# CHILDREN ACT

# 2025 CASE LAW

# UPDATE

**AXA v BYB (QLR: Financial Remedies) [2023] EWFC 251 (B) (18 December 2023)**

Useful reminder of the ‘scope’ of a QLRs duties – and matters falling outside their remit:– Taking instructions (as opposed to eliciting information from a party); asserting client confidentiality; representing the party within proceedings beyond conducting a cross examination on "the essence" of the party's case which "may have significant impact“; negotiating with another lawyer "on behalf of" the party whose case they will be putting; making closing submissions; and drafting court orders**.**

**E, F And G (Interim Child Arrangements) [2024] EWCA Civ 874 (24 July 2024)**

Ground of appeal relating to the decision to adjourn due to a lack of QLR dismissed on the basis that this was a case management decision, and the judge had not erred in principle. The complexity of the issues was such that it would be better, if possible, for the questioning of the mother to be conducted by a lawyer representing the father rather than the court. •

**Re Z (Prohibition On Cross-Examination: No QLR) [2024] EWFC 22 (09 February 2024 –**

 Sir Andrew McFarlane P gives useful guidance on what the court should consider when a direction to appoint a QLR has been made but no QLR obtained– The lodestar for a judge, magistrate or legal adviser who takes on the task of asking questions on behalf of an unrepresented litigant in these circumstances must be fairness. In every case a fairness should require the court to be very open with the parties as to the process that is going to be adopted by explaining what is to happen, step by step, at the start in short straight forward terms. The court should explain that it is taking on the role of asking questions in order for the hearing to proceed in the absence of a QLR, and where there is no other satisfactory alternative. In this judgment I have deliberately avoided describing the process of the court asking questions as 'cross-examination', and I suggest that courts should also refer to it as the court 'asking questions that the other party wishes to have asked', or a similar phrase (rather than using the phrase 'cross-examination’). [35]

**KL v BA (Parental Responsibility) [2025] EWHC 102**

The case looked at the issue of whether a ‘father’ who was not married to the child’s mother, but named on the child’s birth certificate as the father, but upon subsequent genetic testing was not actually found to be the child’s biological father, should have his acquisition of parental responsibility void ab initio, so that it never had any legal effect.

KL was named on the birth certificate as the child’s father. However, subsequent genetic testing showed that he was not the biological father. After separation, the child continued to spend time with KL, until this was stopped by the mother. She sought to have KL’s parental responsibility removed.

The court’s deliberations were guided by several factors:

* the biological link identifies a man as the father of a child. When that is displaced, the status of the man as the ‘father’ cannot continue.
* a man who is not the biological or legal father of a child cannot acquire parental responsibility because of a mistake or a misrepresentation in registering the birth
* the registration of the birth is simply the evidence of parentage and, where an issue arises about that parentage, that must be resolved by the court

It was held that KL had not acquired parental responsibility when he was mistakenly registered as the child’s father on her birth certificate and therefore he had never held parental responsibility for the child. It was therefore not necessary to remove his parental responsibility from him.

***TOM v M and F* [2024] EWFC 313**

Tom, aged 13, applied for permission to make an application that he live with his Father and to move Schools.

There had been a long history of litigation with cases in 2013, 2015 and 2016 resulting in roughly equal division of Tom’s time between his parents. In 2019 in further litigation Tom, who was then 10, had stated that he wanted to live with his Father and to move schools. The Court however felt Tom should continue to spend broadly equal time with his Parents and remain at his then school.

Further litigation took place in 2022 around which Secondary School Tom should attend, and again, Tom expressed a wish to live with his Father, which was considered. The Court however ordered Tom attend the School preferred by his Mother and following this decision being made the Parents agreed the previous arrangement (sharing time broadly equally), should continue.

Tom made an application and filed a Statement expressing unhappiness living with his Mother and to live with Father, spending instead just alternate weekends and a few hours on a weekday evening with his Mother. Tom also wished to attend the Secondary School which had been put forward previously by his Father. Tom stated he did not feel his wishes had been taken into account previously.

Tom’s Solicitor filed a Statement indicating in her opinion Tom had sufficient understanding to make the application. This was not agreed by the Mother, who felt if the application was refused things would be ok with a little time. Tom’s Father supported the application whilst the Guardian did not, being worried what it would do to the relationship between Tom and his Mother.

The Court considered Tom’s understanding and found that he lacked sufficient understanding to make the application as he:

1. Did not understand the long term impact of what he wants on the relationship that he has with both his mother and Anna (his sister).
2. Was unable to put forward clear reasons as to why there needs to be such a significant change to both the time he spends with his parents and his schooling;
3. Did not understand the extent of harm and upset that he might be caused through being in a court battle with his mum and dad.

In light of the lengthy history of litigation the Court then made an order pursuant to s91(14) (preventing further applications without permission of the Court) until Tom turns 16.

Interesting points

1. Tom was appointed a r16.4 Guardian, but the Court exercised its discretion to exclude Tom from the hearing pursuant to *FPR* r.12.14(3) and r.27.4(1) [24-25];
2. Whilst a Court may only grant permission to apply pursuant to s10(8) if it is satisfied a child has sufficient understanding, even if they do, there is still a discretion for the Court [38-39];
3. There is a helpful survey of the authorities as to assessing whether a child has sufficient understanding [41-45] and addressing ‘all the circumstances in the case, including the prospects of success’ [46-47] and the Court then framed it’s analysis of Tom’s understanding utilising the decision of Williams J in *CS v SBH & Others*[2019] EWHC 634 (Fam) at paragraph 65) [82-107];
4. The Court considered the need for expert evidence as to Tom by way eg of Psychological Assessment [51-54], noted [53] that it is typically a matter for the solicitor whether a child has the ability to instruct, and expert evidence is not usually required’, and further in in the judgment the Judge noted [64] the Family Justice Council guidance in April 2022, ‘*Guidance on Assessing Childs Competence to Instruct a Solicitor*’.

[**Re T (a child) (s 9(6) Children Act 1989 orders: exceptional circumstances: parental alienation) [2024] EWHC 59 (Fam)**](https://www.familylawweek.co.uk/judgments/t-re-a-childs96-children-act-1989-orders-exceptional-circumstances-parental-alienation-2024-ewhc-59-fam/)

The court cannot make a s.8 order in relation to a child (unless by way of variation or discharge of an order) who has reached the age of 16 unless it is satisfied that the circumstances of the case are ‘exceptional’, s.9(7) CA 1989.

The act omits to define ‘exceptional’, but practitioners are guided by case law, such cases typically feature children with cognitive learning difficulties and / or other qualities which protract additional need for protection that provide grounds for a s.8 order being granted post the age of 16.

Recently, the ‘exceptional’ definition was considered beyond the customary scope of additional needs in the case of [*Re T (a child) (s 9(6) Children Act 1989 orders: exceptional circumstances: parental alienation)*[2024] EWHC 59 (Fam)](https://www.familylawweek.co.uk/judgments/t-re-a-childs96-children-act-1989-orders-exceptional-circumstances-parental-alienation-2024-ewhc-59-fam/), whereby Mrs Justice Arbuthnot was invited to consider whether parental alienation constituted exceptional circumstances to give rise to a s.8 order being made until the child’s 18th birthday.

Arbuthnot J concluded that parental alienation may fall into the definition of ‘exceptional’, but the overriding factor was the wishes and feelings of T – a boy who was 15 at the time – who had expressed that he did not wish to spend time with his father. The Court found that it would be improper to ignore his strong wishes and feelings, notwithstanding the fact that those wishes and feelings were shaped by the manipulation of the mother since T was a young child. The case therefore cements the importance of a child’s wishes and feelings when the court is considering making a s.8 order beyond the age of 16.

[**T-D (Children: Specific Issue Order) [2024] EWCA Civ 793**](https://www.bailii.org/ew/cases/EWCA/Civ/2024/793.html).

This case concerns the use of Specific Issue Orders to give one parent ‘overriding parental responsibility’ to make decisions in specific circumstances.

Two children; aged 9 and aged 4. The parties were initially involved in private law proceedings following the breakdown of their relationship in July 2020. Unfortunately the level of parental acrimony continued to escalate and the Local Authority issued public law proceedings in January 2023. The matter came before HHJ Tolson KC for a contested final hearing in February 2024 at the conclusion of the public law proceedings.

HHJ Tolson KC made a number of findings that the father had been a victim of domestic abuse from the mother and that she had been controlling and obstructive with professionals. The Judge acceded to the recommendations of the Guardian in granting a Child Arrangements Order that the children ‘live with’ both of their parents on an equal basis. The Court also acceded to the recommendation of the Guardian that the father obtain ‘overriding parental responsibility’ in relation to certain specific matters eg education and therapy.

The Mother appealed and the issues before the Court of Appeal were;

a.    Whether the Court at first instance had the power to make a Specific Issue Order granting one parent ‘overriding parental responsibility’ in relation to specific matters. Mother subsequently conceded this point leaving the following as the live isse ;

b.    If such a power existed, whether such an Order was wrong to make on the facts of this case.

The Court of Appeal determined that the Specific Issue Order was unnecessary and disproportionate in the circumstances. The Court of Appeal highlighted that the other examples found within the case law involved one parent who was absent or only minimally involved with the care of the children. This case involved a fully engaged carer. The appellate Court did not find there was established reasoning for depriving the mother of her active parental responsibility in relation to the three issues in question and for doing so indefinitely.

The appellate Court also found that the correct approach was for the Court to determine the disputed issues relating to schooling and therapeutic support rather than an Order to empower the father to make unilateral decisions about these.

**Q v TS [2024] EWHC 2509 (Fam)**

This was an appeal by mother from order that child's surname be changed from that of her mother to that of both her mother and father.

The parties had been involved in litigation for a ‘substantial period of the child’s young life’ and in 2020 there ‘were proceedings in which a formal application was made by the father to change her name. This application culminated in an agreement that it should be dismissed. The Cafcass officer at the time had recommended that the name change should occur, but for reasons which are not entirely clear the father did not pursue it at that time and the application was dismissed with the agreement of both parties. Proceedings about child arrangements, however, continued. U’s surname registered at birth was that of her mother’ (paragraph 2).

The issue was only raised by F in a Position Statement and then by the judge during the hearing when the father was about to cross-examine the Cafcass officer so no analysis of this was included in either of the two reports that were prepared for the hearing. In response to questions about it the Cafcass officer gave some generic answers about changing a child’s surname to the effect that it is normal and generally in a child’s best interests to have a surname from both parents

The mother then stated to the judge that the application for a change of name had been made before and dismissed to which the judge responded, “Okay.” As a result, the mother did not believe she needed to ask the Cafcass officer questions about the potential change of name and did not do so.

The judge dealt with the question of the change of name in three short paragraphs in his order. He found that sometimes travelling abroad is easier if both parents names are part of the surname, that it would provide U with a sense of identity and that the clear message from Cafcass was that “This is usual order I ought to make.”

Allowing the appeal it was held

20. Whether or not a judge has the power to consider an application of its own motion under section 13 of the Children Act 1989, he should take care when dealing with an application such as this when made informally. Here both the parents were acting in person. An application for a change of name from that which is registered at birth is an important matter and in such circumstances a judge must ensure that the process is fair.

21. The fact that an application was not made formally had some serious repercussions. The Cafcass officer did not consider it in her report or in her addendum. Her evidence about it was necessarily about most children rather than this child. The Cafcass officer had been considering the welfare of this child in relation to enforcement in child arrangement orders, but not in relation to the issue of change of name.

22. What is more, the mother plainly did not appreciate that the judge was going to consider the question of the name change. That is apparent from what the mother said to the judge in the transcript and the judge’s response, “Okay,” and her decision not to ask the Cafcass officer any questions. She would undoubtedly have done so had she been made fully aware, and the fact that she was not fully aware was a result of the lack of a formal application and the judge’s response saying to her when she told him that the previous application had been dismissed by consent.

23. Further, the mother did not give evidence about the change of name nor, as far as I understand it, did the father. In my judgment, this was a serious procedural irregularity and for this reason alone the order must be set aside.

24. The result of all that happened was that the judge did not have the mother’s case on the change of name and he should have done so. He therefore did not consider her arguments about it which principally related to the child’s wishes and feelings. What those are and the weight to be attached to them is a matter for determination at a later stage. There are cases where a child’s wishes and feelings could be important, whether the judge is statutorily required to apply the welfare checklist or not. The judge did not specifically know about how this child would feel about a name change although he did know quite a lot else about the case.

25. In those circumstances, I do not need to go on and consider the further arguments in this case about the judge’s decision, although it is clear that as he did not have the mother’s arguments about it, he was not able to balance what she would have said in his determination. I am not saying in every case that a judge needs to set out the law in comprehensive detail or to give a long judgment in relation. It depends on the facts of the case. But the fact that he did not do so combined with the procedural error that I have underlined, adds to the strength of this appeal on the other grounds as well.

**F (A Minor)(Permission to Appeal) [2025] EWHC 638 (Fam)**

Case concerns an application for permission to appeal.

Family Procedure Rules 2010 (FPR) 30.3 provides that:

*An application for permission to appeal may be made-*

*a. To the lower court at the hearing at which the decision to be appealed was made or, if the hearing is adjourned to a later date, the hearing on that date; or*

*b. To the appeal court in an appeal notice.*

Following a 3-day hearing on 26th, 27th and 28th June 2024 the judge delivered her judgment via email on 26th July. She made limited findings against the mother (M) and extensive findings against F, whom she considered to pose a risks to the children.

On 12th October F sought PTA from the judge, out of time, saying he’d only recently received the judgment.

The PTA application was heard on 25th October. The judge gave F the benefit of the doubt as he said he had not received emails from the court and M’s solicitor until 9th October although it seemed to have been sent four times previously. The judge granted him permission to appeal out of time and went on to consider the permission application, which she refused.

The procedural issues before the High Court were

* Did the judge have jurisdiction to grant permission to appeal out of time?
* Did the judge have jurisdiction to hear the PTA application?

In short, the answer to both questions was “no”.

Hayden J considered the authorities which considered the approach to interpreting “the date of the decision of the lower court”, including in cases in which a written judgment is handed down at a later date, often with a gap between a draft judgment being sent out and a formal hand-down hearing.

At [18]-[20] he set out what is required:

**An oral hand-down hearing or extempore judgment**:

* the “date of the decision” is either the time of the oral judgment or the date to which the judge adjourns the PTA application to be heard. After that point, the first instance judge has no further jurisdiction.
* If no PTA application is made at the decision hearing, and accordingly there has been no adjournment, the lower court has no further jurisdiction.

**A reserved judgment, handed down in court or electronically**:

* the judge will usually circulate the draft judgment to the parties for corrections, etc, with a deadline for responses.
* When the draft is perfected, the judge must communicate the date on which the judgment will be handed down, which gives the parties a further opportunity to consider or indicate whether they wish to appeal.
* If a PTA application is made, the judge should either provide that the hand-down hearing should be attended or set a separate date for the PTA application to be heard.
* Alternatively the judge may agree to the PTA application being made in writing either at the hand-down stage or the adjourned date.
* Adjournments should rarely be necessary where the judgment has been pre-circulated in draft, although they may sometimes be justified.
* Notice of hand-down of reserved judgment must be given in the daily Cause List.
* In order to achieve clarity the perfected judgment should set out the time and date when it will be deemed to have been handed down.
* Following this procedure should avoid any ambiguity about when a first instance judge can hear an application for permission to appeal their own decision.

Hayden J pointed out that whenever a party seeks an adjournment of a decision hearing, to have more time to make or consider making a permission application, they must also seek an extension of time to appeal. The adjournment, following judgment/hand-down, of a PTA application does not of itself extend the time to file an appellant’s notice.

Hayden J considered the PTA afresh, having concluded that it needed to be heard in the High Court. He granted permission to appeal out of time due to administrative confusion and the challenges faced by F as a LiP. Then he dismissed the appeal as being totally without merit.

**P v B (Permission to appeal an arbitral award: children) [2025] EWFC 69**

Appeal against an arbitral determination in a children matter.

*Haley v Haley* [[2020] EWCA Civ 1369](https://www.bailii.org/ew/cases/EWCA/Civ/2020/1369.html) established the law in relation to appealing a financial remedies arbitration award, and *G v G* [[2022] EWFC 151](https://www.bailii.org/ew/cases/EWFC/HCJ/2022/151.html) which held that when appealing an arbitration award the same legal test should apply in financial remedies and children matters, HHJ Roberston held that the mother’s application

The parties attended arbitration for a children matter and received the arbitrator’s written determination on 31 May 2024 resolving all issues. However, the parties were unable to agree the terms of the draft order in relation to certain matters including the summer holidays. The mother referred the issue of the summer holidays (among others) back to the arbitrator who refused to look again at the issue of summer holidays as she had already determined it and had not read anything which would cause her to change her decision.

The mother subsequently filed a C2 seeking to challenge the arbitral determinations of the arbitrator in relation to one issue only, namely the division of time in the summer holidays after 2025. The application was dealt with on paper by HHJ Robertson.

HHJ Roberston held that the mother’s application should be considered in two stages.

1. First, the court should decide whether the application has a real prospect of success or whether there is any other compelling reason why the appeal should be heard.
2. Then, if the above test is met, set the matter down for a review hearing at which the question will be whether the arbitrator was wrong.

HHJ Robertson held that the case law that applies to a judge when revisiting a judgment does not necessarily apply to an arbitrator, as they are not the same and operate in different spheres according to different rules. There is no duty on an arbitrator to explain their power to review a decision.

Section 30(1)(c) of the [Arbitration Act 1996](https://www.legislation.gov.uk/ukpga/1996/23/contents) allows the arbitral tribunal to rule on what matters have been submitted to arbitration in accordance with the arbitration agreement. As a result, an arbitrator can only re-open the issues if the parties were agreed that was to be the case, or in the absence of agreement, under s 57(3)(a) or s 57(3)(b) of the [Arbitration Act 1996](https://www.legislation.gov.uk/ukpga/1996/23/contents), neither of which applied in this instance.

HHJ Robertson held the arbitrator was correct to decline to reassess the issue

There were also no other public or wider interests that made a compelling reason for the appeal to be heard.