NEW COURT CHAMBERS

April 2025 Newsletter

Chambers' latest news:

New Court is thrilled that Iona Gallagher has been named as a finalist for the Young Pro Bono Barrister of the year at Advocate's 2025 Bar Pro Bono Awards.

New Court's current pupil, Hannah Watson, is now on her feet and ready to accept instructions in public and private family law matters.

New Court Chambers has joined the Chambers Pro Bono Framework for 2025 and is thrilled to be part of this fantastic initiative.

CASE LAW

***Re M (A Child)* [2025] EWCA Civ 440** – *Is the test for appointing an intermediary one of necessity or does the court need to consider additional factors such as whether there are 'compelling reasons' for such an appointment?*

The Court of Appeal handed down judgment in ***Re M (A Child)***, confirming that the correct test for appointing an intermediary in family proceedings is necessity, as set out in **FPR Part 3A** and **PD3AA**, and rejecting any additional threshold of rarity or exceptionality.

The appeal concerned a vulnerable mother with neurodevelopmental diagnoses and cognitive impairments whose application for an intermediary in care proceedings was denied. Despite clear recommendations from a clinical psychologist that the mother be assisted by an intermediary, and the intermediary assessment recommending the mother be supported both during hearings and at conferences, her application was refused.

The refusal drew on obiter commentary in ***West Northamptonshire Council v KA* and *Re X and Y***, both of which emphasised the supposed rarity of such appointments and introduced concepts such as "*compelling reasons*" and the use of an intermediary for the whole trial being "*exceptionally rare*". The Court of Appeal has now made clear that such language is not found in the Family Procedure Rules and should not be overlaid onto the necessity test set out in **FPR Part 3A** and **PD3AA**. The Court highlighted the judge's failure to give reasons as inconsistent with the requirements of **rule 3A.9 FPR**. It also recognised that advocates "*should not be required to stray beyond their professional competence to make up for the absence of an intermediary where one is necessary*."

Going forward, courts must determine, on a case-specific and evidence-led basis, whether an intermediary is necessary to achieve a fair hearing.

- Iona Gallagher

Abbasi and another (respondents) v Newcastle upon Tyne Hospitals NHS Foundation Trust (appellant); Haastrup (Respondent) v King's College Hospital NHS Foundation Trust (Appellant) [2025] UKSC 15 – *was the Court of Appeal right to discharge an injunction protecting the identities of hospital staff after proceedings concerning whether a child's life-sustaining treatment should be continued or withdrawn had concluded? In short, yes.*

The injunction against naming hospital staff involved in the care of two children Z and I had been in place since before both children's deaths and had continued following the conclusion of the proceedings. On 23 June 2023, the President of the Family Division ordered the continuation of the injunctions, balancing the Article 8 rights of those involved and the Article 10 rights of the families who now wished to tell their stories. The Court of Appeal in March 2023 gave judgment allowing the parents' appeal of the President's order and discharging the injunctions.

The Supreme Court considered the issue and gave judgment on 16 April 2025, upholding the decision of the Court of Appeal. Lord Reed and Lord Briggs gave the leading judgment, which first set out that the High Court has jurisdiction to grant injunctions protecting the identifies of hospital staff in life-sustaining treatment cases, on the following three bases (which may co-exist):

1) To protect the interests of the child involved.

2) To prevent interference with hospital trusts' performance of their statutory functions (the Broadmoor principle).
3) To protect the rights of hospital staff in proceedings brought in a representative capacity.

The court went on to determine that:

1) Injunctions protecting hospital staffs' identities are not in themselves incompatible with the open justice principle.
2) The interests of the child in question and the need to secure the administration of justice in the proceedings are likely to justify making an injunctive order in circumstances where there is a significant risk that publicity will result in interferences with the child's right to confidentiality and privacy, and in damage to the continued care being provided by the hospital.
3) Such injunctions should be of limited duration, a reasonable duration would be until the end of the proceedings. If sought, the individual may then apply for a 'fresh injunction' if it is felt this is required, and based on the relevant jurisdiction.
4) The court order should name the protected individuals.
5) The need for any restriction of freedom of expression must be established convincingly, justified by a pressing social need and be proportionate to the legitimate aim pursued.
6) Weight can be given to the fact of unfounded accusations and abuse being suffered by the hospital staff, although the court should also bear in mind that the treatment of patients in public hospitals is a matter of legitimate public interest.

- **Grace Robertson**

RE: QX (Parental Consent for Deprivation of liberty: Children under 16) [2025] EWHC 745 (Fam) – *can parental responsibility be used to consent to the deprivation of a child's liberty in specific cases?*

On 31 March 2025, HHJ Burrows gave judgment in ***RE QX*** which concerned a 15 year old (QX), who is autistic with severe learning disabilities, requiring continuous care and support, and not *Gillick* competent. The local authority applied for a care order and authorisation from the High Court to deprive QX of his liberty. When hearing the application, HHJ Burrows considered the issue of parental consent for deprivation of liberty.

The key question the Court considered was: "*can a person who holds PR for a child, give consent (sometimes called "valid" and "informed" consent) for that child to be placed in a regime that leads otherwise to his deprivation of liberty"*? More specifically, "*is a parent (or someone otherwise acting within the "zone of parental responsibility" in a case where they consent to the mentally disabled child being placed in circumstances that objectively amount to a deprivation of their liberty?*"

HHJ Burrows identified the principle derived from past case law that parents hold a personal power to control and place restrictions on a child, to varying degrees as a child reaches the age of maturity. At [**52**], HHJ Burrows noted Mrs Justice Lieven's conclusion in ***Lincolnshire County Council v TGA*** **[2022] 3 WLR 1297 (FD)** that it is not a situation when a person with parental responsibility exercises "substituted consent", but rather the right to consent to a deprivation of liberty falls within the scope of PR.

When considering the relevance of disability to the exercise of PR, HHJ Burrows concluded that provided the exercise of PR is in the interest of the child, it falls within the zone of parental responsibility, and parental responsibility can be deployed to consent to an objective deprivation of liberty.

On the basis that all those with PR for QX agreed and provided valid section 20 consent to QX being placed where he is under continuous supervision and control, HHJ Burrows determined the Court had no place to further scrutinise or authorise the arrangements, and the application for an order under the inherent jurisdiction was dismissed; the local authority having also been granted permission to withdraw the application for a care order.

In reaching this conclusion, the court considered whether an approach which enables the parents of a 15 year old with autism and severe learning disabilities to consent to him being deprived of his liberty, but not those of a child without autism or such disabilities, is discriminatory against the former and deprives the most vulnerable of the protections under Article 5. The court remained persuaded of its conclusion, and confirmed that by finding that parental consent can prevent Article 5 applying to a child like QX, the Court recognises that in some cases the parent knows best and can freely act in the child's best interests.

This judgment confirms that neither a care order nor a "DoLs" order is needed in such cases, and so can be dealt with by local authorities outside of court proceedings. However, as that would mean no legal representation or advice for those with PR, no Guardian appointed for the child, and no scrutiny by the Court, HHJ Burrows noted it is important that local authorities err on the side of caution by bringing the case to court if there is a prospect of parents being overwhelmed with the decision-making process or changing their minds as to the placement of their child.

- Emma Vincent

"What's in a Name? The Legal Hurdles of Changing a Child's Name in Care"

I was recently instructed to represent a Local Authority in the High Court in relation to a young person in care who was seeking to legally change their first and second names. Although eventually agreed between the parties, this case raised complex legal and welfare considerations, particularly given the applicant child's background and the devastating trauma they had suffered at the hands of their birth parents.

The applicant child had been placed in the care of the Local Authority following serious and sustained sexual abuse, over many years, by both of their birth parents. The child's parents had been convicted and imprisoned for multiple offences, and restraining orders were in place preventing them from making any contact with the child. Despite these legal protections, the child, who was deemed Gillick competent, remained deeply concerned about the possibility of being traced through their birth name. For the applicant child, changing their name was not simply a matter of personal preference - it was a vital step towards reclaiming their identity and ensuring their safety, and they were keen to apply for college places and identification with their new name, meaning there was therefore a degree of urgency about the application.

This case presented three key issues. Firstly, whether the parents should even be notified of the application (and ultimately any order). Secondly, whether the case required the appointment of a Guardian and any further assessments or directions. Finally, and most importantly, whether the court should sanction the change of name at all.

In relation to the first issue, ordinarily, parents with parental responsibility are entitled to be informed and involved in decisions of this nature. However, there are of course rare circumstances in which the court may dispense with parental notification (***A Local Authority v B (Dispensing with Service)*** **[2020] EWHC 2741 (Fam)**). The court must carefully assess the risk of harm posed to the child, the necessity of the parents' involvement, and the child's welfare, which, while not paramount in such applications, remains a key consideration. In this case, given the severity of the abuse the child had suffered and the clear evidence that notification would cause them significant distress, the court was invited to dispense with service on the parents, which it did without any difficulty. That application was assisted by the fact that, perhaps unusually, the parents had in fact provided written consent to the name being changed, albeit some time ago.

The next question was whether a Children's Guardian should be appointed to represent the child's interests. Typically, one might expect a Guardian to be appointed here, but given the child's age and clear competence it was not considered by anyone to be necessary. This was particularly the case given that the child would soon be of an age where they could make the name change of their own accord.

The child and Local Authority both invited the court to deal with the application at the first hearing, which it agreed to do.

The court was greatly assisted by the guidance provided by Mr Justice Poole in ***BC v A Local Authority and others*** **[2024] EWHC 1639 (Fam)** which sets out the legal framework for such decisions, and which can be summarised as below.

While a care order is in force, as was the case in this matter, no person may cause a child to be known by a different **surname** without the written consent of every person who has parental responsibility or the leave of the court (**s.33(7) CA 1989**). Although these parents had provided consent to a change of name, they were not aware of what that name was, and so there were perhaps limitations on the extent of that consent. The parties proceeded on the basis that the court's leave should still be obtained.

In relation to changes of forenames, this is not governed by **s.33(7)**, or **s.13(1)** or **s.14C(3)** for that matter. Instead, any application should be made under the Inherent Jurisdiction of the High Court (see ***Re C (Change of Forename: Child in Care)*** **[2023] EWHC 2813 (Fam)**). A number of principles emerged from the ***Re C*** case, which were endorsed in ***BC:***

When will the court intervene under the inherent jurisdiction in respect of a forename change to a child in care?

1. This is likely to happen only rarely. Indeed, only in the "most extreme" case should the court exercise its power to prevent a parent from registering a child with the name chosen by the parent for that child.
2. The issue of whether there is a power within the inherent jurisdiction to prevent a parent with parental responsibility from naming their child with a particular name is dependent on whether the court is satisfied that to allow such a name to be used would likely cause that child significant harm.
3. Although it will only rarely be the case, nonetheless the giving of a particular name to a child (i.e., like 'Cyanide' in ***Re C*** for instance) can give a court reasonable cause to believe that, absent its intervention, the child in question is likely to suffer significant emotional harm.

4. The changing of a name (surname or forename) is a matter of importance, and in determining whether or not a change should take place the court must first and foremost have regard to the welfare of the child, **section 1(1)** and **section 1(3) Children Act 1989** therefore apply.
5. The decision on an application to change a forename is highly fact specific.
6. Registration of a particular name is always a relevant and an important consideration, but it is not in itself decisive. The weight to be given to it by the court will depend upon the other relevant factors or valid countervailing reasons which may tip the balance the other way.
7. The principles to be applied to change of name cases are the same regardless of whether a proposed name change relates to a forename or a surname, in this regard challenging the earlier view of Thorpe LJ in ***Re H (Child's Name: First Name).***
8. Forenames hold the same importance as surnames and the same principles should apply in considering and resolving any issues relating to a forename and surname.
9. The attitude and views of the individual parents and/or proposed carers are only relevant as far as they may affect the conduct of those persons and therefore indirectly affect the welfare of the child.
10. The sharing of a forename with a parent or grandparent or bearing a forename which readily identifies a child as belonging to his or her particular religious or cultural background, can be a source of great pride to a child and give him or her an important sense of belonging, which will be invaluable throughout his or her life.
11. **Article 8 ECHR** is engaged. It would be a significant interference in the EHCR, Art 8 rights of a parent are in play – a right to private and family life to prevent them from giving the child the name of their choice.

Ultimately, cases such as the present one, which are perhaps surprisingly common, are a reminder that harm can take many forms, and can continue long after the primary harm which brought about care proceedings. That harm can follow a child or young person around on a daily basis – during class register, when signing a form, when sending an email. A name can serve as a constant reminder of past trauma. The legal framework forces the court, quite rightly, to consider that harm in the context of the child's overall welfare, with particular focus on the child's own wishes and feelings in accordance with their level of understanding. For children in care, particularly those who have suffered extreme abuse, the ability to change their name can be an essential part of their journey towards recovery and independence.

- **Robert Wilkinson**