

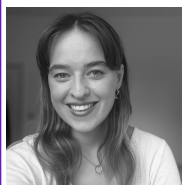


NEW COURT CHAMBERS

March 2025 Newsletter

Chambers' latest news:

New Court is pleased to welcome its newest tenant, Iona Gallagher, following successful completion of her third six with Chambers. Iona has consistently demonstrated exceptional skill, dedication, and professionalism, and is a fantastic addition to Chambers.



New Court's current pupil, Hannah Watson, will be starting on her feet in April 2025, and will be ready to accept instructions as Hannah commences her second six.

New Court's own Co-Head of Chambers Chris Poole sat on the afternoon panel at the Central Family Court Local Family Justice Board conference at the impressive Guildhall; Emma, Grace, Kezia, Iona and Kiran also attended this informative day looking at The Child's Journey Through Family Court Proceedings.



Sally Jackson, Meredith Major, and Michael Connor, attended the Family Law Week's Financial Remedy: Practice & Procedure Conference 2025.

On 5 February 2025 Saiqa Chaudhry and Samuel Prout delivered public law outline training to a group of Magistrates who sit at the East London Family Court and their legal advisors



Case Law

Placement Order granted despite proposals for placement with extended family in Pakistan being an option

M (A Child) (Placement Order) [2025] EWCA Civ 214

At first instance, M proposed her sister and brother-in-law (the aunt and the uncle), who live in Pakistan with their three children as alternative carers. However, following

thorough assessments by the LA, concerns emerged regarding the feasibility of such a placement. A CFAB assessment raised significant issues, including the family's financial instability and the complexity of obtaining legal guardianship under Pakistani law. Additionally, there were doubts about the ability to secure the necessary legal and practical arrangements in a timely manner. The aunt and uncle sought an adjournment for further assessments to be carried out.

The Family Court concluded that the adjournment would have to be at least three to four months to complete the assessment and return to court, and probably "more akin to six to twelve months before successful placement could be achieved if the assessment were positive". While a family-based placement was preferable, M's best interests would be served by adoption in the UK. It ruled that delays in securing a suitable family placement abroad would not be in line with the need for a stable, permanent home for M and therefore refused further adjournment.

On appeal, in week 62 of proceedings, the aunt and uncle argued that the Family Court had made errors in its findings, particularly in relation to the viability of the proposed placement in Pakistan and the extent of the delays that would be caused. However, the Court of Appeal dismissed the appeal, agreeing with the lower court's findings. The appeal judges emphasised the importance of timely decision-making in child welfare cases, particularly when a child's need for stability and permanence is at stake. The judge emphasised that M's need for permanency outweighed the potential benefits of placement with family, especially given the lack of immediate feasibility for such a placement.

Delivering judgment, Lady Justice King concluded:

"I would endorse the judge's observation that the decision was a difficult one but not a finely balanced one. What made it difficult was that the hopes of the family, and particularly the aunt and uncle, had been raised and then maintained long after a decision should have been reached that, for many reasons in addition to delay, the aspiration to place M with his extended family in Pakistan was not achievable within his timescales and that M's best interests could only be served by the making of a placement order with a view to his being adopted in the UK."

– Hannah Watson



NEW COURT CHAMBERS

Consideration given to working with parents with learning difficulties

Re BE (Care and Placement) [2024] EWFC 388

New Court Chambers' members, Sam Wallace and Gary Noble, appeared before HHJ Newport in a matter involving parents with learning difficulties and mental health issues; the mother having diagnoses of global developmental delay, PTSD, anxiety, and depression. Additional issues included the parents' alcohol misuse, and the risk posed by the parental relationship, in particular by the father and his abusive actions.

The court was clear that parents with learning disabilities are not prevented from caring for children simply because of their learning needs, and must be treated and assessed fairly. When considering the caring capabilities of the parents in this matter, however, the court determined that the mother is unable to continue learning the new skills required to raise the child.

It was noted that there had not been compliance by the local authority with the Good Practice on Working with Parents with a Learning Disability; a list of support for the mother or child having not been provided. However, ultimately the court determined that this did not undermine the local authority's case, acknowledging that professionals had tried to help the mother through meaningful social work and referrals, but the mother did not want help from adult services.

A link to the Good Practice on Working with Parents with a Learning Disability is included in the references and should be provided to clients about to embark on assessments of parents in care proceedings. It is commonly a cross-examination point to confirm whether this has been read and applied by the allocated social worker in proceedings where parents have a learning disability or this is suspected.

– Emma Vincent

¹ <https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/2016/%20WTPN%20UPDATE%20OF%20THE%20GPG%20-%20finalised%20with%20cover.pdf>

Warning given against illegal surrogacy arrangements

Re Z (Unlawful Foreign Surrogacy: Adoption)

Sam Marks of Chambers, represented the Local Authority in a case concerning two children, born by a surrogacy arrangement, to a same-sex female couple, Ms W and Ms X. At the time of the hearing, Ms W was over 70 years old and Ms X was 'fast approaching that age'. The couple had procured gametes from both male and female donors before engaging two separate surrogate mothers to carry two embryos of what then became the siblings at the heart of the adoption application.

The surrogate mothers were descended from the Ukraine and part of an agency in Cyprus. The children were born in Northern Cyprus. The prospective parents were unable to obtain a Parental Order which usually follows a surrogacy arrangement [HFEA 2008, s54(1)(b) and s54(1)(b)] as neither of the two gametes used to produce the embryos had hailed from either of the prospective parents.

Ms W and Ms X therefore applied to adopt the children and the matter came before the court, with the benefit of a thorough adoption assessment. The court raised concern about the way in which the surrogate process was used in this case but ultimately determined it was in the children's best interests to be made the subject of adoption orders and to remain in Ms W and Ms X's care as there was no one else in the world who could care for them. The court cited lessons to be learned, namely:

- 1) That the four women at the centre of the arrangements were being exploited for commercial gain by those running 'this unlawful operation'.
- 2) 'The motives of the two applicants in wanting to become parents of babies in their late 60's would seem to have been entirely self-centred, with no thought as to the long-term welfare of the resulting children.'
- 3) That 'anyone seeking to achieve the introduction of a child into their family by following in the footsteps of these applicants should think again'.

- Grace Robertson



NEW COURT CHAMBERS

Father erroneously listed on birth certificate - court determined F was not the legal father despite being named on the birth certificate

Re A & B (Declaration of non-parentage) [2025] EWFC 41

Mr J, the applicant, sought a declaration of non-parentage with respect to A and B. Mr J was erroneously listed on the children's birth certificates and the court was asked to determine whether Mr J should continue to be recognised as their legal parent.

Mr J and the children's mother met in Cyprus in 2006. In 2007, the parties underwent fertility (IVF) treatment at a clinic in Cyprus. The mother became pregnant with the sperm of an unknown donor. The parties married in April 2008. A and B, twins, were born in July 2008. The marriage was short with the parties separating in 2009 and divorcing in 2011. The parties engaged in financial remedy proceedings and Mr J accepted financial responsibility for the children, he was ordered to pay £120 per month with respect to each child. Mr J had no contact with the children since the parties separated.

Should the court determine the application - Section 55A(5) of the Family Law Act 1986 allows the court to refuse to determine a declaration of parentage if it "would not be in the best interests of the child." This is a narrow test. It does not require the court to apply the welfare checklist, nor to conduct a discretionary assessment whether it is in the children's best interests to determine the application.

The court found that the impact on the children would be 'minimal' if the application were determined. Examples of cases where the mere consideration of the application could be harmful to the children would be: threatened suicide of the subject child, child was the product of rape, or the child was placed for adoption as discussed by Black LJ *Re S (a child) (declaration of parentage) [2012] EWCA Civ 1160*. As such, the court allowed the application to proceed.

The court found that Mr J was not the legal father given (i) the parties were not married at the time of conception (ii) conception took place overseas and not in a UK licensed clinic (iii) conception was achieved using sperm that was not Mr J's. The fact that Mr J was erroneously registered as the children's father does not itself confer legal parentage on him. Being named on the birth certificate does not create legal parentage where statutory requirements are not met.

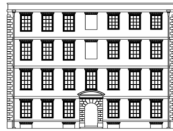
– Iona Gallagher

Guidance

President's Guidance - Public law children cases with an international element

Summary points of the guidance are:

- The central authorities are administrative only; they should not be asked to provide legal advice in respect of orders to be made in another country
- The central authorities may be able to help by making a request for co-operation to another country, or for the collection and exchange of information if: the other country is a state party to the 1996 Hague Convention **and** the proceedings are within the scope of The Convention; **and** the request for co-operation is provided for in Chapter V of the 1996 Hague Convention
- When deciding if the request is within the scope of the 1996 Hague Convention, consider Articles 1, 3, 4, and 30-37
- You **must** consider Article 37 of the 1996 Hague Convention **before** deciding to contact the central authority
- Requests for co-operation involving the collection and exchange of information must be distinguished from requests for evidence
- Requests for co-operation must be: relevant, focused, timely and practical
- Any request for co-operation must be made on the following form - <https://www.gov.uk/government/publications/international-child-abduction-unit-request-for-co-operation-form>
- A sealed copy of the relevant court order should be provided to the central authorities promptly
- Parties should agree who is to prepare the translation of any documents sent to the central authority along with the request for co-operation
- The Local Authority should make the request for co-operation, rather than another party doing this
- If considering placing a child in another 1996 Hague Convention country, you **must** consider Article 33 of The Convention
- Whether a placement of a child in another 1996 Hague Convention country is a placement in a foster family or institutional care is a question for **that** country and not the requesting county



NEW COURT CHAMBERS

Ministry of Justice report: Review of Civil Legal Aid Data Publication Series – Family deep dive

A report providing context for policy-making decisions rather than drawing its own conclusions, but an interesting read nonetheless for practitioners with a legal aid practice. Some key points:

- Solicitors' firms income from private family legal aid has decreased whereas income from public family legal aid has increased
- The number of barristers completing family legal aid cases has increased, with similar percentage increases across private and public law legal aid work
- In each year between 2015 – 2023 around two thirds of barristers did both private and public family legal aid work
- In each year between 2015 – 2023 female barristers made up the majority of those completing private family legal aid work
- 99% of barristers completing private family legal aid work are juniors; 96-97% of barristers completing public family legal aid work are juniors
- There has been an increase between 2015 and 2023 in private legal aid work being completed by barristers between 0-2 years call and 28+ years call

Central Family Court Local Family Justice Board Spring Conference – The Child's Journey Through Family Court Proceedings

On 19 March 2025, the CFC LFJB hosted an informative conference with a variety of sessions, including speeches and addresses from: the President Sir Andrew McFarlane; the DFJ HHJ Sapnara; Jahnine Davis on the adultification bias towards Black children; the Family Justice Young People's Board; the DFL Trailblazer Project, Ravi Kaur Mahey on neurodiversity; and the Racial Justice Family Network. The conference concluded with an interesting panel Q&A which included New Court's own Co-Head of Chambers Chris Poole.

Key take-aways from the day include the following.

- Sir Andrew McFarlane: There unfortunately remains ongoing delays with proceedings extending beyond the 26 week timetable, which does not serve children's interests. When considering the way forward, all those operating within family law are in this together, and it is important professionals do not lose that connection with the timetable.

- Sir Andrew McFarlane: The whole system needs to ensure social workers involved in family proceedings are respected. If assessments have been undertaken by social workers during pre-proceedings, parties and the court need to recognise that this assessment stands and matters should move forward, rather than directing further ISW assessments.
- Sir Andrew McFarlane: Pathfinder is a new model of approach within private law children proceedings and involves Cafcass producing a child impact report for the first hearing which highlights the effects on the child(ren) of the parental conflict. The goal is for London to implement Pathfinder in 18 months time.
- Jahnine Davis: The adultification of Black, Asian, and children of mixed racial backgrounds results in the erasure of childhoods and a delay in the provision of safeguarding responses. There is a level of compassion fatigue in the system and weaponizing of trauma experienced by children of Black and Asian backgrounds. Professionals needs to understand and recognise there is a distinction in the approach towards White children and Black and Asian children regarding an approach of criminalising children versus implementing therapeutic intervention and support.
- The Family Justice Young People's Board have created a practitioner's guide for arranging Safe Family Time, informed by children's own experiences in private law family proceedings.
- HHJ Sapnara: The CFC DFJ area has been selected as 1 of 5 DFJ Trailblazer sites across the country to test local solutions which have been designed to establish a more proactive system aimed at preventing delays. The approach looks to improve the collection and use of pre-proceedings' assessments and is working across organisational boundaries to improve pre-proceedings practices.
- A greater understanding is needed of the impact of neurodiversity on children and families, and the impact of removing neurodiverse children from their family and co-regulator person(s). One approach for professionals to consider moving forward is for trauma informed care strategies and practices to be needs led rather than diagnosis led, considering the backlog in assessments and obtaining diagnoses.
- The Racial Justice Family Network is a collaborative network focused on promoting anti-racist practices within the family justice system. The RJFN has developed tools for advocates, including the Family Court Anti-Racist and Anti-Poverty statements, and an informative document on creating a culture of respect.