals in respect of her." [para.32]

However, in respect of the younger children in the home, where there was no evidence that radicalised material had been found on their personal computers and professionals had not yet had an opportunity to assess their welfare needs, the judge reinforced the need to consider the welfare needs of each child as an individual. The issue of interim removal on those children was therefore adjourned, pending an 'intense and comprehensive social work assessment'.

Looking forward

Like all areas of safeguarding, despite the attention given to a select group of high profile cases, there are many more that are being managed through child protection procedures and where interventions are provided through social care, schools or the Prevent or [Channel](#) programmes. This is a sensitive balancing act for local authorities, between taking robust measures to protect children and potentially further alienating not only families at risk, but the vast majority of moderate Muslims who may perceive the intervention of the state to be disproportionate.

Identification of experts to undertake assessments in these cases can be difficult, as

although considerable research has been undertaken into the causes of radicalisation and external grooming of young people via the internet, little is available in respect of extremism as a children's safeguarding issue, or where grooming has taken place within the family. As stated by Hayden J in *Tower Hamlets v M & Ors* [2015] "...the risk assessment of potentially vulnerable children is the professional skill set of the experienced social worker." [para.48]. However, those with expertise in radicalisation are unlikely to be those with expertise in child protection. Nor are risk assessments aimed at identifying those at risk of committing criminal offences likely to fully address risks to children. Multi-disciplinary assessments may therefore be necessary, where the social workers evaluating children's needs and parenting capacity consult with experts in violent extremism to better understand the dynamics of how the radicalisation process has operated with the family, and importantly, options for deradicalisation.

As this area of law continues to develop, it is important to note that few of the leading cases have reached the point of final hearing and further judicial commentary in respect of assessments and final threshold are keenly awaited to guide practice.

28/10/15

¹ [Section 43, Children Act 1989](#)

² Practice Directions made in support of the Family Procedure Rules 2010, [Practice Direction 12D, para. 5.2](#)

³ Ibid, para. 5.5

⁴ Incorporated into UK law by the [Human Rights Act 1998](#)

⁵ Pursuant to s29 of the Counter-Terrorism and Security Act 2015

⁶ *Re Y (A Minor: Wardship)* [2015] EWHC 2099 (Fam)

⁷ *In the matter of M (Children) (No 2)* [2015] EWHC 2933 (Fam)

⁸ [Section 38, Children Act 1989](#)



Radicalisation: Safeguarding & the Family Courts

A view from the perspective of the Local Authority Solicitor

Lee Maitland, Senior Solicitor
Joanna Green, Trainee Solicitor
Legal Services – the London Borough of Tower Hamlets



Why we are here...

“a new facet of child protection” *Tower Hamlets London BC v M & Ors* [2015] EWHC 869 (Fam), Hayden J

“we are here in the realm of unknown unknowns”
Re X and Y [2015] EWHC 2265 (Fam), Munby LJ

Radicalisation: Safeguarding & the Family Courts



Topics for Discussion

1. Coming on to our radar – from Autumn 2014 to present
2. Getting the balance right (trying our best!)
3. Responding to referrals to legal
4. Managing cases outside of the court arena
5. Cases where we have sought /considered seeking the assistance of the court
6. Assessment
7. Reporting Restriction Orders
8. The way forward...

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Coming onto our radar

November 2014 – first care case

TACT offenders

Children at rallies and demonstrations

Resistance to local authority intervention

Radicalisation: Safeguarding & the Family Courts



video



Shamima Begum, 15, Kadiza Sultana, 16, America Abase, 15 left the UK for Syria on 17 February 2015

All attended the Bethnal Green Academy in LBTH

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Getting the balance right

The Government has defined extremism as:
"vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas" Prevent Guidance, 2011

M (Children) [2014] EWHC 667 (Fam)
 Holman J's definition of radicalisation as *"negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism"*

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Getting the balance right

Section 11 Children Act 2004
The local authority's safeguarding duties

Section 26 Counter-Terrorism and Security Act 2015
The local authority duty to have due regard to the need to prevent people from being drawn into terrorism

Article 9 ECHR
Freedom of thought, conscience and religion

Article 8 ECHR
Right to respect to family life

Article 10 ECHR
Freedom of expression

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Getting the balance right

Re A (A Child) [2015] EWFC 11, the 'Darlington case'

"many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or "model" them in their own lives but those children could not be removed for those reasons."

"We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs."

"...Social Services are not guardians of morality. Nor is this court"

Radicalisation: Safeguarding & the Family Courts







The types of cases we have been dealing with

1. Cases outside of the court arena
 - i. Section 47 Investigations
 - ii. Child Protection Plans
2. Children at risk of flight and the use of wardship
3. Care and supervision proceedings
4. Section 43 Child Assessment Order

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Cases dealt with outside the court arena

Section 47 Children Act 1989, the local authority's duty to investigate

(1) Where a local authority—

- (a) are informed that a child who lives, or is found, in their area—
- (i) is the subject of an emergency protection order; or
- (ii) is in police protection;
- (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm,

the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

AB & Anor, R (on the application of) v The London Borough of Haringey [2013] EWHC 416 (Admin)

[Radicalisation: Safeguarding & the Family Courts](#)



Cases dealt with outside the court arena

Child Protection Plans

- The child can be shown to have suffered ill-treatment or impairment of health or development as a result of physical, emotional, or sexual abuse or neglect and professional judgment is that further ill-treatment or impairment are likely; or
- Professional judgment, substantiated by the findings of section 47 enquiries in this individual case or by research evidence, is that the child is likely to suffer ill treatment or the impairment of health or development as a result of physical, emotional, or sexual abuse or neglect.

The CP Plan is designed to prevent the child suffering harm or a recurrence of harm in the future and to promote the child's welfare

[Radicalisation: Safeguarding & the Family Courts](#)



Children at risk of flight

Applications to the High Court – Family Division in Wardship

Section 100, Children Act 1989
 Limitations to the Court's inherent jurisdiction

Practice Direction 12D
 Inherent Jurisdiction (including Wardship) Proceedings

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam)
 A proportionate response to the "very specific nature of the risk contemplated" & a "light touch" intervention in a case where there was a "high risk of very serious harm"

Passport Orders as injunctive measures under the inherent jurisdictions, Hayden J has described as
"as a very minor infringement into their family life in order to prevent the possibility of a very grave ill."

Recovery, Location and Collection Orders Port Alerts

[Radicalisation: Safeguarding & the Family Courts](#)







Children at risk of flight

Hayden J's core principles, *Tower Hamlets v. M and Ors [2015] EWHC 869 (Fam)*

(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.

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Children at risk of flight

Hayden J's core principles, *Tower Hamlets v. M and Ors [2015] EWHC 869 (Fam) cont.*

(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.

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Children at risk of flight

Hayden J's core principles, *Tower Hamlets v. M and Ors [2015] EWHC 869 (Fam) cont.*

(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.

A copy of these principles can be found in your Delegate Packs (as this is a little small) ©

Radicalisation: Safeguarding & the Family Courts




Section 31 proceedings

Section 31(2) threshold
 (2) A court may only make a care order or supervision order if it is satisfied—

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to—
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child's being beyond parental control.

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Section 31 proceedings

Re A (A Child) [2015] EWFC 11, Munby P
"The mere fact, if fact it be, that the father was a member, probably only for a short time, of the [English Defence League] is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly "minimal" aspects of the father's behaviour... Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings."

Tower Hamlets v B [2015] EWHC 2491 (Fam) Hayden J
"I have no hesitation in concluding that B has been subjected to serious emotional harm, and, at the very least, continues to be at risk of such in her parent's care. I can see no way in which her psychological, emotional and intellectual integrity can be protected by her remaining in this household. The farrago of sophisticated dishonesty displayed by her parents makes such a placement entirely unsustainable."

"I return to the comparator of sexual abuse. If it were sexual risk that were here being contemplated, I do not believe that any professional would advocate such a placement for a moment. The violation contemplated here is not to the body but it is to the mind. It is every bit as insidious, and I do not say that lightly. It involves harm of similar magnitude and complexity."

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Section 31 proceedings

Section 1 Children Act 1989, 'the Welfare Checklist'
 Section 1(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question

Threshold for interim removal set out in case law precedents

Re G (Interim Care Order) [2011] EWCA Civ 745, para 22, Sir Nicholas Wall P, summarised the authorities: *"by asking ourselves the question whether the children's safety (using that term to include both psychological and physical elements) requires removal, and whether removal is proportionate in the light of the risks posed by leaving them where they are."*

Radicalisation: Safeguarding & the Family Courts



Section 43 Child Assessment Orders

(1) On the application of a local authority or authorised person for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—

- (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
- (b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
- (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

Radicalisation: Safeguarding & the Family Courts



Assessments

1. Multi-disciplinary assessment
2. Social work assessment
3. Psychiatric risk assessment
4. Academic input

All are subject to the Court's approval.....we do not always get what we want...☺

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Reporting Restriction Orders

Birmingham City Council v Sarfraz Riaz and Others [2014] EWHC 4247 (Fam)

London Borough of Redbridge v SNA [2015] EWHC 2140 (Fam)

JXMX v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96

Radicalisation: Safeguarding & the Family Courts



Reporting Restriction Orders

Applications to the Court on notice or without notice

A key resource and information provider is the Media Lawyer website <http://www.medialawyer.press.net/>

Checklist:

1. The Application – N244 Form
2. Witness statement(s) setting out the need for an order
3. Any legal submissions if so advised by Counsel
4. Draft order
5. Explanatory note

Radicalisation: Safeguarding & the Family Courts



Thank you all for listening

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Joanna.green@towerhamlets.gov.uk

Radicalisation: Safeguarding & the Family Courts

EXAMPLE ASSESSMENT PLAN

Case Number: XXX

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF XXX

BETWEEN:-

THE LONDON BOROUGH OF TOWER HAMLETS

Applicant

-and-

■■■■

1st Respondent

LOCAL AUTHORITY'S ASSESSMENT PLAN

The Context

1. The local authority concerns arise because ■■■■
■■■■
■■■■
■■■■
■■■■
■■■■
■■■■

The Ambit

2. This will be a comprehensive assessment of the family. It will involve working with the ■■■■ parents, the ■■■■ children and the family and professional network.

Purpose of the Assessment.

3. I am the named social worker for the [REDACTED] children and I will be undertaking this assessment. The purpose of the assessment is to ascertain whether there are grounds for the local authority to continue to be concerned about the wellbeing of the children and to respond accordingly in the light of its assessment.

4. The key issues in this case, which revolve around radicalisation, can be summarised as follows;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. The assessment of the children will be informed by the outcome of the assessments of the adults by [REDACTED]. It will aim to determine whether the parents pose a risk to the children, and if so to what extent and what, if any, measures will need to be put in place to ensure their safety and wellbeing.

6. I will befriend the children as a part of my assessment and I will work with the family. The assessment will include an analysis of protective factors and risk factors, and will make recommendations about the long term intervention, if any. Recommendations will be made at the conclusion of the assessment based on all of the information gathered, an analysis of risk factors and protective factors and the analysis of such regarding any future work or intervention deemed necessary by the local authority. The assessment will inform the long term care plan for each of the [REDACTED] children.

Social work principles and values

7. This assessment will be guided by our core social work principles:
 - The welfare and safety of the child is paramount
 - Each family is unique
 - In every family there are strengths and difficulties
 - Every family needs to be respected
 - The religious beliefs, culture, class and ethnicity, abilities and disabilities of families and their members are valued and respected

Methodology.

8. The assessment will be child focused and will involve a mixture of home based observations, play based activities, and one to one sessions with the children and the parents. It will be informed by the assessment of [REDACTED] and the information which the court directed the local authority to obtain from the [REDACTED]
[REDACTED]
9. The local authority will make direct contact with other professionals involved with the families for example schools, health visitors and schools/nursery.

[REDACTED] I aim to assess the family within the context of its social and familial setting from a present and historical perspective. To assist this aspect of the assessment a Family Group Conference will be held with the extended network once the parents have provided the details of those they wish to be invited. The parents were required to put forward names by [REDACTED]
[REDACTED]
11. The assessment will require a number of appointments both with the parents and children. If for any reason I have to cancel a meeting with

the parents then I will aim to provide 48 hours' notice. Likewise there is an expectation of each parent that they too will provide 48 hours' notice if for any reason a scheduled meeting has to be re-arranged.

The assessment proposal will comprise:

12. Week commencing [REDACTED]. This will be a family session inclusive of [REDACTED] and the [REDACTED] children. I anticipate that this will last about 1 hour and will take place in [REDACTED] home. The purpose of this will be for [REDACTED] to introduce me to her [REDACTED] children and for me to explain my role, to answer any questions that any member of the family may have and to observe the children within the home with their Mother.
13. Week commencing [REDACTED]. After the introductory visit (above) I would propose making arrangements with [REDACTED] to visit her and the [REDACTED] younger children at home. This would provide me with an opportunity to develop my relationship with the family, and to observe the [REDACTED] young children in their home environment and in the care of their [REDACTED]. This will provide me with an opportunity to initial discussions with [REDACTED] about the local authority's concerns.
14. Week commencing [REDACTED]. This will be a session undertaken with the [REDACTED] [REDACTED] children. I anticipate that this will last about 1 ½ hours. It will be used to begin the process of exploring the children's wishes and feelings. I plan to work with the [REDACTED] children to compile a family tree, and explore with them their place within the family unit. I will make arrangements for this session to take place in a venue away from the family home. I will be liaising with the [REDACTED] [REDACTED] to see if they have a suitable room. This is a centre which hosts, amongst other things, contact sessions for children so they have excellent child friendly facilities. The [REDACTED] [REDACTED] children, who are only aged [REDACTED] will not be

incorporated into this session. My work with them will revolve more around observations through play and discussion with their parents.

15. Week commencing [REDACTED]. This will be a session undertaken with the [REDACTED] children individually. The proposal is that each child will be seen for approximately 30 - 45 minutes. Again this session will take place away from the family home, hopefully, in the [REDACTED] in which the children will now be familiar. During this session I will develop eco maps with each child, and continue to explore their wishes and feelings. The purpose of the eco map is to gain an understanding of the child's world and who is significant and important within it. It helps if this is done individually as each child is given the space to explore in their own time with me.

16. Week commencing [REDACTED] I will invite [REDACTED] [REDACTED] [REDACTED], to meet me at [REDACTED]. This session is likely to be in the morning at 10 a.m. and last circa 1 ½ hours. This session will be used to further explore, for example, [REDACTED] personal history, his parenting role, his parenting style, his views and beliefs and how this might impact on his parenting and how he envisages contributing to the parenting of the children in the future. [REDACTED]
[REDACTED]
[REDACTED] I will explore with her contribution to their parenting, her relationship with the children and her views about their care and protection.

17. Week commencing [REDACTED]. I will make arrangements to meet with the [REDACTED] older children together. I anticipate that this session will last about 1 hour and will again be arranged in a venue, hopefully [REDACTED], away from the family home. This session will be used to continue to explore their wishes and feelings and to develop any areas that I have identified during the preliminary part of the assessment process which require further exploration.

18. Week commencing [REDACTED]. I will arrange to meet with [REDACTED], on her own, at [REDACTED]. This session is likely to take about 1 ½ hours. I will use this session to answer any questions [REDACTED] may have, to continue to explore her personal history, her parenting style, her views and beliefs and how they impact on her parenting and any other issues that have been identified during the preliminary part of the assessment.

19. Week commencing [REDACTED]. I will arrange to have a final visit with the [REDACTED] older children. These will be individual sessions. I will liaise with [REDACTED] about how best this can be arranged. These sessions will be used to answer any questions the children might have, and to continue to explore their wishes and feelings, and their place within the family unit.

[REDACTED] Week commencing [REDACTED]. I will make arrangements with [REDACTED] to visit him at his home to see him within the context of that environment with his family around him to include [REDACTED]

21. Week commencing [REDACTED]. Any additional sessions which are required to further my understanding of the family functioning and its impact on the children's wellbeing will be scheduled in this week.

22. Week commencing [REDACTED]. After I have received the [REDACTED] (psychological/psychiatric/other assessment). I would like to make arrangements to see each of the parents individually. This will be to consolidate the information I have gathered, to discuss any issues that have arisen once I have seen the psychiatric assessment, and conclude the preparatory work before the assessment and analysis is finalised.

[REDACTED] The assessment will be ready to be filed and served on [REDACTED]

Schedule of proposed appointments

Date	Plan
[REDACTED] [REDACTED]	Meet [REDACTED] and the [REDACTED] children
	Meet with [REDACTED] at home with the [REDACTED] children
[REDACTED] [REDACTED]	Session with [REDACTED] children together
[REDACTED] [REDACTED]	Sessions with [REDACTED] children individually
	Visit [REDACTED] [REDACTED]
[REDACTED] [REDACTED]	Meet [REDACTED] at [REDACTED]
	Meet the [REDACTED] children together
[REDACTED] [REDACTED]	Meet with [REDACTED] – without the children
	Meet with the [REDACTED] children individually
[REDACTED] [REDACTED]	Meet [REDACTED] at his home with his family and [REDACTED]
[REDACTED] [REDACTED]	Any additional sessions required to further my understanding of the family functioning and its impact on the children’s wellbeing will be scheduled in this week.
[REDACTED] [REDACTED]	Arrange to meet [REDACTED]
	Arrange to meet [REDACTED]
	Arrange to visit [REDACTED]

EXAMPLE REPORTING RESTRICTION APPLICATION

Form N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

In the HIGH COURT - FAMILY DIVISION	
Claim no.	Case no. XXX
Fee Account no.	
Warrant no. (if applicable)	
Claimant's name (including ref.)	Applicant - the London Borough of Tower Hamlets
Defendant's name (including ref.)	Respondents - XXX, XXX & XXX (a child)
Date	07/08/2015

1. What is your name or, if you are a legal representative, the name of your firm?

London Borough of Tower Hamlets - Legal Services

2. Are you a Claimant Defendant Legal Representative
 Other (please specify) _____

If you are a legal representative whom do you represent?

the Local Authority

3. What order are you asking the court to make and why?

The local authority seek a reporting restriction order

4. Have you attached a draft of the order you are applying for? Yes No
5. How do you want to have this application dealt with? at a hearing without a hearing
 at a telephone hearing
6. How long do you think the hearing will last? Hours Minutes
Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period

Hearing floating XXX

8. What level of Judge does your hearing need?

High Court Judge

9. Who should be served with this application?

The Press

- 9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

10. What information will you be relying on, in support of your application?

- the attached witness statement
 the statement of case
 the evidence set out in the box below

If necessary, please continue on a separate sheet.

The local authority seek to rely on:

1. the witness statement attached to this application
2. the submission prepared by XXX, XXX
3. the draft order attached
4. the explanatory note

Statement of Truth

I believe that the facts stated in this section (and any continuation sheets) are true.

Signed _____ Dated _____
Applicant's legal representative

Full name XXX

Name of applicant's legal representative's firm London Borough of Tower Hamlets - Legal Services

Position or office held XXX
(if signing on behalf of firm or company)

11. Signature and address details

Signed _____ Dated _____
Applicant's legal representative

Position or office held XXX
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

London Borough of Tower Hamlets Legal Services 6th Floor Mulberry Place 5 Clove Crescent London	If applicable
Postcode <input type="text" value="E"/> <input type="text" value="1"/> <input type="text" value="4"/> <input type="text" value="2"/> <input type="text" value="B"/> <input type="text" value="G"/>	Phone no. 0207 XXX
	Fax no. 0207 XXX
	DX no. 42656 Isle of Dogs
	Ref no.
E-mail address <u>XXX@towerhamlets.gov.uk</u>	

Statement from the Social Work Team

Case No: [REDACTED]

IN THE HIGH COURT

FAMILY DIVISION

AND IN THE MATTER OF [REDACTED]

BETWEEN:

THE LONDON BOROUGH OF TOWER HAMLETS

Applicant

-and-

[REDACTED]

First Respondent

-and-

[REDACTED]

(By [REDACTED] Guardian [REDACTED])

Second Respondent

LOCAL AUTHORITY STATEMENT IN SUPPORT OF A REPORTING RESTRICTITON

1. I, [REDACTED], Children's Social Care, at the London Borough of Tower Hamlets, Mulberry Place, 5 Clove Crescent, London E14 2BG make this statement believing the contents to be true and knowing that it may be placed before the court.
2. Proceedings under the inherent jurisdiction were issued by the local authority on [REDACTED]; [REDACTED] was made a ward of court on this date.
3. The local authority has concerns that [REDACTED] is at risk of leaving the jurisdiction and fleeing to a conflict-zone. The risk in relation to [REDACTED] is not assessed as high. That said the consequences and adverse impact on [REDACTED] welfare if [REDACTED] were to leave the jurisdiction and travel to a conflict zone would be extremely high.
4. [REDACTED]
[REDACTED]; the wardship framework entered into in [REDACTED] was simply related to risk management and led to further work being undertaken with [REDACTED] and [REDACTED] family.

Draft Reporting Restriction Order

Case no: [REDACTED]

**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
BEFORE [REDACTED] IN PRIVATE**

IN THE MATTER OF THE COURT'S INHERENT JURISDICTION

BETWEEN

THE LONDON BOROUGH OF TOWER HAMLETS

Applicant

-and-

[REDACTED]

1st Respondent

-and-

[REDACTED]

(By her Guardian [REDACTED])

2nd Respondent

REPORTING RESTRICTION ORDER

IMPORTANT

If you disobey this order you may be found guilty of contempt of court and may be sent to prison or be fined or have your assets seized. You should read the order carefully and are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge the order.

EXPLANATION

1. On _____ the Court considered an application for a reporting restriction order.
2. The following parties were represented before the Court:
 - i. The London Borough of Tower Hamlets – represented by [REDACTED]
 - ii. [REDACTED] – represented by [REDACTED]
 - iii. [REDACTED] – represented by [REDACTED]
 - iv. [REDACTED] (a child) – represented by [REDACTED]

3. The Court read the following documents:
 - i. The application form N244 for a reporting restriction
 - ii. The witness statement of [REDACTED]
 - iii. The submissions filed by the Applicant
 - iv. The explanatory note
4. The Court granted permission to the Applicant to apply for the exercise of the Court's inherent jurisdiction.

ORDER

1. Subject to any different order made in the meantime, this order shall have effect until 7th September 2017, the 18th birthday of the child whose details are set out in Schedule 1 to this order ("the Child").
2. This order binds all persons and all companies (whether acting by their directors, employees or agents or in any other way) who know that the order has been made.
3. This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, sound or television broadcast or cable or satellite programme service of:
 - a. The name and address of
 - i. the Child;
 - ii. the Child's parents ("the parents"), whose details are set out in Schedule 2 to this order;
 - iii. any individual having day-to-day care of or medical responsibility for the Child ("a carer"), whose details are set out in Schedule 3 to this Order;
 - b. any picture being or including a picture of either the Child, a carer or an establishment;
 - c. any other particulars or information relating to the Child;

IF, BUT ONLY IF, such publication is likely to lead to the identification of the [REDACTED]

4. No publication of the text or a summary of this order (except for service of the order under paragraph 7 below) shall include any of the matters referred to in paragraph 3 above.
5. This Order prohibits any person from seeking any information relating to the Child or the parents or a carer from any of the following:
 - a. the Child;
 - b. the parents;
 - c. a carer;
6. Nothing in this Order shall prevent any person from:
 - a. publishing information relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication.

- b. seeking or publishing information which is not restricted by Paragraph 3 above.
 - c. inquiring whether a person or place falls within paragraph 3(a) above.
 - d. seeking information relating to the Child while acting in a manner authorised by statute or by any court in England and Wales.
 - e. seeking information from the responsible solicitor acting for any of the parties or any appointed press officer, whose details are set out in Schedule 4 to this order.
 - f. seeking or receiving information from anyone who before the making of this order had previously approached that person with the purpose of volunteering information (but this paragraph will not make lawful the provision or receipt of private information which would otherwise be unlawful).
 - g. publishing information which before the service on that person of this order was already in the public domain in England and Wales as a result of publication by another person in any newspaper, magazine, sound or television broadcast or cable or satellite programme service, or on the internet website of a media organisation operating within England and Wales.
7. Copies of this Order endorsed with a notice warning of the consequences of disobedience shall be served by the Applicant (and may be served by any other party to the proceedings)
- a. by service on such newspaper and sound or television broadcasting or cable or satellite or programme services as they think fit, by fax or first class post addressed to the editor (in the case of a newspaper) or senior news editor (in the case of a broadcasting or cable or satellite programme service) or website administrator (in the case of an internet website) and/or to their respective legal departments; and/or
 - b. on such other persons as the parties may think fit, by personal service.
8. The parties and any person affected by any of the restrictions in paragraphs 3-5 above may make application to vary or discharge it to a Judge of the High Court on not less than 48 hours' notice to the parties.

SCHEDULE 1

Child: [REDACTED]

Born: [REDACTED]

Address:

SCHEDULE 2

Mother: [REDACTED]

Born:

Address:

Father: [REDACTED]

Born:

Address:

SCHEDULE 3

N/A

SCHEDULE 4

Child's solicitor: [REDACTED]

Tel no: [REDACTED]

Date of Order: _____

Draft Explanatory Note

IN THE HIGH COURT OF JUSTICE

CASE NUMBER: [REDACTED]

FAMILY DIVISION

IN THE MATTER OF THE SUPERIOR COURT ACT 1981

BEFORE [REDACTED]

BETWEEN:

LONDON BOROUGH OF TOWER HAMLETS

Applicant

-and-

OTHERS

Respondents

EXPLANATORY NOTE

1. The children are Wards of Court at present and other injunctive orders are in force. The proceedings are listed for further hearing (possibly final hearing) across the [REDACTED] before [REDACTED]. The local authority seeks the continuation of the wardship and final injunctive orders.
2. The wardship proceedings were issued because of a perceived risk, not assessed as high, that the children may take steps to leave the jurisdiction and travel to a conflict zone.
3. This case has been reported [REDACTED]
[REDACTED]
[REDACTED]
4. The LA is making an application for a lifelong reporting restriction. The hearings will be listed on the [REDACTED]. The aim of the application is to protect each of the [REDACTED] children's right to confidentiality in respect of these proceedings.

Radicalisation: Safeguarding & the Family Courts

13th November 2015

Public Law Update:
Radicalisation Cases in the Family
Courts

Jo Delahunty QC

Chris Barnes

4PB



Public Law Update: Radicalisation Cases in the Family Courts

Introduction

1. Before the early months of 2015 the impact of radicalisation and extremism were unfamiliar issues in the family courts. Other agencies – both Police and state – have been grappling with the issues which arise as they impact on national security and are addressed through the criminal courts.
2. By way of definition we are assisted the view of Holman J in ***Re M (Children) [2014] EWHC 667 (Fam)*** in a case arising in a private-law context where an allegation that the father was “*negatively influencing [the eldest son] with radical fundamentalist thought, which is associated with terrorism*” led the local authority (who had prepared a positive section 37 report previously) to issue proceedings:¹

"Radicalising" is a vague and non-specific word which different people may use to mean different things. There is quite a lot of material in this case to the effect that the elder of these children are committed Muslims who like to attend, and do attend, at a mosque and wish to display religious observance. This nation and our culture are tolerant of religious diversity, and there can be no objection whatsoever to any child being exposed, often quite intensively, to the religious practices and observance of the child's parent or parents. If and insofar as what is meant in this case by "radicalising" means no more than that a set of Muslim beliefs and practices is being strongly instilled in these children, that cannot be regarded as in any way objectionable or inappropriate. On the other hand, if by "radicalising" is meant, as appears in paragraph 12 of the draft addendum report that I have already quoted, "negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism" then clearly that is a very different matter altogether. If any child is being indoctrinated or infected with thoughts involving the possibility of "terrorism" or, indeed, hatred for their native country, which is England, or another religion, such as Christianity which is the religion of their grandparents and now, again, their mother, then that is potentially very abusive indeed and of the utmost gravity.

3. This presentation will consider the guidance issued in October 2015 by the President of the Family Division, review the relevant case law and examine the practicalities arising in proceedings where radicalisation are an issue.

¹ Paragraph 23

President's Guidance

4. Once uncommon cases involving allegations of radicalisation are coming before the Family Court on an almost weekly basis. An early view on this development was provided by Hayden J:²

The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family. Here, the type of harm I have been asked to evaluate is a different facet of vulnerability for children than that which the courts have had to deal with in the past.

5. The increasing frequency with which such cases arose led to the President of the Family Division, Sir James Munby, issuing a guidance document “Radicalisation Cases in the Family Court” on 8th October 2015:³

The Recent months have seen increasing numbers of children cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or are at risk of being involved in terrorist activities either in this country or abroad.

6. Interesting to note the different “categories” which emerge which are a helpful indication of the types of case which have been before the courts:
- a. Children planning, attempting or being groomed to travel to Syria;
 - b. Parents planning or attempting to travel to Syria with their children;
 - c. Children at risk of being radicalised (within the home or by outside influences); and
 - d. Children at risk of being involved in terrorist activities.

7. Most of the cases have been brought under the inherent jurisdiction and have therefore, necessarily, been in the High Court but others have commenced at

² ***London Borough of Tower Hamlets v M & Others [2015] EWHC 869 (Fam)*** paragraph 57

³ <https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf>

public – or private – cases commenced in the Family Court. The Guidance is clear on the issue of allocation:⁴

*Given the complexities of these cases, I have decided that, for the time being at least, **all** cases falling within the description in paragraph 1 above are to be heard by High Court Judges of the Family Division. For the purpose of this Guidance the expression High Court Judge of the Family Division does not include a judge or other person authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981.⁵*

8. Some children may be made subject to Police Protection where the usual considerations apply:

- a. For a maximum of 72-hours;
- b. Requires “reasonable cause to believe the child is likely to suffer significant harm”;
- c. Responsibilities set out in sections 46(3) and (4) Children Act 1989.

9. Otherwise the options are set out at paragraph 3 of the Guidance:

Only a local authority can start care proceedings (see section 31(1) of the Children Act 1989 – the police powers are set out in section 46). However, any person with a proper interest in the welfare of a child can start proceedings under the inherent jurisdiction or apply to make a child a ward of court. Usually, in cases falling within the description in paragraph 1 above, it will be the local authority which starts proceedings under the inherent jurisdiction or applies to make a child a ward of court, and the court would not expect the police (who have other priorities and responsibilities) to do so. There is, however, no reason why in a case where it seems to the police to be necessary to do so, the police should not start such proceedings for the purposes, for example, of making a child a ward of court, obtaining an injunction to prevent the child travelling abroad, obtaining a passport order, or obtaining a Tipstaff location or collection order.

10. Though “a different facet of vulnerability” for the family courts long established principles apply:

- a. *“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*

⁴ Paragraph 4

⁵ Paragraph 6 of the guidance provides that in *exceptional* circumstances cases may be heard for the DFJ or a *judge* authorised to sit as a High Court Judge with the permission of the President of the Family Division Liaison Judge

*contribution of the other, is most likely to achieve good and informed decision making”;*⁶

- b. *“What, however, is clear is that the conventional safeguarding principles will still afford the best protection. Once again, this court finds it necessary to reiterate that only open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter agency cooperation is going to provide the kind of protection that I am satisfied that the children subject to these applications truly require”;*⁷
- c. *“This is a two-way process. The court can expect to continue to receive the assistance it has hitherto been given in these cases by the police and by other agencies. But there must be reciprocity”.*⁸

11. Critically important for all practitioners to be aware of the fundamental protections afforded by Articles 6 and 8:

- a. Crucial that the process affords protection to the Article 6 rights of all parties;
- b. On Article 8 note the President’s observations in ***Re A (A Child) [2015] EWFC 11*** that “[t]he mere fact, if fact it be, that the father was a member, probably only for a short time, of the EDL is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly “immoral” aspects of the father’s behaviour. I refer again to what was said in *In re B*, both by Lord Wilson of Culworth JSC and by Baroness Hale of Richmond JSC. Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings

Case Law Review

12. The President’s guidance sets out a helpful list of the published decisions in the area:

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam) (17th March 2015)

⁶ ***London Borough of Tower Hamlets v M & Others [2015]*** paragraph 18(ix)

⁷ ***London Borough of Tower Hamlets v M & Others [2015]*** paragraph 58

⁸ ***Radicalisation Cases in the Family Court***, guidance, paragraph 11

13. Decision of Hayden J on the first occasion on which wardship was utilised to address the risk of radicalisation. In this instance to a young man from an extraordinary family with two brothers killed in Syria, another injured and an uncle previously detained in Guantanamo Bay Detention Centre:

- a. No foolproof way to prevent travel but the most effective is to remove the passport;
- b. A ward may not be removed from England and Wales without the Court's permission;
- c. Balance in favour of protecting Y "*from himself*".

London Borough of Tower Hamlets v M & Others [2015] EWHC 869 (Fam) (27th March 2015)

14. Judgment arising from *ex parte* applications where the Judge permitted the naming of the school attended by a number of the children making the children wards and making a number of passport orders:

- a. Nine-point guidance provided for cases concerning radicalisation;
- b. Need for "*searching*", "*sceptical*" and "*thorough*" risk assessment in respect of "*potentially vulnerable children*".

Re Y (A Minor: Wardship) [2015] EWHC 2099 (Fam) (23rd April 2015)

15. The return of the earlier application regarding Y which led to the continuation of "*light touch intervention*":

- a. Wardship noted to have "*a flexibility to it that enables it to make interventions into the lives of children which can, when required, have a lightness of touch, and equally when required can have very draconian reach indeed, for after all it removes parental responsibility from either parent or local authority and places it in the hands of the High Court judge*";
- b. Assessment of risk: "*Risk does not exist as a concept in a vacuum. Sometimes a small risk of some very serious consequence is an unacceptable risk. Sometimes by contrast a significant risk of something with really rather minor consequences may be acceptable. Here it seems to me is the classic case of a high risk of very*

serious harm. It is important not to lose sight of the fact that two brothers have already died in this war”;

Re M (Children) [2015] EWHC 1433 (Fam) (20th May 2015)

16. The President’s decision to ward 4 young children of a family where the parents alleged attempt to travel to Syria had received significant media attention:

- a. Recognition of the *parens patriae* duty as a jurisdictional basis where the children were British citizens;
- b. Use of anti-tipping-off order as against *contra mundum* Reporting Restriction Order (with helpful summary of the wording of a Model Order) but exclusion of media was *not* required;
- c. Helpful precedent for an order requiring liaison with authorities in another state;
- d. Highlights the availability of swift consideration even out-of-hours.

Re Z [2015] EWHC 2350 (4th June 2015)

17. The granting of an *ex parte* injunction in circumstances where a girl had made plans or attempted to travel on two occasions and where present concerns included travel to Syria or forced marriage:

- a. Highlights challenge on working with radicalised teenager where parents and child not consistent, open and honest;
- b. Police would have had standing to seek orders;
- c. Transcript of hearing directed with redactions for security reasons.

Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam) (30th July 2015)

18. Two linked cases before the President where the “*fundamental issue in each case relates to the degree of risk of the parents seeking to remove the children and take them to Syria*”:

- a. Border controls are not foolproof with two principle methods of avoiding them to use a false passport or a clandestine departure;
- b. Availability of radio-frequency monitoring or GPS monitoring as alternative systems (and reference to earlier tagging guidance);

- c. Despite opposition of local authorities and guardians, and despite “some” risk of successful flight the package of restriction was sufficient to allow the children to be returned home.

Re X (Children); Re Y (Children) (No. 2) [2015] EWHC 2358 (Fam) (4th August 2015)

19. Addendum judgment considering the use of tagging to address risk of flight:

- a. The President considered GPS tagging to provide a greater (and in these cases necessary) amelioration of the risk;
- b. The use of GPS tagging had not been foreseen in the drafting of the protocol in place between HMCTS and NOMS to allow tagging in family cases;
- c. The MoJ agreed to facilitate – and meet the costs – of GPS tagging in the specific case without prejudice to its position in any other cases.

London Borough of Tower Hamlets v B [2015] EWHC 2491 (21st August 2015)

20. Judgment concerning the interim removal of a girl of 16 who had previously attempted to travel to Syria and been made a ward in circumstances where radicalising material was subsequently reported by the Police to have been found on the devices of family members:

- a. Difficulties of effective protective action were access to a family home may be restricted;
- b. Comparator to sexual abuse;
- c. Tagging not capable of addressing risk of psychological and emotional harm from exposure to radicalising material;
- d. Issues of honest, open working where material exists relating to the concealment of extremist views.

Re M (Children) (No. 2) [2015] EWHC 2933 (Fam) (20th October 2015)

21. Final disposal in the case of Re M where children had been returned from an alleged attempt by their parents to travel to Syria:

- a. The parents were reported to have cooperated with no immediate concerns expressed about the welfare of the children;

- b. The intervention of the state had acted as a wake-up call and there was no reason to remove the children.

Practicalities

22. Focus on three of the practical issues that may be encountered in bringing proceedings in a case in this area:

- a. Hayden J's 9-point guidance;
- b. Police cooperation and disclosure;
- c. Press, reporting restrictions and publicity;
- d. Tagging.

a. Hayden J's 9-point guidance

23. In dealing with an urgent, without notice application, Hayden J provided useful guidance which should be borne in mind when issuing proceedings:

- 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.*

b. Police cooperation and disclosure

24. Given the nature of the issues involved close coordination with Police – and possibly security services – is likely to be critical. It is for this reason that it features so prominently in the President’s guidance.

The police and other agencies recognise the point made by Hayden J 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.” The police and other agencies also recognise the point made by Bodey J that “it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities ... or other public bodies.” But subject to those qualifications, it is important that the family justice system works together in cooperation with the criminal justice system to achieve the proper administration of justice in both jurisdictions, for the interests of the child are not the sole consideration. So the family courts should extend all proper assistance to those involved in the criminal justice system, for example, by disclosing materials from the family court proceedings into the criminal process.⁹

25. Disclosure is likely to be of considerable importance but also an area which requires significant care. As the President’s guidance notes:

- a. Much of the information gathered by the police and other agencies will not be relevant to the issues before the court;
- b. 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;
- c. There is the need to avoid inappropriately wide or inadequately defined requests for disclosure of information or documents by the police or other agencies;
- d. 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;

⁹ *Ibid* paragraph 12

- e. The need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court⁵ by the police or other agencies;
- f. The need to consider any PII issues and whether there is a *need* for a closed hearing or use of a special advocate;
- g. 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;
- h. 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;
- i. The assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert counsel.

26. This is an area where dialogue is of assistance to all parties and to the court to allow orders for disclosure to be precisely targeted or, where possible, to proceed by consent without the need to PII hearings.

27. Establishing a basis on which information is shared between the Police and local authority is also critical to ensuring child protection can take place effectively and with proper regard for the need for fairness in the process.

c. Press, reporting restrictions and publicity

28. The nature of the subject matter of proceedings and the fact that they will – almost always – be heard in the High Court means that the issues of reporting and publicity are likely to feature prominently. There has been considerable media interest in a number of the reported proceedings and additional hearings and cases where the press have attended and been permitted to report.

29. Not inconceivable that there may be an interest in seeking publicity but in general terms the focus is likely to be on restricting unhelpful publicity or interference in the private lives of the children and families involved in proceedings. As always there is a balance in that seeking to put in place restrictions (given the need to put the press on notice and serve them with orders) can often lead to increased press interest and scrutiny. There can be scope for dialogue to produce results without the need for contested applications.

30. Many Judges of the High Court have shown considerable willingness to have the press present and to permit reporting given the novelty of the issue and the need for public scrutiny. Tends to be a high degree of confidence in the members of the accredited press who are regularly in attendance at the RCJ.

31. Context of Article 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

32. Also important to note **section 12(4) Human Rights Act 1998**:

The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become available to the public, or (ii) it is, or would be, in the public interest for the material to be published, [and] (b) any relevant privacy code.

33. Keehan J provided a helpful review of Reporting Restriction Orders in ***Birmingham City Council v Sarfraz Riaz and Others* [2015] EWHC 1857 (Fam)** and noted the following:

10. I was referred to the case of JXMX v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96 by Ms Meyer QC, on behalf of the local authority, and by Mr Forbes, on behalf of AB. In that case the Court of Appeal said that it was appropriate to make an anonymity order in respect of the children and protected parties who were parties to civil proceedings for the purposes of settlement approval hearings held in public.

11. Giving the judgment of the court, Moore-Bick LJ said:

*"17. The identities of the parties are an integral part of civil proceedings and the principle of open justice requires that they be available to anyone who may wish to attend the proceedings or who wishes to provide or receive a report of them. Inevitably, therefore, any order which prevents or restricts publication of a party's name or other information which may enable him to be identified involves a derogation from the principle of open justice and the right to freedom of expression. Whenever the court is asked to make an order of that kind, therefore, it is necessary to consider carefully whether a derogation of any kind is strictly necessary, and if so what is the minimum required for that purpose. The approach is the same whether the question be viewed through the lens of the common law or that of the European Convention on Human Rights, in particular articles 6, 8 and 10. As to the latter, see **In re Guardian News and Media Ltd** [2010] UKSC 1, [2010] 2 A.C. 697 at paragraphs 43-52. In **JIH v News Group Newspapers Ltd** [2011] EWCA Civ 42, [2011] 1 W.L.R. 1645 this court provided guidance on the manner in which applications for injunctions to prevent publication of private information should be approached. The case did not concern an application for approval of a settlement involving a child or protected party, but the making of an anonymity order in the context of an attempt to prevent publication of personal information. To that extent there are obvious differences between that case and the present, but in paragraph 21 of his judgment Lord Neuberger M.R. identified the following principles which are of general application and therefore of direct relevance to applications of the present kind:*

(i) an order for anonymity should not be made simply because the parties consent to it;

(ii) the court should consider carefully whether some restriction on publication is necessary at all, and, if it is, whether adequate protection can be provided by a less extensive order than that which is sought;

(iii) if the application is made on the basis that publication would infringe the rights of the party himself or members of his family under article 8 of the Convention, it must consider whether there is sufficient general, public interest in publishing a report of the proceedings which identifies the party concerned to justify any resulting curtailment of his right and his family's right to respect for their private and family life."

12. He continued:

"26. In paragraph 13 of his judgment Tugendhat J. observed that advocates commonly address the question as simply one of balancing the demands of privacy and freedom of expression. He rejected that analysis, however, holding that the true question for decision is whether it is necessary for the court to grant a derogation from open justice and thus from the rights of the public at large. In our view he was right to do so and he was also right to hold that the absence of any objection from the defendant or the media does not relieve the court of the duty to consider whether a derogation from the principle of open justice is necessary.

34. The judgment of ***Riaz (No. 2)*** should be treated with care as much in the arena of lifelong reporting restrictions as ***Riaz (No.1)***¹⁰ is in relation to the use of the inherent jurisdiction to address issues of child sexual exploitation.¹¹ Note reporting from August:

*"[Mr Justice] Hayden ordered that the identity of the girl must remain secret at least until she is 18, so that she can finish her childhood and complete her education in peace. He refused to grant her a life-long anonymity order, but said the issue could be reconsidered before she turned 18."*¹²

35. In an appropriate case an order to prevent tipping off (by restricting the publication of even an anonymised story) is available. In every instance an application for reporting restriction is likely to be given detailed consideration even where all parties consent to (or indeed actively support) the making of an order.

d. Tagging

36. Though being used in a different context tagging, to prevent the removal of a child from the jurisdiction, is not new. In both ***Re C (Abduction: interim Directions: Accommodation by a LA)*** [2003] EWHC 3065 (Fam) and ***Re A (Family Proceedings: Electronic tagging)*** [2009] EWHC 710 (Fam) tagging was used pursuant to **section 5 of Child Abduction and Custody Act 1985** to allow reunification with a parent where a threat of abduction was alleged to exist.

¹⁰ ***Birmingham City Council v Sarfraz Riaz and Others*** [2014] EWHC 4247 (Fam)

¹¹ See Hayden J's refusal in ***London Borough of Redbridge v SNA*** [2015] EWHC 2140 (Fam)

¹² <http://www.theguardian.com/uk-news/2015/aug/18/bethnal-green-academy-pupils-passport-held-risk-travelling-syria>

37. Guidance was issued on Tagging or Electronic Monitoring in the Family Courts in 2010 and was reissued in 2015. The reissued guidance is quoted by the President in ***Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam) (30th July 2015)***. Notably this guidance is only concerned with Radio Frequency tagging and curfew monitoring.
38. The Ministry of Justice sought to make submissions having received notice that the President was considering the need for GPS tagging. The MoJ's submissions were premised on the basis that the court cannot order it to provide tagging and identifies the problem in providing it because the MoJ and National Offender Management Service (NOMS) had not foreseen the expansion of tagging in family cases from Radio Frequency tagging.
39. The difference between the two systems is significant: Radio Frequency tagging is designed to monitor compliance against a curfew order. The equipment will monitor whether a person is in a specified place or not between curfew hours defined in the order. GPS monitoring will do all of this but will also monitor a subject's movements and whereabouts whilst outside the residence. It is possible to set "Exclusion" and "Inclusion" zones such that we can generate alerts if they enter a forbidden area or leave an area where they are ordered to remain.
40. The difference in distribution is even starker. There are presently approximately 1400 Radio Frequency devices in use against just 16 GPS tags.
41. The jurisdiction of the Court to direct GPS tagging is, as yet, undetermined. Similarly, though the MoJ has consented to meet the costs in specific instances it has done so without conceding the general principle. It should be noted that the MoJ holds an exclusive contract with two providers of GPS tags, one of which is EMS (Per Capita). Those providers cannot act with an order from the Courts *and* the direction of the MoJ. They also require a

protocol to be agreed for GPS with details of any inclusion and exclusion requirements and the notification details in the event of any violations.

42. On the basis of the existing guidance it is strongly arguable that the Court has the jurisdiction to order Radio Frequency tagging. That guidance does not operate to *exclude* GPS tagging and even if it was not contemplated at the time the guidance was drafted the MoJ's case on the lack of a jurisdictional basis for ordering GPS tagging is yet to be determined.
43. Whilst thus far the MoJ has (on a case-by-case basis) met the costs of GPS tagging there remains a possibility that a local authority would be required to meet the costs of provision of the system as a consequence of their obligation to take steps to ensure, where possible, that a child remains with their parents.
44. In any event, where tagging is contemplated there is a need to obtain consent from the parent, or parents, being made subject to the order and to give early notice to the MoJ.
45. A Protocol will be required to ensure an appropriate response to non-compliance events:
 - a. The Police would be the first point of contact in the event of a non-compliance event – 24-hour contact details are required for the local Police force to allow them to provide an immediate response where necessary;
 - b. The tag provider will inform the designated Police contact of the details of any non-compliance and it is then for the Police to decide on the appropriate response;
 - c. A designated contact is required for the "*responsible agency*" (in this instance the local authority) to receive non-compliance reports from the monitoring company in order to take decisions regarding the response to the breach (i.e. no action/return to court). The contact has tended to be the local authority solicitor;

- d. A non-compliance event could relate to (i) tampering or attempting to tamper with the tag, (ii) failure to abide by curfew requirements or (iii) entry into an exclusion zone;
- e. Protocols can be updated at any time to respond to emerging requirements and are bespoke for each case. The information required includes photographs of the subjects, details of special requirements (i.e. interpreters), a list of significant addresses and maps marked with inclusion and exclusion zones;
- f. The precise terms of the Protocol are confidential from the subjects to the order and the provider will create a response grid for each alert type based on the precise terms agreed.

Conclusion

46. As with any novel area where the risk being considered is potentially very grave great care will be required. This is made more challenging where complex inter-agency liaison is very likely and where – on occasion – situations may demand an urgent approach.
47. Paying close regard to the guidance provided by the President and the developing case law is key but cannot substitute for proper risk assessment and management and clear open communication and information sharing.

Jo Delahunty QC
Chris Barnes
4 Paper Buildings

Appendices

1. ***Radicalisation Cases in the Family Courts***, guidance issued on 8th October 2015.
2. Sample tagging protocol.
3. Tag charging information.
4. Speaker profiles: Jo Delahunty QC and Chris Barnes



PRESIDENT OF THE
FAMILY DIVISION

RADICALISATION CASES IN THE FAMILY COURTS

Guidance issued by Sir James Munby President of the Family Division
on 8 October 2015

1 Recent months have seen increasing numbers of children cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or are at risk of being involved in terrorist activities either in this country or abroad.

2 Most of these cases have been brought under the inherent jurisdiction, where the children have been made wards of court.¹ Such cases are necessarily in the High Court. Others have been care cases commenced in the Family Court. Some cases have started out under the inherent jurisdiction but then become care cases.

3 Only a local authority can start care proceedings (see section 31(1) of the Children Act 1989 – the police powers are set out in section 46). However, *any* person with a proper interest in the welfare of a child can start proceedings under the inherent jurisdiction or apply to make a child a ward of court.² Usually, in cases falling within the description in paragraph 1 above, it will be the local authority which starts proceedings under the inherent jurisdiction or applies to make a child a ward of court, and the court would not expect the police (who have other priorities and responsibilities) to do so. There is, however, no reason why in a case where it seems to the police to be necessary to do so, the police should not start such proceedings for the purposes, for example, of making a child a ward of court, obtaining an injunction to prevent the child travelling abroad, obtaining a passport order, or obtaining a Tipstaff location or collection order.

4 Given the complexities of these cases, I have decided that, for the time being at least, *all* cases falling within the description in paragraph 1 above are to be heard by High Court Judges of the Family Division. For the purpose of this Guidance the expression High Court Judge of the Family Division does *not* include a judge or other person authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981.

5 Where a case falling within the description in paragraph 1 above is issued in the Family Court, or where a case issued in the Family Court becomes a case falling within the description in paragraph 1 above, then:

- (a) the Designated Family Judge must be notified immediately;

¹ For the jurisdiction to make a child who is a British subject a ward of court even if the child is abroad, see *Re M (Children)* [2015] EWHC 1433 (Fam) and *Re B (A Child) (Habitual Residence) (Inherent Jurisdiction)* [2015] EWCA Civ 886.

² *In re D (A Minor) (Wardship: Sterilisation)* [1976] Fam 185.

- (b) the Designated Family Judge must immediately notify the Family Division Liaison Judge (who should liaise with the President of the Family Division); and
- (c) urgent steps must be taken, in consultation with the Family Division Liaison Judge, to allocate the case to a High Court Judge of the Family Division.

6 In exceptional circumstances a case falling within the description in paragraph 1 above may be heard by a Designated Family Judge, or a *judge* authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981, but *only if* this has previously been authorised *in relation to that particular case* by the President of the Family Division or the Family Division Liaison Judge. Such permission will *not* normally be given in any case:

- (a) raising PII issues;
- (b) requiring a closed hearing or use of a special advocate; or
- (c) where electronic tagging is proposed.³

7 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;⁴
- (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 court⁵ by the police or other agencies;⁶

³ For electronic tagging in family cases see *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam).

⁴ For the latest authority on this see the decision of the Court of Appeal in *Kiani v The Secretary of State for the Home Department* [2015] EWCA Civ 776.

⁵ In especially sensitive cases it may be appropriate for such materials to be delivered direct to the judge (via the judge’s clerk or otherwise as the judge may direct) rather than to the court office.

- (g) the need to consider any PII issues and whether there is a *need* for a closed hearing or use of a special advocate;⁷
- (h) the need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings⁸ or (ii) any transcripts;⁹
- (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;¹⁰
- (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.

8 Judges hearing cases falling within the description in paragraph 1 above will also wish to consider whether in any particular case there is a *need* (i) to exclude the media, or (ii) to make a reporting restriction order, or (iii) to make an ‘anti-tipping-off’ order (for instance when making an order for disclosure against a third party).¹¹ The media should be excluded only as a last resort and if there is reason to believe that the situation cannot be adequately protected by a reporting restriction order or ‘anti-tipping-off’ order.¹²

9 Advocates appearing in cases falling within the description in paragraph 1 above need to be alert to and be prepared to argue the issues that may arise, including those referred to in paragraphs 7 and 8 above.

10 I draw attention to what Hayden J has said¹³ about “The importance of coordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved” and the need for “open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter-agency

⁶ For example, by placing such materials in a sealed envelope clearly marked on the outside by such words as “In accordance with an order made by Mr(s) Justice [name] on [date] THIS ENVELOPE MUST NOT BE OPENED BY ANYONE unless authorised by a written order from Mr(s) Justice [name] or the President of the Family Division” which is kept in a safe with limited access. In especially sensitive cases, the materials (and all copies) should be returned to the police or other agency subject to an undertaking to return them if so ordered by the trial judge or the President of the Family Division.

⁷ As to which see *Re T (Wardship: Impact of Police Intelligence)* [2009] EWHC 2440 (Fam), [2010] 1 FLR 1048, and *A Chief Constable v YK* [2010] EWHC 2438 (Fam), [2011] 1 FLR 1493.

⁸ Judges will wish to be alert to the need to consider special arrangements for recording the proceedings, especially where there is a ‘master’ recording system covering all the courts in a building.

⁹ In especially sensitive cases the judge may think it appropriate to direct that the transcript is to be prepared not by the usual transcribers but only by a special security-cleared transcriber.

¹⁰ Examples of forms of order designed to guard against this can be found in the orders set out in the judgments in *Re M (Children)* [2015] EWHC 1433 (Fam) (see the second recital to the order set out in para 22) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam) (see the sixth recital to the order set out in para 13). It may be appropriate to make an order providing, for the avoidance of doubt, that the fact that the child is a ward of court, or otherwise the subject of proceedings, does not, of itself, require the police or other agencies to disclose the existence of live investigations, especially if the investigation is covert.

¹¹ As to all of which see *Re M (Children)* [2015] EWHC 1433 (Fam).

¹² See *Re M (Children)* [2015] EWHC 1433 (Fam), paras 15-16.

¹³ *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), paras 18(ix) and 58.

cooperation” if children in such cases are to be provided with the kind of protection they require.

11 This is a two-way process. The court can expect to continue to receive the assistance it has hitherto been given in these cases by the police and by other agencies. But there must be reciprocity.

12 The police and other agencies recognise the point made by Hayden J¹⁴ 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.” The police and other agencies also recognise the point made by Bodey J¹⁵ that “it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities ... or other public bodies.” But subject to those qualifications, it is important that the family justice system works together in cooperation with the criminal justice system to achieve the proper administration of justice in *both* jurisdictions, for the interests of the child are not the sole consideration. So the family courts should extend all proper assistance to those involved in the criminal justice system, for example, by disclosing materials from the family court proceedings into the criminal process.¹⁶

13 In the same way, the police and other agencies will wish to be alert to the need of the court for early access to information, for example, information derived from examination of seized electronic equipment, *so far as such information is relevant to the issues in the family proceedings*. Accordingly, the court should be careful to identify with as much precision as possible in any order directed to the police or other agencies: the issues which arise in the family proceedings; the types of information it seeks; and the timetable set by the court for the family proceedings.

14 I attach a list in chronological order of relevant judgments which are publicly available on the BAILII website:

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam) (17 March 2015 – Hayden J)
Tower Hamlets v M and ors [2015] EWHC 869 (Fam) (27 March 2015 – Hayden J)
Re Y (A Minor: Wardship) [2015] EWHC 2099 (Fam) (23 April 2015 – Hayden J)
Re M (Children) [2015] EWHC 1433 (Fam) (20 May 2015 – Munby P)
Re Z [2015] EWHC 2350 (4 June 2015 – Hayden J)
Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam) (30 July 2015 – Munby P)
Re X (Children); Re Y (Children) (No 2) [2015] EWHC 2358 (Fam) (04 August 2015 – Munby P)
London Borough of Tower Hamlets v B [2015] EWHC 2491 (21 August 2015 – Hayden J)

15 This Guidance will be reviewed from time to time.

James Munby
President of the Family Division

8 October 2015

¹⁴ *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), para 18(iv).

¹⁵ *Y v Z* [2014] EWHC 650 (Fam), para 30.

¹⁶ See *Re X (Children)* [2007] EWHC 1719 (Fam), [2008] 1 FLR 589, para 43, and *Re X (Disclosure for Purposes of Criminal Proceedings)* [2008] EWHC 242, (Fam) [2008] 2 FLR 944, para 32.

Example Protocol

Please complete and send to emccspecialcase@uk.ems.com

Name of Special Case:	
Tracking System Unique Case Number:	Case (number to be allocated by EMS)
Police Operational Code Name:	n/a
Subject Name:	
Subject Date of Birth:	
Subject Address:	
Subject's Tel. Number: (Approved premises or personal)	
Monitoring Company Name & Address:	EMS, PO Box 170, Urmston, Manchester M41 7XZ
Responsible Police Officer & Offender Manager Contact Details:	<p>Contact the below in the event of a breach / Incident:</p> <p><u>To be immediately informed of any non-compliance event on 24/7 basis:</u></p> <p><i>Police force contact</i></p> <p><u>Breach information sent to:</u></p> <p><i>Local authority contact (eg solicitor in the case)</i></p>
Context of Electronic monitoring:	This protocol has been prepared for the above named person who will be subject to electronic monitoring, as operated by EMS under provisions of the XX Order.
Conditions affecting Electronic Monitoring:	<p><i>This section sets out the details of the Order as it pertains to the electronic monitoring including but not limited to:</i></p> <ul style="list-style-type: none"> - <i>curfew address</i> - <i>curfew times</i> - <i>any exclusion / inclusion zones</i> - <i>end date of EM order if known</i>
Language /Interpreter details:	

Example Protocol

Please complete and send to emccspecialcase@uk.ems.com

Health Issues:	
Monitoring Type:	GPS tag only GPS tag & HMU(s) V <i>It is recommended that if a curfew is given, that an Home Monitoring Unit is installed as this is the best way to monitor a curfew</i>
Overnight Residence Schedule:	The individual must remain in their residence between the following hours: <i>le 2pm to 4pm and 7pm to 7.00 am</i>
Exclusion/Exclusion areas	
	Add Standard Zones (airports, ports and train stations) YES NO
Telephone Reporting arrangements:	<i>n/a</i>
Other Conditions:	As stated in the XX order
Electronic Monitoring Team Section contact:	<i>NOMS</i>

TAG CHARGING INSTRUCTIONS

Your tag must be fully charged at least once every 24 hours.

The total time to completely charge a tag with a flat battery could be up to 2½ hours however in routine circumstances charging will take between 60 and 90 minutes per day. You must ensure that the battery never becomes flat by following the charging instructions below.

You have been provided with a charger. To charge the tag, plug the charger into a wall socket and switch on. Clip the 'hood' onto the tag. As shown below.



When your tag is charging, the LED will flash green and will continue to flash throughout the charging operation.

When your tag is fully charged the LED will cease flashing green and become solid green.

If your tag is disconnected from the charger before a fully charged state is achieved, it will vibrate 15 times in quick succession to alert you that additional charging is required.

If the LED flashes red and your tag vibrates 5 times, this to alert you to the fact that the battery has reached a low state and must be recharged **immediately**. You must ensure that the battery never becomes flat by charging it every day.

Charging can be applied in one session or in multiple sessions every day but it is imperative that the final session results in a fully charged state being indicated by a solid green light.



Suggested Reading List / Reference Library

Case Law

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam) (17 March 2015 – Hayden J)

Tower Hamlets v M and ors [2015] EWHC 869 (Fam) (27 March 2015 – Hayden J)

Re Y (A Minor: Wardship) [2015] EWHC 2099 (Fam) (23 April 2015 – Hayden J)

Re M (Children) [2015] EWHC 1433 (Fam) (20 May 2015 – Munby P)

Re Z [2015] EWHC 2350 (4 June 2015 – Hayden J)

Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam) (30 July 2015 – Munby P)

Re X (Children); Re Y (Children) (No 2) [2015] EWHC 2358 (Fam) (04 August 2015 – Munby P)

London Borough of Tower Hamlets v B [2015] EWHC 2491 (21 August 2015 – Hayden J)

Re M (Children) (No 2) [2015] EWHC 2933 (Fam) (20 October 2015 – Munby P)

Judicial Guidance

Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division on 8 October 2015

Articles

Radicalisation: a Proportionate Response by Sarah Williams, the London Borough of Tower Hamlets published in the Family Law Week

Government Guidance

Channel Duty Guidance, April 2015

Revised Prevent Duty Guidance for England & Wales, July 2015

Channel: Protecting Vulnerable People From Being Drawn Into Terrorism, October 2012

Channel: Vulnerability Assessment Framework, October 2012

Counter Extremism Strategy, Home Office October 2015

The Prevent Duty: Departmental advice for schools and childcare providers, June 2015

Research Papers

'Becoming Mulan?' Female Western Migrants to ISIS, Institute for Strategic Dialogue 2015

'Til Martyrdom do us Part' Gender and the ISIS Phenomenon, ICSR, Institute for Strategic Dialogue 2015



Radicalisation: Safeguarding & the Family Courts

London Borough of Tower Hamlets

Coin Street Conference Centre
13 November 2015



Professor Andrew Silke

Head of Criminology and Director of
Terrorism Studies
University of East London



Sarah Williams

Legal Team Leader – Social Care Team
London Borough of Tower Hamlets



Rashad Ali

Intervention Provider



- Helping Syria from Home
- <https://www.youtube.com/watch?v=-xo51LIGYII>
- A Mother's thoughts on the crisis in Syria
- https://www.youtube.com/watch?v=2Bty9Z_L_Cm8



SO15, Tower Hamlets and the Royal Courts Of Justice

On Friday 20 March 2015 the LB Tower Hamlets, as a result of safeguarding concerns, applied to the High Court Family Division to remove the passports of 5 girls known to LBTH and SO15

Following protracted hearings over the following weeks at the High Court before Mr Justice Hayden the court made an order for the provision of the passports and Interim Wardships.

HHJ Hayden in his judgement highlighted the **'importance of a co-ordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved'**




CT Safeguarding & The Family Court

DI Matt Duncan
Local Operations SO15




Assessment of Risk

Channel Vulnerability Assessment Framework as a stand alone document not suitable as a Risk Assessment for the Family Court.

Local Ops Disruption Team was tasked to undertake full Risk Assessments in respect of the 5 young females.

Risk Areas covered
Safeguarding – using elements from the Child Risk Assessment Model
Vulnerability to Radicalisation
Potential to Travel





Learning from Experience

- Collaborative working
- Information Sharing
- Disclosure
- Officers at Court
- SIO to consider Safeguarding strategy at outset of investigation



SO15 - The Future

New Team within SO15 to be formed who's remit includes –

- Child Safeguarding
- Mental Health
- Extremist Speakers



March - Present

- 31 Children subject to Safeguarding
- 10 – Wardship
- 1 – Interim Care Order
- 20 – Child Protection Plans
- All subject to Prevent Case Management



RESTRICTED





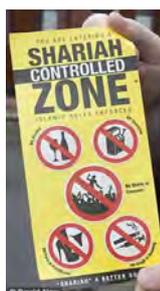
David Smart

National Counter Terrorism Policing HQ



Tower Hamlets - Context and Threats

Almost without exception behaviour in our schools is good or outstanding. Results in our schools show excellent value-added outcomes. Community cohesion is good ...but threats exist.






WORK WITH SCHOOLS

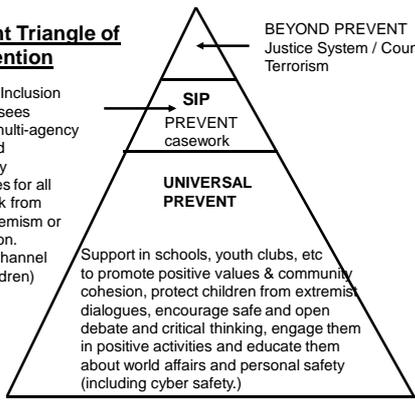
Liz Vickerie
Social Inclusion Lead & Prevent/Channel lead for Children

Tom Llewellyn-Jones
Prevent Education Officer for Tower Hamlets



Prevent Triangle of Intervention

The Social Inclusion Panel oversees individual multi-agency support and diversionary programmes for all those at risk from violent extremism or radicalisation. (includes Channel role for children)



Support in schools, youth clubs, etc to promote positive values & community cohesion, protect children from extremist dialogues, encourage safe and open debate and critical thinking, engage them in positive activities and educate them about world affairs and personal safety (including cyber safety.)



Universal Provision – for all pupils

- Vulnerable cases are not easy to identify so we need to assume all pupils at risk and teach all children
- Discontinuity between what they know and their parents know about the internet and social media, so can't leave it to the home (Do teachers know enough?)
- Children today have open and unrestricted access to extensive information so we need to teach skills of **critical thinking, discrimination and questioning the validity of sources** (a healthy scepticism),

Prevention of Violent Extremism and Radicalisation.

4. Checklist for ensuring Prevent issues have been addressed in your school policy and practice:

	YES	NO	Partially	Further action planned	By Date
Does your safeguarding policy make explicit that the school sees protection from radicalisation and extremist narratives as a safeguarding issue?					
Are the lead responsibilities for Prevent clearly identified in the policy?					
<ul style="list-style-type: none"> • Prevent Safeguarding Lead? • Prevent Governor Lead? • Prevent Curriculum Lead? 					
Responsibility for checking visitors to the school?					
Responsibility for checking premises use by outsiders?					
Has all school staff received training on Prevent?					
Has the Designated Safeguarding Officer been trained?					
Have Governors received training on Prevent?					
Does your induction programme cover Prevent issues?					
Does your safeguarding policy make explicit how Prevent concerns should be reported within the school?					
Have you checked that all staff know what they should do if they have a Prevent concern and to whom it should be reported?					
Do you have a clear statement about how the Prevent agenda is addressed preventatively through the curriculum/other activities?					
Have the Prevent curriculum interventions been mapped across the age range and subject areas?					
Is there a clear statement about the range of interventions the school can offer to individuals at risk?					
Is there a clear understanding of when cases should be referred to the Social Inclusion Panel for Channel or other support?					
Has the school ensured its internet security systems prevent access to unauthorised or extremist websites?					
Is there a clear vetting policy on the use of school premises and facilities by outside agencies and groups?					
Is there a Clear Visitors Policy that ensures visitors are vetted and adhere to the school's values and promote community cohesion?					

Continued overpage



School Engagement – Guidance and Training - a safeguarding policy and practice issue

- Policy Guidance and checklist issues to all schools
- Safeguarding Leads and Governors have had WRAP +
- All state secondary schools and most independent and free schools in the borough have had WRAP + training.
- Primary school WRAP + training underway
- Parental engagement sessions available to schools



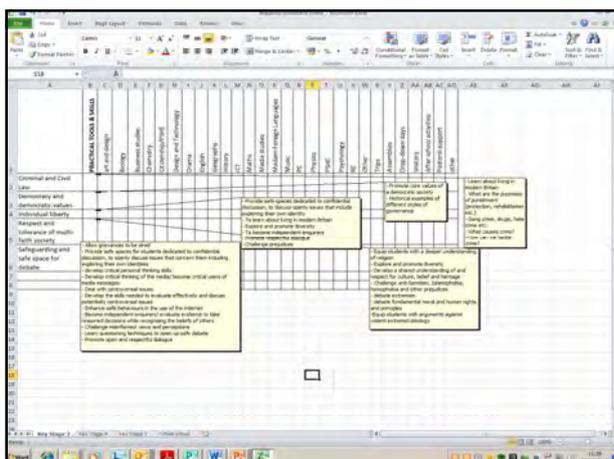
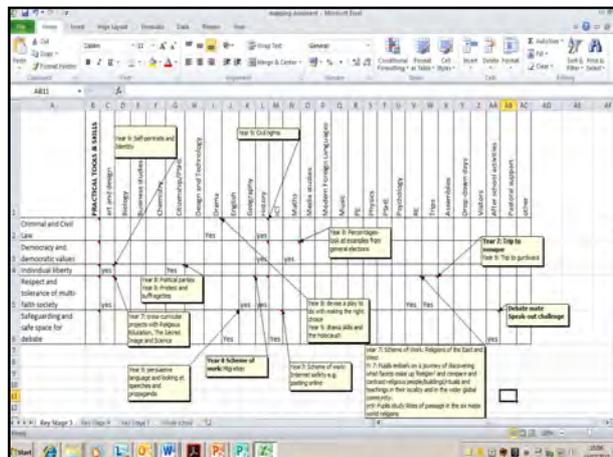
School Engagement – Curriculum Development

- Schemes of work have been developed for Key Stages 2-5
- Assemblies have been delivered in schools on request
- Secondary and Primary curriculum working groups are developing and trialling resources
- 6th form working party (including students) to devise appropriate resources
- Prevent conferences to disseminate good school practice



Universal Provision – benefits

- Not about closing down debate but enabling discussion of controversial issues in a safe environment with staff who feel confident to do so.
- All this work improves children’s analytic and reasoning and debating skills
- Mapping across all age ranges and all subjects – embedded values and counter narratives and safety work supporting the broader curriculum delivery
- E-safety work has relevance to other risks as well e.g. sexual grooming and online scams




School Engagement – Best Practice

- Respond to the individual needs of the school, building on existing good practice / resources
- Consult with teachers, students and parents so they have input re: issues they want raised
- Use and develop existing partnerships, e.g. community groups, local police, the parental engagement team, faith organisations and other focus groups e.g. Violence Against Women and Girls, No Place for Hate Campaign, SACRE, Anti-Bullying Alliance / Global Education

Examples of resources

Drop Down Day for Years 10 and 12
Topic – Leading Tolerance in our Community

- Input from Guest Speakers
- Presentation – Statistics / Think Pieces
- Issues – Sexuality / Gender / Race / Faith
- What do we know / see / hear?
- What do we want to improve?
- What will Equality look like in our school?
- What do we want our school to look like from today?
- Spreading the message / Keeping it live.

Examples of resources



Assembly requested by and jointly planned with 6th form

Lesson taught by 6th form

Examples of resources



Primary assemblies

Secondary assemblies

Examples of resources



Parent session run jointly with the police

Lessons requested by staff



Radicalisation – Example of early intervention case

- **Case** - A very intelligent Yr 6 boy on the autistic spectrum with significant IT skills but unable to discriminate between fantasy and reality on-line. He espoused a range of extremist views and conspiracy theories and started an online bullying website.
- **Risk** - Immediate issue of illegal cyber-bullying activity but also at risk of being radicalised online or used / abused by others for extremist purposes as he grows up.
- **Support** – An IT specialist who negotiated safer use of the internet, specialist autism outreach support from Special School to address responses to others / consequences; a discussion with the police about what activities would or would not break the law (literal and factual); tackling the issue of the bullying he had himself suffered; transition support for secondary school to ensure he developed a friendship group and ongoing support from staff to channel his IT skills positively



Radicalisation: Safeguarding and the Family Court
Friday 13 November

Prevent and safeguarding vulnerable individuals
Charles Farr, Director General, OSCT

OFFICIAL



Julian Butcher

Department for Education

Context: the terrorist threat to the UK

- **The terrorist threat level is 'severe'** – meaning that an attack in this country is 'highly likely'.
- **But the threats we face have changed:**
 - ISIL is much larger and better resourced than AQ and is trying to create and establish a state;
 - unlike AQ, ISIL is also trying to radicalise large numbers of people here and in other western countries and has attracted far more foreign fighters and supporters;
 - ISIL social media propaganda is professional and extensive.
- ISIL supporters here are encouraged either to travel to the so-called 'Caliphate' or to conduct simple but effective terrorist attacks here. ISIL also appeals to 'state-builders'.

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Syrian travellers and returnees

- **750 people of security interest have travelled to Syria/Iraq** since the conflict began; about 50% have returned since January 2012.
- **High proportion of all early travellers were motivated by humanitarian** not extremist issues.
- **Greater proportion of all later travellers intend to join ISIL**; fewer are returning.
- Greater proportion of later travellers are **women and children**; **average age has decreased**.
- **Greater proportion of later travellers are being stopped before departure**.
- **High proportion of recent travellers have familial or other connections to previous travellers**.

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Our response: Prevent Duty

- **Counter-Terrorism and Security Act 2015** placed a duty on specified authorities to 'have due regard to the need to **prevent** people from being drawn into terrorism'.
- We are increasing work with **social media providers** to remove ISIL online content contrary to terms and conditions of service; We are producing more guidance about on line propaganda and **supporting more effective online community based rebuttal of ISIL ideology**.
- We are supporting **community based organisations** who are campaigning against ISIL and warning about the threats it presents.
- We are **working closely with sectors** e.g. education to explain what ISIL is doing and how and to update advice about how to keep children safer.

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Our response: Prevent

- **ISIL makes Prevent more important**.
- The **aim of Prevent** is to *stop people becoming terrorists or supporting terrorism* by: countering ideology and propaganda; supporting people at risk of radicalisation (Channel); and working with key institutions.
- **Prevent is intended to pre-empt criminal activity** – to protect and not to criminalise communities.
- **Prevent is prioritised according to risk** – the greatest risk of radicalisation is currently from ISIL but x right wing organisations are active and also within the scope of the programme.
- **Prevent is not concerned with matters of faith** but issues of ideology and radicalisation.

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Our response: vulnerable people and Channel

- Programmes to **support vulnerable people** are dealing with both aspiring travellers, travellers who have been stopped (e.g. in Turkey) and people who have returned.
- **Channel** supports individuals vulnerable to being drawn into terrorism. Participation is voluntary - it is not a criminal sanction.
- Administered at local level through **multi-agency panels** which are chaired by local authorities and supported by police.
- It may provide **access to statutory support** – it can also (uniquely) provide **theological or ideological mentoring**.
- **We are expanding Channel** - all relevant partners now have a requirement to co-operate; referrals and current casework have increased sharply (notably from education); want to refer more people with links to Syria travel to the programme.

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Our response: vulnerable people and

- ISIL is trying to appeal to families.
- We are therefore facing **growing numbers of children who need safeguarding** outside of Channel because they are affected by the radicalisation of a parent or parents.
- For the first time we are using Courts inherent jurisdiction to safeguard children. New legal issues are emerging. **Police and DfE guidance seeks to provide support to practitioners.**

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Radicalisation and Extremism. Making the Connection: identifying and safeguarding families at risk.

Helen McLachlan
Children's Independent Reviewing Officer CPRS

Conclusions

- ISIL is not more of the same: it brings a **different kind of threat**, notably to families and young people.
- **ISIL makes Prevent increasingly important.**
- Local authorities, the police and communities have been for many years, and will continue to be, **a key part of our response to the terrorist threat and vital for Prevent work.**
- Safeguarding plays an important role in our response and **the volume of casework in and outside of Channel will continue to grow.**
- **Safeguarding needs to operate closely with Prevent coordinator and central Prevent teams.**
- If it's not working, tell us.

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Safeguarding and Challenges

- Children's Act 1989
- Convention on the Rights of the Child
- In 2012 no protocols, laws, guidance or case law which spoke to the issue of safeguarding children.
- Some agencies at that time were slow to recognise this as a safeguarding issue.
- Work with partner agencies very much needed.
- Court may take a different view of the presenting issues as this does not fit within traditional models.



Girls who are considered to be a flight risk.

- Girls who are considered to be a 'flight risk' to Syria or another country where there is an IS



Three teenage girls who travelled to Syria from Tower Hamlets in February 2015.



- English was a second language in each of these households and as a result the parents were unable to negotiate the girls 'on line' activity.
- IS sophisticated use of social media fell into this gap and there was no possibility of this being monitored.
- IS are extremely sophisticated at grooming and were able to tap into the dreams and aspirations of the girls.
- The girls academic intelligence was not matched by their emotional maturity or vulnerability and it was this that made them very susceptible to the grooming.



Profile of flight risk girls

- No previous history with CSC .
- Families stable with no obvious triggering concerns.
- Girls are well behaved, socially able and high academic achievers.
- Nothing to indicate that the source of the radicalisation is from the family home.
- Majority of the grooming took place on-line.



Boys at risk of flight.

- Limited experience of working with boys in LBTH due to the fact that they have not been referred into CSC before they make it across the border to Syria.
- Need for initiation into manhood missing from Western Society – this is offered by IS as well as the community recognition of them becoming a man – hence the use of Facebook to post pictures such as:



- The use of social media in this way not only allows for the boy to publicly announce that he is now a man, but allows also for their to be world recognition of this transition.
- Similar process to joining a gang.





- 2. Previously unknown Families who have travelled or attempted to travel to Syria with all their children.



The Dawood Family from Bradford, three sisters and nine of their children the youngest of which was three.



- The radicalisation of boys is often brutal and de-humanising which makes them indifferent to violence making it an easy process to sever ties with loved ones.
- Children whose parents are not originally from the UK can become skilled at negotiating two ways of life which has the potential to lead to a split between life outside and life within the family, this makes deceit easier and places the boys in a position to be easily groomed.



- No previous referrals to CSC that would indicate any member of the family holding extremist views.
- Children are of differing ages but many under the age of 5.
- Unclear as to the source of the radicalisation but due to the age of the parents it is more likely to be from a face to face interaction as online grooming is less effective over the age of 25 due to the development of emotional intelligence.
- Alarm raised by a member of the extended family expressing a concern for the safety of the children.



- Concern for CSC is two fold, it is not just about securing the physical safety of the children but the issue of emotional harm caused by the exposure to material of an extreme nature has to be considered when evidencing the threshold for significant harm.
- The family is one of the most powerful, social, emotional and human influences in the life of a child, this greatly constructs who they become as adults.



4. Children or young people with learning difficulties or being diagnosed as on the autistic spectrum.

- Children who have been diagnosed as on the autistic spectrum can struggle with making sense of the world.
- The extremist ideologies can often present in a very stark black and white manner as to the right and wrong of given situations.
- This can provide the young person with a clear set of rules and guidelines as to how to engage and negotiate the world giving them clarity and ease where previously there had been confusion.
- Extreme ideology is very much lacking in empathy for 'the other' something with which children on the autistic spectrum can often struggle.
- These children are targeted by groomers due to their innate vulnerability.



3. Radicalisation by default

- Children exposed to foreign news channels with images of war and although in another language the child understood more than the family gave him credit for.
- The information was from the War in Palestine, which contained very disturbing images of dead children.



Commonalities across the profiles.

- LBTH are acutely aware of the fact that not every family will fit neatly into one of the profiles and we currently have several cases which span across two or more.
- There are commonalities which are present in all:
- There is a varying degree of severance of ties with family and community.
- There needs to be a degree of narcissistic behaviour in order for the threshold from ideology to action to be crossed.
- The grooming process encourages this way of thinking and eventually behaving.



5. Families who are affiliated to Al-Muhajiroun.

- Al – Muhajiroun is a proscribed organisation in the UK. It was founded in 1983 by Omar Bakri Mohammed and Anjem Choudary.
- Al-Muhajiroun has a significant presence in Tower Hamlets.





Parenting profile.

- Children to be home educated.
- Very limited use of universal health services.
- This ensures that the children are 'hidden' and there are no professionals who are in a position to raise a safeguarding concern if there is one.
- It also ensures that the children are not exposed to any other world view other than those held by their parents.
- Nearly all socialisation happens within the Al-Muhajiroun community again limiting the children's social interaction to those of a similar mindset to their parents.
- It is CSC's view that the radicalisation of the children occurs in private meetings within members homes, where we believe they are exposed to quite extreme images and rhetoric.
- To date no background check that could be undertaken has raised concerns regarding the basic care of the children.



Expectation of the leaders of Al-Muhajiroun.

- Families are encouraged not to work and to claim benefits.
- Families are encouraged to live in social housing and not own their properties.
- Encouraged not to enrol on the electoral register and therefore not to vote.



Make up of these families.

- Many of the parental marriages are of mixed ethnicity with at least one parent being a convert to Islam. The marriage is not always the motivator for the conversion.
- Generally the ideology is shared between the mother and the father.
- The men are much more publicly recognised but due to the use of the hijab and the niqab there is often little information on the women. In some cases this may be a deliberate strategy to add to the invisibility of the family with the children being unseen and the women being unrecognisable.



Strategy employed in interactions with CSC.

- There is a clear and thought through strategy in these families dealings with CSC which has been employed by every one of these families to date. Until recently this has proved to be very effective in preventing any meaningful engagement, but in recognising this strategy it has given LBTH the circumstantial evidence which has been presented to court.



- The strategy is put in place and supported by both the mother and father although it is often the mother who will front the conversation with CSC as they are able to 'appear' to be innocent of the ideology.



- Agree to work in partnership with CSC so only a S17 assessment can be undertaken.
- Constant requests made by the family for clarity on the remit of the assessment and the need for such. This is repeated both verbally, in writing and eventually through a solicitor.
- A solicitor is then employed who builds in further delay all the time stressing the family's willingness to co-operate.
- Due to the hidden nature of the children there is not enough evidence to tip it into a S47.



A view from the perspective of the Local Authority Solicitor

Lee Maitland & Joanna Green
Legal Services – London Borough of Tower Hamlets




Why we are here...

"a new facet of child protection" *Tower Hamlets London BC v M & Ors* [2015] EWHC 869 (Fam), Hayden J

"we are here in the realm of unknown unknowns" *Re X and Y* [2015] EWHC 2265 (Fam), Munby LJ

Radicalisation: Safeguarding & the Family Courts




Coming onto our radar

November 2014 – first care case

TACT offenders

Children at rallies and demonstrations

Resistance to local authority intervention

Radicalisation: Safeguarding & the Family Courts




Topics for Discussion

1. Coming on to our radar – from Autumn 2014 to present
2. Getting the balance right (trying our best!)
3. Responding to referrals to legal
4. Managing cases outside of the court arena
5. Cases where we have sought /considered seeking the assistance of the court
6. Assessment
7. Reporting Restriction Orders
8. The way forward...

Radicalisation: Safeguarding & the Family Courts




video



Shamima Begum, 15, Kadiza Sultana, 16, America Abase, 15 left the UK for Syria on 17 February 2015

All attended the Bethnal Green Academy in LBTH

Radicalisation: Safeguarding & the Family Courts







Getting the balance right

The Government has defined extremism as:
"vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas" Prevent Guidance, 2011

M (Children) [2014] EWHC 667 (Fam)
 Holman J's definition of radicalisation as *"negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism"*

Radicalisation: Safeguarding & the Family Courts







Getting the balance right

Re A (A Child) [2015] EWFC 11, the 'Darlington case'

"many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or "model" them in their own lives but those children could not be removed for those reasons."

"We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs."

"...Social Services are not guardians of morality. Nor is this court"

Radicalisation: Safeguarding & the Family Courts







Getting the balance right

Section 11 Children Act 2004
 The local authority's safeguarding duties

Section 26 Counter-Terrorism and Security Act 2015
 The local authority duty to have due regard to the need to prevent people from being drawn into terrorism

Article 8 ECHR
 Right to respect to family life

Article 9 ECHR
 Freedom of thought, conscience and religion

Article 10 ECHR
 Freedom of expression

Radicalisation: Safeguarding & the Family Courts







Cases dealt with outside the court arena

Section 47 Children Act 1989, the local authority's duty to investigate

(1) Where a local authority—
 (a) are informed that a child who lives, or is found, in their area—
 (i) is the subject of an emergency protection order; or
 (ii) is in police protection;
 (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

AB & Anor, R (on the application of) v The London Borough of Haringey [2013] EWHC 416 (Admin)

Radicalisation: Safeguarding & the Family Courts






Cases dealt with outside the court arena

Child Protection Plans

- The child can be shown to have suffered ill-treatment or impairment of health or development as a result of physical, emotional, or sexual abuse or neglect and professional judgment is that further ill-treatment or impairment are likely, or
- Professional judgment, substantiated by the findings of section 47 enquiries in this individual case or by research evidence, is that the child is likely to suffer ill treatment or the impairment of health or development as a result of physical, emotional, or sexual abuse or neglect.

The CP Plan is designed to prevent the child suffering harm or a recurrence of harm in the future and to promote the child's welfare

Radicalisation: Safeguarding & the Family Courts






Children at risk of flight

Hayden J's core principles, *Tower Hamlets v. M and Ors* [2015] EWHC 869 (Fam)

(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.

Radicalisation: Safeguarding & the Family Courts






Children at risk of flight

Applications to the High Court – Family Division in Wardship

Section 100, Children Act 1989
Limitations to the Court's inherent jurisdiction

Practice Direction 12D
Inherent Jurisdiction (including Wardship) Proceedings

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam)
A proportionate response to the "very specific nature of the risk contemplated" & a "light touch" intervention in a case where there was a "high risk of very-serious harm"

Passport Orders as injunctive measures under the inherent jurisdictions, Hayden J has described as
"as a very minor infringement into their family life in order to prevent the possibility of a very grave ill."

Recovery, Location and Collection Orders **Port Alerts**

Radicalisation: Safeguarding & the Family Courts






Children at risk of flight

Hayden J's core principles, *Tower Hamlets v. M and Ors* [2015] EWHC 869 (Fam) cont.

(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 subjected 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 public/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 contemplated for should be drafted before coming to court.

Radicalisation: Safeguarding & the Family Courts






Children at risk of flight

Hayden J's core principles, *Tower Hamlets v. M and Ors* [2015] EWHC 869 (Fam) cont.

(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.

A copy of these principles can be found in your Delegate Packs (as this is a little small) ©

Radicalisation: Safeguarding & the Family Courts






Section 31 proceedings

Re A (A Child) [2015] EWFC 11, Munby P

"The mere fact, if fact it be, that the father was a member, probably only for a short time, of the [English Defence League] is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly 'immoral' aspects of the father's behaviour... Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings."

Tower Hamlets v B [2015] EWHC 2491 (Fam) Hayden J

"I have no hesitation in concluding that B has been subjected to serious emotional harm, and, at the very least, continues to be at risk of such in her parent's care. I can see no way in which her psychological, emotional and intellectual integrity can be protected by her remaining in this household. The farrago of sophisticated dishonesty displayed by her parents makes such a placement entirely unsustainable."

I return to the comparator of sexual abuse. If it were sexual risk that were here being contemplated, I do not believe that any professional would advocate such a placement for a moment. The violation contemplated here is not to the body but it is to the mind. It is every bit as insidious, and I do not say that lightly. It involves harm of similar magnitude and complexion."

Radicalisation: Safeguarding & the Family Courts






Section 31 proceedings

Section 31(2) threshold

(2) A court may only make a care order or supervision order if it is satisfied—

- that the child concerned is suffering, or is likely to suffer, significant harm; and
- that the harm, or likelihood of harm, is attributable to—
 - the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - the child's being beyond parental control.

Radicalisation: Safeguarding & the Family Courts






Section 31 proceedings

Section 1 Children Act 1989, 'the Welfare Checklist'

Section 1(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- his physical, emotional and educational needs;
- the likely effect on him of any change in his circumstances;
- his age, sex, background and any characteristics of his which the court considers relevant;
- any harm which he has suffered or is at risk of suffering;
- how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- the range of powers available to the court under this Act in the proceedings in question

Threshold for interim removal set out in case law precedents

Re G (Interim Care Order) [2011] EWCA Civ 745, para 22, Sir Nicholas Wall P, summarised the authorities: *"By asking ourselves the question whether the Children's safety (using that term to include both psychological and physical elements) requires removal, and whether removal is proportionate in the light of the risks posed by leaving them where they are."*

Radicalisation: Safeguarding & the Family Courts



Section 43 Child Assessment Orders

(1) On the application of a local authority or authorised person for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—

- (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
- (b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
- (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

Radicalisation: Safeguarding & the Family Courts



Reporting Restriction Orders

Birmingham City Council v Sarfraz Riaz and Others [2014] EWHC 4247 (Fam)

London Borough of Redbridge v SNA [2015] EWHC 2140 (Fam)

JXX v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96

Radicalisation: Safeguarding & the Family Courts



Assessments

1. Multi-disciplinary assessment
2. Social work assessment
3. Psychiatric risk assessment
4. Academic input

All are subject to the Court's approval.....we do not always get what we want...☹

Example social work assessment framework can be found in your delegate packs

Radicalisation: Safeguarding & the Family Courts



Reporting Restriction Orders

Applications to the Court on notice or without notice

A key resource and information provider is the Media Lawyer website <http://www.medialawyer.press.net/>

Checklist:

1. The Application – N244 Form
2. Witness statement(s) setting out the need for an order
3. Any legal submissions if so advised by Counsel
4. Draft order
5. Explanatory note

Radicalisation: Safeguarding & the Family Courts



Thank you all for listening

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Radicalisation: Safeguarding & the Family Courts



Radicalisation Cases in the Family Courts
 Introduction

"It is unusual in cases in the Family Division to make any factual reference to other cases, no matter how obliquely. I do so because, as I have already commented, in my judgment reported as Tower Hamlets London BC v M & Ors [2015] EWHC 869 (Fam), they present a new facet of child protection where there is, as yet, limited professional experience or, for that matter, available training. I would observe however that over the months that I have been hearing applications in these cases, I have observed professional knowledge and understanding develop considerably."

Hayden J, London Borough of Tower Hamlets v B [2015] EWHC 2491 (Fam)



Radicalisation: Safeguarding & the Family Courts

Public Law Update:
 Radicalisation Cases in the Family Courts

Jo Delahunty QC
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 4PB



Radicalisation Cases in the Family Courts
 Introduction

"Radicalising" is a vague and non-specific word which different people may use to mean different things. There is quite a lot of material in this case to the effect that the elder of these children are committed Muslims who like to attend, and do attend, at a mosque and wish to display religious observance. This nation and our culture are tolerant of religious diversity, and there can be no objection whatsoever to any child being exposed, often quite intensively, to the religious practices and observance of the child's parent or parents. If and insofar as what is meant in this case by "radicalising" means no more than that a set of Muslim beliefs and practices is being strongly instilled in these children, that cannot be regarded as in any way objectionable or inappropriate. On the other hand, if by "radicalising" is meant, as appears in paragraph 12 of the draft addendum report that I have already quoted, "negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism" then clearly that is a very different matter altogether. If any child is being indoctrinated or infected with thoughts involving the possibility of "terrorism" or, indeed, hatred for their native country, which is England, or another religion, such as Christianity which is the religion of their grandparents and now, again, their mother, then that is potentially very abusive indeed and of the utmost gravity.

Holman J, Re M (Children) [2014] EWHC 667 (Fam)



Radicalisation Cases in the Family Courts

Introduction

1. President's Guidance
2. Case Law Review
3. Practical Matters
4. Tips from the Courtroom



President's Guidance

Categories of case

At least 4 categories of case identified by the President:

1. Children attempting or being groomed to travel to Syria;
2. Parents planning or attempting to travel to Syria with their children
3. Children at risk of being radicalised
4. Children at risk of being involved in terrorist activities



Radicalisation Cases in the Family Courts

Introduction

"The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family. Here, the type of harm I have been asked to evaluate is a different facet of vulnerability for children than that which the courts have had to deal with in the past."

Hayden J, *London Borough of Tower Hamlets v M & Others* [2015] EWHC 869 (Fam)



President's Guidance

Routes of protection

The guidance provides for virtually all cases to be heard by a High Court Judge regardless of the avenue chosen:

1. Police protection
2. Wardship summons
3. Seeking injunctions
4. Emergency protection order
5. Care proceedings



President's Guidance *Conventional safeguarding principles*

"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"

"What, however, is clear is that the conventional safeguarding principles will still afford the best protection. Once again, this court finds it necessary to reiterate that only open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter agency cooperation is going to provide the kind of protection that I am satisfied that the children subject to these applications truly require"

Hayden J, London Borough of Tower Hamlets v M & Others [2015] EWHC 869 (Fam)



Case Law Review *Applications for wardship and injunctions*

A number of applications came before Hayden J in the first half of 2015:

- *Re Y (A Minor: Wardship)* [2015] EWHC 2098 (Fam) (17th March 2015)
- *London Borough of Tower Hamlets v M & Others* [2015] EWHC 869 (Fam) (27th March 2015)
- *Re Y (A Minor: Wardship)* [2015] EWHC 2099 (Fam) (23rd April 2015)
- *Re Z* [2015] EWHC 2350 (4th June 2015)



President's Guidance *Convention rights*

The guidance emphasises the importance of having regard to Articles 6 and 8:

- Ensuring fair process
- Access to material/special advocates
- Need for foundational basis for intervention
- Proportionality
- Hedley J, *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050 and President in *Re A (A Child)* [2015] EWFC 11



Case Law Review *Managing travel to Syria*

The President's first major intervention came in *Re M (Children)* and *Re M (Children) (No. 2)*:

- Initial stages*
 - Jurisdiction to make orders for British children abroad
 - Precedent for orders liaising with foreign governments
 - Use of anti-tipping off order
- Disposal*
 - Disposal of proceedings without order
 - Proceedings considered to have acted as a "wake up call"



Case Law Review

Electronic tagging

The President considered the use of tagging in *Re X and Re Y* and *Re X and Re Y (No. 2)*:

- Identified risk of flight rather than interim risk of radicalisation
- Consideration of 2 options – Radio Frequency vs GPS tag
- Package of restriction sufficiently protective to allow return of children to the care of their parents
- Previous protocol had not considered use of GPS tagging
- The MoJ agreed to facilitate the use of the GPS tagging and meet costs without prejudice to position in other cases



Practicalities

Guidance in LBTH v M & Others [2015] EWHC 869 (Fam)

Hayden J's judgment on *ex-parte* injunctions included helpful 9-point guidance:

- i. Need to draft outline of orders sought in advance
- ii. Speed with which applications can be restored on notice to parties
- iii. Complexity requiring the instruction of senior and experienced lawyers
- iv. Interests of the child paramount *but* must be considered against informed understanding of the "*wider canvas*"



Practicalities

Introduction

1. Hayden J's 9-point guidance in *LBTH v M & Others*
2. Police cooperation and disclosure
3. Press, reporting restrictions and publicity
4. Tagging



Practicalities

Guidance in LBTH v M & Others [2015] continued...

- v. Must be "*hard evidence*" of support of the application from Police or other security agencies
- vi. Transparency remains the presumption though on occasion there may be a need to exclude press in the event that "*sensitive issues of policy and national security*" arise
- vii. Consideration of Reporting Restrictions required
- viii. The impact of mainstream and social media
- ix. Need for "*coordinated strategy predicated on an open and respectful cooperation between all safeguarding agencies*"



Practicalities

Police disclosure and cooperation

"The police and other agencies recognise the point made by Hayden J 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." The police and other agencies also recognise the point made by Bodey J that "it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities ... or other public bodies." But subject to those qualifications, it is important that the family justice system works together in cooperation with the criminal justice system to achieve the proper administration of justice in both jurisdictions, for the interests of the child are not the sole consideration. So the family courts should extend all proper assistance to those involved in the criminal justice system, for example, by disclosing materials from the family court proceedings into the criminal process."

Munby P, *Radicalisation Cases in the Family Court* (October 2015), para 12



Practicalities

Police disclosure: President's Guidance

1. Much Police evidence will not be relevant to Family Court
2. The disclosure of some highly sensitive information may damage Public interest
3. Need to avoid inappropriately wide disclosure requests
4. Avoid PII issues if possible: disclosure only where *necessary*
5. May need to limit access to material or tapes/transcripts
6. PII issues may require closed hearing or Special Advocate
7. Need to ensure operational requirements not compromised
8. Police instruction of experienced Counsel may assist



Practicalities

Police disclosure and cooperation

Close coordination between the Police and local authority is of critical importance:

- Need to ensure proper information sharing between agencies to allow for effective safeguarding
- Management of information sharing to ensure fairness to all parties
- Police disclosure likely to be key in any resultant proceedings
- Importance of establishing good communication to avoid unnecessary contested hearings



Practicalities

Press, reporting restrictions and publicity

The issue of reporting is frequently an issue in case given public and media interest in this area:

- Could be occasions where publicity is of benefit – would require close inter-agency cooperation
- High Court Judges familiar with more frequent attendance by accredited media
- Need to consider impact of even anonymised reporting: are the normal restrictions sufficient?



Practicalities

Reporting restrictions

Seeking an RRO will at times be necessary but must be justified and can lead to increased press interest

- Need for notice to media organisations frequently leads to attendance
- Correct formulation of necessity of derogation from principle of open justice
- If justified wide-ranging orders can be sought (anti-tipping off order) but must consider the duration that is required – likely to be discharged as promptly as possible



Practicalities

Radio Frequency vs GPS tagging

Radio Frequency tagging

- Monitors compliance with a curfew order
- 1400+ devices in use

GPS tagging

- Allows for monitoring of curfew *and* creation of inclusion/exclusion zones
- Just 16 GPS tags in use
- System preferred by the President in *Re X and Re Y*



Practicalities

Electronic tagging

The use of tagging has been established and has been subject to Guidance issued in 2010 (reissued in 2015):

- MoJ submissions have highlighted that the Guidance considered Radio Frequency tagging rather than GPS tagging
- The MoJ has acceded to meeting the costs of GPS tagging without prejudice to their principal submission that the Court does not have the jurisdiction to do so
- Remains a possibility that a local authority (rather than the MoJ) may be required to bear the costs of tagging



Practicalities

GPS tagging requirements

Parents must consent to the use of tagging and the MoJ (which holds an exclusive contract with providers) must also consent.

Bespoke protocol is created on a case-by-case basis:

- Key information is provided (names, address, photos etc...)
- First point of contact is local Police but protocol also sets out responses to “*non-compliance events*”
- LA will need to provide contact details of designated contact
- Terms of the protocol kept confidential from subjects of order



And Finally...

Tips from the Courtroom

- Need for familiarity with Guidance and case law
- Benefit of knowing your Tribunal
- Importance of cooperative working at all levels: local authority and Police, clients and legal representatives, solicitors and advocates
- Given novelty, need for flexibility and (at times) creativity key
reliance is placed on the core skills of cogent risk assessment

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Julian Butcher, Head of Regulatory Framework Unit, Due Diligence and Counter Extremism Group

Advice for Local Authorities – The use of child protection powers to protect children from radicalisation or from being taken into conflict zones

Travel to conflict zones

- Evolving threat of school-age children travelling.
- DDCEG works with affected schools
- **Purpose:**
 - learn lessons from schools' experience;
 - interaction between experiences at school and vulnerability to extremism; and
 - identify what helps schools deal with such events.
- Travel to Syria cannot be dealt with by schools in isolation and must be part of wider **multiagency working**

Objectives of the counter extremism programme in DfE

OUR OBJECTIVES

Improve the **resilience of the system** to extremist and radicalising influences, giving people the knowledge, skills and confidence to act.

Enable **safeguarding** to operate effectively in protecting vulnerable children and young people from extremist influences.

Strengthen our **intelligence** on extremism, financial and reputational risk in the education sector.

Continue to pursue action in **Birmingham** in response to the Clarke report.

Undertake **casework**, on individuals, institutions and areas where extremism concerns arise, increasingly seeking to stay ahead of risks, rather than reacting to events.

Safeguarding – early identification

- *“Schools can help to protect children from extremist and violent views in the same ways that they help to safeguard children from drugs, gang violence or alcohol. Schools’ work on Prevent needs to be seen in this context.”*

Prevent Strategy, 2011

- **Thresholds** for intervention
- The department’s statutory guidance for schools on safeguarding, **Keeping Children Safe in Education**, is clear that radicalisation is one of a number of safeguarding concerns.

Child protection powers: Children Act 1989

- **Court orders** (under the Children Act 1989) to protect children who are suffering, or are likely to suffer, significant harm.
 - Child Assessment Order
 - Emergency Protection Order
 - Police Protective Custody
 - Care and Supervision Orders

Information sharing

- **Working Together to Safeguard Children:** highlights importance of effective information sharing
 - all organisations should have arrangements in place setting out the processes and the principles for sharing information
- **Prevent duty guidance:** importance of information sharing agreements at local level to ensure the rights of individuals are fully protected).
- **People suspected of being involved in illegal terrorist-related activity must be referred to the police.**
- The police will have arrangements in place for sharing sensitive intelligence with safeguarding partners.

Inherent jurisdiction (wardship)

- Application can be made to the High Court **without notice to the parents**.
- **Wardship:** Part of High Court's inherent jurisdiction; offers immediate protection.
- **Broad powers** to protect children under inherent jurisdiction, including imposing conditions on others both within and outside a child's family.
- **The conditions that may be imposed include:**
 - confiscation of travel documents;
 - prohibition from leaving the country or making travel arrangements;
 - asking the UK Border Agency not to issue new passports;
 - prohibiting individuals from association with a child; and
 - restrictions on movement within the UK- electronic tagging and curfew of the parents has been used in one case.