



NEW COURT CHAMBERS

August 2025 Newsletter

CASE LAW:

AA (Mother) v XX (Father) [2025] EWHC 2165 (Fam)

The child, aged 11, was abducted to Iran by the paternal uncle in January 2024. The mother immediately returned to the UK and initiated wardship proceedings, obtaining a return order. The father failed to comply with repeated court orders to facilitate the child's return or to enable contact. He attended court, but refused to enter the courtroom unless certain conditions were met.

The court considered:

1. Whether the father's behaviour constituted contempt of court by breaching the return and contact orders.
2. Whether the committal process under Family Procedure Rules 2010, rule 37.4, had been properly followed.
3. What sentencing approach was suitable for contempt in this context - whether to impose immediate or suspended imprisonment, and the conditions for purging contempt.

The court found the father in contempt based on his longstanding non-compliance with clearly communicated and properly served orders. Applying the committal provisions, the judge emphasised that courts must uphold wardship orders firmly to protect the child's welfare and ensure respect for judicial authority. The judge sentenced the father to six months' immediate imprisonment.

There are two objectives with respect to sentence in these circumstances: (1) to mark the court's disapproval of breaches of its orders and (2) to secure compliance with those orders.

Key points from the judgment include:

1. The court can impose custodial sentences for contempt where a parent does not comply with orders designed to protect a child's welfare.

2. Non-compliance remains sanctionable.
3. Imprisonment may sometimes be the appropriate sanction.

This case is a reminder that the court can, and will in the appropriate circumstances, deem imprisonment to be an appropriate sentence in contempt applications.

- Iona Gallagher

Re H (Children) (Findings of Fact) [2025] EWCA Civ 993

This decision concerns the mother's and maternal uncle's appeals, challenging a number of adverse findings which included serious sexual abuse.

The grounds of appeal advanced included: (1) the first instance judge's insufficient analysis of the chronological development of the allegations (2) breaches of the ABE guidance (3) a lack of a holistic evidential evaluation. An underlying submission of the grounds of appeal was a general lack of rigorous judicial analysis of the evidence, which ultimately led the judge to err in finding that the maternal uncle had sexually abused the child.

As the judgment sets out, the court acknowledged this was a complex case, with a complex background history. This matter involved serious allegations of child abuse in which the evidence was in many respects unreliable, and the methods by which it was obtained, fundamentally flawed. It was noted that not one of the professionals investigating the allegations had complied with standard good practice in their work, which had the effect of excluding from judicial consideration potentially important material. Further, this matter involved a child complainant who was known to lie repeatedly, with alleged perpetrators who were all extremely vulnerable, and each with a personal history of childhood sexual abuse and suffering degrees of impaired functioning.

In a case such as this in which there are multiple allegations, the court clarified that a judge must always

guard against the temptation to approach the evidence on the basis that something must have happened.

As set out within the conclusion of the court's judgment, notwithstanding the judge's conscientious efforts in preparing a detailed judgment, the crucial analysis on the key facts of this case would have been easier to undertake, and been more coherent in organisation and presentation, if the judge had identified and focused on the "chapters of time" covered by the evidence, rather than structuring the judgment by reference to the sequence of witnesses and the individual allegations in isolation from each other; this being the approach advocated for by Peter Jackson LJ in *Re S* [2023] EWCA Civ 346.

When considering the specific findings under challenge, the court determined there were obvious deficits in the judge's analysis of the evidence which led to a specific finding, resulting in the conclusion that it must be set aside. This consequently led to the conclusion that other findings should also fall away.

The Court therefore allowed the appeals and, of the seven findings contained within the appeals, determined that four should be set aside, with one able to stand, albeit qualified. The Court determined that the Part IV CA 1989 application should be remitted to the specific DFJ, to then be reallocated as appropriate and listed urgently for case management directions.

- Emma Vincent

The Trust V Z & Ors (Withdrawal of Medical Treatment) [2025] EWHC 2100 (Fam) - *A re-cap of the applicable principles when the court is tasked with the devastating and difficult task of whether to withdraw life-sustaining treatment from a child*

Mrs Justice Theis DBE considered the welfare of Z (a boy, 10 months). The Trust sought an order permitting the withdrawal of life sustaining treatment from Z. Z was born 'with a severe congenital abnormality in his brain development'. The medical team caring for Z recognised the high level of care and love which they had shown Z; his parents equally acknowledged the specialist and good care being provided to him by the clinical team. The court commended the collaborative, respectful, and sensitive way in which the parties had conducted the case.

Z's parents submitted that Z had a right to live, that he had already defied the odds, and it is in his best interests to live the extent of his life whilst being actively treated. The Trust submitted that the treatment for Z was no longer in his best interests.

Theis J relied on the principles succinctly set out by **MacDonald J in *Raqeeb v Barts NHS Foundation Trust* [2019] EWHC 2531 (Admin)** and **[2019] EWHC 2530 (Family)**. Namely:

1. The court's paramount consideration is the best interests of the child.
2. The question is whether it is in the best interests of the child patient that a particular decision as to medical treatment should be taken. 'Best interests' is to be used in its 'widest sense'.
3. Each case is fact specific.
4. The court is not bound to follow the clinical assessment of the doctors.
5. The starting point is to consider the matter from the assumed view of the patient.
6. There is a strong presumption in favour of taking all steps to preserve life because survival instinct can be presumed to be strong in the patient. However, this may be outweighed by an evaluation of the patient's pain, suffering, and quality of life.
7. The views and opinions of both the doctors and the parents must be considered.
8. The court must consider the nature of the medical treatment in question, its prospects of success, and the likely outcome for the patient.
9. Article 2 and Article 8 of the ECHR are engaged. Article 9 may also be engaged.

The court concluded at **paragraph 45**:

It is with very great sadness that I have reached the conclusion that the application by the Trust should be granted. Whilst I have carefully considered the strong and important considerations in favour of continuing treatment, including their Article 8 rights and Z's Article 2 rights, the balance comes down clearly that the burdens of continuing that treatment for Z, in his particular circumstances, are contrary to his best interests. His parents are right that he has defied the odds, but the evidence demonstrates that save for relatively brief periods he suffers pain and discomfort on a regular basis, due to the many and necessary procedures that have to be undertaken and through his own symptoms. He will not recover; he remains at high risk of further complications which will only further weaken him as a consequence of any treatment. There are no more medication options to manage his condition. In this bleak medical landscape I agree that further treatment is futile. I have carefully considered the evidence about the uncertainty of life expectancy whether Z continues being treated or moves to be cared pursuant to the Plan. Whilst that uncertainty is there, Dr B was clear that the medication options are more flexible under the Plan, which is likely to better manage any future pain and discomfort for Z.

- Grace Robertson