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**Is one Individual’s Radicalism Another’s Right to Free Speech?**

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**Introduction**

The UK is tolerant of religious diversity, so how does a family court determine when rights to freedom of conscience and religion cross a legal line by putting children at risk of harm?

This is a complex, contentious and fascinating area of emerging law In this lecture I will go behind dramatic headlines such as *"Model Pupils Fleeing to be Brides of ISIS"* and "*Three Girls on Half Term Flee UK to Join ISIS*", to explain the emerging law and practice in this area. I will explore how the potential risk of harm to a child is balanced against the families' rights under Articles 6, 8, 9, 10 and 11 of the Human Rights Act and how the Family Court seeks to ensure a fair process which is evidence based and proportionate.

The aim of the Court is, as in all Family law cases, to protect children from serious harm. Alleged radicalism cases are no different in the legal considerations to be applied, but the court has had to grapple with issues emerging from a political and religious ethos which, if followed to an extreme, can place children in a war zone at risk of death either through their own actions or of being caught in the wake of a parents idealism. In these cases the judge must balance two extremes: the risk of harm of the very highest order to the child if the State’s concerns are justified versus perpetrating a great injustice against a family if a child is removed from home because of a misguided belief that the child or the parents are radicalised and that their piety has been misunderstood and stigmatised.

In the spring of 2015, the Family Division began to deal with cases that challenged all who played a role in them. ‘Radicalism’ as an issue had crossed the border from political debate to the courtroom. Eighteen months on I have much to reflect upon. What follows is my personal view based on my involvement in and analysis of a number of Family Division cases over the past year.

Once uncommon, cases involving allegations of radicalisation now come before the High Court of the Family Division on a monthly (sometimes weekly) basis. An early view on this development was provided in March 2015 by Hayden J:[[1]](#footnote-1)

*‘The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family. Here, the type of harm I have been asked to evaluate is a different facet of vulnerability for children than that which the courts have had to deal with in the past’.*

Hayden J was talking about the risk posed to a number of teenage children who were thought to be on the cusp of leaving the UK to travel to ISIS controlled territory, there to fight or become brides of fighters. To prevent that risk, a number of passports were ordered to be lodged with the solicitors in respect of the young people who were at risk: the view being taken that their families were unlikely to adequately protect them from leaving the UK. He was seeking to balance the level of risk against the harm that would be caused if the risk materialised. Although there may a low risk of an attempt to travel to Syria, the consequences if a child were to do so would be of the utmost gravity, potentially placing their lives at risk.

Cases initially became known of by word of mouth between local authorities and the lawyers involved. Few were reported in the press or legal journals. This was a new area of potential child abuse, yet there was little case law, next to no social work principles of assessment and a lack of uniformity around basic principles of information-sharing between the police and local authorities. Until October 2015, applications were being heard at County Court level as well as in the High Court and reported judgments were a scarcity; those that existed dealt with preliminary stages and no finding of fact hearings, let alone disposal determinations, had been adjudicated upon. It was, and still is, a fast- developing, challenging, novel legal world.

The increasing frequency with which such cases arose led to the President of the Family Division, Sir James Munby, issuing Guidance called “*Radicalisation Cases in the Family Court*” on 8th October 2015:[[2]](#footnote-2)

*‘The* *recent months have seen increasing numbers of children cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or at are at risk of being involved in terrorist activities either in this country or abroad’.*

This intervention recognised the seriousness and novelty of the issues being adjudicated upon and reserved such cases to the High Court in the knowledge that case law and practice would need to develop as litigation progressed.

In this lecture, a year on from the Guidance that marked out these cases for special interest and complexity, I wish to explore what we have learnt.

**Areas to Explore**

1. What do we mean by the word ‘radicalisation’ when used in a family court room context?
2. Human Rights
3. What’s the problem?
4. Stage 1: The trigger for intervention
5. Routes to protection: Wardship, public law proceedings under the Children Act 1989
6. Stage 2: Threshold: is there reasonable grounds for continued state intervention
7. Evidence gathering: what is relevant?
8. Police co-operation and its limitations
9. Stage 3: Disposal: what happens to the child and the family?
10. **What do we mean by the word ‘radicalisation’ when used in a family court room?**

The first major family case to consider the issue of radicalisation was decided in March 2014 but it went largely un-noticed by the public, press and legal profession. The judgment of Holman J in private law proceedings ***M (Children)* [2014] EWHC 667 (FAM)** considered the problem ….

*"Radicalising" is a vague and non-specific word which different people may use to mean different things.  There is quite a lot of material in this case to the effect that the elder of these children are committed Muslims who like to attend, and do attend, at a mosque and wish to display religious observance.  This nation and our culture are tolerant of religious diversity, and there can be no objection whatsoever to any child being exposed, often quite intensively, to the religious practices and observance of the child's parent or parents.*

*If and insofar as what is meant in this case by "radicalising" means no more than that a set of Muslim beliefs and practices is being strongly instilled in these children that cannot be regarded as in any way objectionable or inappropriate.*

*On the other hand, if by "radicalising" is meant, "negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism" then clearly that is a very different matter altogether’.*

Holman J's definition of radicalisation as *"negatively influencing [a child] with radical fundamentalist thought, which is associated with terrorism"* is a helpful one, properly distinguishing traditionalist beliefs from those connected to violent extremism.

**Section 26 of the Counter-Terrorism and Security Act 2015** has now placed a duty on specified authorities, including local authorities and schools, to have *"due regard to the need to prevent people from being drawn into terrorism"* in the exercise of their functions.

The supporting **Prevent Duty Guidance[[3]](#footnote-3)** provides this definition:

*"'Radicalisation' refers to the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups."*

In addition to case law we can learn from academics: for example there is a report, commissioned within Children Act proceedings, concerning “***Issues Relating to Radicalisation***” written by Professor Andrew Silke and Dr Katherine Brown, which summarises criminological terrorism related research on issues around children and adolescents, communities, on-line material and gender and psychological vulnerability to radicalisation.[[4]](#footnote-4)

From my perspective these cases have been amongst the most challenging I have encountered both in terms of trial management and evidential appraisal. The demands on counsel’s judgment and skill are extraordinarily high. These cases are reserved to the High Court. Radicalism cases do not have the smallest of legal casts: the press, police, local authority, parents, competent children, minors represented through their Guardian play a role, all have their own lawyers.

There is no jury; this is a Family Court not a criminal court. Cases are decided on the balance of probability not beyond all reasonable doubt: please see my first lecture ‘Sex, Death and Witchcraft: What Goes On In A Family Court Room’ <http://www.gresham.ac.uk/lectures-and-events/sex-death-and-witchcraft-what-goes-on-in-the-family-court-room>  that set out the basic principles of family law and proceedings and how and why it has different procedures and standard of proof than criminal law[[5]](#footnote-5).

1. **Human Rights: where does alleged radicalism fit into that protective framework?**

The European Convention on Human Rights[[6]](#footnote-6)provides for the recognition and protection of fundamental human rights including:

**Article 9**: ***everyone has the right to freedom of thought, conscience and religion.*** This overlaps with **Article 10: *the right* *to freedom of expression and***

**Article 11: *the right to freedom of association***

However, these rights are subject to such legal limitations as are necessary in the interests of public safety, or to protect the rights and freedom of others. The question therefore arises as to how to determine when those rights to freedom of conscience and religion will cross a legal line by impacting on the safety of children

**Question**: at what point does the state (through the local authority) and the family court have the right to intervene in a family’s religious and political choices? Is one person’s radicalism another’s right to freedom of speech and religious belief, even if those beliefs are abhorrent to the majority of society?

As was said in one recent case *‘one must be careful not to punish piety.’*

The court isn’t concerned with ‘morality’ nor with beliefs that might repel many members of our multi cultural multi-faith society: such as fascism or racist beliefs: we, as adults, have the right to hold and espouse anti-social views: note the President’s observations in ***Re A (A Child)* [2015] EWFC 11** that

“*[t]he mere fact, if fact it be, that the father was a member, probably only for a short time, of the EDL is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly "immoral" aspects of the father's behaviour. I refer again to what was said in In re B, both by Lord Wilson of Culworth JSC and by Baroness Hale of Richmond JSC. Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings.*

Hedley J in **Re L (Care: Threshold Criteria) [2007] 1 FLR 2050,** observed, at para 50, that

*"Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent’*

and, at para 51, that

*"significant harm is fact-specific and must retain the breadth of meaning that human fallibility may require of it" but that "it is clear that it must be something unusual; at least something more than the commonplace human failure or inadequacy".*

In Re **B (Care Proceedings; Appeal)** Lord Wilson said at para 28;

*‘Counsel seeks to develop Hedley J’s point. He submits that “many parents are hypochondriacs, many parents are criminals or benefits cheats, many parents discriminate against ethnic or sexual minorities, and many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or ‘model’ them in their own lives but those children could not be removed for those reasons’. I agree’..*

**Article 8:** ***the right to respect for his or her private and family life, home and correspondence.*** This right is subject to proportionate and lawful restrictions. It is a broad-ranging right that is often closely connected with other rights such as freedom of religion, freedom of expression, freedom of association and the right to respect for property.

***Family Life.*** Article 8 also provides the right to respect for one’s established family life.  This includes close family ties, although there is no pre-determined model of a family or family life.  It includes any stable relationship, be it married, engaged, or de facto; between parents and children; siblings; grandparents and grandchildren etc.  This right is often engaged, for example, when measures are taken by the State to separate family members (by removing children into care, or deporting one member of a family group or asking a ‘risky’ partner to live separately from their family household).

***Private life.*** The concept of a right to a private life encompasses the importance of personal dignity and autonomy and the interaction a person has with others, both in private or in public. Respect for one’s private life includes:

* the right to personal autonomy and physical and psychological integrity, i.e. the right not to be physically interfered with *(consider being forcibly stopped from boarding a plane or going on a ferry with your family);*
* respect for private and confidential information, particularly the storing and sharing of such information *(consider the accessing of media devices held by the family and scrutiny of both public and private internet use such as What’s App, emails and twitter feeds)*
* the right not to be subject to unlawful state surveillance (*consider being filmed at a march or demo, helping out at a Da’wah stall handing out leaflets etc.)*;
* respect for privacy when one has a reasonable expectation of privacy; and
* the right to control the dissemination of information about one’s private life, including photographs taken covertly.

**Limitations:** Article 8 is a qualified right and as such the right to a private and family life and respect for the home and correspondence may be limited.  So while the right to privacy is engaged in a wide number of situations, the right may be lawfully limited. Any limitation must have regard to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.

In particular any limitation must be:

* in accordance with law;
* necessary and proportionate; and
* for one or more of the following legitimate aims:
  + the interests of national security;
  + the interests of public safety or the economic well-being of the country;
  + the prevention of disorder or crime;
  + the protection of health or morals; or
  + the protection of the rights and freedoms of others.

**Article 6: *Right to Fair trial: everyone is entitled to a fair and public hearing.***  Much of the material I will cover on the rest of this lecture is relevant to Article 6. A particular tension arises when the evidence that the applicant local authority relies upon comes from police surveillance and investigation. The police may have acquired a library of information that is relevant to understanding the actions of the child or family before the court but to disclose it prematurely might compromise a parallel criminal investigation into this family or other ‘persons of interest’ or compromise the security of members of the public. It was for that reason that the President of the Family Division set out very clearly in his Guidance (explored later in this lecture[[7]](#footnote-7)) the expectations (and limitations) of information-sharing between the police and the parties in court.

Whilst Article 6 is an absolute right, Articles 8, 9, 10 and 11 are qualified.An **absolute right** is one that cannot be infringed under any circumstances: Article 3 – prohibition of torture is a good example of an absolute right. A **qualified right** is where the state can lawfully interfere under certain circumstances, or in the pursuit of a legitimate aim; or to uphold a democratic principle: Article 10 – Freedom of Expression (for example a Hate Crime) is a good example of a right which can be qualified. Any right that is qualified must also be prescribed by law or be necessary and proportionate.

In family cases, the central principle applied to all decision making is that the welfare of the child is paramount. That is why, for example, a parent’s right to a private family life free from state interference is not absolute: the child within that home has a right to be brought up safely and if that right cannot be respected or protected within the family home (for example because the child is being abused by the very person who ought to be nurturing and protecting him) then the child is removed. The child’s right to a life free from significant, avoidable, harm takes precedence over the parent’s right to retain the child within their care. In alleged radicalism cases the court strives to balance an individual’s right to freedom of religion and expression and political action against the child’s right not to be placed at risk of significant emotional and /or physical harm by those beliefs or actions if carried out to an extreme level. The ‘tipping’ point can be finely balanced.

**3 What’s the problem?**

The issue at the centre of radicalism cases is the nature of the serious harm (including death) that might befall a child if they travel to a war zone as part of a family group, or seek to do so independently of their family so as to become an active participant in the ISIS cause (as ‘jihadi’ bride or fighter). When a parent or competent child makes a decision to travel to Syria to join ISIS they do so at great personal risk to themselves. The regime is brutal and it is, almost certainly, a one-way destination. It is a war zone. The risk it poses to a child that lives in it is extreme and life-threatening

When adults make mistakes they are entitled to live and learn by them. But the court intervenes to protect a child because they may not make decisions that are in the best interest given their age, vulnerability and maturity. Their welfare is the court’s paramount concern, and when the child, or the parent of that child, cannot see or protect the child from the risk of serious harm the court intervenes to protect the child.

The religious journey towards radicalism is emotionally and psychologically abusive; the propaganda that ISIS produces pollutes the web. It is horrific in its imagery as well as its message. Propaganda contaminates those who view it. To hear a man screaming as he is set alight, to see the skin on his face melting as the camera zooms in to focus on his agony is not a sight that should be seen by anyone. Images of violent death of ‘infidels’ or the manufactured smiling ‘ecstasy’of dead ‘martyrs’ smelling of roses rather than decay, pollutes young minds.

ISIS manuals are explicit, found on the Dark Web, written with specific instruction on how to disguise radicalized action, use subterfuge to cover web activity. Contain instructions on how provoke terror, make plans for an attack, how to access and make contacts thought the Dark Web (and then cover web footprints). How to disguise convert’s true beliefs from society and their family. How to make and conceal plans to undermine the ‘enemy state’, or, the ultimate goal, how to plan and then travel to join ISIS in Syria. The risk to a child by exposure to this material by their own actions or through those of a radicalized relative is at the extreme end of emotional child abuse.

The reality of the evidence in such cases is brought home by the observations of Hayden J reflecting on the material discovered on the family’s devices and the evidence of the 16 year-old girl, B[[8]](#footnote-8):

*‘I have mentioned above that I elected not to see the video material in this case. It is rarely necessary for the Judge or the lawyers to do so. It is probably desirable that we should not. The danger that we become inured to it is greater than might initially be thought. Some of the material here is, plainly profoundly shocking……………*

*It is important to state that over the course of these proceedings and during her evidence I found B, as I have said, to be intelligent and perceptive. She gave her evidence on video link and was able to do so without inhibition or embarrassment. She was relaxed in cross examination, alert to the objectives behind the questions and never remotely intimidated intellectually. Some of the material she was discussing can only be described as profoundly disturbing. As she described some of these images she became distant, withdrawn, flat and rather glazed in her expression. She gave some of the most disturbing evidence I have ever heard from a child or, for that matter, an adult. She told me how violent beheadings, point blank shootings through the brain and images of mass killings no longer had any impact upon her. Whatever doubt I may have about any other aspect of her evidence I am entirely satisfied that she was telling the truth about this. Her demeanour was entirely congruent with her verbal evidence. The impact of this evidence on all those who heard it will remain for a long time.*”

But what are the options when plans to travel to Syria to take part in the ISIS regime are prevented by police or court intervention and the court has to decide what to do with the children plucked from the plane or car? Otherwise good parents may make bad ethical choices. Having been thwarted in their plans and had their beliefs exposed, there may well be little or no evidence of traditional categories of physical or emotional harm to the child save the (disputed) allegation that the parents have become radicalised and were prepared to put their children at risk in a war zone. Removal of an otherwise well-cared for child may be seen as oppressive or punitive by the extended family and the community, Muslim and non-Muslim alike.

ISIS propaganda portrays the removal of a child from its Muslim parents as state-sponsored persecution. In a community which is kept in ignorance – or is in denial of – the evidence that led to the family being detained and the children removed; do we run the risk of alienating law-abiding citizens?

These are complex issues and each case in the family court is determined on its specific facts. Each child; each parent, each set of facts are unique.

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**The spur to court? : Who can apply? What of the evidence that drives a case forward? Who has it? What is it? What happens in the end?**

1. **Stage 1: The trigger for intervention**

Four key categories of cases have emerged:

* + Children planning, attempting or being groomed to travel to Syria;
  + Parents planning or attempting to travel to Syria with their children;
  + Children at risk of being radicalised (within the home or by outside influences); and
  + Children at risk of being involved in terrorist activities.

1. **Routes to protection: Wardship, public law proceedings under the Children Act 1989**

Some children may be made subject to **Police Protection[[9]](#footnote-9)**

* + For a maximum of 72-hours;
  + An Order requires the officer to have “*reasonable cause to believe the child is likely to suffer significant harm*”;

This may come into effect if parents are stopped at a border by customs officers who call the police and decisions need to be made before social services can be notified or attend. A Police Protection order is strictly time limited and, if the local authority is to step in, they must do so swiftly.

Other cases begin within Public Law Care Proceedings by virtue of an application to the court for an **Emergency Protection Order** under the Children Act 1989.

Only a local authority can start care proceedings (see section 31(1) of the Children Act 1989). However, any person with a proper interest in the welfare of a child can start proceedings under the inherent jurisdiction[[10]](#footnote-10) or apply to make a child a ward of court[[11]](#footnote-11). Usually it will be the local authority which starts proceedings under the inherent jurisdiction or applies to make a child a ward of court, and the court would not expect the police (who have other priorities and responsibilities) to do so. There is, however, no reason why in a case where it seems to the police to be necessary to do so, the police should not start such proceedings for the purposes, for example, of making a child a ward of court, obtaining an injunction to prevent the child travelling abroad, obtaining a passport order, or obtaining a Tipstaff location or collection order and the proceedings are then taken over by the local authority.

The proceedings initiated may well depend on the information available and the length of time the family have been known to social services or community agencies in the build up to the application.

Cases where the identified risk is that older children have become radicalised themselves, including the possibility of attempting to travel unaccompanied to Syria or Iraq or where parents have allegedly attempted to travel to IS-held territories with their children may come to court as emergencies and /or through wardship proceedings or other orders under the court's inherent jurisdiction.

Cases where concerns arise that parents or older siblings hold extremist ideologies and may be indoctrinating children into those beliefs, placing them at risk of emotional and psychological harm (an accruing potential risk rather than an immediate and potentially irrevocable such as flight): these may best be brought under care proceedings although there may be additional orders sought under the court's inherent jurisdiction to remove passports or prohibit travel.

In circumstances where families are obstructing social services from assessing the child's welfare, an interim supervision order[[12]](#footnote-12) or child assessment order[[13]](#footnote-13)may facilitate an assessment whilst taking a least interventionist approach.

Once proceedings move past the initial application for urgent orders or injunctions the cases reported tend to fall into two categories: proceedings in **Wardship** or under the inherent jurisdiction and public law proceedings under **Part IV, Children Act 1989**.

**Wardship*:***

In the earlier reported cases the proceedings tended to be focused in wardship – principally (though not exclusively) concerning older children. This included ***Re Y (A Minor: Wardship) (No.2)*** where the child Y was noted to have “*grown up in modern Britain in an extraordinary family - a family where the male members are patently committed to waging jihad in war-torn Syria*” and the concern was that this boy was planning to follow their path by leaving the UK to go to Syria to fight.

These cases developed the use of wardship as a “*light touch*” intervention. The use of wardship brings with it the advantage of allowing the Court to reserve specific aspects of the exercise of parental responsibility to itself whilst delegating residual matters – with which the Court is not concerned as they do not give rise to the issue of risk – to the child’s parents. The greatest practical issue which can arise in such proceedings relates to the inadequate provision of funding. Where proceedings are brought exclusively under the inherent jurisdiction there is no recourse to *non-means, non-merits* funding as exists for parents in care proceedings. If the parents’ means places them above the income threshold they can be left facing complicated and serious proceedings at a considerable disadvantage. They must then rely on pro bono representation or act alone or seek out a McKenzie friend[[14]](#footnote-14) . They would not have ‘equality of arms’ with the local authority applicant and their counsel nor with their child who would be separately represented

**Public Law Proceedings**

The majority of reported decisions in recent months have been handed down, and published, in cases where the risks associated with radicalisation have led local authorities to issue care proceedings.

1. **Stage 2: Threshold: is there reasonable grounds for continued state intervention?**

Threshold: whilst reasonable suspicion is sufficient to commence proceedings and the evidence available at that time may be limited, the party’s rights to a fair trial mean that the local authority must file the evidence it relies upon to prove its case and the parents or parties are entitled to call their own evidence in rebuttal. The burden of proof is on the local authority to prove its case: please refer back to my first lecture ‘Sex, Death and Witchcraft’[[15]](#footnote-15) where I set out what threshold was and the respective burdens on the local authority to prove its case to the require standard so as to justify, on cogent evidence, why it should be permitted to continue to interfere in a family’s private life.

The decisions of the President of the Family Division in ***Re X (Children) (No. 3)* [2015] EWHC 3651 (FAM)** and ***Re Y (Children) (No. 3)* [2016] EWHC 503 (FAM)** raised considerable questions about the ability of local authorities to establish threshold in radicalism cases. Especially in light of the President’s finding in ***Re Y (No. 3)*** that the family had been “*detained by Turkish military authorities … within a zone of military control near the border with Syria and … probably within sight of the border*” it appeared, on one level, surprising that the President did not find the threshold to have been satisfied. Both judgments provide a helpful summary of the law to be applied to the making of findings which is of more general application.

Ultimately, though the President was left with – and expressed – considerable “*suspicion*”, neither local authority was able to establish that the parents in the two cases adhered to an extreme or radical ideology. This drove the President to conclude in ***Re Y (No. 3)*** that in the absence of such a belief system it was “*improbable – in my judgment, inexplicable – that any of these parents should ever have wished to put their children in the kind of very serious danger that re-location to Syria would inevitably entail*”.

In circumstances where limited reported cases were available the President’s judgments may have appeared to tip the balance in favour of parents and against findings being made as a general approach to radicalism allegations, despite extremely concerning evidence, Hayden J had this to say in ***Re K (Children)* [2016] EWHC 1606 (Fam)**:

“*8. I am quite confident that the President was not there in any way seeking to establish some kind of elevated standard of proof in these cases, but merely reiterating and underscoring the legal orthodoxy. What seems to me here, however, to have been lost sight of is that the President's observations are based on his evaluation of the case that he was hearing and which was contested before him. Of course, suspicion is not sufficient to substantiate a factual finding. As I have said, though the President plainly considered it needed to be reiterated in that case, it is ultimately trite law. However, to my mind, whilst the Local Authority and the guardian should always, in any litigation, evaluate their evidence and assess what they have a realistic potential to establish, there will always be a strong pull to actually investigating the evidence in the forensic process in order best to protect the interest of the child. At the end of the day, the question is whether, in relation to each discrete part of its case, the local authority has established it, on a balance of probabilities.*”

That was a sharp reminder that every case turns on its own unique facts and those facts require close scrutiny: it is for the Local Authority to prove its case and the evidence must be tested robustly to establish if they have made out each of their allegations on the balance or probabilities.

Notwithstanding the President’s decisions in ***X (No. 3)*** and ***Re Y (No. 3)*** other cases are now available in which local authorities have been able to establish threshold:

* + ***Leicester City Council v T* [2016] EWFC 20**;
  + ***Lancashire County Council v M & Ors (Rev 1)* [2016] EWFC 9**;
  + ***Re Y (A Child) (Care proceedings: Fact finding)* [2016] EWFC 30**
  + ***A Local Authority v M & Ors (Fact Finding) (Rev 1)* [2016] EWHC 1599 (Fam)**; and
  + ***London Borough Tower Hamlets v B* [2016] EWHC 1707 (FAM)**.

It is important to note that there is no special law that has been enacted in the family jurisdiction to deal with radicalism cases. The facts in dispute fall to be considered under the same legal framework that underpins all family cases.

***Appendix:*** *At the end of this lecture I have set out some of the cases that track the court’s evolving approach to allegations of radicalism as the evidence emerges and the needs of the child become clearer.*

**7 Evidence gathering: what is relevant?**

Identification and analysis of political extremism and the threat of terrorist activity is not the habitual domain of social workers nor traditional community services.

However, with the advent of the ‘Prevent duty’ placed on schools, prisons, the NHS and Local Authorities to spot individuals who might be vulnerable to extremism and radicalisation this is an evolving situation.

Between January 2012 and December 2015, 1,839 children aged 15 and under had been referred to ‘Channel’ (the governments anti-extremism programme) over concerns they were at risk of radicalisation[[16]](#footnote-16). How legitimate some of the concerns are that led to referrals is a matter of lively debate. An over zealous or ill-conceived referral can lead to bewilderment and fear, alienating the family concerned and triggering a resentment against the state and interest in the speeches of those who rail against it. The overwhelming majority of these referrals do not lead to court room activity: engagement with Channel is voluntary and the referral may go nowhere, alternatively, engagement work under the Channel programme may be successfully completed.

The ‘Channel Vulnerability Assessment Framework’ can be found within the Channel statutory guidance: [www.gov.uk/government/publications/channel-guidance](http://www.gov.uk/government/publications/channel-guidance)

The cases I and my colleagues deal with come to court as a result of a trigger action: for example, a family is stopped at a port by customs or the police, suspected of intending to travel to Syria .Or a teenager, seeking to travel to Syria, is reported missing by his or her family and taken off the plane on the runway. Whole families may ‘disappear’ un-noticed until an alert is raised by those left behind and the publicity that ensues alerts the world to a family decision that would otherwise have been private and irrevocable.

The difference is that unless there is a child at risk who requires the court’s protection the family court will not be asked to intervene: an act of political extremism by an adult may impact on the remaining family but it will not trigger a court application.

**8 Police co-operation and its limitations**

Given the nature of the issues involved, close coordination with the Police – and possibly counter terrorism security services – is likely to be critical. It is for this reason that it features so prominently in the President of the Family Divisions Guidance[[17]](#footnote-17).

*‘The police and other agencies recognise the point made by Hayden J[[18]](#footnote-18) that ‘in this particular process it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations.” The police and other agencies also recognise the point made by Bodey J[[19]](#footnote-19) that “it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities ... or other public bodies.” But subject to those qualifications, it is important that the family justice system works together in cooperation with the criminal justice system to achieve the proper administration of justice in both jurisdictions, for the interests of the child are not the sole consideration. So the family courts should extend all proper assistance to those involved in the criminal justice system, for example, by disclosing materials from the family court proceedings into the criminal process[[20]](#footnote-20).*[[21]](#footnote-21)

The evidence the Local Authority rely upon to justify the immediate application to court will be the intelligence gathered and held by the police supplemented by whatever community evidence they can gather from social care, health and education services. The evidence that informs intent is likely to be that seized and analysed by the police as part of their subsequent criminal investigation. Whilst the family is under criminal investigation, a Local Authority will be highly dependent on its partnership relationship with the police to secure knowledge of what evidence the police possess and are willing to divulge. The police will be wary of sharing any intelligence if it compromises their investigation into the affected family members or affects their wider security subjects or concerns.

This means that at the earliest stages of the application the respondents in a family case are potentially at a significant disadvantage in rebutting the concerns of the Local Authority who have access to he police information but may not have all they would otherwise wish (and have a duty) to disclose

**Presidents Guidance** **Police, the Local Authority and the Family Division:**

*Disclosure is likely to be of considerable importance but also an area which requires significant care.*

* 1. *Much of the information gathered by the police and other agencies will not be relevant to the issues before the court;*
  2. *Some of the information gathered by the police and other agencies is highly sensitive and such that its disclosure may damage the public interest or even put lives at risk;*
  3. *There is the need to avoid inappropriately wide or inadequately defined requests for disclosure of information or documents by the police or other agencies;*
  4. *The need to avoid seeking disclosure from the police or other agencies of information or material which may be subject to PII (Public Interest Immunity), or the disclosure of which might compromise on-going investigations, damage the public interest or put lives at risk, unless the judge is satisfied that such disclosure is “necessary to enable the court to resolve the proceedings justly” within the meaning given to those words when used in, for example, sections 32(5) and 38(7A) of the Children Act 1989 and section 13(6) of the Children and Families Act 2014;*
  5. *The need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court by the police or other agencies;*
  6. *The need to consider any PII issues and whether there is a need for a closed hearing or use of a special advocate;*
  7. *The need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings or (ii) any transcripts;*
  8. *The need to ensure that the operational requirements of the police and other agencies are not inadvertently compromised or inhibited either because a child is a ward of court or because of any order made by the court;*
  9. *The assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert* *counsel.*

**Other evidence: the ‘broad canvas’:**

Local authorities are running to catch up on this emerging area by trying to put pieces of the jigsaw together through looking at police intelligence in the context of the behaviour of the family in the community.

* There may be potential relevance in the fact that a baby has not been immunised, that a child attends a faith school, or the children are home schooled or a family prays at a particular mosque or seeks guidance from a particular Imam.
* Financial activity may be revealing: if a parent is engaging in an uncharacteristic level of eBay activity or has tried to take out unsecured credit, are the origins benign or indicative of access to ISIS training for those intending to raise money to travel to Syria having read their online manuals?
* When en route to a port /airport, has the male family member shaved his beard and adopted western clothing? Has a female member removed her burka and abaya, revealed her hair and face and wears western clothing in sharp contrast to her appearance when in public over preceding years?
* Having booked a short city weekend break for a family holiday (e.g.; to Germany) with return ferry tickets paid for, why, none the less, is the car packed with multiple packs of bulk nappies, over 47 items of underwear, multiple razors, 114 sanitary towels alongside a balaclava and male all-weather outdoor fitness gear… in July?
* If a short family trip has been planned why would there be multiple unused sealed SIM cards stowed away in the car and a GPS navigation history showing routes further afield than the booked destination? Why is there a translation app down loaded which covers far more languages than that need in the holiday country of destination? Why is there so much cash concealed around the car and on the children and families persons? Why take a bank-issued (PIN sentry) device to perform internet banking?

It is not any one aspect of family life that raises concern: evidence must not be compartmentalized. The broad canvass’ of family life and action must be considered. What may seem ominous may be entirely benign: suspicion is not enough.

One leans on and learns from police intelligence; they know the 'players', the modus operandi of recruiters and recruits, the manuals that are disseminated, and the hallmarks of activity when ISIS advice is put into action. Police Counter Terrorism intelligence is vast and closely protected. Only by case by case experience do advocates acquire it.

I now know why, for example, in one case I was instructed in, a very precise amount in cash was acquired through fraudulent eBay activity and credit card applications when the sum seemed an oddity. There was no logic, but there was a reason behind the amount (in cash) and the route to getting it (fraudulent activity) and it is to be found in the ISIS Manual I had police-controlled access to in another trial.

The common thread in these cases has been the ability of the local authority to demonstrate the commitment of a parent (or in one instance a child) to a radical or extreme ideology. The Court and parties must be careful to consider what evidence is available to prove or disprove this central contention. A non-exhaustive list includes:

* + Forensic computer and telephone analysis;
  + Evidence gathered from (sometimes publicly available) social media platforms including Facebook, Twitter, YouTube and WhatsApp;
  + Evidence from documentary programmes;
  + Police investigative evidence;
  + Findings of other tribunals (including criminal courts but also, potentially, professional disciplinary bodies);
  + Evidence of those who have had direct dealings with the family;
* Direct evidence from the parents and children in interview or at Court

Knowledge gained in one case is invaluable in decoding the evidence in another, and that’s possibly why these cases are dealt with by a small pool of advocates who acquire knowledge through experience and anecdote rather than via text or case law review.

The question may arise in due course as to whether the Family Bar’s independence will be viewed with suspicion by the state security services. Counter Terrorism Officers are used to having in-house legal teams who use counsel from an approved stable of Crown Prosecution Service names. For how much longer will the Police be willing to share painstakingly acquired technical and tactical information with counsel for the LA when, as members of the independent bar, that same counsel may in a different case, cross examine the police department on behalf of an accused radicalised party? Make no mistake; the officers involved in this work are passionate about what they do and about how real they perceive the risk to the public to be.

* + - 1. **Stage 3: Disposal: what happens to the child and the family?**

The concluded proceedings have concerned children across a wide range of ages. Though in some cases the removal of children from the family home has taken place under interim care orders none of the cases reported to date have concluded with children being placed permanently outside of their family network.

This may reflect the notable aspect of many cases concerning radicalisation: the juxtaposition between the espousal of a radical ideology (and consequential risk) and the high quality of care and parenting offered in other areas.

Munby P spelt out this contrast between the high levels of concern around actions inspired by radicalism which could lead a child into a war zone which seemed at odds with positive parenting in every other sense:

*‘In relation to her qualities as a parent, the mother starts with this, that there is no suggestion, apart from the alleged journeys to Syria, that there is any basis for complaint about any aspect of her basic care for the children. It is accepted that she is, in other respects, a good parent who is bringing up her children lovingly and well. But this encomium must be qualified in two respects*

*[…]*

*96. Secondly, the mother's qualities as a parent are not, of themselves, any assurance that she would not have acted in the way alleged by the local authority. I cannot blind myself to the reality that not every parent is necessarily as steeped in the values and belief-systems of a post-Enlightenment Europe as we might like to imagine. People may be otherwise very good parents (in the sense in which society generally would use the phrase) while yet being driven by fanaticism, whether religious or political, to expose their children to what most would think to be plain, obvious and very great significant harm. There are, after all, well-attested cases of seemingly good parents exposing their children to ISIS-related materials or even taking their children to ISIS-controlled Syria.”*[[22]](#footnote-22)

The importance of the wider family network cannot be under-estimated. They may support the security of a child within a former ‘radicalised’ home or step in to take the child into their household with monitored access to their parent. If findings are made against a parent but they are not such as to justify the permanent separation of the child from them, the final plan may look to the support that can be offered by the wider family network to enable continued care from parents where family members, assessed as aware of the risk, may well represent the best “*eyes on the ground*” available. Placement back at home, or with family members, has frequently come within the framework of care orders.[[23]](#footnote-23)

The creative use of GPS Electronic Tagging has enabled children to remain with their family when the risk of flight has been addressed. GPS monitoring can monitor a subject’s movements and whereabouts whilst outside the residence. It is possible to set “Exclusion” and “Inclusion” zones such that can generate alerts if the tagged person enters a forbidden area (such as an airport or ferry terminus) or leaves an area where they are ordered to remain within.

The preference for children to remain in the family network is particularly understandable where the very intervention of the state and the appearance (real or otherwise) in the family life can lead to feelings of being targeted or persecuted. Every case involving every child has a different set of facts that needs to be evaluated if the child’s welfare is to be properly, and individually addressed. If there are siblings of 6 months and 14 years in a family their vulnerability to on-line or domestic extremism will be very different. If the fear is of flight and that can be managed by tagging the parents then the baby could go home because they are going to be protected by their age from the effects of exposure to any radicalised proselytising. But what of the 14 year old? He or she could be negatively influenced by radical propaganda because they are old enough to listen and learn from what is said to and around them in the home. But if a decision to return the baby is made then would it be right to separate the siblings leading to feelings of bewilderment and anger in the older child who isn’t reunited with his parents and remains, alone, in foster care? That may increase the teenagers susceptibility to the very ideology that is at the core of the Court’s concern. A teenager, forced to live separate from parents he or he considers loving and caring may become highly sensitized to the message of the militant marchers that the state is forcibly taking Muslim children away from loving homes. Decisions in cases of this sort are finely balanced. The basic principle remains that the local authority must prove its case against an accused party, and, even if findings are made, the path of least intervention should be followed by the court.

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**Concluding Remarks**

In this lecture, I have tried to set out the developing case law and practice as it relates to the issues of radicalism as presented to the Family Court. The situation is fluid and will continue to change. It may be, for instance that once case law and practice is established, cases are no longer reserved exclusively to the High Court and will, again, be heard in the county court. It may be that the nature of risk changes as travel to join ISIS to fight becomes unrealistic or unattractive as the battle for Mosul reduces ISIS controlled territory and access routes become less navigable. Does the risk then arise, not from a desire to leave the UK to join the fight, but from fighters who wish to return to the jurisdiction, their energy for the cause undimmed, but dedicated to continue their radicalised fight by other means, closer to home?

It is worth reemphasizing that there is no new statute law here. The same law applies as to any case in the Family Division. The same focus on the risk of harm and the welfare of the child is paramount. The processes of intervention, threshold, evidence and balance of probabilities apply. The current cases involve radicalisation within the Muslim faith but the case law and practice could equally apply in the future to any radical religious or political belief that presented a risk of harm to a child.

The developing case law and guidance is firmly rooted in both existing UK family law and the basic tenets of the Human Rights Act.

Challenges, sensitivities, and disputes will continue but the fundamental aim of the protection of a child will remain constant.

*Acknowledgements*

I have had the pleasure of working with many talented silks and juniors. My colleague Chris Barnes of 4 Paper Buildings has worked alongside me in court and spoken with me at many a lecture. I would like to acknowledge the contribution to this lecture by him through the many talks we have had and given on this challenging subject.

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**APPENDIX**

**What’s the fuss about? Some case examples**

**Note: *This is not a full case library, just a flavour of some of the cases that have worked their way through the High Court from application to disposal***

*Re Y (A Minor: Wardship)* [2015] EWHC 2098 (FAM) (17th March 2015) part 1: Decision of Hayden J .The first occasion on which wardship was utilised to address the risk of radicalisation. In this instance to a young man from an extraordinary family with two brothers killed in Syria, another injured and an uncle previously detained in Guantanamo Bay Detention Centre was seeking to leave the UK to join the jihad. There was no fool proof way to prevent travel but the most effective was thought to remove his passport; he was made a ward of court and a ward may not be removed from England and Wales without the Court’s permission. Wardship Order made and passports taken and retained because on balance the court was in favour of protecting Y “*from himself*”.

*Re Y (A Minor: Wardship)* [2015] EWHC 2099 (Fam) (23rd April 2015) : part 2 The return of the earlier application ( above) regarding Y led to the continuation of “*light touch intervention*”: Wardship noted to have “*a flexibility to it that enables it to make interventions into the lives of children which can, when required, have a lightness of touch, and equally when required can have very draconian reach indeed, for after all it removes parental responsibility from either parent or local authority and places it in the hands of the High Court judge*”; **Note**: Assessment of risk: “*Risk does not exist as a concept in a vacuum.  Sometimes a small risk of some very serious consequence is an unacceptable risk.  Sometimes by contrast a significant risk of something with really rather minor consequences may be acceptable.  Here it seems to me is the classic case of a high risk of very serious harm.  It is important not to lose sight of the fact that two brothers have already died in this war*”;

*London Borough of Tower Hamlets v B* [2015] EWHC 2491 (21st August 2015) The London Borough of Tower Hamlets sought to remove B and her siblings from the care of their parents. B, a female of 16 years, attempted to travel to Syria in order to join Islamic State. Mr Justice Hayden, determining this application, set out the context thus:

*"This case comes before me consecutively with a number of other cases within the Borough of Tower Hamlets, each of which involves intelligent young girls, highly motivated academically, each of whom has, to some and greatly varying degrees, been either radicalized or exposed to extreme ideology promulgated by those subscribing to the values of the self-styled Islamic State."*

Citing from his previous judgment reported as *Tower Hamlets London BC v M & Ors [*2015) EWHC 869 (FAM), Hayden J states that cases of this nature *"present a new facet of child protection where there is, as yet, limited professional experience or, for that matter, available training".*  The judge goes on to state that *"conventional safeguarding*" principles still afford the best protection, and continue to apply in these cases.

On 6 December 2014, B's mother reported her missing. It is said that one of B's brothers alerted their mother to her plan to travel to Syria that day to join Islamic State. The Metropolitan Police Service Counter Terrorism Command were alerted, and they were able, operating on a narrow time margin, to intercept the flight only minutes before it was due to take off and B was removed.

At the outset of the proceedings, B was made a ward of court. Hayden J refused an application for her passport to be held by the Tipstaff. The family was permitted to deposit their passports including B's with their solicitor. Further to their reassurances it was believed that the family was willing to engage and cooperate. However, following a search of their home a number of electronic devices were seized by the Counter Terrorism Command. B was arrested on suspicion of terrorism offences. Her parents and siblings were arrested for "possessing information likely to be useful to a person committing or preparing an act of terrorism."

The long list of ‘radicalising materials’ found is summarized at paragraphs 15 to 18 of the judgment. They were said to be powerful and alarming. Hayden J states that:

*"It requires to be stated unambiguously, it is not merely theoretical or gratuitously shocking, it involves information of a practical nature designed to support and to perpetrate terrorist attacks.  I have noted already bur reemphasize that it provides advice as to how to avoid airport security, particularly for females (sic).  In addition, the videos of beheadings and smiling corpses can only be profoundly damaging, particularly to these very young, and in my judgment, vulnerable individuals."*

B and her parents had chosen not to give evidence despite being aware of the adverse inferences that could be drawn. Hayden J concluded that the parents had deceived the local authority and the Police. The learned judge states:

*"I am bound to say I do not recall seeing deception which is so consummately skillful as has been the case here."*

Mr Justice Hayden ordered a 'comprehensive and thorough' assessment before determining whether the boys ought to be removed on the basis that no radicalising material had been found on their devices; they were more integrated in society than their female siblings through their interests in sports; one of them had sounded the alarm following B's attempted flight to Syria; and, they were about to start Sixth Form college which would expose them to greater professional scrutiny.

In relation to B, the learned judge concluded that she had suffered serious emotional harm and continued to be at risk in her parents' care. He added *"(the) farrago of sophisticated dishonesty displayed by her parents makes such a placement entirely unsustainable*." B had urged the judge to consider all options and had suggested that she be tagged and her access to the internet restricted. However, Hayden J considered that the risk to her was not primarily or indeed exclusively one of flight; it was of psychological and emotional harm from which tagging could not protect her.

The end of B’s journey: not to Syria but to her home

*Borough of Tower Hamlets v B* [2016] EWHC 1707 (FAM)A final care order was made in relation to the 17-year-old girl with a care plan for her to return home

The 17-year-old girl, B, had been caught attempting to travel to Syria and materials were found in the family home which supported ISIS including violent images. Care proceedings were initiated in relation to B and her five younger siblings.

Following the decision in *London Borough of Tower Hamlets v B* [2015] EWHC 2491 B was removed from the family home but there had been difficulties in providing her with a foster placement and education provision.

The local authority sought findings inter alia that: the father held radical beliefs which he promoted within the family; the mother was complicit; and, B remained a radicalised child who posed a risk to herself, her family and members of the public.

The father’s evidence in respect of his failure to purchase internet monitoring equipment and his assertions that a USB stick containing Jihadist materials did not belong to him could not be relied upon. The mother accepted that she had failed to protect B. B accepted that she had been radicalised but not that she posed a risk to the public. She asserted that her views had now changed.

It was emphasised that the court’s paramount concern was the welfare of the children. Wider issues of public protection were for the Counter Terrorism Unit, the Government, Intelligence Agencies and for the Criminal Courts when considering appropriate sentences.

The factors leading to B’s radicalisation were particular to her, her parents and the family’s unique circumstances. B’s most pressing need was for an opportunity to decompress and to get respite from her ‘addiction’ to viewing damaging material. However, the reality of local authority care for B had been very different since there were no opportunities of a foster placement and schools were reluctant to offer her a place. She felt isolated and desperately wished to return home.

Placement with extended family members had been offered but the court concluded that they would find it challenging to regulate B’s contact with her family and it would be difficult for the local authority to monitor B. Given B’s age and the restrictive number of options the plan most likely to meet her needs was for her to return home. She would be able to resume her studies in preparation for her chosen career path in medicine. Her siblings did not share her extreme views and would be likely to challenge those beliefs. Her attendance at college and the social opportunities that would entail was another protective factor. Furthermore, the family could more easily be monitored while together than if they were separated. A final care order was made.

*Re X (Children); Re Y (Children)* [2015] EWHC 2265 (FAM) (30th July 2015)

Two linked cases before the President where the “*fundamental issue in each case relates to the degree of risk of the parents seeking to remove the children and take them to Syria*”:

* + Border controls are not fool proof with two principle methods of avoiding them to use a false passport or a clandestine departure;
  + Availability of radio-frequency monitoring or GPS monitoring as alternative systems (and reference to earlier tagging guidance);
  + Despite opposition of local authorities and guardians, and despite “*some*” risk of successful flight the package of restriction was sufficient to allow the children to be returned home.

*Re X (Children); Re Y (Children) (No. 2)* [2015] EWHC 2358 (FAM) (4th August 2015)

Addendum judgment considering the use of tagging to address risk of flight:

* + The President considered GPS tagging to provide a greater (and in these cases necessary) amelioration of the risk;
  + The use of GPS tagging had not been foreseen in the drafting of the protocol in place between HMCTS and NOMS to allow tagging in family cases;
  + The MoJ agreed to facilitate – and meet the costs – of GPS tagging in the specific case without prejudice to its position in any other cases.

And then to the concluding tales of X and Y

In *Re X (Children) (No. 3) [2015] EWHC 3651 (Fam)* a number of important and well established principles were set out by the President at paragraphs 20 – 24 which are of particular relevance to this case including those drawn from the decision of Baker J in *Re L and M [2013] EWHC 1569*, namely that;

* + - Its is for the local authority to prove its case
    - Findings of fact must be based on evidence and the inferences which can properly be drawn from evidence and not on suspicion or speculation
    - The court must take into account all the evidence and consider each piece of it in the context of all the other evidence
    - The evidence of the parents is of the utmost importance
    - Witnesses may lie during investigations and do so for many reasons but it does not follow that if a parent is lying about one matter that they are lying about everything.
    - There mere fact that a parent was a member of an extremist group whose policies and beliefs are immoral is not without more a basis for care proceedings.

*Re Y no 3 (2016) EWHC 503 (FAM)*delivered on 7.3.16, published on 5.4.16. In this case the family were “*detained by Turkish military authorities … within a zone of military control near the border with Syria and … probably within sight of the border*” – whilst this history raised considerable suspicions about the parents’ intentions, sufficient to institute proceedings , the President found the evidence when tested to be insufficiently cogent to prove the facts required to satisfy him that the family had formed and acted on an intent to live in Syria under IS rule thus placing their children at risk of really serious harm. The ability (or more precisely inability) of the local authority to establish that the parents adhered to an extreme of radical ideology was of central importance. On the facts of Re Y threshold was not proven.

The President made plain in both Re X and Re Y no’s 3, whilst expressing concern as to the honesty of the explanations and accounts given, that it is not for the parents is such cases to prove anything: whether establishing that they did not intend to travel to Syria or had some legitimate reason for travelling (to Turkey or elsewhere). Ultimately in ***Y (Children)*** the President was driven to the conclusion that it was “*improbable – in my judgment, inexplicable – that any of these parents should ever have wished to put their children in the kind of very serious danger that re-location to Syria would inevitably entail*”. Notwithstanding the proven lies told by family members and the “*intriguing*” (often unanswered) questions raised by the local authority, and the residual suspicion that lingered, the President found that the local authorities in both Re X and Re Y had been unable to prove its case. On the basis of the binary system this must result in a ‘nil’ return: suspicion is not enough and a matter not proven has a forensic value of zero.

The reality of dealing with such applications can be far from straightforward. They require, at times, liaison between multiple agencies across multiple jurisdictions.

The case of *Re M (Children) [2015] EWHC 1433 (FAM) (20th May 2015),* involved a hunt which ranged from Turkey to Moldova and culminated in the safe return of the family to the jurisdiction.

This case concerned wardship proceedings brought by a Local Authority in respect of four children in a family suspected of travelling to join the Islamic State in Syria.

Prior to the handing down of judgment, the factual background had been the subject of some media interest. It was reported that on or around 7th April 2015, the children's parents had left their home in the UK with the children, without warning and without informing friends or extended family. They were reported missing to the police on 16th April and on 19th April the police made a public appeal for information. The family had, by that date, crossed the Channel several days earlier and were in the process of crossing the border into Turkey. The family were detained by the Turkish authorities on 20th April. The UK media then reported on 5th May that the family had been voluntarily deported to, and subsequently detained in, Moldova. By 8th May however, the family had returned to the UK and appeared before Munby P.

In this period, the four children were made the subject of applications by the Local Authority for ex-parte warship orders. The Authority sought these orders on the basis that it had reasonable grounds to believe that the family were intending to join the Islamic State in Syria. The application came before Baker J who held: (i) that this was an appropriate case in which the court could proceed in the parents' absence, (ii) that unless the court made protective orders, significant harm was likely to come to the children, and (iii) that their welfare would be best served if they remained in detention in Turkey pending assessment by the Local Authority or, at the least, an on-notice hearing. Wardship orders, amongst others, were therefore made.

The family were then, however, deported to Moldova. As Baker J was on circuit, the matter came before Munby P on 6th May for urgent consideration. Munby P made an order in similar terms to that of Baker J, save for ordering the Moldovan border authorities to detain the family on arrival and to ensure that the children remained there pending assessment. At the hearing, Munby P also made a non-disclosure reporting restriction order preventing the publication of details relating to the proceedings. Following the parties return from Moldova, accompanied by social services, the matter came before Munby P on notice on 8th May for consideration of whether the wardship and reporting restriction orders should continue.

In a judgment explaining the decisions of 6th May and 8th May, Munby P held that the wardship orders should continue. The President held that it was "well recognised" in the authorities that a child could be made a ward of the court even if, at the time the order was made, they were outside the jurisdiction. Munby P observed that it was, in fact, in cases such as this that the remedy of wardship demonstrated its "adaptability" to meet changing needs and circumstances. The President found that the paramountcy of a child's welfare could not be eclipsed by wider considerations of counter-terrorism policy or operations but that the decision the court was being asked to make could only be arrived at with an "informed understanding of that wider canvas". In this case, the Court had jurisdiction to make the orders and the children's welfare demanded "imperatively" that they be made.

In discharging the reporting restriction order on 8th May, Munby P held that its objective had been achieved. In the Court's view, a contra mundem reporting restriction order would not have been an appropriate order to make on 6th May as it would have permitted the publication of an anonymised version of the proceedings. What was required here; however, was a prohibition (if temporary) on publication altogether to prevent the very real risk of the parents, directly or indirectly, realizing that these proceedings concerned their children and preventing their safe return. Now that the family were back in the jurisdiction, there was no further need for the order.

It is frequently the involvement of the Police and the liaison they can achieve in other jurisdictions, which can provide the greatest assistance in seeking to recover children who have already left the jurisdiction. In applications where the aim is to *prevent* travel the most effective measures are likely to be *practical* steps to impede travel: the removal of passports and the use of port alerts. [*Per Re Y (A Minor: Wardship) (No.1) [2015] EWHC 2098 (FAM) (17th March 2015)]*

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1. ***London Borough of Tower Hamlets v M & Others [2015] EWHC 869 (Fam)*** paragraph 57 [↑](#footnote-ref-1)
2. https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf [↑](#footnote-ref-2)
3. Pursuant to s29 of the Counter-Terrorism and Security Act 2015 para 21 [↑](#footnote-ref-3)
4. Appended to ***London Borough Tower Hamlets v B* [2016] EWHC 1707 (Fam)** http://www.bailii.org/ew/cases/EWHC/Fam/2016/1707.html [↑](#footnote-ref-4)
5. ‘Sex,Death and Witchcraft: what goes on in a family court room: <http://www.gresham.ac.uk/lectures-and-events/sex-death-and-witchcraft-what-goes-on-in-the-family-court-room>   [↑](#footnote-ref-5)
6. Incorporated into UK law by the **Human Rights Act 1998** [↑](#footnote-ref-6)
7. The President’s guidance: <https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf> see para 8 supra [↑](#footnote-ref-7)
8. ***London Borough Tower Hamlets v B* [2016] EWHC 1707 (FAM)**. [↑](#footnote-ref-8)
9. Responsibilities set out in sections 46(3) and (4) Children Act 1989. [↑](#footnote-ref-9)
10. Inherent jurisdiction is a doctrine of the English common law that a superior court has the jurisdiction to hear any matter that comes before it, unless a statute or rule limits that authority or grants exclusive jurisdiction to some other court or tribunal. [↑](#footnote-ref-10)
11. The title given to a minor who is the subject of a wardship order. The order ensures that custody of the minor is held by the Court with day to day care of the minor being carried out by an individual(s) or local authority. As long as the minor remains a ward of Court, all important decisions regarding the minor’s upbringing must be approved by the Court. [↑](#footnote-ref-11)
12. A supervision order gives the local authority the legal power monitor the child’s needs and progress while the child lives at home or somewhere else. [↑](#footnote-ref-12)
13. A child assessment order means that the child must be made available for the assessment, for example, that the parent will take them for a medical appointment. [↑](#footnote-ref-13)
14. There is a presumption in favour of permitting a personal litigant to have reasonable assistance from a layperson, sometimes called a McKenzie Friend; McKenzie Friends have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation. In McA v McA [2006] 10 BNIL 63[[2]](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Practice%20Note%2003-12/Practice%20Note%2003-12.htm" \l "_ftn2" \o "),

    **What McKenzie Friends may do :**i) provide moral support for personal litigants; ii) take notes with the permission of the judge; iii) help with case papers; iii) quietly give advice on any aspect of the conduct of the case which is being heard.

    **What McKenzie Friends may not** i) Conduct the litigation, acting as the personal litigant’s agent in relation to the proceedings; ii) Manage the personal litigant’s cases outside court, for example by signing court documents; or iii) Exercise a right of audience by addressing the court, making oral submissions or examining witnesses unless this has, in very exceptional circumstances, been authorised by the court. [↑](#footnote-ref-14)
15. : <http://www.gresham.ac.uk/lectures-and-events/sex-death-and-witchcraft-what-goes-on-in-the-family-court-room> [↑](#footnote-ref-15)
16. National Police Chief Council (NPCC) figures: 1,424 children aged between 11-15 and 415 children aged 10 and under. [↑](#footnote-ref-16)
17. The President’s guidance: <https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf> [↑](#footnote-ref-17)
18. *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (FAM), para 18(iv). [↑](#footnote-ref-18)
19. *Y v Z* [2014] EWHC 650 (FAM), para 30. [↑](#footnote-ref-19)
20. See *Re X (Children)* [2007] EWHC 1719 (FAM), [2008] 1 FLR 589, para 43, and *Re X (Disclosure for Purposes of Criminal Proceedings)* [2008] EWHC 242, (FAM) [2008] 2 FLR 944, para 32. [↑](#footnote-ref-20)
21. *Ibid* President Guidance paragraph 12 [↑](#footnote-ref-21)
22. Munby P, *Re X (Children) (No. 3) [2015] EWHC 3651 (Fam)* [↑](#footnote-ref-22)
23. Notably ***Lancashire County Council v M & Ors (Rev 1*) [2016] EWFC 9**, ***Leicester City Council v T* [2016] EWFC 20** and ***London Borough Tower Hamlets v B* [2016] EWHC 1707 (Fam)** [↑](#footnote-ref-23)