

Friday Family Law Roundup

Sometimes it can be incredibly difficult to keep up to speed on all of the news, case law and other updates in family law, so here's your latest weekly roundup of all of the important bits you might have missed!

Case Law

Re WSP (A Child) (Vaccination: religious objection) [2023] EWHC 2622 (Fam)

- <https://caselaw.nationalarchives.gov.uk/ewhc/fam/2023/2622>

- This was an application by a mother to prevent a child in care from being given their childhood immunisations, due to religious objections.
- The Mother's case was that to administer the immunisations would be a contravention of her Article 9 right to freedom of thought, conscience and religion on its own, and also when taken with her Article 14 right to be free from discrimination on religious grounds.
- The Court considered that "*a parent's decision to consent or refuse to have their child vaccinated on religious grounds is another 'manifestation' of religious belief that may be regulated by the state and its Courts without breaching Article 9*" [19], as it is a qualified and not an absolute right under the ECHR.
- The Court held that the vaccinations were in WSP's best interests and so dismissed the Mother's application to injunct the Local Authority to restrain the vaccinations.
- "*...in the absence of cogent, objective evidence of harm to his welfare, the mother's objections on religious grounds do not otherwise outweigh WSP's welfare interests in receiving the vaccinations. Her views must, of course, be taken into account and given proper weight, both by the Local Authority and by the Court. Her religious objections must be given respect. That is required both as a matter of common law and Article 9.*" [25]

A Mother v A Father & Ors [2023] EWHC 2728 (Fam)

- <https://www.bailii.org/ew/cases/EWHC/Fam/2023/2728.html>

- In this private law application, the applicant Mother applied for summary return of her two children to France. The Court dealt with the application in August 2023 in *A Mother v A Father & Ors* [2023] EWHC 2059 (Fam), however following the hearing it became apparent that the Judge had not dealt with the issue of habitual residence during that hearing.
- The habitual residence of the children was disputed – however the Court had previously made an order dismissing the Mother's application for return of the children to France.
- The Court summarised the following as a 'non-exhaustive list of bullet point guidance' when determining the question of habitual residence:
 - a. habitual residence is a question of fact and is not a legal concept;
 - b. the factual inquiry requires consideration of all relevant factors applied to the *individual* circumstances of the children and the court should not permit the gloss of legal concepts to produce a different outcome from the factual inquiry;
 - c. the list of relevant factors is open-ended and should provide for a global analysis;

- d. whilst helpful to look for 'some degree of integration by the child in a social and family environment' this is not a substitute for a holistic analysis and (likely) may not be sufficient to fully grapple with a holistic determination, particularly if there are two competing jurisdictions in respect of which it might be said there is some degree of integration;
 - e. it might be helpful to pose the question whether the child's residence in the jurisdiction has achieved a 'necessary degree of stability' when carrying out the required global analysis for the individual child, but without requiring facts to demonstrate permanence of residence;
 - f. if more than one jurisdiction for the child's habitual residence is to be considered then the court should consider a comparative analysis of each jurisdiction where it is said they have a connection and assess the relative strengths of those connections;
 - g. when carrying out the global and comparative analysis the court should bear in mind that:
 - (i) the deeper the child's integration in the former jurisdiction probably the less fast his/her integration into the following jurisdiction;
 - (ii) the greater the pre-planning by the adults to effect the move from one jurisdiction to another, may impact the speed of the integration;
 - (iii) the transition from one jurisdiction to another of many, or all, central family members, from the child's perspective, may impact on the speed of integration;
 - h. the court must bear in mind the factors of the 'old' and 'new' lives for the individual child;
 - i. habitual residence is unlikely to be achieved in one jurisdiction if the child's position can be described as temporary (but that may depend on the nature of the integration in the other competing jurisdictions);
 - j. the intention/state of mind of the parents (not as a legal concept but as to the reasons for leaving/staying) and of the older child (depending on their understanding) may be taken into account in the global analysis;
 - k. a parent may unilaterally change habitual residence without the consent of the other parent.
- The Judge was satisfied that the English courts have jurisdiction based upon a combination of Articles 16 of the 1980 Hague Convention and Articles 7 and 50 of the 1996 Hague Convention, and declared both children as habitually resident in England and Wales.

News

Children in Sussex and Surrey housed illegally amid care shortage

- <https://www.bbc.co.uk/news/uk-england-sussex-67216401>

- A scenario we have become all too familiar with is back in the news.
- Data shows that from March 2022 to 2023, 49 children aged under 16 were put in housing not approved by Ofsted.
- Freedom of information requests have also revealed councils used unregulated accommodation on 81 occasions.

Royal Assent given to Online Safety Act

- <https://www.gov.uk/government/news/uk-children-and-adults-to-be-safer-online-as-world-leading-bill-becomes-law>

- The new laws take a zero-tolerance approach to protecting children from online harm, while providing adults with more choices over what they see online.
- Ofcom will immediately begin work on tackling illegal content, with a consultation process launching on 9th November 2023. They will then take a phased approach to bringing the Online Safety Act into force, prioritising enforcing rules against the most harmful content as soon as possible.

Chambers News

Our very own Gina Tarawally has written this excellent article on Black History month! Click the link to read - <https://www.4bc.co.uk/news-events/news/black-history-month-saluting-our-sisters-at-four-brick-court/>

Jacqui Gilliatt is delivering a seminar entitled 'Updates and Tips on Special Guardianship and Adoption' on 25th January 2024. Here is the link to register - <https://lnkd.in/eXbj8f3s>

Bronach Gordon and I will be delivering a DOL seminar on 22nd February 2024. Sign up here - <https://lnkd.in/eWXsTQTU>

And finally, Chambers are recruiting for a junior clerk to join our fabulous team! For more information on this position, please contact our Senior Practice Manager [Billy Forecast](mailto:billy.forecast@4bc.co.uk) (billy.forecast@4bc.co.uk) and Marketing and PR Coordinator [Gina Tarawally](mailto:gina.tarawally@4bc.co.uk) (gina.tarawally@4bc.co.uk)

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