

RADICALISATION CASES IN THE FAMILY COURTS

Guidance issued by Sir James Munby President of the Family Division on 8 October 2015

1 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 are at risk of being involved in terrorist activities either in this country or abroad.

2 Most of these cases have been brought under the inherent jurisdiction, where the children have been made wards of court.¹ Such cases are necessarily in the High Court. Others have been care cases commenced in the Family Court. Some cases have started out under the inherent jurisdiction but then become care cases.

3 Only a local authority can start care proceedings (see section 31(1) of the Children Act 1989 – the police powers are set out in section 46). However, *any* person with a proper interest in the welfare of a child can start proceedings under the inherent jurisdiction or apply to make a child a ward of court.² Usually, in cases falling within the description in paragraph 1 above, 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.

4 Given the complexities of these cases, I have decided that, for the time being at least, *all* cases falling within the description in paragraph 1 above are to be heard by High Court Judges of the Family Division. For the purpose of this Guidance the expression High Court Judge of the Family Division does *not* include a judge or other person authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981.

5 Where a case falling within the description in paragraph 1 above is issued in the Family Court, or where a case issued in the Family Court becomes a case falling within the description in paragraph 1 above, then:

- (a) the Designated Family Judge must be notified immediately;

¹ For the jurisdiction to make a child who is a British subject a ward of court even if the child is abroad, see *Re M (Children)* [2015] EWHC 1433 (Fam) and *Re B (A Child) (Habitual Residence) (Inherent Jurisdiction)* [2015] EWCA Civ 886.

² *In re D (A Minor) (Wardship: Sterilisation)* [1976] Fam 185.

- (b) the Designated Family Judge must immediately notify the Family Division Liaison Judge (who should liaise with the President of the Family Division); and
- (c) urgent steps must be taken, in consultation with the Family Division Liaison Judge, to allocate the case to a High Court Judge of the Family Division.

6 In exceptional circumstances a case falling within the description in paragraph 1 above may be heard by a Designated Family Judge, or a *judge* authorised to sit as a High Court Judge under section 9 of the Senior Courts Act 1981, but *only if* this has previously been authorised *in relation to that particular case* by the President of the Family Division or the Family Division Liaison Judge. Such permission will *not* normally be given in any case:

- (a) raising PII issues;
- (b) requiring a closed hearing or use of a special advocate; or
- (c) where electronic tagging is proposed.³

7 Judges hearing cases falling within the description in paragraph 1 above will wish to be alert to:

- (a) the need to protect the Article 6 rights of all the parties;⁴
- (b) the fact that much of the information gathered by the police and other agencies will not be relevant to the issues before the court;
- (c) the fact that 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;
- (d) the need to avoid inappropriately wide or inadequately defined requests for disclosure of information or documents by the police or other agencies;
- (e) the need to avoid seeking disclosure from the police or other agencies of information or material which may be subject to PII, or the disclosure of which might compromise ongoing 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;
- (f) the need to safeguard the custody of, and in appropriate cases limit access to, any sensitive materials provided to the court⁵ by the police or other agencies;⁶

³ For electronic tagging in family cases see *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam).

⁴ For the latest authority on this see the decision of the Court of Appeal in *Kiani v The Secretary of State for the Home Department* [2015] EWCA Civ 776.

- (g) the need to consider any PII issues and whether there is a *need* for a closed hearing or use of a special advocate;⁷
- (h) the need to safeguard the custody of, and in appropriate cases limit access to, (i) the tape or digital recordings of the proceedings⁸ or (ii) any transcripts;⁹
- (i) 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;¹⁰
- (j) the assistance that may be gained if the police or other agencies are represented in court, including, in appropriate cases, by suitably expert counsel.

8 Judges hearing cases falling within the description in paragraph 1 above will also wish to consider whether in any particular case there is a *need* (i) to exclude the media, or (ii) to make a reporting restriction order, or (iii) to make an ‘anti-tipping-off’ order (for instance when making an order for disclosure against a third party).¹¹ The media should be excluded only as a last resort and if there is reason to believe that the situation cannot be adequately protected by a reporting restriction order or ‘anti-tipping-off’ order.¹²

9 Advocates appearing in cases falling within the description in paragraph 1 above need to be alert to and be prepared to argue the issues that may arise, including those referred to in paragraphs 7 and 8 above.

⁵ In especially sensitive cases it may be appropriate for such materials to be delivered direct to the judge (via the judge’s clerk or otherwise as the judge may direct) rather than to the court office.

⁶ For example, by placing such materials in a sealed envelope clearly marked on the outside by such words as “In accordance with an order made by Mr(s) Justice [name] on [date] THIS ENVELOPE MUST NOT BE OPENED BY ANYONE unless authorised by a written order from Mr(s) Justice [name] or the President of the Family Division” which is kept in a safe with limited access. In especially sensitive cases, the materials (and all copies) should be returned to the police or other agency subject to an undertaking to return them if so ordered by the trial judge or the President of the Family Division.

⁷ As to which see *Re T (Wardship: Impact of Police Intelligence)* [2009] EWHC 2440 (Fam), [2010] 1 FLR 1048, and *A Chief Constable v YK* [2010] EWHC 2438 (Fam), [2011] 1 FLR 1493.

⁸ Judges will wish to be alert to the need to consider special arrangements for recording the proceedings, especially where there is a ‘master’ recording system covering all the courts in a building.

⁹ In especially sensitive cases the judge may think it appropriate to direct that the transcript is to be prepared not by the usual transcribers but only by a special security-cleared transcriber.

¹⁰ Examples of forms of order designed to guard against this can be found in the orders set out in the judgments in *Re M (Children)* [2015] EWHC 1433 (Fam) (see the second recital to the order set out in para 22) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam) (see the sixth recital to the order set out in para 13). It may be appropriate to make an order providing, for the avoidance of doubt, that the fact that the child is a ward of court, or otherwise the subject of proceedings, does not, of itself, require the police or other agencies to disclose the existence of live investigations, especially if the investigation is covert.

¹¹ As to all of which see *Re M (Children)* [2015] EWHC 1433 (Fam).

¹² See *Re M (Children)* [2015] EWHC 1433 (Fam), paras 15-16.

10 I draw attention to what Hayden J has said¹³ about “The importance of coordinated strategy, predicated on open and respectful cooperation between all the safeguarding agencies involved” and the need for “open dialogue, appropriate sharing of information, mutual respect for the differing roles involved and inter-agency cooperation” if children in such cases are to be provided with the kind of protection they require.

11 This is a two-way process. The court can expect to continue to receive the assistance it has hitherto been given in these cases by the police and by other agencies. But there must be reciprocity.

12 The police and other agencies recognise the point made by Hayden J¹⁴ 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 J¹⁵ 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.¹⁶

13 In the same way, the police and other agencies will wish to be alert to the need of the court for early access to information, for example, information derived from examination of seized electronic equipment, *so far as such information is relevant to the issues in the family proceedings*. Accordingly, the court should be careful to identify with as much precision as possible in any order directed to the police or other agencies: the issues which arise in the family proceedings; the types of information it seeks; and the timetable set by the court for the family proceedings.

14 I attach a list in chronological order of relevant judgments which are publicly available on the BAILII website:

Re Y (A Minor: Wardship) [2015] EWHC 2098 (Fam) (17 March 2015 – Hayden J)
Tower Hamlets v M and ors [2015] EWHC 869 (Fam) (27 March 2015 – Hayden J)
Re Y (A Minor: Wardship) [2015] EWHC 2099 (Fam) (23 April 2015 – Hayden J)
Re M (Children) [2015] EWHC 1433 (Fam) (20 May 2015 – Munby P)
Re Z [2015] EWHC 2350 (4 June 2015 – Hayden J)
Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam) (30 July 2015 – Munby P)

¹³ *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), paras 18(ix) and 58.

¹⁴ *The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), para 18(iv).

¹⁵ *Y v Z* [2014] EWHC 650 (Fam), para 30.

¹⁶ 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.

Re X (Children); Re Y (Children) (No 2) [2015] EWHC 2358 (Fam) (04 August 2015 – Munby P)
London Borough of Tower Hamlets v B [2015] EWHC 2491 (21 August 2015 – Hayden J)

15 This Guidance will be reviewed from time to time.

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President of the Family Division

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