

Re S; WSP v Hull City Council
[2006] EWCA Civ 981

Court of Appeal

Wilson and Moses LJJ and Hedley J

24 May 2006

Children - Care proceedings - Non-accidental injuries - Expert evidence - Joint instruction of experts - Disclosure of medical records - Compelling a party to file a third party's report

A 3 week old baby, the younger of the parents' two children, sustained very serious injuries while in her father's care. The parents consistently contended that the father had tripped while carrying the baby, thus causing her head to be cracked against a door frame. They alleged that that accident had caused the baby's external injuries and that her serious internal injuries were either caused in the same way or were the result of some pre-existing medical condition. Paediatric consultants at the hospital considered the father's account to be an insufficient explanation for the injuries and they formed the view that the injuries were compatible with violent shaking and may well have been non-accidental. The local authority brought care proceedings in relation to both children. In making case management decisions the judge favoured the joint instruction of four experts in different fields. He rejected the contention of the parents, apparently prompted by the decision in *W v Oldham Metropolitan Borough Council*, that both they and the local authority should each be entitled to approach experts in the same field to make independent reports for use at the first stage of the hearing. He also refused to permit the parents to instruct an American professor of mechanical engineering. The father appealed.

Furthermore, the local authority had sought disclosure of records relating to the father held by his psychiatrist and GP, or, as a fall-back position, that the father be directed to file a report by his psychiatrist about his psychiatric condition and the effect on him of either having taken or failed to take his prescribed medication. The judge favoured the fall-back position. The father appealed on the basis that the judge had no power to direct him to file such a report and/or that his psychiatric circumstances were irrelevant to the inquiry. The local authority cross-appealed against the judge's refusal to order disclosure of the medical records.

Held - dismissing the father's appeal against the refusal to permit instruction of independent experts but allowing both the appeal and the cross-appeal in relation to the medical evidence relating to the father -

(1) The judge had been correct - or at the very least entitled - to favour the joint instruction of single experts. The *Oldham* case (above) was no authority for the submission that the parents were entitled to unilaterally instruct four experts to prepare reports at the outset of proceedings for use at the fact-finding stage of the hearing. The *Oldham* case had not intended to suggest that the court should routinely favour the instruction of two or more experts in the same discipline additional to such experts already destined to give evidence because of their clinical involvement in the child's case: it also stressed that justification for a second opinion lay only in circumstances in which the first opinion was 'pivotal' and until the first set of reports was to hand, it could not be discerned whether any one of them, and if so, which one, was the pivot around which the others turned (see paras [18], [19]).

(2) Although there was a clear need for the court to receive evidence of the father's psychiatric condition, he should not have been compelled to file a report by his psychiatrist in accordance with the fall-back application made on behalf of the local authority. A party could not be compelled to file evidence to be collected by himself from a third party for he has no power to compel a third party to cooperate. However,

the father's medical records should have been directed to be provided and, since they were already in his possession, there was no impediment to an order for an immediate disclosure to all other parties. Those parties were permitted to show the records to a psychiatrist and, at the next review hearing, ask for leave to issue a subpoena ad testificandum against the father's psychiatrist (see paras [23], [24]).

Cases referred to in judgment

CB and JB (Care Proceedings: Guidelines), Re [1998] 2 FLR 211, FD

Daniels v Walker (Practice Note) [2000] 1 WLR 1382, CA

R v Harris [2005] EWCA Crim 1980, [2005] All ER (D) 298 (Jul), CA

U (Serious Injury: Standard of Proof), Re; Re B [2004] EWCA Civ 567, [2004] 2 FLR 263, [2004] All ER (D) 197 (May), CA

W v Oldham Metropolitan Borough Council [2005] EWCA Civ 1247, [2006] 1 FLR 543, *sub nom Re W (a child) (Non-accidental Injury: Expert Evidence)* [2005] All ER (D) 370 (Oct), CA

Peter Collier QC and *Ian Shiels* for the appellant father

Anthony Kirk QC and *Carol Trimmer* for the first respondent, Hull City Council

Deborah Adcock for the second respondent mother

Taryn Lee for the third and fourth respondents, the children, by their children's guardian

WILSON LJ:

[1] This appeal comes, with the leave of the trial judge, from case management decisions in care proceedings made by His Honour Judge Dowse, sitting as a High Court judge, Family Division, Hull District Registry, on 23 March 2006.

[2] In the proceedings Hull City Council (the local authority) apply for care orders in relation to two girls, namely D, who was born on 28 November 2003 and so is 2½ years old, and B, who was born on 4 December 2005 and so is 6 months old. The application is based upon very serious injuries sustained by B, apparently in the early hours of 26 December 2005, which the local authority allege to be non-accidental. The girls are presently in short-term foster care pending a full inquiry in the care proceedings into the aetiology of B's injuries and a consequential consideration of whether it would be in the interests of D and B to be restored into the home of the parents. Further scheduled hearings are as follows:

- (a) for review on 16 June 2006;
- (b) for the first, fact-finding stage of the substantive hearing, first for 2 days on 19 and 20 July and then for 15 days beginning on 7 August 2006; and
- (c) for the second and final stage of the hearing, for 5 days beginning on 4 December 2006.

[3] There are four respondents to the local authority's application:

- (a) the mother;
- (b) the non-marital father, who shares parental responsibility for the children with the mother; and
- (c) and;
- (d) the girls, by their children's guardian, Mrs Turner.

[4] The appeal is brought by the father with the support of the mother. It is opposed by the local authority and by the guardian. The main part of it relates to the judge's refusal to allow the parents unilaterally to instruct four experts to prepare reports for use at the first stage of the hearing and to give evidence at it. The judge instead favoured the local authority's suggestion that four other experts be jointly instructed by all parties; but, in the light of the fact that the parents were not prepared to join in the instruction of more than one of them, the order was for the three other experts to be jointly instructed only by the local authority and the guardian.

[5] The subsidiary part of the appeal relates to the fact that, whether relevantly or irrelevantly to the forthcoming inquiry, the father has had the misfortune to suffer psychiatric problems and was apparently under the care of a consultant psychiatrist in December 2005. The local authority's application to the judge was for the disclosure by the father of the records referable to him held by the psychiatrist and his GP; and their fall-back application was for the father to be directed to file a report by the psychiatrist in relation to his diagnosis of the father's condition, to the details of medication prescribed for him, and to the effect of the father's either having taken or having failed to take the prescribed medication, particularly in December 2005. In the event the judge favoured the local authority's fall-back application. The subsidiary part of the appeal is a complaint that the judge had no power to direct the father to file a report, or any other evidence, by a third party and that, further or alternatively, his psychiatric circumstances are irrelevant to the forthcoming inquiry. This subsidiary issue attracts a cross-appeal by the local authority, which complains that the judge wrongly rejected their primary application for disclosure of the medical records relating to the father.

[6] In the morning of 26 December 2005 the parents presented B to a GP. She had a bruise on her left forehead, spreading down to her left eyelid; and she was whimpering. On the recommendation of the GP they took her at once to Hull Royal Infirmary. The bruise was noted; a swelling of the eyelid was noted; she was irritable and crying; and the history was given that she had not fed for several hours. She was admitted to the hospital; and, in the light of her continued refusal to feed and her high-pitched crying, she was reviewed by neurosurgeons and paediatricians. In the evening nurses considered that her abnormal movements and facial expressions indicated seizures. In the early hours of 27 December a CT scan was performed and it indicated gross abnormality of the brain with marked swelling at both cerebral hemispheres. A consultant paediatrician noted not only petechiae, marks and bruises around B's forehead, eye and nose, but that she was continuing to suffer episodes of staring, abnormal breathing and apnoea. She was given an anti-convulsant, was intubated and transferred to intensive care. There a consultant ophthalmologist found an extensive left retinal haemorrhage. During the next 3 days B continued to suffer fits, as a result of which, on 30 December, an MRI scan was performed. This showed that the brain, in particular the cerebral cortex, was diffusely swollen, with focal haemorrhages and subdural haematomas, all of which were considered by a consultant neuroradiologist at the hospital to be consistent with a severe cerebral hypoxic/ischaemic injury. There were fears for B's life but she made a recovery sufficient to justify discharge back to the paediatric ward; and ultimately, on 27 January, she was

discharged from hospital into the foster home to which D had already been moved. The prognosis for B is unsure; but she may have significant long-term neurological and developmental problems. There is no suggestion of any bony injury.

[7] It is - and always has been - the case of the parents that B sustained these injuries as a result of an unfortunate accident when she was in the care of the father. He says that at about 3 am on 26 December B, who was in her Moses basket in the bedroom occupied by both parents and D, woke up in need of milk; that he took her downstairs in order to feed her; that she was unsettled and fed slowly and reluctantly; that she was whining; that at about 5 am she ultimately went to sleep on the sofa in the living room; that the family dog is customarily chained to the bottom of the banisters in the hall at night and sleeps on a blanket; that the dog had dragged the blanket the short distance from the bottom of the stairs to the entrance to the living room; that soon after 5 am he, the father, picked B up in order to carry her out of the living room; that, when cradling her, he tripped over the blanket; that he fell forward towards the banisters; that, as he fell, the left side of B's head hit the frame of the living room door; that he heard her head crack against it; that, when, still holding her, he picked himself up and took her back into the living room, he noticed a small red mark on the left side of her forehead; that, when he picked her up again, she flinched slightly; that he took her up to the bedroom and settled her down; that she soon started crying; and that that morning, with increasing concern, he and the mother noticed developing bruises on B's head.

[8] It is, of course, the case of the parents that it was in that way that the external injuries on B's head were caused. Their case is either that it was also in that way that her serious internal injuries were caused or at least that some pre-existing condition was thereby triggered so as to give rise to them. Each parent hotly denies the perpetration of any non-accidental injury upon B. Albeit slowly, however, the staff at Hull Royal Infirmary, and in particular the consultant paediatrician in charge of B's care and a consultant in paediatric accident and emergency medicine, had come to the view, particularly following the results of the MRI scan, that the father's account of the incident was an insufficient explanation for her injuries; and that there was nothing to indicate the pre-existence of a condition in B which, when triggered by the incident described by the father, could have led to the internal injuries. They came to the view that the injuries might well be non-accidental and were compatible with violent shaking.

[9] The decision of the judge on 23 March 2006 was that there should be an urgent assembly of expert evidence but that, at that stage, it should be pursuant to joint instruction. He rejected the contention of the parents that, in effect, they and the local authority should each be entitled to approach experts in the same field to make independent reports. Happily this is a case in which all the experts contended for on both sides seem to be particularly distinguished and in which - so I understand - no part of the argument turned on any specific objection to any of them. The argument was one of principle, namely whether for each specialism there should be a single expert subject to joint instruction or two experts subject to independent instruction.

[10] In the end, therefore, the judge favoured the joint instruction of:

- (a) Dr Stoodley, consultant neuroradiologist with special expertise in paediatric neuroradiology;
- (b) Mr Clarke, consultant ophthalmologist;
- (c) Mr May, consultant paediatric neurosurgeon; and
- (d) Dr Erhardt, consultant paediatrician.

In the event, however, the parents were not prepared to subscribe to joint instruction of any of those experts other than Dr Erhardt, as a result of which the judge directed that the first three named experts be jointly instructed only by the local authority and the guardian.

[11] The father appeals not against the direction for the instruction of those four experts but against the judge's refusal to give leave to him and the mother to instruct four further experts, namely:

- (a) Dr Anslow, consultant neuroradiologist with special expertise in paediatric neuroradiology;
- (b) Mr Taylor, consultant paediatric ophthalmologist;
- (c) Mr Hockley, consultant neurosurgeon; and
- (d) Professor Hayes, professor of mechanical engineering at Oregon State University.

[12] It should be noted at the outset that, whatever the extent of the expert evidence which was or should have been permitted by the judge, it was additional to evidence to be given by the two consultant paediatricians, the consultant neuroradiologist and the consultant ophthalmologist, who were all attached to the Hull Royal Infirmary and had played a role in B's treatment.

[13] It seems that the impetus behind the application by the parents for permission to instruct experts independently of the instruction of other experts by the local authority and by the guardian was the decision of this court in *W v Oldham Metropolitan Borough Council* [2005] EWCA Civ 1247, [2006] 1 FLR 543. In that in his judgment the judge described the parties as in two camps which held diametrically opposed views about the effect of that decision, it seems clear that it was this perceived disagreement which led to his unusual permission to appeal against his case management decisions.

[14] In the *Oldham* case a baby only a few days old had been presented to hospital in a floppy condition; and had begun to have seizures. A minor brain haemorrhage was discovered. Five days later he was discharged home upon a plan that he should be reviewed weekly and that an MRI scan should be taken. Several days after his discharge from hospital the scan was taken; and it was reviewed by a paediatric neuroradiologist (Dr A), who, for the first time, raised a possibility of non-accidental injury. A few weeks later, very largely by reference to his views, the local authority issued an application for a care order. At two interlocutory hearings and at the outset of the fact-finding hearing the father unsuccessfully sought permission to instruct a second paediatric neuroradiologist to report, in particular on the MRI scan. The judge proceeded to find that the injuries were non-accidental; and it was clear that, although there were a number of expert medical witnesses, their evidence was all linked with, and depended upon, the evidence of Dr A. When, in the course

of the father's appeal to this court, permission was given for him to instruct a second paediatric neuroradiologist, and when the latter reported that he fundamentally disagreed with Dr A, it was agreed that the appeal against the findings should be allowed and the matter remitted for fresh adjudication.

[15] In giving the only substantive judgment in the *Oldham* case Wall LJ explained that the judge had been wrong to deny the father the opportunity to collect a second opinion from a paediatric neuroradiologist in advance of the hearing. He said:

'[31] It was, in my view, clear from the date of Dr A's first report ... that the evidence of the MRI scan was critical to the medical conclusion that K had suffered NAHI. It was equally clear that the other doctors, including the neuroradiologists, deferred to Dr A. Thus, the case turned pivotally on Dr A. But Dr A was the only medical witness properly capable of assessing the MRI scan, and the medical consensus on which the judge relied depended on Dr A's analysis of the MRI scan being correct.

[32] In such circumstances, I am quite clear, speaking for myself, that parents in the position of this mother and father are entitled to a second opinion.'

In my view the judgment of Wall LJ in the *Oldham* case represents, first, a reaffirmation of the desperate importance, not only for the child but also for the parents, that these particularly difficult fact-finding exercises should yield the correct conclusion; and, secondly, a statement that the family justice system should guard against the danger that its specialist judges may too readily assume that an expert report which accords with their preconceptions about established medical wisdom cannot effectively be challenged.

[16] That said, however, I believe that there was a significant misunderstanding before the judge, perhaps in both camps, of the reach of the decision in the *Oldham* case. It was - and is - submitted on behalf both of the local authority and of the guardian that the decision largely turned upon the fact that Dr A had had a minor degree of clinical involvement in the baby's case. I disagree. At para [46] Wall LJ specifically dismissed the suggestion that his degree of involvement disabled him from acting as an expert witness and described it as only an additional argument in favour of a second opinion. But the major misunderstanding, in my view, lies in the submissions on behalf of the parents. I am convinced that this court did not intend to suggest that, at the outset of a court's arrangements for the assembly of expert evidence, it should favour the instruction of two or more experts in the same discipline additional, indeed, to such experts already destined to give evidence because of their clinical involvement in the child's case. Wall LJ refers on more than one occasion to 'a second opinion'; and indeed, in that it was even prior to the issue of proceedings that Dr A had articulated his crucial opinion, the question in that case was whether a second, subsequent opinion should be collected from within the same sphere of expertise. Furthermore the decision stresses that justification for a second opinion lies only in circumstances in which the first opinion is 'pivotal'; and, until the first set of expert reports is to hand, it cannot be discerned whether any one of them, or, if so, which one of them, is the pivot around which the others turn.

[17] In para [36] of his judgment Wall LJ quoted the following passage from the judgment of Lord Woolf MR in *Daniels v Walker (Practice Note)* [2000] 1 WLR 1382, at 1387E:

'In a substantial case such as this, the correct approach is to regard the instruction of an expert jointly by the parties as the first step in obtaining expert evidence on a particular issue. It is to be hoped that in the majority of cases it will not only be the first step but the last step. If, having obtained a joint expert's report, a party, for reasons which are not fanciful, wishes to obtain further information before making a decision as to whether or not there is a particular part (or indeed the whole) of the expert's report which he or she may wish to challenge, then they should, subject to the discretion of the court, be permitted to obtain that evidence.'

With one proviso, Wall LJ suggested that that passage applied to the *Oldham* case. The proviso was that experts in family proceedings were a precious resource, perhaps nowadays more scarce than those able and willing to undertake forensic work in civil proceedings such as *Daniels v Walker*.

[18] In my view the *Oldham* case is no authority whatever for the extravagant submissions made to the judge on behalf of the parents and now made to us by Mr Collier QC on behalf of the father. Quite apart from the attendant public expense, what was the logical argument in favour of contributions from two consultant neuroradiologists; from two consultant ophthalmologists; and from two consultant neurosurgeons? What was objectionable in the subscription of all parties to a carefully crafted letter of instruction to one top expert in each discipline, whose duty of total impartiality the joint instruction could only confirm? How could it be said at that stage before the judge that there was an expert whose evidence was not only adverse to the parents but pivotal and so justified a second opinion?

[19] The only argument which runs in any way counter to the conclusion that the judge was correct - and at the very least entitled - to favour the joint instruction of single experts is the risk of delay in the event that it was only at a later stage that, in the light in particular of the *Oldham* case, the court were to favour the taking of a second opinion. In his courageous submissions to us this morning Mr Collier has stressed this point. In this case the expert evidence is due to be filed by 9 June; the court's review will take place on 16 June; and the first day of the first stage of the hearing is 19 July although, fortuitously, the break between 20 July and 7 August may allow for a little more flexibility. In para [12] of his judgment the judge said:

'It may be that the opinions of these single joint experts will be accepted and if so the case will likely be speedily resolved. If they are not then the court would likely be asked at that time for permission to instruct another expert or tier of experts, and the observations of the Court of Appeal in *Oldham* would be of advantage to a dissatisfied parent.'

I take that passage as being an acknowledgement on the part of the judge, which I would endorse, that it may be that at the review on 16 June, in the light of the reports then to hand, the father and mother will be in a position to

press for, and indeed perhaps to obtain, permission to collect a second expert opinion in one or more disciplines. Although it may be possible for any such second opinion or opinions to be collected between 16 June and 19 July, or at least between 16 June and 7 August, in time for the fact-finding hearing to proceed as fixed, there is no denying that a direction for such further evidence might jeopardise the holding of the fact-finding hearing on those dates. Such a risk Mr Kirk QC on behalf of the local authority recognises. The tail, however, would be wagging the dog were the court, in this case or routinely, to favour what would otherwise be the premature collection of expert evidence in order not to jeopardise a hearing in the event that it were later to prove appropriate for it to be collected.

[20] The judge's refusal to permit the parents to instruct Professor Hayes falls into a different category. The engine behind their application in this regard appears to have been references in the decision of the Criminal Division of this court in *R v Harris* [2005] EWCA Crim 1980, [2005] All ER (D) 298 (Jul). In the judgment of the court at para 81 the word 'biomechanics' was defined as the application of traditional engineering principles to living organisms; and at paras [82]-[87] the court addressed references by the medical witnesses in the conjoined appeals to biomechanical processes whereby a child can sustain brain and eye injuries. In the present case the argument was, and is, that biomechanical engineering evidence could, by saying that it was either possible or impossible, help to confirm or refute the father's account that his tripping against the blanket and causing B to hit her head against the door frame caused or triggered her injuries. At best this argument is premature. Mr Collier casts this argument upon the basis that it might assist the medical experts in their review of the case. But let us see whether it does assist them, indeed whether they contend that they would be thereby assisted. It is possible that, when their evidence is collected, it might throw up the need for expert evidence of this character, whether to be given by the distinguished American professor or otherwise. In my view, however, the likelihood is that even at that stage the procurement of such evidence will be seen as unnecessary. In many of these tragic cases parents put forward, with varying degrees of cogency, innocent explanations for serious injuries. Mr Collier suggests that this case is unusual in that the case put forward by the father is of an impact injury sustained in the manner which I have described. I have to say that, in my long and recent experience of trial work in the Division, I have determined a number of cases in which parents put forward versions of events involving a sudden impact of the child's head upon some sort of surface in the course of an accident; and I cannot recall a case in which I considered, or in which it was suggested to me, that the probabilities could not safely be balanced without biomechanical evidence.

[21] I turn finally to the appeal and cross-appeal in relation to the evidence about the father's psychiatric condition. It is convenient first to deal with the father's contention that such evidence is irrelevant. The argument is based in large part upon the following proposition articulated by Wall J, as he then was, in *Re CB and JB (Care Proceedings: Guidelines)* [1998] 2 FLR 211, at 217H-218C:

'Evidence of propensity or a psychiatric or psychological assessment of one of the parties is unlikely to be of any assistance in resolving a

purely factual issue. There will in any event be before the court evidence from the local authority and the parents relating to the history of the case and the backgrounds of each of the parents. A psychologist or psychiatrist instructed to undertake an assessment of a parent for the first stage of a split hearing is unlikely to have a complete knowledge of the facts ... In my judgment therefore, [it] should not be permitted at the first stage of a split trial unless the particular facts of the case demonstrate that such evidence is or is likely to be directly relevant to the factual issue to be tried.'

[22] I believe that, with respect to him, the father completely misunderstands that proposition. In my view Wall LJ was rejecting the value of a bland assertion by an expert that a parent had a psychological profile which predisposed him to act in the manner alleged against him. The situation in the present case is entirely different. The evidence is that the father was undergoing psychiatric treatment over a period which included 26 December 2005. One of the clinical consultant paediatricians gives evidence - although I know not from what source - that on 26 December the father 'was supposed to be taking high doses of anti-depressants as per his psychiatrist's advice'. A social worker will give evidence at the hearing - and thus it lies as yet entirely untested - that on 6 January 2006, following an outburst on his part, the father apologised for it; and explained that his psychiatrist had told him that medication previously prescribed for him was not working and so had prescribed different medication but that, unable for some reason to obtain the new medication, he, the father, had continued to take the old medication. In these circumstances it is only too obvious that the father's psychiatric condition; the nature of the medication prescribed for him in December 2005; the nature of the medication taken by him in December 2005, if different; and the effects upon him of his not having taken, if it be the case, the medication prescribed for him and conversely of his having taken, if it be the case, the medication no longer prescribed for him, are all relevant. They are not relevant to mere propensity. They are relevant to what, in *Re U (Serious Injury: Standard of Proof)*; *Re B* [2004] EWCA Civ 567, [2004] 2 FLR 263, at para [26], Dame Elizabeth Butler-Sloss P described as the requisite survey of:

'a wide canvas, including a detailed history of the parents' lives, their relationship, and their interaction with professionals. There will be many contributions to this context, family members, neighbours, health records, as well as the observation of professionals ...'

[23] I move, therefore, from the clear need for the court to receive the disputed evidence to the manner by which it should do so. I have no doubt that the submission is correctly made on behalf of the father, and today correctly conceded on behalf of the local authority, that the court cannot compel a party, against his will, to procure the evidence of a person not already a witness in proceedings. A party can be permitted to file evidence which he wishes to file; and, in civil proceedings, he can be compelled to file evidence from himself. He cannot, however, be compelled to file evidence to be collected by him from a third party; for he has no power to compel the third party to co-operate

in enabling him to comply with the order against him. So, yes, the father is right: he should not have been subject to purported compulsion to file a report by his psychiatrist. The judge seems to have recognised as much when, in judgment, he observed: 'although it does not seem to me that the father can be forced to, the evidence from [the father's psychiatrist] can be obtained now'. Notwithstanding his doubts the judge for some reason proceeded in his actual order to direct the father to file a report from the psychiatrist.

[24] It must be remembered, however, that the request for an order that the father should file a report from the psychiatrist was only the fall-back application made on behalf of the local authority. Their primary application was for an order for the disclosure of the records held by the psychiatrist and the linked records held by the father's GP. Granted the relevance of the father's psychiatric condition, that application was in my view unanswerable. In the ordinary case, in which the medical records are held by the doctors, the appropriate direction would have been to grant leave to the local authority to issue what in the Division we still have to call subpoenas duces tecum and ad testificandum, returnable either at the outset of the substantive fact-finding hearing or, surely more conveniently, at a prior review hearing, at which the doctor or doctors can produce the records to the court and answer such questions as will enable the parties both to make sense of them and, more broadly, to collect from them the focused information about the parent's likely condition at the time of the event. In this case, however, we are given to understand that the medical records are already in the possession of the father; and so in my view there is no impediment to a straightforward order for his immediate disclosure of them to all other parties. To that order I would attach permission to the local authority and the guardian, if so minded, to show the records to a psychiatrist of their own choosing; and, having studied the records and perhaps having instructed a psychiatrist to educate them about their significance, the local authority and/or the guardian will be free at the next review hearing to ask for leave to issue a subpoena ad testificandum against the father's psychiatrist. I have to say that, once the court in care proceedings has decided in principle that such information should be obtained and once the parent has had the benefit of legal advice, this cumbersome method of obtaining it is usually circumvented by his agreeing, as a recital to the order, to procure a report from the psychiatrist upon the matters ruled to be relevant. Perhaps, now that this appeal is reaching its end and now that he can be given further and clearer advice, the father will be amenable to that elementary level of co-operation. But we should not count on it. It follows that I propose that the local authority's cross-appeal and, insofar as it relates to the direction that the father should file a psychiatric report, the father's appeal should be allowed; and that the orders which I have indicated should be substituted for the direction made by the judge. In all other respects the father's appeal should in my view be dismissed.

MOSES LJ:

[25] I agree.

HEDLEY J:

[26] I also agree and would only want to add that the orders in relation to experts made by the judge were entirely conventional orders in this kind of

case, and in my judgment, as Wilson LJ has said, in no way infringed the principles in the *Oldham* case. Likewise, the order that my Lord has proposed in relation to medical records would in a case such as this with a psychiatric history be an entirely conventional order, and I agree that such an order would in no way offend the principles set out in *Re CB and JB (Care Proceedings: Guidelines)* [1998] 2 FLR 211. I too agree with the results proposed by my Lord.

Extension of time granted. Permission to cross-appeal granted. Cross-appeal allowed. Appeal allowed in part.

Solicitors: *Payne & Payne* for the appellant father

Hull Legal Services for the first respondent, Hull City Council

Myer Wolff for the second respondent mother

Williamson for the third and fourth respondents, the children, by their children's guardian

NATASHA WADSWORTH

Law Reporter