



NEW COURT CHAMBERS

July 2025 Newsletter

CASE LAW:

Newcastle City Council v JK [2025] EWHC 1767 (Fam) – *Poole J gives guidance and a decision on the procedure for accepting oral evidence by video link from a person outside of the jurisdiction*

Four children were subject to an Austrian Guardianship Order, removed from their parents, and placed in a long-term foster care placement in Austria. In July 2022, the mother abducted the children from supervised family time at a contact centre and travelled to the UK. The father remained in Austria. In October 2024, the children were taken into foster care under the police's powers of protection and then under interim care orders.

Mid-way through the final hearing, the Foreign, Commonwealth & Development Office (FCDO) informed that it would take 20 days to consider notice that the father and paternal uncles were to give evidence in Austria by way of video link. In making final care orders for the children and endorsing the Local Authority's care plans of long-term foster-care, the court set out the following as a '*coda*' to judgment:

- **FPR r22.3** allows the court to receive evidence remotely.
- **FPR PD 22A annexe 3 paragraph 5** states that, '*it should not be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a court in England or Wales by means of VCF*', and if in doubt, enquiries should be made of the Foreign and Commonwealth Office (International Legal Matters Unit, Consular Division).
- The case of **Agbabiaka (Evidence from Abroad: Nare Guidance) [2021] UKUT 00286 (IAC)** was cited in holding that '*it is accordingly necessary for there to be permission from such a foreign state*

(whether on an individual or general basis) before oral evidence can be taken from that State by a court or tribunal in the United Kingdom. Such permission is not considered necessary in the case of written evidence or oral submissions.' **The court emphasised that this decision is not binding on the family court.**

- In the family court there are many competing factors to balance this decision: the no delay principle, the 26 weeks' statutory obligation to conclude care proceedings, the overriding objective, and the children's welfare as the court's paramount consideration.
- It would have been disproportionate to require the paternal uncles to travel to England to give evidence in person, for in their case a mere hour of evidence.
- It is not unlawful to take evidence from abroad without the other country's permission – **Raza V Secretary of State for the Home Department [2023] EWCA Civ 29**
- In respect of evidence from Austria specifically, the Austro-British Convention on Mutual Legal Assistance BGBI 1932/45 was relevant in determining that evidence could be taken without intervention of state authorities, provided that there be a '*person authorised by the court*' appointed to be "commissioner". The trial Judge can be such a suitably appointed person.

The court determined that the father and paternal uncles could give evidence by video link and a review/confirmation from the FCDO in advance of this was not necessary. In conclusion, the decision re-emphasises the point that it is not ordinarily considered necessary to obtain permission from a foreign jurisdiction for a witness or party who has volunteered to given evidence remotely.

- Grace Robertson

H (Care Proceedings: Risk Assessment) [2025] EWCA Civ 72

Sabrina Polak of New Court Chambers, led by Joanne Brown KC (4pb), successfully appeared on behalf of the Local Authority, appealing a judgment delivered by HHJ Wicks in March 2025.

The child, H, was the Mother's fifth child. H's four older siblings had been adopted due to concerns around their exposure to the mother's relationship with an abusive partner. Concerns for H, sadly, mirrored the same issues. The Local Authority had sought a Care Order with a view, subject to assessment, to H remaining in the care of her foster carers in the long-term pursuant to adoption, with either a placement order application and/or a private adoption application being made in due course. The trial Judge, HHJ Wicks, refused the Local Authority's application for a Care Order, instead determining that H should be returned to his mother's care under a 12-month Supervision Order. The Local Authority appealed this decision.

Baker LJ, who gave the lead judgment, stressed that it *'is axiomatic that a judge must consider the totality of the evidence'*, and accepted the submission of the Local Authority that it was not enough for the Judge to simply say that he did not propose to summarise the evidence that had been read and heard, but that he had kept it in his mind when reaching his decision.

Baker LJ noted that it was incumbent on the trial judge to give reasons for rejecting the evidence of the social worker as to the longstanding and continuing risks, as set out in an updating statement, but there was no reference to that statement. Baker LJ determined that *'it is necessary for this Court to intervene because the judgment does not provide any or any adequate explanation of the basis on which the judge concluded that the risks had abated to the extent that it was safe to allow H to return to the care of her Mother'*. The Judge had not properly weighed the longstanding concerns in the balance against improvements made by the Mother in his evaluation of the risks.

Furthermore, Baker LJ reinforced that it was *'equally axiomatic that a judge must not treat the evidence in compartments but must consider each piece in the context of the rest of the evidence'*, determining that the Judge, in this case, had effectively left the threshold findings in one compartment and considered the improvements made by the Mother in a separate compartment, without an analysis of if those positive factors alleviated the risks to H as established in the threshold findings.

The Court of Appeal highlighted that *'...[t]he welfare*

checklist thus provides the structure on which the necessary analysis of risk can be built. The judgment in this case was silent as to this analysis'. Baker LJ also found that the *'deficiencies in the judgment in this case were not capable of repair through the process of seeking clarification'*.

The appeal was allowed, the decision was overturned, and the case was remitted.

- Sabrina Polak

Re S (Placement Order Contact) [2025] EWCA Civ 823 – Sibling Contact Post-Placement Order

The Court of Appeal considered the issue of sibling contact post-placement order, when a plan of adoption is approved for one sibling ('S') while the other ('R') is to remain subject to a final care order. The appellant mother relied upon six grounds of appeal, the central basis for the appeal being that the trial judge had focused solely on the detrimental impact that an order for sibling contact may have on the prospect of finding an adoptive family for S. In this matter there was agreement between the parties as to future planned contact arrangements between the siblings. The issue was whether said agreed arrangements should be embodied within an order.

Ultimately, the Court of Appeal dismissed the appeal, finding that this was a finely balanced issue of child welfare and the Judge's focus in this case on the detriment that would flow from the making of an order was appropriate. Within this judgment, the President provides a helpful analysis of the key authorities on contact at the placement stage and the principles that can be applied in future cases, including:

- The question of contact between siblings is a matter for the court and it is the court which has the responsibility to make orders for contact, if required, in the interests of the children.
- Cases where continuing direct sibling contact is considered to be necessary for the child's future welfare, and cases where the achievement of an adoptive home is the overarching goal with future sibling contact being desirable as opposed to a pre-requisite, can be distinguished.
- Each case falls to be determined on its own facts and requires a bespoke analysis of the future contact arrangements.
- In all cases it will be relevant to consider the impact on family finding of a care plan that includes ongoing contact, but it would be wrong for the risk of deterring potential adopters to be the determining factor in each and every case.

- It is wholly wrong, and was astonishing to the Court of Appeal, that if continuing direct sibling contact is justified, the frequency should be set at a level of six times per year in line with the rate endorsed in **Re R (Children) [2024] EWCA Civ 1302**. Rather, whether an order for contact is necessary, and the detailed arrangements contained within any such order, including frequency, will turn of the particular facts of each case.
- In noting the shift in recent years towards post-adoption contact and marrying this with making orders under the ACA 2002, the President considered that, given the number of uncertainties at the time a placement order is made, rather than having an order for contact in concrete terms, the court might record its views and its endorsement of the future contact plans, in a recital to the placement order.

- Emma Vincent

Ghosting the Court: A tactical approach to respondent non-engagement in financial remedy proceedings

Respondent non-engagement in financial remedy cases is a familiar - albeit highly disruptive - feature for family lawyers. When a respondent refuses to disclose, communicate, or even acknowledge proceedings, early and proactive tactical decision-making makes all the difference. Below, is a practical 'DIY' to ensure the proper foundations for robust advocacy and successful enforcement down the line.

The paper trail

From the outset, there is a need to demonstrate reasonableness and lay evidential groundwork for the applicant.

We all appreciate the need to send a comprehensive pre-action letter, expressly referencing **FPR PD 9A** and **r.9.27**, setting out the disclosure sought, proposing negotiation or mediation etc., and specifying a clear deadline for response (typically 14–21 days).

Documentation is key. Keep copies of all emails, letters, and any attempts at NCDR. This paper trail is crucial, not just for cost arguments later (see **FPR r.28.3**), but for establishing the client's cooperative approach.

Judges increasingly scrutinise pre-action conduct - your correspondence file will be critical in arguing for costs or adverse inferences (**Moher v Moher [2019] EWCA Civ 1482**). Ensure that early correspondence explicitly

references the issue of costs, particularly if there is an inkling of non-cooperation.

Move decisively

The strategic objective here is to prevent asset dissipation and avoid the appearance of applicant-induced delay. Courts will expect an explanation for any pre-issue delay – so have a timeline ready.

If there is no substantive response to your LBA, issue Form A without further delay. If key assets may be at risk, consider simultaneous applications for a freezing injunction (**MCA 1973 s.37; UL v BK [2013] EWHC 1735 (Fam)**) or a preservation order.

Managing client expectations are also important. There is a need to explain to the client that non-engagement is not unusual, but proactive case management is essential for the court to act decisively.

Shaping early directions – the First Appointment

It is important to utilise the court's case management powers / overriding objective to put pressure on the non-engaging party and ensure momentum.

In Form E, or an accompanying case summary or position statement, explicitly outline the respondent's non-engagement, referencing failed attempts at contact and lack of disclosure.

At the First Appointment, seek directions for:

- Strict deadlines for the respondent's Form E and documents (**FPR r.9.14, r.9.15**).
- A penal notice attached to orders (**FPR r.9.14(5)**), making non-compliance a contempt issue.
- An "unless order" where appropriate - failure to comply leads to the court accepting your client's evidence as determinative (**Behzadi v Behzadi [2022] EWCA Civ 1402**).
- Your client's costs – see below.

Where non-engagement persists, advocate for directions that include permission to proceed in absence (**FPR r.9.14(7)**) and advance warnings of potential cost consequences. If the court is slow to act, be ready with a draft order and authorities (**Moher, Behzadi, Sharland v Sharland [2015] UKSC 60**) to press for robust case management.

It is incredibly important to ensure your own client's unscrupulous adherence to the rules ahead of the First Appointment – see particularly **FPR Part 9, Standard Procedure**. Exerting pressure is key, make it explicit.

Costs and inferences

Rely on **FPR r.28.3(7)** (as amended 2024) - invite the court to make a costs order at the earliest possible stage if the respondent's conduct warrants it. Be clear and refer to your documented attempts at engagement. On costs, it is the court's ability to depart from the general 'no order' rule – see **FPR r.28.3(6)** and particularly **FPR PD28A p4.4; OG v AG [2020] EWFC 52** regarding conduct.

Ensure the N260 is prepared, and the rates and items claimed are reasonable. Make sure it is served on the respondent in good time.

Make the case (with reference to *Moher* and *Sharland*) that the respondent's failure to disclose should allow the court to draw adverse inferences - your client's evidence should be accepted unless positively disproved.

Prepare for the future: enforcement and beyond

A key tactical phase here is to ensure the groundwork is laid for effective enforcement and further tactical applications.

Where the judge makes findings critical of the respondent's conduct, ask for those to be recorded in the order by way of a recital. This will strengthen your hand on costs down the line and within any future enforcement.

Where disclosure remains patchy, prepare a detailed narrative schedule of assets based on available evidence and ask the court to adopt your figures on inference.

Make sure the issue of enforcement is flagged early on. In your skeleton argument or case summary, note that ongoing non-compliance may require applications under **FPR Part 33** (enforcement of financial orders), including committal for contempt if necessary.

As always, managing expectations are very important. Warn clients that, while the system provides for robust judicial intervention, some delay is inevitable with a disengaged party. They will know and appreciate that all steps are being taken to protect their interests.

For solicitors and clients alike, facing a non-engaging respondent is not just an administrative headache – it is a call for decisive, strategic action from the very start. Meticulous documentation, focused early directions, and the intelligent use of the FPR's sanctions regime can all turn the tables. The importance of positioning the client cannot be overstated, not just to survive non-engagement, but to convert it into a tactical and, ultimately, substantive benefit.

- Michael Connor

X and Y (Children: Adoption Order: Setting Aside) - *Does the court have jurisdiction to set aside a valid adoption order other than by way of appeal?*

The Court of Appeal has ruled that there is no jurisdiction to revoke an adoption order even when all parties involved, including the children and their adoptive and birth mothers, support the revocation.

The children's adoptive mother, AM, has lodged an application to appeal to The Supreme Court, supported by both children and their birth mother, BM.

New Court will update on the progress of this matter in upcoming newsletters.