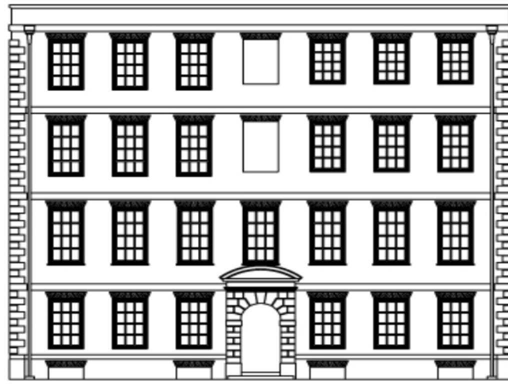

New Court Chambers

NEWSLETTER

January 2024 No. 19

MESSAGE FROM THE HEADS OF CHAMBERS

As we settle into 2024, our 19th New Court Newsletter is published.

We have seen more change and progression at New Court through 2023, with the addition of Gary Noble, Emma Vincent, Steven Evans and Gabriella Slater as new members of chambers. Their contribution to the growth of chambers is welcomed.

Isabella Taylor-Ezechie continues in her pupiilage and will be anticipating the opportunity to undertake her own advocacy from April 2024.

With transparency being a significant focus for the Family Court, we will not only be seeing more decisions reported, but a ‘real-time’ insight into the day to day progress of proceedings. This brings with it opportunities which New Court seeks to embrace.

It is impressive to read this latest newsletter, not least the breadth of issues covered and contributions from so many members of chambers.

We hope that you enjoy the read and please take the opportunity to feedback.

- Giles and Chris.

MESSAGE FROM YOUR EDITORS

For this edition we've summed up and highlighted the various reported cases where Chambers' members have admirably represented their clients throughout 2023.

It's been another impressive and non-stop year for New Court and the outcomes in these hearings are just some case law updates which we can take with us into 2024 for all of us to continue enhancing our practice.

Thankyou especially to our new pupil Isabella Taylor-Ezechie who will be on her feet in April 2024 and helped us put together these case summaries!

- Michael & Grace

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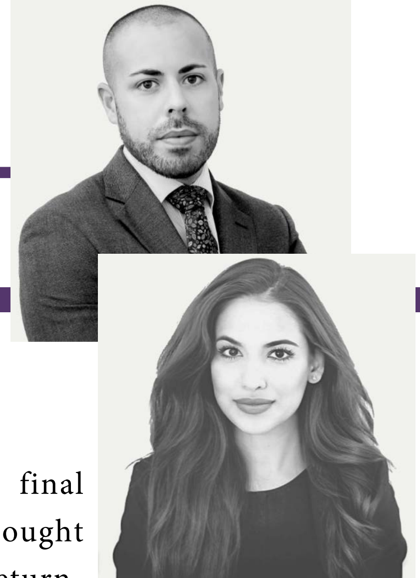
London Borough of Ealing V Mother & Ors [2023] EWFC 201 (15 November 2023)

Matthew Burman representing the LA and Meena Fakhri representing the child's guardian



Background

The child was placed in foster care having lived his whole life with M. An ICO was granted in February 2023. For the majority of the proceedings the child was opposed to having any contact with M.

The father lives in an East European Country ("Y"). The parties, including the child, are from a country in East Asia ("X"). The local authority at the outset of proceedings sought a supervision order and a CAO to be made to F on the basis that the child would be placed in boarding school and living with F in school holidays either in the UK, in X or in Y. Throughout the proceedings, the child spent large portions of time overseas with F, including in X (a non-Hague Convention Country).

The child's guardian opposed the child attending boarding school and living there in term time, given the child' strong view that they did not want to attend or live at such a school. As a result of the guardian's analysis, the local authority's care plan, supported by the father, was for the child to be made the subject of a final care order, with substantial and generous contact to be had with F, overseas, and with M, in the UK.

M opposed the final care order and sought for the child to return to her care as soon as she had identified suitable accommodation for them both. She sought a section 20 agreement in the interim until she found suitable housing.

At the time of the three-day final hearing, the child was 13 years old. He was settled in his foster care placement and had expressed being happy attending his current school.

The Legal Principles

The court had to grapple with whether a final care order was required or if the matter could conclude with a section 20 agreement, both parents confirming they would provide this consent.

The court considered Re S (A Child) and Re W (A Child) (s20 Accommodation) [2023] EWCA Civ 1 which set out that a s.20 arrangement can be the final outcome in care proceedings and is not only reserved to interim or short-term placements.

Analysis

At the time of the proceedings concluding, the court had only a binary option available to it of a care order or a return to the mother. Although initially concluding with a section 20 order had been suggested, no party actively pursued this. In any event, the court considered that this would place the applicant local authority in serious difficulty by 'providing accommodation without any real control in circumstances in which the parents were in active disagreement, incapable of communicating and with the father out of the country. Added to this is the very real difficulty of the mother's opposition to social care and an unwillingness to work co-operatively with the applicant (local authority)'.

Judgment

The Judge determined that the child's welfare demanded the making of a care order and for him to remain in foster care. However, it had been open to the court to conclude with the making of a s20 agreement as a final decision.

EY (Fact-finding hearing) [2023] EWCA Civ 1241

Rob Wilkinson representing the child's guardian

Background

E is a young person, who at the time of COA judgment was 14 years old. E was born a girl but now identifies as non-binary and goes by the pronouns 'they/them'. E has an older sister "S" who turned 18 during the care proceedings.

In 2009, when E was a few months old, S alleged that F had sexually abused her. F was arrested and a s47 investigation undertaken. Professionals became concerned that S's allegations had been prompted by M and subsequently

the investigations concluded with no further action.

A few weeks later S moved to live with F. A year later, E went to live with F alongside S. The children had occasional contact with M.

Several referrals were made to children's services, arising out of concerns that the children were being neglected whilst in F's care. Referrals were also made that the children had shared a bed with an older male and had observed adults having sex in the home. In 2017 the children were placed under Child Protection Plans under the category of sexual abuse. The family worked with the LA and the matter was stepped down to a Child in Need plan and was closed to the LA in June 2019.

During 2022, a further series of referrals were made concerning sexualised statements made by E. F was arrested in June 2022 on suspicion of sexual activity with a child and was released with bail conditions not to have contact with either S or E. F agreed to the children being accommodated by way of s.20 agreement and on 6 September 2022 E was made the subject of an ICO.

On 20 January 2023, Dr Timberlake, expert psychologist, completed his global family psychological assessment of E and F.

In November 2022 the police concluded their investigation taking no further action.

A three-day final hearing took place from 5-7 June 2023. The LA filed an amended threshold document. The social worker, the father and the children's guardian gave evidence.

The initial proceedings concluded on 10 August 2023. It was the LA's position that the proceedings should conclude with a care order; the first instance Judge had found that the threshold criteria were not satisfied, and the LA's application was dismissed.

The local authority appealed the decision. They were supported by E's mother and the children's guardian. The appeal was opposed by E's father.

Lower Court's Judgment

The Judge at first instance was critical of the LA's case at final hearing in that:

- Threshold was changing up until the start of giving evidence
- There was no evidence from the school in respect of the disclosures made by E
- Dr Timberlake had not set out alternate views depending on whether contested facts were or were not proved

The court went on to find that:

- E had made statements suggesting she had either been exposed to inappropriate sexual activity or had been sexually abused by F
- The court did not make a finding that what E stated had happened and was true
- That E saw a sex tape (later clarified as images of F and another person) when they were in year 7; and F did not monitor the children's internet use.
- That F would shout at the children on more than one occasion.
- E expressed that they wanted to be adopted.

Grounds of Appeal

The LA appealed initially on seven grounds: (1) the Judge erred in misconstruing the unchallenged report of Dr Timberlake (2) The Judge erred in not evaluating the facts as a whole in respect of a finding of 'failure to protect' as a result of E accessing a "sex tape" (3) the Judge erred in not finding E had been hit in Asda (4/5) The Judge failed to account for the inconsistencies in F's evidence properly and not taking into account the hearsay evidence of E and S fully when assessing a finding that the children had suffered significant harm due to F's shouting and lack of affection (6) the Judge said they could make findings beyond threshold, but did not identify what they may have been (7) the Judge minimised the evidence of S and E when no party had required either of them to give live evidence.

The LA then sought to add two grounds of appeal: (8) the Judge had not considered the evidence in its entirety (9) the Judge did not consider the context within which E said "I just want to be adopted".

Submissions

The court focused on the following grounds of appeal: (1), (2) and (6).

Ground One - Dr Timberlake

The LA submitted that (1) Dr Timberlake's report was unchallenged and the unchallenged report was an important portion of the LA's evidence in support of its case (2) Dr Timberlake had interviewed E, S, F and the foster carers and therefore had not solely relied upon the LA's case (3) Dr Timberlake had clearly demonstrated that E was likely to suffer significant harm if returned to F based on his assessment of the individuals he interviewed.

The CG, supporting the LA's submissions, raised: (1) the Judge had misunderstood the scope of Dr Timberlake's instructions, these had been approved at an earlier CMH and went beyond providing simply a psychological opinion of F and E, (as was the Judge's misconception) but extended to considering F's insight, his capacity to care for E, and to assess risk should they return to his care. The scope of the assessment had been agreed by all parties.

F, opposing the appeal, submitted: (1) the report had been challenged in closing submissions, namely that he had assumed the LA's concerns were all true (2) the Judge was not bound to adopt Dr Timberlake's conclusions, but was obliged to scrutinise them, had done so, and had rejected his conclusions.

Ground Two – failure to consider the evidence as to sexual risk as a whole

The LA submitted that: (1) although the Judge made various findings, he failed to evaluate them in their totality (2) the Judge had minimised a number of the findings of sexual matters.

The Guardian raised that there was nothing in the judgment to explain the reasoning for the Judge's conclusion that the findings of exposure to inappropriate sexual activity/images did not amount

to significant harm.

Both the LA and the CG submitted that the determination of the sexual abuse findings as 'historic' indicated the Judge had failed to consider a link between those experiences and E's more recent comments and behaviour.

F submitted that the Judge was entitled to find that the LA had failed to establish a link between the historic findings and E having suffered significant harm; the Judge having been hampered by no evidence from E's school.

Ground 6 – findings beyond threshold

The LA and the Guardian submitted that the Judge had erred in suggesting he could make additional findings beyond threshold, but declining to identify what they could have been, saying that it was inappropriate to do so due to the "shifting sands" of the LA's case. It was submitted that the Judge had prioritised the Article 6 rights of F over E's welfare.

F submitted that the LA had never invited the court to make any additional findings and that he had in fact made a finding beyond the threshold document as a result of F's oral evidence.

Discussion

Dr Timberlake

The Judge was not obliged to accept the psychologist's opinion simply because it had not been challenged.

The Judge did fall into error in his analysis and treatment of Dr Timberlake's report.

Mr Wilkinson (CG)'s submission was accepted in that the Judge had misunderstood the scope of Dr Timberlake's instruction and the scope of the same, this having been approved at an earlier CMH. It was therefore wrong of the Judge to criticise Dr Timberlake for considering the disputed facts and supposedly going outside the ambit of his instruction.

It was plain that Dr Timberlake was basing his observations and recommendations substantially on his own interviews with S, E and F, and not on the LA's own evidence.

The Judge was wrong to conclude that Dr Timberlake had failed to prove a link between the findings of fact and a finding of significant harm; he had in fact carefully explained why he thought this link was established.

Evidence as a whole

The court at first instance had made 9 findings in respect of inappropriate sexual activity/exposure. The Judge had concluded that because the LA had abandoned some of their findings in respect of sexual abuse a pattern could therefore not be established. In addition many of the allegations had been discounted from the analysis as 'historic'.

The appellant court relied on Butler-Sloss P's comments in Re T that the court must consider the totality of the findings.

In assessing the 9 findings, the they Court of Appeal set out that they were 'plainly capable of establishing a pattern of being exposed to a risk of harm as a result of F's failure to impose appropriate boundaries'. These findings should then have been assessed in the context of the rest of the evidence.

Findings beyond threshold

The Judge is obliged to say if the findings sought by the LA are unnecessary to resolve welfare issues in proceedings. Equally, the Judge is obliged to address the case if it is not felt that the LA are adequately addressing the factual issues which require resolution.

The court relied on Wall LJ in Re G and B (Fact-FindinThe court relied on Wall LJ in Re G and B (Fact-Finding Hearing), supra, at paragraph 16: *"if the judge is, as it were, to go "off piste", and to make findings of fact which are not sought by the local authority or not contained in its Schedule, then he or she must be astute to ensure; (a) that any additional or different findings made are securely founded in the evidence; and (b) that the fairness of the fact finding process is not compromised."*

The Judge was fully entitled to make other findings not contained in the threshold document.

It is very hard to see how a judge can be criticised for failing to make findings which they were never asked to make.

Judgment

- Appeal allowed on ground 1 – improper treatment of Dr Timberlake's expert report, recommendations and conclusions.
- Appeal allowed on ground 2 – inadequate assessment of the totality of the evidence.
- Appeal dismissed on ground 6 – findings beyond threshold.
- The matter to be remitted and reallocated to another Circuit Judge for a CMH and then a FFH.

E (A Child: Care Proceedings Fact Finding) [2023] EWCA Civ 858

Stephanie Hine representing the LA

Background

E was born in June 2021. On 29 July 2021 the parents left E in the care of PGM and the father's niece whilst they left the home for an hour and a half.

When the parents returned, E was put in her nightclothes by M and put to bed. In the morning of 30 July 2021, M sent a photograph of E to the father showing red marks around E's shoulder. An hour and a half after sending this photograph, M informed the allocated social worker about the marks. E was taken to hospital that afternoon. The unanimous medical opinion in the absence of any explanation was that the bruising was non-accidental.

Lower Court's Decision

The Judge concluded after a lengthy fact-finding hearing that the injuries to E had been non-accidental. The Judge then determined that M had inflicted these injuries on E when M was in a state of 'high emotional arousal' and that these did not occur on 29 July 2021, but on 30 July 2021.

M denied throughout the proceedings and the FFH that she had inflicted these injuries and raised that either F or the PGM must have done so.

On 14 April 2023, two weeks after judgment was given a hearing was held to consider M's permission to appeal and to consider timetabling to final hearing. During the hearing, the LA provided the Judge and the parties an IVA of PGM dated 9 October 2021; the assessment was negative. The assessment had not been disclosed prior to the FFH or the hearing on 14 April 2023.

On 18 April 2023, a second version of the IVA of PGM was included in the court bundle; this included the amendments which PGM had requested on 28 October 2021 following receipt of the assessment.

On 8 May 2023 PGM requested further amendments and a third version of the IVA was therefore prepared. This third version did not include any significant changes from the second version.

Grounds of Appeal

Permission to appeal was granted solely in relation to the Judge's finding that M had caused the injuries, that being parasitic upon the LA's failure to disclose the first and original version of PGM's IVA.

Legal Principles

The LA were under a duty to disclose version 1 and version 2 of PGM's IVA as documents with the potential to undermine the case of F and/or support the case of M. This was the case as they potentially included material which affected the credibility of F and PGM; as the assessment recorded an alternative version of events put forward by F.

The failure to disclose those documents was therefore a material irregularity.

Discussion

The Judge made a considered assessment of the parents and PGM's oral evidence before providing a review of the background evidence. She went on to analyse the medical evidence; it was not suggested on appeal that the Judge was wrong to conclude that the injuries were non-accidental.

The Judge provided scrupulous detail of the chronology of the period 29/30 July 2021.

The court concluded that '*the findings relating to 3.00am and 9.00am on 30 July 2021 were founded on the evidence and circumstances pertaining to each of those times. General conclusions about the background of any party, whether M, F or PGM, played no significant part in the findings.*'

If the first or second version of the IVA had been disclosed, the court determined that *'I do not consider that those lies would have been regarded as relating to a significant issue. They had nothing to do with the events of 2021. They concerned what happened to him as a child.'*

Stephanie Hine, for the LA submitted that it was accepted that the initial IVA should have been disclosed but that this irregularity did not materially affect the Judge's decision. Although it may have added to the cross-examination of PGM, it did not change the dynamic of the case.

Judgment

Accepting Ms Hine's submissions, the court concluded that: *'although there was a material irregularity in that the first and second versions of PGM's IVA had not been disclosed prior to the FFH this had no practical effect on the trial which took place or the Judge's decision. The court concluded that 'the effect of such cross-examination even put at its highest would have been negligible. It certainly would not have affected the Judge's finding about the identity of the perpetrator of the injuries to E.'*

Re T & Ors (Children) (Adequacy of Reasons) [2023] EWCA Civ 757

Sarah McMeechan & Samuel Prout representing the LA

Background

S is a 19-year-old man who is the older sibling of his four younger siblings who were subject to the care proceedings considered in the lower court.

The family had been known to the LA for 15 years. S's younger sister, 'T' had made allegations against S that he had sexually abused her when she was aged 11 and 12. She alleged that M had known about the abuse and done nothing to protect her. S denied the allegations.

The Proceedings

S was made an intervenor to the care proceedings.

A Re W hearing took place and the Judge concluded that T would not give evidence. The matter was listed for a FFH in December 2021; this was adjourned until April 2022 due to practical and evidential difficulties. It was adjourned again until August 2022 and took place over twelve days in August, September and October. Fifteen witnesses gave oral evidence.

Judgment was due to be delivered in November 2022.

However, between the evidence concluding and the judgment being passed down, S and T's younger sister, 'U' made similar allegations against S. It was agreed that judgment would be delayed while the allegations were investigated. Following the conclusion of the investigations no further findings were sought by the LA.

The Judge was then asked to hand down a written judgment, but declined to do so due to a shortage of time.

The Judgment was delivered on 21 March 2023.

Lower Court's Decision

The Judge made the majority of the LA's findings, including that S had sexually abused T and that M had been aware of the abuse and not prevented it or protected her.

Grounds of Appeal

Permission to appeal was granted on 7 June 2023.

S's appeal is supported by his father, through his litigation friend, but opposed by the LA and the children's guardian.

The five ground of appeal put forward by S and M were:

1. The Judge's reasoning and approach were flawed and failed to meet the minimum standard of adequate reasoning having regard to the seriousness of the allegation.
2. Failure to set out and apply the key authorities.
3. Factual errors and misunderstandings.
4. Wrong decision that the evidence supported the findings against the mother.
5. Procedural irregularity in giving judgment.

The focus of the appeal was on ground 1, supplemented by ground 5.

Key Issue on Appeal: ***Whether adequate reasons were given by the Judge at first instance to justify the serious findings made against S and his mother.***

Discussion

The LA submitted that the judgment was not devoid of reasoning and analysis and was sufficiently detailed to meet that standard and the guidance set out in Re B, despite severe time constraints, the Judge covered much ground in his judgment.

The appellants argued that the omissions in the judgment surpassed the wide discretion afforded within Re B.

Judgment

The court allowed the appeal on grounds 1 and 5.

The court agreed with the parties in the original hearing that a written judgment, when the parties required intermediaries, would have been preferable.

The proceedings were remitted to the Designated Family Judge for Central London.

FTF V MWM [2023] EWFC 191 (3rd November 2023)

Andrew Shaw representing the applicant mother

The matter was listed for final determination of a Child Arrangements application made by the Father on 21st June 2019. The original application was made in respect of the parties' eldest child, who was born in 2018, however its scope was widened as the parties had three further children over the course of the proceedings.

Background

The parties had never lived together, and the children had always been cared for by the Mother. At the time of the hearing, the Father had been having supervised contact with the children every fortnight at the home of the Maternal Grandparents (without the Mother present) but sought a 50/50 shared care arrangement.

There were however a number of concerns in respect of the Father. These formed the crux of the Fact-finding hearing before District Judge Jabbitt in August 2021, and the findings made were observed and concurred with by Recorder Jack in the present. In summary, the concerns were in respect of his challenging presentation; his parenting capacity; and his behaviour towards the mother.

Issues

There were a total of four applications before Recorder Jack at the Final Hearing:

1. The Father's principle application for 50/50 shared care child arrangements.

2. An application by the Father for enforcement of previous contact orders against the Mother. The Judge did not consider it proportionate to adjudicate on this.

3. A S91(14) application by the Mother seeking to prevent the Father from making any application in respect of the children without the court's permission.

4. An application for a Family Assistance Order. This was supported by both parties, and the Local Authority were in attendance at the hearing only to oppose this.

Judgment

The Father's application for 50/50 shared care was dismissed; the Judge having regard to the concerns highlighted in the Father's parenting assessment, the 'excellent' quality of the Mother's care and likely 'deleterious' impact of changing the arrangements. The Judge, noting the children's positive interactions with the Father, but mindful of the burden on the Maternal Grandparents in facilitating contact, endorsed Mr. Phillips recommendation for contact to be reduced to 3 hours once a month.

A s91(14) Order was made against the Father for five years. The Judge considered that there were strong indications that the Father may bring further proceedings, which would be contrary to the children's best interests, unless steps were taken by the court. Before the end of proceedings, the Father had already reported Mr. Phillips to Social Work England seeking disciplinary proceedings to be brought, made complaints to the chambers of the Mother's counsel and indicated his intent to appeal.

The Court unusually used its powers to make an injunction against the Father to prevent him from making complaints without permission of the court regarding professionals, lawyers, and judges involved in the case, due to his unwarranted behaviour during the proceedings.

The application to make a Family Assistance Order was refused. The Judge did not consider either parties' reasons sufficient – the Mother considering that a social worker could be beneficial to advise on alternatives in the event of contact breaking down, and the Father wishing to evidence his parenting capacity to the Local Authority.

K (children) (Powers of the Family Court)[2024] EWCA Civ 2 (11 January

Will Tyler KC, leading chambers' Meredith Major for the appellant

Door tenant Leslie Samuels KC leading chambers' Kyri Lefteri

Michael Connor led by Damian Garrido KC representing Child B

Background

The two subject children were initially subject to private law proceedings between their parents in which findings were made of parental alienation, domestic abuse and controlling and coercive behaviour against the father towards the mother and the children. Following a s37 report, the local authority issued care proceedings and the children were removed from their father and placed with maternal family members under ICOs.

At the final hearing in May 2023, the mother made an application for an injunction against the father requiring him to transfer the parental controls on the children's phones under s31E of the Matrimonial and Family Proceedings Act 1984. This application was refused by the judge who considered that she did not have jurisdiction to grant the order sought as she is not authorised to sit as a Deputy High Court Judge.

Appeal

Child A, through his Children's Guardian, sought permission to appeal the refusal to grant the injunction, which was granted on paper by Peter Jackson LJ. The matter came before the Court of Appeal, comprised of the President of the Family Division, Peter Jackson and Warby LLJ

Judgment

The Court of Appeal used the opportunity to review the powers of the Family Court and the application of the Guidance regarding the allocation and distribution of business within the Family Court as it relates to applications under s31E.

The Family Court was created in 2014 with the addition of Part 4A into the MFPA. Section 31E(1) provides:

> *31E Family court has High Court and county court powers*
> *(1) In any proceedings in the family court, the court may make any order—*
> *(a) which could be made by the High Court if the proceedings were in the High Court, or*
> *(b) which could be made by the county court if the proceedings were in the county court.*

It was accepted by all parties that the Family Court therefore has the power to make orders which could otherwise be made by the High Court.

The real question before the court was which level of judge within the Family Court is required to exercise the powers granted by s31E(1). The judgment begins the answer to this question with The Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014/840). The Family Court judiciary is divided into four levels:

High Court Judge level
Circuit Judge level
District Judge level Lay justices

Part 5 of the above rules, rules 13-20, set out the distribution of Family Court business between those different levels of judiciary. In particular, rule 15 gives effect to schedule one to those same rules, which states that cases in the first column should be heard by the level of judge mentionned in the second column. Rule 17 concerns application with existing or related to concluded proceedings, in summary, they should be allocated to the judge already hearing the case or the judge who has previously heard the case. Further, it gives effect to schedule 2 of the rules, which sets out that certain remedies can only be granted by a judge of a certain level, as set out within schedule 2.

Rule 20 is a catch-all provision, which considers the distribution of the majority of cases, which will fall into neither schedule 1 or 2, the majority of cases. The President of the Family Division is empowered to give guidance as to these rules and did so in 2014 in the President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law), which primarily concerns those cases falling under rule 20 and contains its own schedule regarding allocation. Column 1 lists cases which should be heard at District Judge level, column two, those which should be heard by a judge of Circuit or High Court level. In addition, paragraph H sets out matters which are reserved to the High Court.

Further guidance was issued by the President in 2018, which gives further explanation as to the distribution of cases between the Family Court and the High Court and as to cases within the Family Court heard at High Court Judge level: *Jurisdiction of the Family Court: Allocation of cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court.* Within this guidance, paragraph 15 assists in understanding the scope of s31E(1),

"This [s31E(1)] does not permit the family court to exercise original or substantive jurisdiction in respect of those exceptional matters, including applications under the inherent jurisdiction of the High Court, that must be commenced and heard in the High Court. It does, however, permit the use of the High Court's inherent jurisdiction to make incidental or supplemental orders to give effect to decisions within the jurisdiction of the family court"

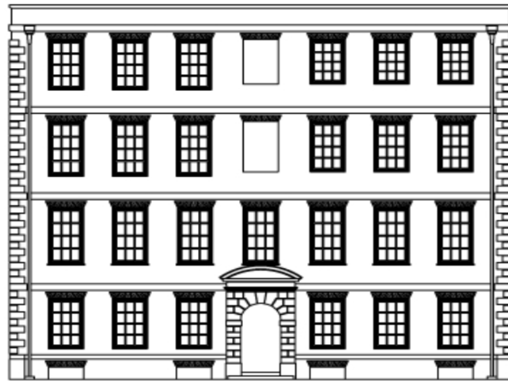
The schedules to this guidance give further details as to the cases which must begin the Family Division of the High Court and those which may begin there but then be transferred to the Family Court.

The Guidance further sets out first instance case law, confirmed within this judgment, where s31E(1) can be used the issuing of bench warrant against a maintenance debtor; an order to use best endeavours to secure release from a mortgage and a freestanding port alert. These are therefore examples of "incidental and supplemental orders" permitting the use of the powers of the High Court by the Family Court.

The Court draws the law, rules and guidance together in a helpful set of question which should be asked when considering application under s31E(1),

"(1) Are these properly issued family proceedings?
(2) Is the order sought one that is incidental or supplemental to the substantive orders that are sought in the proceedings?
(3) Is the remedy one that is reserved to a higher level of judge by the Schedule to the Rules or by the 2014 Guidance?
(4) Is the application one that is reserved to the High Court by the Rules or by the 2018 Guidance?"

The court was clear that applying these questions in the instant case, the judge did have jurisdiction to make the injunction sought. It therefore granted the appeal and remitted the case to her for rehearing.



NEW COURT CHAMBERS