

**IN THE FAMILY COURT**  
**Sitting at Newcastle**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Sent to the parties on 22 August 2018

Handed down 18 October 2018

**Before :**

**SIR JAMES MUNBY (SITTING AS A JUDGE OF THE HIGH COURT)**

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**In the matter of H (Children)**  
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**Ms Lindsay Webster** (instructed by the local authority) for the applicant local authority  
**Mr Dorian Day** (instructed by Wollen Michelmore) for the mother  
**Mr Andrew Comaish** (instructed by Edwards Hayes) for the father  
**Ms Charlotte Hall** (of Hadaway & Hadaway Solicitors LLP) for the children’s guardian

Hearing date: 12 July 2018  
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**Judgment Approved**  
**This judgment was delivered in open court**

**Sir James Munby (sitting as a Judge of the High Court):**

1. In this care case, which came before me at Newcastle on 12 July 2018 pursuant to an order made by His Honour Judge Simon Wood on 19 June 2018, the mother’s position statement, prepared on her behalf by Mr Dorian Day, began with these arresting words: “These proceedings are entering **Week 109.**”
2. What has been going on? Are there lessons to be learned?
3. Before proceeding further, it will be convenient to set out the relevant chronology. I can be brief. The proceedings relate to a boy, born in January 2014, and his younger sister, born in March 2016. She was discharged a week later. Five weeks later, on 30 April 2016, she was re-admitted to hospital in critical condition, having suffered life threatening injuries. Local authority and police involvement followed almost immediately. The day after his sister had been admitted to hospital, the boy was placed with his maternal grandparents. The following day the father was charged and remanded in custody; he was released on bail 18 days later. A week later, on 27 May 2016, the local authority began care proceedings in relation to both children. Two months later the girl was released from hospital and placed in foster care. On 22 November 2016, following a fact finding hearing lasting some days, Judge Wood gave judgment: he found that the injuries had been inflicted by the father in circumstances where there was no culpability of the part of the mother. Thereafter the ‘welfare’ stage of the care proceedings was delayed because of the ongoing criminal proceedings against both the father and the mother.

4. Notwithstanding Judge Wood's exoneration of the mother, the police and the CPS maintained their decision to prosecute her as well as the father. The trial in the Crown Court which had originally been listed for March 2017 was put back to 16 October 2017. On 27 October 2017 the jury was directed by the judge to enter a not guilty verdict against the mother. On 31 October 2017 the jury reached a verdict of not guilty in relation to the father.
5. The effect of the protracted criminal proceedings was not merely that the best part of a year had been lost since Judge Wood's fact finding judgment. There were three other consequences:
  - i) First, the mother's bail conditions seriously hindered the necessary process of assessing the mother's capacity to look after both children, one of whom, unhappily, has significant ongoing disabilities and extremely complex needs. I am told that, despite this, applications to vary her bail conditions were opposed by the prosecution and refused by the Crown Court.
  - ii) Secondly, the mother lost her accommodation.
  - iii) Thirdly, the entire process subjected both the mother and the wider family to very considerable stress.

It is unsurprising that Mr Day, on her behalf, goes on in his position statement to say that the delay has exasperated the mother, the social work team, the children's guardian and at times the court, and has also contributed to family tensions.

6. In terms of moving the care proceedings on, by the beginning of 2018 the emphasis was on finding suitable accommodation for the mother and the two children. Because of the need to find accommodation, in an area where accommodation is in short supply, that would meet, or could be adapted to meet, her daughter's special needs and, moreover, sufficiently close to the mother's support network and to the hospital responsible for her daughter's ongoing medical care, the search was never going to be easy. One property which had been identified turned out not to be suitable. Despite much endeavour on the part of the local authority, it was not until the last week in May 2018 that what turned out to be a suitable property was found. It was in that state of play that Judge Wood, who had earlier voiced his concerns at a directions hearing on 23 April 2018, at a further hearing on 19 June 2018 made the order to which I have already referred.
7. As I have said, the hearing before me which Judge Wood had directed was fixed for 12 July 2018. By the week commencing 2 July 2018 there was reason to believe that the property which had been identified in May would be both suitable (subject to certain work being done) and available for the mother and her children. On 10 July 2018, two days before the hearing, the mother was given the keys to the property.
8. In these circumstances, the primary purpose of the hearing before me had fallen away. Indeed, the parties were agreed that no directions were needed in relation to the accommodation issue. I directed that the final hearing of the care proceedings be listed before Judge Wood on 13 August 2018. My order recited that the local authority "wishes to do everything possible to support [the mother] in moving into her new home." It was common ground that various works required to be done to the

property, including the installation of a lift. My order went on to record the local authority's indication that the installation of the lift would take approximately four months, and my "hope ... that the lift ... could be installed by the next hearing."

9. I made an order that the local authority was to serve, by 17 July 2018, "an action plan in a tabular format setting out explicitly the timeline for works to be carried out in order to allow the plan of rehabilitation to commence at mother's new property." The action plan, dated 17 July 2018 and displaying an appropriate sense of urgency, spelt out with commendable precision, in tabular form under the headings "Objective/Task", "Responsibility (name and job role)", "Start Date" and "Completion Date", a comprehensive list of all the works required to be done to the property, including but not limited to the installation of the lift, and of the furniture (some specialist) and equipment to be provided for the mother and the children.
10. To bring that part of the story to its conclusion, on 14 August 2018, Judge Wood made a supervision order, as proposed by the local authority and supported by both parents, thereby bringing the care proceedings finally to an end in week 116.
11. In a position statement and more particularly in a detailed and carefully argued skeleton argument circulated to the other advocates on the morning of an advocates' meeting on 9 July 2018, Mr Day raised a wider issue. Although by then it seemed that the accommodation issue was well on the way to being resolved, Mr Day indicated that he wished to retain the hearing before me for a rather different purpose, namely to "look at the wider ramifications of delay in proceedings in the family court" and, specifically, to address two questions:
  - i) What can the family court do to avoid delay which is engendered by concurrent criminal proceedings?
  - ii) What can the family court do when the delay to proceedings is engendered by the acts and omissions of other government departments or agencies?

Referring to the present case, he asserted that "Progress to permit a child to come home to a mother has been paralysed by the unnecessary and disproportionate delay and approach in the criminal proceedings", compounded by the fact that there has been "very slow progress by the relevant housing authority to find a property for the mother that is suitable for [her daughter]." The delay here, he says, has thus been caused by factors external to the care proceedings.

12. In relation to his first question, Mr Day acknowledged the principle as stated by Lord Donaldson of Lynton MR in *In re R (A Minor) (Wardship: Criminal Proceedings)* [1991] Fam 56, 66:

"In the context of the conduct of criminal proceedings in court, the definition and enforcement of these duties have been entrusted by law exclusively to the court in which the proceedings are being conducted and it is not for the wardship court, whatever the theoretical scope of its jurisdiction, to use that jurisdiction to interfere with the performance by the criminal courts of their lawful duties. If it were thought that the criminal courts had insufficient discretion to enable them to

balance the public interest in the welfare of child witnesses, whether or not wards of court, against the public interest in the achievement of justice between the state and the accused, the remedy lies not in the exercise of the wardship jurisdiction, which could only assist wards, but in the conferment of new and wider discretions upon the criminal courts.”

13. In the light of this and other authorities (most recently, my decision in *Re A Ward of Court* [2017] EWHC 1022 (Fam), [2017] 2 FLR 1515), he acknowledged that it is “constitutionally improper” for the wardship court to exercise its inherent jurisdiction so as to interfere with or undermine the criminal process or the criminal court. So, it would not, he said, be open to the family court to encroach on the activities of either the police or the criminal court in relation to the relaxation of bail conditions.
14. However, he contended that there would be no impropriety in requiring the officer in the case to attend the family court by way of witness summons “to answer to and explain the need for [bail] conditions in the light of the clear findings of the family court.” He added: “Subject to procedural safeguards, it should not be seen as constitutionally improper to witness summons the police officer conducting the criminal investigation to attend the family court to answer to the need for bail conditions.”
15. This is, he asserted, a “vexed” question which occurs with “repeated regularity” in care proceedings. Although he could not point to any published judgments, he suggested, on the basis of personal experience and anecdote, that it was a matter on which the views and approach of judges in the Family Division differed. (Whether and to what extent that is so, is not something which I have sought to canvass further.)
16. In relation to his second question, Mr Day, having referred to my judgment in *Re M and N (Parallel Family and Immigration Proceedings)* [2008] EWHC 2281 (Fam), [2008] 2 FLR 2030, and to the speeches of Lord Hoffmann and Baroness Hale of Richmond in *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413 (see below), submitted that “Subject to procedural safeguards, it is not at variance with [*Holmes-Moorhouse*] to witness summons the decision maker of government department to answer to decisions and progress within their field that impact on, and delay, progress in care proceedings.”
17. The consensus before me was that the new issues raised by Mr Day would necessitate an adjournment, both to give the other advocates time to respond to his very detailed skeleton argument and because the police and the CPS would have to be given notice so that, if they wished, they too could respond.
18. I declined either to embark upon the wide-ranging inquiry proposed by Mr Day or to adjourn. My reasons, reflecting in significant part submissions from the local authority and the children’s guardian, who in large measure adopted the local authority’s submissions, can be summarised as follows (I take the points in no particular order):
  - i) It is no part of my proper functions, nor did Mr Day suggest that it is, to conduct some general investigation into the actions of the third parties in this case (whether the police, the CPS, the Crown Court, or the housing authority),

nor to investigate the extent to which their actions, or inactions, contributed to the very concerning – indeed, on the face of it, wholly unacceptable delay – in this case. As the local authority put it in its skeleton argument (prepared by Ms Sarah Woolrich and adopted by Ms Lindsay Webster), “whilst the decisions of the police and CPS had the effect of creating delay in the family proceedings, those decisions were effectively scrutinised by the criminal court from time to time and were effectively upheld. What business does the family court have in seeking to alter the course of criminal proceedings?”

- ii) Given where matters now stood on the morning of 12 July 2018, nothing in the process proposed by Mr Day could make any difference to the mother, the father or the children or to the outcome of the care proceedings. On the contrary, from their point of view the urgent imperative was to bring these very seriously delayed proceedings to as speedy a conclusion as possible. The point was put very pithily in the local authority’s skeleton argument: “What is the value of keeping the case running beyond the existing timetable of 116 weeks to resolve a point that does not advance the welfare of the children?” As the children’s guardian said, in a position statement prepared by Ms Charlotte Hall, “Consideration of the questions posed by the mother will not advance the welfare of [the children].”
  - iii) No good reason had been shown why further, no doubt far from insignificant, public funds should be spent in relation to proceedings which have already – entirely properly, of course – consumed very considerable public resources. As the local authority put it: “On a costs / benefits analysis, the expenditure of further public costs for the [local authority], the [Legal Aid Agency] and potentially the police and CPS is not justified.”
  - iv) Crucially, to the extent that it is appropriate for me to address the questions posed by Mr Day (see below), there was, in my judgment, no need to adjourn the hearing. Given the state of the authorities (see below), and given the relatively limited ambit of anything I could properly decide (see below), there was no need to give notice to any of the third party decision makers. I was satisfied then, and I am satisfied now, that there was neither unfairness to anyone else by not giving further opportunity to answer Mr Day’s submissions nor any real prospect of my judgment being sufficiently improved by such an exercise as to justify any further delay.
19. What follows goes as far as, in my judgment, I can properly can – in fact, quite a long way – in addressing Mr Day’s questions. Most of it is, in fact, entirely uncontroversial.
20. The starting point is the fundamental point of principle articulated and elaborated in a well-known series of cases in the House of Lords and, more recently, the Supreme Court: *A v Liverpool City Council* [1982] AC 363, *In re W (A Minor) (Wardship: Jurisdiction)* [1985] AC 791, *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, *Aintree University Hospitals NHS Foundation Trust v James* [2013] UKSC 67, [2014] AC 591, and, most recently, *N v A Clinical Commissioning Group and others* [2017] UKSC 22, [2017] AC 549 (dismissing the appeal from the decision of the Court of Appeal in *In re N (An Adult)*)

(*Court of Protection: Jurisdiction*) [2015] EWCA Civ 411, [2016] Fam 87). That principle, as explained by Lord Scarman in *A v Liverpool City Council*, is that:

“The High Court cannot exercise its powers, however wide they may be, so as to intervene on the merits in an area of concern entrusted by Parliament to another public authority.”

21. Authorities which there is no need for me to refer to (see my judgment in *In re N*, para 19) demonstrate the application of this principle in many contexts where a family court is involved, for example, where the child or the parents are subject to immigration control, where the child or the parents are the subject of a police investigation or criminal proceedings, or where there is dispute as to the provision of statutory services by other agencies, for example, in the provision of health care by the NHS or the provision of social housing by a local authority.
22. For present purposes, this fundamental principle has two corollaries. First, that a family court cannot dictate to another court or agency how that court or agency is to exercise its powers. It follows, secondly, that, absent statutory provision to the contrary, the ambit of family court judicial decision-making is constrained by the extent of the resources made available by other public bodies. So, the family court cannot *direct* that resources be made available or that services be provided; it can merely seek to *persuade*. How far can *persuasion* go? The answer is that the family court can seek to *persuade* but must not apply *pressure*: *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, paras 38-39 (Baroness Hale of Richmond).
23. I have referred to a family court. I emphasise, what is quite clear on the authorities, that, in this respect, exactly the same principles apply whether the case is in the Family Court or the Family Division of the High Court (or, for that matter, in the Court of Protection), and whether it is a private or a public law case. The High Court has no greater powers in this respect than the Family Court, even if the child is a ward of court: see *In re N*, paras 13, 14.
24. How then, while remaining loyal to these principles, is a family court to engage with another court or agency which is also involved in the family’s life. This, as it happens, is an issue I had to address almost exactly ten years ago in *Re M and N (Parallel Family and Immigration Proceedings)* [2008] EWHC 2281 (Fam), [2008] 2 FLR 2030. I said this (para 31):

“In all such situations the family court will need the fullest and most up-to-date information. And where the outcome is dependent upon or is likely to be affected by the decision of some third party, whether, for example, a local authority housing department, the Secretary of State for the Home Department, the Crown Prosecution Service, or a NHS Primary Care Trust, or whoever, the family court will also need the fullest and most up-to-date information as to where exactly that decision-making process has got to, what the decision is, if it has been given, or when it is expected if it is still awaited. Consideration will also need to be given – and at the earliest possible stage – as to whether and if so how that third party

decision maker should be brought into some appropriate form of direct engagement with the family proceedings.”

25. It will be noticed that in *Re M and N* I referred (paras 6, 30) to the then recent decision of the Court of Appeal in *Holmes-Moorhouse v Richmond-upon-Thames London Borough Council* [2007] EWCA Civ 970, [2008] 1 FLR 1061. The decision of the Court of Appeal was subsequently reversed by the House of Lords: *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413.
26. For present purposes what is important is what Lord Hoffmann (para 17):

“In my opinion the Court of Appeal was wrong to suggest that a housing authority should intervene in family proceedings to argue against the court making a shared residence order. It will obviously be helpful to a court, in dealing with the question of where the children should reside, to know what accommodation, if any, the housing authority is likely to provide. It should not make a shared residence order unless it appears reasonably likely that both parties will have accommodation in which the children can reside. But the provision of such accommodation is outside the control of the court. It has no power to decide whether the reasons why the housing authority declines to provide such accommodation are good or bad. That is a matter for the housing authority and, if necessary, the county court on appeal. Likewise, it is relevant for the housing authority to know that the court considers that the children should reside with both parents. But the housing authority is not concerned to argue that the court should not make an order to this effect. The order, if made, will only be part of the material which the housing authority takes into account in coming to its decision. The two procedures for deciding different questions must not be allowed to become entangled with each other.”

In saying this, Lord Hoffman was, in substance, adopting exactly the same approach as the one he had explained in the Court of Appeal in *R v Secretary of State for Home Department ex parte T* [1995] 1 FLR 293, a case involving the interface between family and immigration proceedings.

27. Nothing in what Lord Hoffmann said affects, in my judgment, either the general thrust or most of the detail of what I said in *Re M and N*. Given the decision of the House of Lords, what I said in *Re M and N* at para 30 is best ignored; but this does not affect the continuing validity of what I said (para 31) in the passage quoted above.
28. In this context, the question is what, to use my terminology, is an “appropriate form of direct engagement with the family proceedings” for the third party decision maker? In relation to this, Lord Hoffmann’s observations are of great importance: the third party decision maker should *not* be made an intervenor in the family proceedings and should *not* be required to “argue” its case.

29. On the other hand, the family court can properly seek from the third party decision maker information – information both as to what has happened and as to what it is anticipated will or may happen – and, where necessary, documents. Moreover, if this is necessary to enable the family court to perform *its* task and to come to a decision on the matter before it, the family court can legitimately ask the third party decision maker to *explain* why it has come to its decision and, if this is necessary for the family court properly to *understand* the decision, to *probe* the proffered explanation, if need be by asking searching questions. What, in contrast, the family court cannot legitimately do, is to require the third party decision maker to *justify* its decision, let alone with a view to putting it under pressure to change its decision.
30. Where, in any particular case, one draws the line between *explanation* and *justification* may be difficult; but the principle is clear. It is not for a family court to require a third party decision maker to *justify* its decision; that is a matter, if at all, for the Administrative Court exercising its powers of judicial review. And, as I pointed out in *In re N*, para 82,
- “it is not a proper function of ... the family court or the Family Division ... to embark upon a factual inquiry designed to create a platform or springboard for possible future proceedings in the Administrative Court.”
31. It is also clear that the family court can, if this is necessary to enable it to dispose of the proceedings before it justly and fairly, make an *order* requiring the third party decision maker, or an individual specified by the family court for the purpose, to disclose relevant documents or to give evidence (see further, paragraph 38 below). The jurisdiction to make such an order is quite plainly conferred by section 31G of the Matrimonial and Family Proceedings Act 1984, to which Mr Day referred me, and there is nothing, whether in section 31G itself, or in the provisions of the Family Procedure Rules, or in the case-law or in principle, to exonerate the police, the CPS or any other public agency or authority from the reach of section 31G. Section 31G goes to the power of the court to make an order for the disclosure of documents or the giving of evidence; it does not, I emphasise, empower the court to disregard the principle that although the court can demand an *explanation* it cannot require the third party to *justify* its decision.
32. It follows from the principle in *A v Liverpool City Council* that a family court cannot dictate the contents of its care plan to a local authority: see *In re N*, paras 34-36:

“34 It is the duty of any court hearing an application for a care order carefully to scrutinise the local authority’s care plan and to satisfy itself that the care plan is in the child’s interests. If the court is not satisfied that the care plan is in the best interests of the child, it may refuse to make a care order: see *In re T (A Minor) (Care Order: Conditions)* [1994] 2 FLR 423. It is important, however, to appreciate the limit of the court’s powers: the only power of the court is either to approve or refuse to approve the care plan put forward by the local authority. The court cannot dictate to the local authority what the care plan is to say. Nor ... does the High Court have any greater power when exercising its inherent jurisdiction. Thus

the court, if it seeks to alter the local authority's care plan, must achieve its objective by persuasion rather than by compulsion.

35 That said, the court is not obliged to retreat at the first rebuff. It can invite the local authority to reconsider its care plan and, if need be, more than once: see *In re X; Barnet London Borough Council v Y and X* [2006] 2 FLR 998. How far the court can properly go down this road is a matter of some delicacy and difficulty. There are no fixed and immutable rules. It is impossible to define in the abstract or even to identify with any precision in the particular case the point to which the court can properly press matters but beyond which it cannot properly go. The issue is always one for fine judgment, reflecting sensitivity, realism and an appropriate degree of judicial understanding of what can and cannot sensibly be expected of the local authority.

36 In an appropriate case the court can and must "be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking": see *In re B-S (Children) (Adoption Order: Leave to Oppose)* [2014] 1 WLR 563, para 29. Rigorous probing, searching questions and persuasion are permissible; pressure is not."

33. Not infrequently, an important component of the appropriate care plan will be input from – services to be provided by – another public authority, for example, health care to be provided by the NHS as part of a holistic care plan, or social housing to be provided by another local authority. In such a case the family court can engage with the third party decision maker both indirectly and/or directly: indirectly, by requiring the local authority, as part of *its* consideration or reconsideration of *its* care plan, to discuss and negotiate with the third party; directly by the court making orders against the third party of the kind referred to in paragraphs 29, 31, above.
34. In part to meet some of the practical difficulties identified in *Re M and N* but also intended to achieve much wider objectives, on 19 July 2013 I issued, in conjunction with the then Senior President of Tribunals, Sir Jeremy Sullivan, the *Protocol: Communications Between Judges of the Family Court and Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal*, Family Court Practice, 2018, p 2693 (which needs to be read together with the Protocol agreed between the President of the Family Division and the Home Office issued on 16 May 2018, replacing and superseding the previous Guidance issued by successive Presidents of the Family Division in 2002, 2004, 2006, 2010 and 2014). This was followed, on 17 October 2013, by the *Protocol and Good Practice Model: Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Directions Hearings*, Family Court Practice 2018, p 2694, which I issued in conjunction with the then Senior Presiding Judge, Lord Justice Gross, and the then Director of Public Prosecutions, Keir (now Sir Keir) Starmer QC.
35. Each of these Protocols was designed to facilitate the exchange of documents and information as between the family justice system on the one hand and, on the other

hand, as the case might be, Immigration Tribunals or the criminal justice system. The criminal *Protocol and Good Practice Model* went further. While Part A deals with *Disclosure into the Family Justice System*, and Part B with *Disclosure from the Local Authority / Family Justice System into the Criminal Justice System*, Part C deals with *Linked Directions Hearings*, applicable (Part C, para 15), “where a person connected with the child who is the subject of the care proceedings or the child himself is to be tried at the Crown Court for any violent or sexual offence or for an offence of child cruelty against the child, or any other child or any person connected with the child.” It will be noted that this does *not* apply to cases where the child is to be tried in the Youth Court, nor to any offence other than a “violent or sexual offence or ... an offence of child cruelty.” Thus, for example, Part C of the *Protocol and Good Practice Model* did *not* apply in the well-known case of X, who was tried in the Youth Court: see *In re X (A Child) (Jurisdiction: Secure Accommodation)*, *In re Y (A Child) (Jurisdiction: Secure Accommodation)* [2016] EWHC 2271 (Fam), [2017] Fam 80; *Re X (A Child) (No 2)* [2017] EWHC 1585 (Fam), [2018] 1 FLR 1041; *Re X (A Child) (No 3)* [2017] EWHC 2036 (Fam), [2018] 1 FLR 1054; *Re X (A Child) (No 4)* [2017] EWHC 2084 (Fam), [2018] 1 FLR 1072; *Re X (A Child) (No 5)* [2017] EWHC 2141 (Fam); and, for the outcome, *Re X (A Child) (No 6)* [2018] EWHC 1005 (Fam).

36. Underpinning both Protocols is a vitally important point which I have repeatedly made, most recently in *Re W (Children); Application by SW (No 2)* [2017] EWFC 74, [2018] 1 FLR 1601, para 7:

“... subject always to the imposition of any necessary safeguards and conditions, family courts should not stand in the way of, and should, on the contrary, take all appropriate steps to facilitate, the proper administration of justice elsewhere. This principle is well recognised in the authorities both in relation to the criminal justice system and in relation to tribunals as varied as those dealing with medical discipline and criminal injuries compensation. It is, of course, equally applicable in relation to the civil justice system ... [and] in relation to proceedings or proposed proceedings before the European Court of Human Rights.”

I would anticipate ready recognition of the reciprocal principle by the criminal, civil and tribunals justice systems.

37. My impression, based on my own judicial experiences and too much anecdotal information, is that these Protocols are not working as well as one would wish. Recent discussions, by Francis J in *Re L (A Child)* [2017] EWHC 3707 (Fam) (not affected on this point by the decision of the Court of Appeal allowing an appeal: *Re A (Children)* [2018] EWCA Civ 1718 – see King LJ, para 23) and by Gwynneth Knowles J in *Lancashire County Council v A, B and Z (A Child : Fact Finding Hearing: Police Disclosure)* [2018] EWHC 1819 (Fam), surely demonstrate, at least in relation to Part A, that the criminal *Protocol and Good Practice Model* is not working as it should and as it must.
38. Part A, para 7, provides in terms for the making by the family court of orders for disclosure against the police and/or the CPS. Para 7.4 states that:

“The police and the CPS will comply with any court order.”

39. It might be thought that this statement is otiose, for it is, after all, as Romer LJ said in *Hadkinson v Hadkinson* [1952] P 285, 288, in a passage endorsed by the Privy Council in *Isaacs v Robertson* [1985] AC 97, 101:

“... the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

40. In *Re W (Adoption Order: Leave to Oppose)*; *Re H (Adoption Order: Application for Permission for Leave to Oppose)* [2013] EWCA Civ 1177, [2014] 1 FLR 1266, para 51, I referred to:

“the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders made by family courts.”

I went on:

“There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with *to the letter* and *on time*. Too often they are not. They are not preferences, requests or mere indications; they are orders.”

I added (para 54):

“Non-compliance with an order, any order, by anyone is bad enough. It is a particularly serious matter if the defaulter is a public body such as a local authority.”

The same, it ought to be needless to say, obviously applies also where the order is directed to the police.

41. I make no apologies if I seem to be labouring a point which ought to require no emphasis. However, I was recently confronted, in a care case that came before me on circuit, with a letter, written by the legal department of a police force one really might have thought would have known better, which, responding to an *order* made by a Circuit Judge sitting in the Family Court for disclosure by the police of certain documents, sought to explain why it was proposed by the police not to comply with this “request” (as it was described) because, in the view of the writer, it was inappropriate. Without having thought it necessary to require the hapless writer of this astonishing missive to be brought to court to provide an explanation, it would not be fair to assume that this was impertinence or defiance rather than simple ignorance and incompetence; but either way it is deeply troubling that any police force can have thought that this was an appropriate response to an *order* of the court, even if it was a family and not a criminal court.

42. The point is very simple: if a public authority to whom an order is directed by a family court wishes to challenge the order rather than comply with it, the authority *must*, and, moreover, *before the time for compliance has expired*, either appeal the order or if, as will often be the case, the order was made without notice to and in the absence of the authority, apply to the court which made the order for it be discharged or varied. Otherwise, the authority may find itself on the wrong end of proceedings for contempt of court.
43. Speaking extra-judicially, I drew attention to some of the problems in a recent lecture *What is family law? – securing social justice for children and young people*, [2018] Fam Law 819:

“Although there are some mechanisms in place for the sharing of information between some of these jurisdictions, these mechanisms, even when they work, are largely confined to the sharing of information; there are no effective mechanisms to facilitate collaborative, joint or even joined-up decision-making.”

I observed that:

“On occasions, the perception of a family court is that the sentencing decision of the criminal court is not helpful in furthering the family court’s planning for a disturbed teenager. On occasions one finds that the two jurisdictions simply do not ‘marry-up’ sensibly.”

I might add that the particular example I gave there – sentencing – is merely one manifestation of a wider phenomenon. In the present case, as we have seen, it was the bail conditions upheld by the Crown Court which ‘cut across’ what the Family Court was trying to achieve.

44. I went on to suggest steps that might be taken by the judges:

“For example:

- Improving understanding across the jurisdictions of how the others work.
- Introducing mechanisms to facilitate collaborative, joined-up or even joint decision-making.
- In particular, ensuring by appropriate judicial ‘ticketing’ and ‘cross-deployment’ that judges with expertise and experience in the family court can also sit in the Youth Court, the Immigration and Asylum Chamber and the Health, Education and Social Care Chamber.
- In cases where there are parallel proceedings in different courts involving the same child or family, listing the cases simultaneously before suitably ‘cross-ticketed’ judges.”

45. Earlier this year, while still President of the Family Division I established, in conjunction with the Senior President of Tribunals, Sir Ernest Ryder, a working party to consider, amongst other matters, how the immigration *Protocol* might be up-dated and improved. It is of course now a matter for the President of the Family Division, Sir Andrew McFarlane, to consider what if anything needs to be done in relation to the criminal *Protocol and Good Practice Model*, but it might be thought that there is an equal need – if anything, a more pressing need – to revisit it.
46. Francis J and Gwynneth Knowles J, in their judgments referred to in paragraph 37 above, have each suggested ways in which the criminal *Protocol and Good Practice Model* might be improved. I have drawn attention (paragraph 35 above) to another point which I suggest merits consideration.
47. In conclusion, there is one further point which I suggest likewise merits consideration. The criminal *Protocol and Good Practice Model* provides, as has been seen, for the exchange of “information”. Much of the time what is required is not so much the provision by the family justice system of *information* about the family court proceedings in the narrow sense but, rather, a more detailed *explanation*, for the benefit of the police or the CPS or the Youth Court or Crown Court, as the case may be, of the family court’s *thinking*; of what the family court is trying to achieve, and why; and of the family court’s objectives for the child and the family, whether in the context of judicial case management or in its detailed care planning. This is not so that the family court can dictate to the criminal justice system – which, to repeat, is impermissible – but so as to ensure, as far as possible, that the criminal justice system is aware of the family court’s thinking; that the criminal justice system can have a better appreciation of whether what it is minded to do will facilitate and ‘mesh with’ or will cut across what the family court is doing; and to ensure that the criminal justice system’s decision-making is less vulnerable to challenge.<sup>1</sup> Sometimes such an explanation can best be provided by a formal judgment which can be transmitted to the criminal justice system. Sometimes, as in a care case I was recently concerned with, the explanation can appropriately be provided in the form of a memorandum approved by the judge.

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<sup>1</sup> I have in mind the point made by Hoffmann LJ in *ex parte T* at 297-8: “Clearly, any order made or views expressed by the [family] court would be a matter to be taken into account by the Secretary of State in the exercise of his powers. If he simply paid no attention to such an order, he would run the risk of his decision being reviewed [by way of judicial review or appeal] on the ground that he had failed to take all relevant matters into consideration.” That was said in an immigration context, but the point is of general application.