



IGC *newsletter*

ISSUE 21



Welcome. I am delighted to introduce this first newsletter of 2016; shorter than its predecessors, we hope to produce them more frequently.

It is also my first opportunity to 'appear in print' since succeeding Joe Turner

as the Chambers' Director in mid-December 2015. Like Joe I hail from a Service background and despite some unfamiliarity with the legal context, I hope that my leadership, managerial and administrative skills will make me an effective senior member of staff for 1 Garden Court. I am certainly enjoying this new, friendly and highly effective working environment.

There have been further changes amongst Chambers' senior staff since the end of 2015. Following Howard Rayner's departure, we were delighted to appoint Paul Harris to succeed him as Senior Clerk. Already well known to clients and colleagues alike, Paul has stepped up into the premier clerking position with ease. More recently we have been pleased to appoint Tim Dockrill to the vacant 1st Junior Clerk's position. Since joining 1 Garden Court in mid-2015, Tim has quickly established himself, earning the respect of our clients and members alike and we are confident he will succeed as 1st Junior.

I must also underscore the delight and pride we feel as a set in the recognition several members have achieved this year – Andrew Norton and Ian Bugg on being appointed as Recorders, Andrew also on being appointed QC and Charles Geekie QC – Joint Head of Chambers – on being appointed a Deputy High Court Judge. They join many other members who have been similarly recognised for their professional excellence, wisdom and contribution to the profession. In addition, Marlene Cayoun is one of a team of Counsel working on the Goddard Inquiry; and Sam Momtaz has been appointed as a member of the Independent Review Panel on Sharia Law.

2016 has already been a busy year with members participating in a number of important cases:

- Four members appeared in the Matter of the Human Fertilisation and Embryology Act 2008 (Case G) [2016] EWHC 729 (Fam).
- Jeni Kavanagh acted as junior counsel in *DB v DLJ* [2016] EWHC 324 (Fam) – Mostyn J (24 Feb 16).
- Deirdre Fottrell QC and Lucy Sprinz represented the Aire Centre (1st Intervener) at the Supreme Court in the Matter of N (Children).

More details are provided on our newly refreshed website at www.1gc.com.

“2016 has already been a busy year with members participating in a number of important cases.”

In terms of events, 1 Garden Court was pleased to host a well-received Family Finance Seminar in April, with the intent to run another in the autumn. In mid-May, together with the Polish Embassy in London we hosted a very successful conference on cross border cooperation on English and Polish children's cases. Further seminars are planned for the second half of the year, the details of which will be available in good time on our website.

In conclusion, I commend to you Thomas Wilson's article that follows, I hope you find it of interest. This newsletter comes with the warm good wishes of all members and staff of 1 Garden Court to our professional and lay clients, friends and supporters. If you require anything of us, please do not hesitate to contact Paul (harris@1gc.com) or me (swann@1gc.com).

David Swann CBE
Chambers Director

FORTHCOMING EVENTS

- A seminar on EU Public Law Children Proceedings – 5 October
- A seminar on topical Family Finance issues – 13 October
- A seminar on FGM Issues – 15 November

RE D (NO. 3) Ensuring Access to Justice for Parents with Learning Difficulties

By *Thomas Wilson*



Re D (A Child) (No.3) [2016] EWFC 1 is a desperately sad decision concluding long-running public law proceedings. D is aged 4 and has complex needs.

His mother was assessed to be on the borderline of a learning disability and, while not fulfilling the diagnostic criteria, displays a number of features of ASD, including inflexibility of thinking and difficulty in accepting guidance. These traits hindered her in anticipating possible risks, knowing how to react quickly and effectively in the face of hazards, anticipating or controlling D's actions, and being unable to apply past experience or theoretical awareness of risk to a live situation. D's father was found to have a more significant cognitive impairment, with an IQ of around 50.

D was initially subject to care proceedings in 2012 which concluded with a care plan for D to remain at home with his parents subject to a care order with an intensive support package. In March 2014, the local authority sought to remove D and a number of applications ensued from both sides, culminating in those before the President, namely the father's application to discharge the care order and the local authority's application for a placement order.

The President, with reluctance, dismissed the father's application and made a placement order. In doing so, he determined that the proposed package of support was unsustainable and, in any event, was insufficient to bridge the gap between what D needs and what the parents are capable of providing. The President highlighted the following points of general application:

The local authority's change of stance was not driven by any worsening in the parents' abilities or any unforeseen event. The parents' needs remained constant throughout D's life and were fully appreciated by the local authority at the time of the original care order. As such, the case required '... more than usually rigorous analysis and an exceptionally high degree of anxious scrutiny.'

There is no different standard of parenting that is required for children with complex needs. What is required is parenting which is 'good enough' for the particular child, having regard to that child's needs and requirements. What is 'good enough' for one child may not be 'good enough' for another.

More importantly, however, the President endorsed the remarks of Gillen J in the Northern Irish case of Re G and A (Care Order; Freeing Order; Parents with a Learning Disability)

[2006] NI Fam 8. These can be summarised as follows:

An increasing number of adults with learning difficulties are becoming parents and the court must recognise that such parents are individuals with a right to be treated as an equal citizen. The court must reflect this and recognise the need to remove barriers to inclusion that disadvantage and discriminate against such parents.

The court must take all possible steps to ensure that parents are able to actively participate in decisions affecting their lives. They must be supported in ways that take account of their individual needs.

The court must approach all such cases with a recognition of the possible barriers to the provision of appropriate support to parents, including negative or stereotypical attitudes about parents with learning disabilities.

The concept of 'parenting with support' must underpin the professionals' and the court's approach whenever dealing with such parents. Multi-agency working and anxious scrutiny of what support the wider family can offer is critical. The court must carefully inquire as to what support is needed to enable the parents to show whether or not they can become 'good enough', rather than assume that they are destined to fail.

“a desperately sad decision concluding long-running public law proceedings”

The court must ensure that there are no barriers to justice within the process. The court must recognise that parents may require extra time with legal representatives and the process necessarily has to be slowed down. Care should be taken by the court and professionals as to the language and vocabulary used, and appropriate special measures should be employed. Parents should not be overwhelmed by large numbers of people at meetings with professionals. The court should ensure that parents are able to indicate if something is beyond their comprehension. It must be careful to ensure that the supposed inability of parents to change is not a result of professionals engaging with them ineffectively. Practitioners involved in cases with parents who have learning disabilities should be anxiously aware of these principles, together with the remarks of Baker J in Re X, Y, Z (Minors) [2011] EWHC 402 and Re A (Care Proceedings: Learning Disabled Parent) [2014] 2 FLR 591.