

# 1KBW

**1KBW TALKS FOR  
ASPIRING FAMILY LAW BARRISTERS  
CHILDREN PROCEEDINGS**

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# 1KBW TALKS FOR ASPIRING FAMILY LAW BARRISTERS

## CHILDREN PROCEEDINGS

### 1KBW SPEAKERS



ANDREA WATTS

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### Programme:

- » Chair – Andrea Watts (1KBW)
  
- » Parental Responsibility and Child Arrangements Orders – Millicent Benson and Leonie James (1KBW)
  
- » Parental alienation – Kirstie Shearman (guest speaker)
  
- » Public law children proceedings – Rajni Virk (guest speaker)
  
- » International child abduction – Fatima Ismail (guest speaker)
  
- » Litigants in person and McKenzie Friends – Gemma Galletly (guest speaker)
  
- » Q&A with the panel

# PARENTAL RESPONSIBILITY

MILLIE BENSON & LEONIE JAMES

- » What is it?
  - » Children Act 1989 s3(1)
- » Re H-B (children) (contact) *[2015] EWCA Civ 389*, at [72], [2015] Fam Law 634 – Munby J
  - “parental responsibility is more, much more, than a mere lawyer’s concept or principle of law. It is fundamentally important reflection of the realities of the human condition, of the very essence of the relationship of parent and child. Parental responsibility involves duties owed by the parent not just to the court. First and foremost, and even more importantly, parental responsibility involves duties owed by each parent to the child”*
- » Not all holders have the same level e.g. Emergency Protection Orders – Children Act 1989 s44(5)(b)
- » Can delegate – Children Act 1989 s2(9)
- » Who has it?
  - » Children Act 1989 s2
  - » B v UK [2000] 1 FLR 1
  - » Assisted Reproduction: s43 Human Fertilisation and Embryology Act 2008
  - » Multiple people can have it Children Act 1989 s2(5)
- » How do you get it?
  - » Unmarried fathers – Children Act 1989 s2, s4, s12(1A)
  - » ‘Lives with’ Child Arrangements Orders – Children Act 1989 s12
  - » Step-Parents – Children Act 1989 s4A
  - » Local Authorities – (Interim) Care Orders s38 and s33 Children Act 1989, Emergency Protection Orders s44 Children Act 1989
  - » Special Guardians – Children Act 1989 s14
  - » Surrogacy – Parental Order s54 Human Fertilisation and Embryology Act 2008

- » Placement for Adoption – s25 Adoption and Children Act 2002
- » Can you lose it?
  - » By court order – Children Act 1989 s4(2A)
  - » Child turning 18
  - » Can be restrained – (Interim) Care Orders s38 and s33 Children Act 1989, Emergency Protection Orders s44 Children Act 1989
  - » Transfer of Parenthood – Parental Order, Adoption Order

## **CHILD ARRANGEMENTS**

- » Children Act 1989
  - » Section 1(1) – the child’s welfare is paramount
  - » Section 1(3) – the welfare ‘checklist’
  - » Section 8
    - Child arrangements orders (“live with”, “spend time with”)
    - Specific issue orders
    - Prohibited steps orders
- » Section 10
  - » Who may apply for orders
  - » Who may seek permission to apply for orders

# Parental Alienation

KIRSTIE SHEARMAN (GUEST SPEAKER)

» Definitions

» Development

» **Re L, V, M and H [2000] EWCA Civ 194**

» **Re C [2011] EWCA Civ 521**

» **Re A [2009] EWCA Civ 1141; Re L [2019] EWHC 867**

# Public Law Children Proceedings

RAJNI VIRK (GUEST SPEAKER)

## (1) Duties of a local authority

*Section 17 Children Act 1989* – a local authority has a general duty to:

(a) safeguard and promote the welfare of children within their area who are in need;

and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs

## (2) Section 31 Children Act 1989

*Section 31 Children Act 1989* –

A court may only make a care order or supervision order if it is satisfied—

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to—

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

## (3) Orders

Interim orders – *Section 38 Children Act 1989*

The typical orders made within care proceedings are:

a. Care order – Section 33 Children Act 1989 (effects of a Care Order) if a child is made subject to a care order, the local authority is given Parental Responsibility of the child and will share it with those who

already have it, for example, the parents

b. Supervision Order – *Section 35 Children Act 1989*

this order imposes a duty on the LA to advise, assist and befriend the child. Final supervision orders usually last a year, however, under a SO, the local authority does not share PR of the child.

c. Special Guardianship Order – *Section 14A Children Act 1989*

under this order, a child will be ordered to live with someone other than their parents on a long-term basis. This person is called a special guardian and they share PR of the child.

d. Placement / adoption – *Section 2 Adoption and Children Act 2002*

the parents of the child lose their Parental Responsibility, and it is transferred to the adoptive parents

**(4) Impact of COVID-19**

*Re P (A Child: Remote Hearing) [2020] EWFC 32 – In this case, the President made it clear that because a matter can be heard remotely, does not mean that it must. Consideration is required to the difficulties lay parties can face when important lengthy hearings such as fact findings or final hearings are to be conducted remotely.*

# International Child Abduction

FATIMA ISMAIL (GUEST SPEAKER)

## (1) Key legal instruments

- » Hague Convention on the Civil Aspects of International Child Abduction 1980;
- » Hague Convention on the International Protection of Children 1996;
- » Regulation 2201/2003 or “Brussels II Revised”;
- » Child Abduction and Custody Act 1985;
- » Children Act 1989 (to apply for a prohibited steps order, an order for delivery up of passports, order restraining the issue of passports or interim residence order).

## (2) Brussels II Revised

- » Brussels II regulates the rules of jurisdiction for child protection, child abduction and parental responsibility within the EU. It has provided predictability in international children cases and in child abduction cases, a framework for the child’s swift return.
- » As a result of Brexit, the UK will lose some protection and benefits that were awarded under Brussels II. Some examples include:
  - » Parental Responsibility under Article 9;
  - » Return Proceedings and six-week time frame under Article 11(3);
  - » Home Country Return Order under Article 11(6)-(8);
  - » Refusal to Return under Article 14.

## (3) Key Cases

- » Re B (Children) [2011] UKSC 27
- » Re B (A Child: Custody Rights, Habitual Residence) [2016] EWHC 2174 (Fam)
- » Re B (A Child Abduction Article 13b) [2020 EWCA Civ 1057



- » M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention) [2020] EWCA Civ 1105

**(4) Additional Resources**

- » Family Procedure Rules 2010/2955
- » P. Beaumont and P. McEleavy, 'The Hague Convention on International Child Abduction', (OUP, 1998)
- » Practice guidance on Case management and Mediation in International Child Abduction Proceedings, <https://www.judiciary.uk/wp-content/uploads/2018/03/presidents-practice-guidance-case-management-mediation-of-international-child-abduction-proceedings-20180227-1.pdf>
- » Practical Case Management of Child Abduction Cases by Clare Renton (29 Bedford Row), <https://www.familylawweek.co.uk/site.aspx?i=ed2255&f=2255>

# Litigants In Person and McKenzie Friends

GEMMA GALLETLY (GUEST SPEAKER)

## Further reading:

- » McKenzie Friends – an overview – McKenzie friends and litigants in person—overview – Lexis®PSL, practic... (lexisnexis.com)
- » Practice Guidance: McKenzie Friends (Civil and Family Courts) 2010 – McKenzie friends practice guidance – july 2010 (judiciary.uk)
- » Judicial Executive Board calls for 2010 guidance to be updated – Family Law Week: 2010 practice guidance on McKenzie Friends ‘should be updated and reissued’
- » Research by legal academics into the work of McKenzie Friends – Family Law Week: Bulk of paid McKenzie Friends’ work is delivered outside court