RE T (WARDSHIP: REVIEW OF POLICE PROTECTION DECISION) (NO 2) [2008] EWHC 196 (Fam)

Family Division

McFarlane J

1 February 2008

Contact – Interim contact – Supervised direct contact previously ordered in wardship proceedings – Subsequent police decision to withdraw police protection for mother and child if contact went ahead – Whether family court had jurisdiction to review, and if so to quash police decision or to mandate different decision

The child, who had been abducted at the age of 6 months by the father and taken to India for 2 years, had been made a ward of court. A few months after the father returned to England with the child, the child was recovered from the paternal home and placed in the mother's care; the father was arrested, and charged with the criminal offence of child abduction. Before any decision had been made concerning contact between the child and the paternal family, the police informed the family court that there was credible intelligence suggesting that the father and the paternal grandfather had taken out a contract to have the mother murdered, and that the mother and child had been taken into police protection. The father and the paternal grandparents, who had not seen the child for about a year, applied for interim contact, specifically, supervised contact once a fortnight until the final hearing which was due to take place in 6 months' time. The mother was willing to promote this degree of contact, provided the court considered that the arrangements were safe. However, the police position was that if interim contact with the father were established, the officers involved would apply internally to have the current level of police protection withdrawn, on the basis that the risk to the mother would then be unmanageable, in particular because of the risk that the child would say something during contact that would enable the paternal family to track down the mother. The court ordered interim direct supervised contact once every 3 weeks, on the basis of specific arrangements intended to minimise the risk to the mother, but made it clear that the case was to come back to court if the police decided that, as a result of the court's decision, police protection would be withdrawn. The police concluded that if contact went ahead as ordered, the current protective arrangements would be withdrawn. The case duly returned to court; at the hearing the father and paternal grandparents sought orders requiring the police to continue the protection if contact took place, arguing that the police decision breached their human rights.

Held – dismissing the applications by the paternal family –

(1) In seeking to achieve contact while retaining the current protective arrangements for the mother, the father and paternal grandparents were making a public law claim not a human rights claim, because, regardless of the substance of the rights involved, what was in reality being sought was the quashing or setting aside of a public law decision taken by a public authority in the discharge of its statutory duty (see paras [57], [58], [60]).

(2) A court hearing a contact application could not entertain a claim under the Human Rights Act 1998 which was in reality an application for judicial review. Public law relief must, by virtue of s 31 of the Supreme Court Act 1981 and r 54 of the Civil Procedure Rules 1998 be sought within judicial review proceedings. The Human Rights Act 1998 had not collapsed the fundamental distinction between public law proceedings and private law proceedings: in a judicial review case the judge was solely tasked with reviewing the processes and resulting decision of the decision-maker, and

could not be drawn away from that process into a merits or welfare-based adjudication. Therefore, save for the residual jurisdiction of any High Court judge to hear cases of great urgency which might fall outside his assigned position, any judicial review proceedings that arose as a result of the police decision in relation to the family must be determined within the Administrative Court, or by a judge of the Family Division who was a nominated judge of the Administrative Court (see paras [63]–[65], [67]).

(3) If, in the alternative, the court had a discretion to embark upon a judicial review of the police decision, it would decline to do so on the basis of: (i) the wider public significance of the issues involved; (ii) the need for any court reviewing an internal operational police decision to be experienced in and cognisant of the sophisticated public law issues involved; (iii) the need to balance not only those public law issues but also the mother's rights under Art 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 against the human rights of the paternal family and the child; (iv) the fact that the court had already expressed a view as to the child's best interests, and to that degree might be compromised in conducting a review of the police decision (see para [66]).

(4) Given that the police decision would stand unless and until it was quashed in properly constituted judicial review proceedings, it was not necessary, proportionate, or right to require a police officer to attend to give oral evidence in the contact proceedings in relation to the police decision-making process. The interim contact decision had to be reconsidered against the background of the police decision, and any marginal further actual information that might be gleaned from cross-examining a police officer would fall into the de minimis category when set against the substantial factors flowing from the potential withdrawal of the current police protection regime (see para [72]).

Statutory provisions considered

Supreme Court Act 1981, s 31
Children Act 1989, s 100, Parts 2, 4
Human Rights Act 1998, ss 6, 7(1)
Serious Organised Crime and Police Act 2005, s 82(4)
Family Proceedings Rules 1991 (SI 1991/1247), r 4.7(5)
Civil Procedure Rules 1998 (SI 1998/3132), Parts 1, 8, 53, 54.2
Prison Rules 1999 (SI 1999/728), r 12(2)
European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Arts 2, 8

Cases referred to in judgment

C v Bury Metropolitan Borough Council [2002] EWHC 1438 (Fam), [2002] 2 FLR 868, FD
CF v Secretary of State for the Home Department [2004] EWHC 111 (Fam), [2004] 2 FLR 517, FD
Clark v University of Lincolnshire and Humberside [2000] 1 WLR 1988, [2000] All ER 752, [2000] ELR 345, CA
D (A Minor), Re [1987] 1 WLR 1400, CA
Haringey London Borough Council v S [2006] EWHC 2001 (Fam), [2007] 1 FLR 387, FD
M (Care: Challenging Decisions by Local Authority), Re [2001] 2 FLR 1300, FD
O'Reilly and Others v Mackman and Others [1983] 2 AC 237, [1982] 3 WLR 1096, [1982] 3 All ER 1124, HL
R (Anton) v Secretary of State for the Home Department; Re Anton [2004] EWHC 2730/2731 (Admin/Fam) [2005] 2 FLR 818, QBD
R (Daly) v Secretary of State for the Home Department [2001] UKHL 26, [2001] 2 AC 532, [2001] 2 WLR 1622, [2001] UKHRR 887, [2001] 3 All ER 433, HL

R (P) v Secretary of State for the Home Department and Another; R (Q and Another) v Secretary of State for the Home Department and Another [2001] EWCA Civ 1151, [2001] 1 WLR 2002, [2001] 2 FLR 1122, CA
R (Wilkinson) v Broadmoor Special Hospital Authority and Others [2001] EWCA Civ 1545, [2002] 1 WLR 419, CA
R v Ministry of Defence ex parte Smith; R v Ministry of Defence ex parte Grady; R v Admiralty Board of the Defence Council ex parte Beckett; R v Admiralty Board of the Defence Council ex parte Lustig-Prean [1996] QB 517, [1996] 2 WLR 305, [1996] 1 All ER 257, CA
T (Wardship: Review of Police Protection Decision) (No 1), Re [2010] 1 FLR 1017, FD

James Lewis QC leading *Perrin Gibbons* for the Metropolitan Police
Cherry Harding for the mother
Judith Farbey appeared as special advocate for the father
Alison Ball QC leading *Elizabeth Wilson* for the father
Lucy Theis QC and *Joanna Youll* for the paternal grandparents
Susan Freeborn for the guardian

MCFARLANE J:

[1] These are continuing wardship proceedings in relation to T who was born on 8 January 2004. On 27 November of last year I heard representations in relation to the issue of interim contact between T and his father and his paternal grandparents. The history of the proceedings is substantial and complex and, insofar as it is necessary to do so, I summarised that background in the judgment of 27 November: [2010] 1 FLR 1017. I do not propose at all to repeat any of that detail this morning. This judgment given today is, in many ways, a continuation of the decision-making process started on 27 November in relation to interim contact.

[2] The structure of the proceedings is that there is a substantial 2 week hearing before either me or another judge of the Division in April of this year. The issue, therefore, before the court at present remains interim contact. At the hearing on 27 November, a key part of the evidential jigsaw before the court and the factors to be considered was the potential for the police to reconsider their current arrangements for protecting the mother and T. The approach that I, therefore, took was summarised at para [20] of my judgment in the following terms:

> 'Having heard the evidence of the police and understanding their position, I have formed the clear view that it was for this court to decide upon the right course in terms of contacts for this ward, T, having his welfare as the court's paramount consideration. Thereafter, the court's decision and judgment will be disclosed to the police, and the police will be invited at Gold Group level to consider whether or not they would intend to withdraw protective arrangements. Were they to decide to do so, the matter would be referred back to the court for the court to reconsider the contact decision in the light of the decision taken by the police.'

[3] I then went on to consider the merits and the risks involved in relation to interim contact against the background of the police current protective measures remaining unchanged. At para [26] I expressed my conclusion in these terms:

> 'I take the view that, on the knowledge that I have, the risk is justified. Whilst the possibility that T may give relevant information exists, I regard the chances of him doing so and being able to do so in any clear or relevant way as low. Also, were he to do so, the consequences are likely to be capable of management if, as I have described, the police have access to a tape of the visit soon after it takes place so that if any leakage of information has taken place it will be possible for the police to take action and manage the situation promptly thereafter and before any use can be made of the information actually to trace the mother's location. On that basis, I therefore take the view that some interim direct contact should take place, unless that fact is sufficient to lead the police to withdraw the current protection measures. If they do come to that view, the case will have to be returned to court for further consideration.'

[4] I then endorsed arrangements for interim contact but suspended that order pending a process under which the police conducted a review of their own position.

[5] That review has taken place, and on 13 December 2007 the commander in charge of the covert police command of the Metropolitan Police Service, chaired a meeting, the conclusion of which was that if the contact arrangements proposed by the court took place, the current protective arrangements for the mother and T would be withdrawn. The bottom line of that decision was confirmed in a letter to the parties and to court by Mr Emery, the solicitor for the police, on 17 December, and the effect of that decision is that the mother and T would be put in a position which affords them no greater protection than any ordinary member of the public who has raised concerns about domestic violence or similar potential threats.

[6] On 8 January the police produced a revised risk management form, which was signed off on 10 January. It is a substantial document. It is in the court bundle at p G400, and has been disclosed in full to the parties. Save for some small matters of detail, there is, in effect, no fresh evidence or new material in that document. It is, however, a detailed description of the factors that the police took into account in coming to their decision that, despite the court's judgment, the protective arrangements would be withdrawn if interim contact took place. It is right to record that there is no direct reference to this court's judgment in terms within the risk management form. There is, however, oblique reference to it, and it is plain from those oblique references that the police had some knowledge of the detailed scheme of checks and balances that was proposed by counsel for the father and endorsed by the court.

[7] The proceedings that have, therefore, been conducted before me, following that decision, have been to consider the way forward for this court in the light of the police decision. The issues for this hearing have, therefore, been:

(1) that the father and the grandparents seek orders quashing the police decision and requiring the police to continue to provide the current level of protection, notwithstanding that interim contact may take place;

(2) interim contact provision in the light of the police decision to withdraw the protective arrangements;
(3) whether the police decision-maker or someone else on her behalf should be compelled to attend court for cross-examination by the parties;
(4) whether consequential orders for disclosure should be made as to the material and information relating to the decision-making process.

[8] The mother, in short terms, supports the position of the police and is alarmed by the detail contained within the recent police risk assessment. Having been in favour of some form of contact throughout this interim period, she now opposes interim contact pending the main hearing in April.

[9] The primary police position is that this court does not have jurisdiction to conduct a review process which may lead to a quashing of the Metropolitan Police decision, or orders requiring the current protective arrangements to continue. Secondly, the police say that the court does have power to compel the decision-maker or another officer to attend or provide material insofar as that supports submissions being made in relation to the interim contact decisions, but that that process would at this stage be futile pending the wider consideration of the issues at the hearing in April.

[10] The father seeks orders quashing the police decision and/or injuncting the police to continue protection. Counsel on his behalf suggests a staged process, short of making definitive orders at this stage, whereby the court investigates the police process, makes observations designed to cause the police to review its own decision, and then allows time for that consideration to take place. The father's position is that the police decision is a direct cause of any change (if change there be) to the contact arrangements endorsed by me on 27 November and, therefore, is an interference with the paternal family's and the child's Art 8 rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention), and it is, therefore, necessary for this court to engage in some process of consideration of the police decision. The umbrella by way any consideration of the police decision is to be brought before this court is, says the father, that of the Human Rights Act 1998, and that that consideration can take place within these wardship proceedings. Although I have described the position of the father as seeking orders quashing the police decision, counsel for the father, and indeed for the paternal grandparents, are careful not to use the 'Q word', if I can call it that. They seek declarations as to the lawfulness in human rights terms of the police decision, and an injunction requiring the police to continue their protective arrangements.

[11] Alternatively, the father seeks to investigate the decision-making process, with a view to questioning the process and inviting this court to continue the contact arrangements nevertheless. He draws attention to the fact that no evidence has been filed of the actual decision-making process – the commander's statement falling short of a description of the actual decision-making. It is submitted that the paternal family must be entitled to test the material upon which the police opinion was formed. The paternal family say that the police accept that the court has power to compel the

attendance of a witness to assist in the process, and the father, therefore, submits that this court should use that power for the purposes that I have described.

[12] The paternal grandparents' position is, understandably, very similar to that of the father. Their counsel stresses the great distress that they feel at being held back from contact with T with whom they have formed a very close relationship during the years that he was in their care. Although not put into words in those terms by the father's counsel, I accept that he too must feel even more acutely the distress that I have just described. Counsel for the grandparents also urges this court to hear any challenge to the police process within these proceedings.

[13] Counsel for the children's guardian takes a slightly different approach. She submits that there are three questions that can properly be asked:

(1) Is the basis of the police decision relevant to any issue before the court?
(2) If so, is there any legal or practical reason why the basis of the decision may not be explored by this court?
(3) By what means can or should such an explanation be undertaken?

Miss Freeborn, counsel for the guardian, also gives a short list of particular matters that arise from the detail that has been disclosed that require further clarification. Her conclusion in her written skeleton argument is:

> 'The police have taken an active role in these proceedings to date. Their current operational decision may lead to a decision being taken by this court which runs counter to all other welfare considerations. Before the court is impelled to take such a highly unusual step, it should be as fully informed as possible in respect of the reasons which drive it to that position. There are issues arising out of the risk assessment which the guardian would therefore wish to explore with the police officer or her representative.'

[14] The primary question, it seems to me, is whether the court has jurisdiction to review and, if so, to quash or direct the Metropolitan Police in respect of the decision that they have made. I propose to summarise the substantive submissions on this aspect that have been made by the various parties.

[15] Taking the father first, he seeks to establish a prima facie case for concern at the process by questioning aspects of the evidence and the apparent procedure adopted by the police. The submission is based, and quite properly so, on the fact that this court has already held that it is in the child's best interests for some direct interim contact to take place. If the police decision leads to a reversal of that decision, then it is submitted that the police decision would amount to a direct and unjustified interference with the paternal family and the ward's rights in respect of family life under Art 8 of the European Convention. Third, it is submitted that the father is, therefore, 'a victim', in European Convention terms, and can seek to make a claim against the police as a public authority under s 7 of the Human Rights Act 1998, on the basis

that the police decision is unlawful under s 6 of that Act, being an Act which is incompatible with the father's European Convention rights. Fourth, the father submits that his Human Rights Act claim can be brought within these wardship proceedings or by a freestanding application under s 7(1) of the Act but, either way, that application and those issues should be determined by this judge sitting in the Family Division.

[16] Fifth, the father submits that if there is a procedural difficulty arising out of the fact that the police are not parties to these proceedings, the court has the power to join the police as a party under r 4.7(5) of the Family Proceedings Rules 1991 (the FPR). The following four points are made in that regard:

(a) that the police have a very influential role in these proceedings;
(b) they will need to be parties in order for the April hearing to be effective;
(c) it is wrong for the police to seek to hide behind the fact that they are not parties, and
(d) it is unconscionable for the police not to be a party.

[17] The final submission made by the father at this stage is that the court is asked to make a declaration that the police action is unlawful and then to consider what remedies may be just and appropriate, and it is submitted that an injunction to enforce the continuance of arrangements is the right remedy, rather than an order quashing the decision which, it is conceded, would involve judicial review. In passing, I note that an injunction requiring a public authority such as the police to continue with arrangements which they have expressly decided they do not consider they should continue, is, in effect, a mandatory order, similar to mandamus, under the judicial review procedure and is one, on my understanding of administrative law, that would require quite cogent material before the Administrative Court before such an order were made.

[18] The grandparents' submissions are to support those of the father, to reinforce the submission that a separate freestanding Human Rights Act claim could be made by the paternal family and transferred to this court. This court has no power to prevent such an application being made and that, therefore, not to entertain the Human Rights Act claim of the paternal family within the proceedings is simply to delay matters and cause an unnecessary or – to use a phrase from the law reports – barren process. Counsel, Miss Theis QC, refers to a number of decisions of the family court in which Human Rights Act claims have been entertained, and in particular relies upon a decision of Munby J in the case of *CF v Secretary of State for the Home Department* [2004] EWHC 111 (Fam), [2004] 2 FLR 517, to which I will turn in a short time.

[19] The findings sought by the paternal grandparents are summarised in their skeleton argument at para 19(f). They are to the effect that the decision to withdraw protective measures is unlawful as the evidence demonstrates that the police cannot marry its duty to protect the mother's and T's right to life under Art 2 with the decision to withdraw the protective measures. At the very least, it is submitted, there has been a failure to:

(a) apply the criteria of s 82(4) of the Serious Organised Crime and Police Act 2005 relating to the purported decision;
(b) as a consequence of the matters highlighted earlier in the skeleton argument regarding the content of the updated risk assessment, such assessment cannot be relied upon to justify the lawfulness of the decision;
(c) the court is invited to make a finding that withdrawing the protective measures at this stage if contact is to take place is unlawful and contrary to the grandparents' Art 8 rights, and
(d) the cases to which reference has been made indicate that it is highly desirable in cases that raise issues like this under the Human Rights Act 1998 that they should, if possible, always be heard by a judge of the High Court who is assigned to the Family Division and a nominated judge of the Administrative Court, but that that requirement, whilst desirable, is not mandatory.

[20] The submission, therefore, is made, in like terms to the father, that this court should seise itself of these issues within these proceedings. The grandparents also submit, as the father does, that the police should be made a party. It is submitted that this is a proportionate step, that the police decision is critical to the proceedings, and that the police have, in fact, been a party in all but name for the past 12 months, given the very substantial involvement that they have had in court hearings. Finally, Miss Theis, in neat terms, summarises the position by saying that unless the court investigates the police decision, the court is effectively abdicating its responsibility for the ward's welfare to the police.

[21] The police submissions are to the contrary. The starting point of them is to refer to the relatively recent statutory basis upon which protective arrangements of this sort are now provided. It is s 82 of the Serious Organised Crime and Police Act 2005, to which I have already made reference. The police have a duty to act in accordance with that statutory provision and any regulations under it. Mr Lewis QC, for the police, submits that the decision taken by, effectively, the Commissioner for the Metropolis is a public law decision, and no dissent to that submission, as I hear it, has been voiced by any of the other parties. The starting point is, therefore, the decision of the House of Lords in *O'Reilly and Others v Mackman and Others* [1983] 2 AC 237, [1982] 3 WLR 1096. That is a well-known authority. I will make reference to it in a moment. But the effect of it is to establish the 'procedural exclusivity' of public law and, within public law, judicial review proceedings because of the particular procedural safeguards that are put in place by s 31 of the Supreme Court Act 1981 and Part 54 of the Civil Procedure Rules 1998 (the CPR) that are peculiar and particular to the judicial review process. Mr Lewis points out that both s 31 and also Part 54 are in mandatory terms to the effect that a claim for judicial review must be conducted under the judicial review procedure and, therefore, not within any other form of proceedings.

[22] Mr Lewis submits that the wardship court, exercising its wardship jurisdiction, cannot quash a decision of the Metropolitan Police to cancel the protective arrangements or require the police to continue them. He submits that there is considerable procedural disadvantage to the public authority, the

police, and to the court if the judicial review process is bypassed and the wardship court simply embarks upon what would be a review of the commissioner's decision. No doubt with respect, he submits that the court is inexperienced in public law issues and unused to the extremely high threshold that would apply to the review of an operational police decision. He also submits, that the illogicality of the paternal family's position is demonstrated by an example. The example he gives is of a parent being arrested who is involved in ongoing family law proceedings and not given bail, thereby thwarting a family court order, for example, for contact. The logic, he says, of the paternal family's submissions is that the family court in ordinary family proceedings could call the police to account and challenge the arrest and the bail decisions. In short, he submits that the remedy that is required to obtain what the paternal family seek is judicial review and that must be sought in formal judicial review proceedings.

[23] He accepts that this court has jurisdiction to entertain an application under the Human Rights Act 1998, under s 7, within pending proceedings, but the question is: 'Is it an abuse of process to exercise that power in these proceedings?' Having posed that question, his emphatic answering 'Yes, it would be an abuse of process for the court to embark upon judicial review within these proceedings'. He submits it would also be an abuse of process for the court to join the police as a party in order to conduct that review and, within that submission, he submits that simply joining them as a party would not correct the abuse of process that would follow if the court went on to embark upon the review process for the reasons that I have just summarised.

[24] In detailed written submissions that have been provided since the close of the oral hearing, counsel both for the father and for the grandparents have sought to delve more deeply into the law reports in relation to the issues that I have just summarised, and I am very grateful to them for the endeavour that has gone into the preparation of those summaries and for the provision of the authorities to which references has been made, which I have had an opportunity to consider. What I propose to do now is look at a number of those authorities and draw what seem to me to be relevant observations from them.

[25] The first pair of authorities is that of *O'Reilly and Others v Mackman and Others* (to which I have already made reference) and then the much later decision of *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR 1988, [2000] ELR 345. The convenient way of summarising those two cases is to focus on the later *Clark* decision. That was a claim by a student against her university in relation to a finding of plagiarism that had been made in relation to her work. She had brought her claim in contract but it raised public law issues, and the question arose as to whether or not formal judicial review proceedings should have been commenced and whether, because judicial review may have been a more appropriate remedy, the claim in contract should have been struck out. In the course of looking at that issue in those proceedings, Lord Woolf MR (as he then was) reviewed the background in relation to judicial review proceedings being a separate category of proceedings in the light of what was at that stage the new CPR of 1998. Before Lord Woolf turned to look at *O'Reilly and Others v Mackman and Others* at 1993H and 351 respectively Sedley LJ said this:

> 'There is a useful discussion of the present situation in … the current edition … of De Smith, Woolf and Jowell *Judicial Review of Administrative Action*. Since it was published the CPR have given substance to its suggestion that the mode of commencement of proceedings should not matter, and that what should matter is whether the choice of procedure (which will now be represented by the identification of the issues) is critical to the outcome. This focuses attention on what in my view is the single important difference between judicial review and civil suit, the differing time limits.'

[26] Lord Woolf, at 1994H and 352 respectively, takes up the substantive issue by looking at *O'Reilly and Others v Mackman and Others* [1983] 2 AC 237, [1982] 3 WLR 1096 and summarising Lord Diplock's position with a quote from 285 and 1110 respectively of the House of Lords' decision. Lord Diplock said:

> '… as a general rule [it would] be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority to infringe rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities [Order 53 being the judicial review provision].'

[27] Later, at para [28] of his own judgment, Lord Woolf said:

> 'The distinction between proceedings under Order 53 and an ordinary claim are now limited. Under Order 53 the claimant has to obtain permission to bring the proceedings so the onus is upon him to establish he has a real prospect of success. In the case of ordinary proceedings the defendant has to establish that the proceedings do not have a real prospect of success.'

[28] Later at para [36] he said:

> 'When considering whether proceedings can continue the nature of the claim can be relevant. If the court is required to perform a reviewing role or what is being claimed is a discretionary remedy, whether it be a prerogative remedy or an injunction or a declaration the position is different from when the claim is for damages or a sum of money for breach of contract or a tort irrespective of the procedure adopted. Delay in bringing proceedings for a discretionary remedy has always been a factor which a court could take into account in deciding whether it should grant that remedy.'

[29] Later at para [37] he said:

> 'Similarly if what is being claimed could affect the public generally the approach of the court will be stricter than if the proceedings only affect the immediate parties.'

In the following sentence he said:

> 'The intention of the CPR is to harmonise proceedings as far as possible and to avoid barren procedural disputes which generate satellite litigation.'

[30] Then finally at para [39] he said:

> 'The emphasis can therefore be said to have changed since *O'Reilly v Mackman*. What is likely to be important when proceedings are not brought by a student against a new university under Order 53, will not be whether the right procedure has been adopted but whether the protection provided by Order 53 has been flouted in circumstances which are inconsistent with the proceedings being able to be conducted justly in accordance with the general principles contained in Part 1.'

[31] That is a helpful decision. It shows that the more robust view taken in *O'Reilly and Others v Mackman and Others* has now to be seen in the light of the CPR, and different horses will be appropriate on different courses, if I can use that rather crude description in relation to the procedural approach. The important consideration has to be the nature of the claim and the nature of the remedy that is being sought.

[32] A further decision that has been placed before me by the paternal family is that of the House of Lords in the case of *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [2001] 2 AC 532, [2001] 2 WLR 1622, [2001] UKHRR 887. The central part of the judgments of their Lordships is that of Lord Steyn which, whilst being a short judgment, describes the approach to be taken to judicial review cases in the light of the European Convention. In para [27] of his speech, he summarises the general changes that may have to be accepted to the ordinary and (by that stage) familiar *Wednesbury* unreasonableness approach in judicial review cases, because of the need to consider proportionality. He says this in the middle of para [27]:

> 'The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases would be decided in the same way whichever approach is adopted. But the intensity of review is somewhat greater under the proportionality approach. Making due allowance for important structural differences between various convention rights, which I do not propose to discuss, a few generalisations are perhaps permissible. I would mention three concrete differences without suggesting that my statement is exhaustive. First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations.'

[33] He then goes on to look at the category of cases following *R v Ministry of Defence ex parte Smith; R v Ministry of Defence ex parte Grady; R v Admiralty Board of the Defence Council ex parte Beckett; R v Admiralty Board of the Defence Council ex parte Lustig-Prean* [1996] QB 517, [1996] 2 WLR 305, which at that time may have been thought as being 'above *Wednesbury* unreasonable' cases. He then draws his conclusions in these terms:

> 'In other words, the intensity of the review, in similar cases, is guaranteed by the requirements that the limitation of the right was necessary in a democratic society, in the sense of meeting a pressing social need, and the question whether the interference was really proportionate to the legitimate aim being pursued.'

[34] He concludes at para [28]:

> 'The differences in approach between the traditional grounds of review and the proportionality approach may therefore sometimes yield different results. It is therefore important that cases involving convention rights must be analysed in the correct way. This does not mean that there has been a shift to merits review. On the contrary, as Professor Jowell … has pointed out the respective roles of judges and administrators are fundamentally distinct and will remain so. To this extent the general tenor of the observations in *Mahmood* are correct. And Laws LJ rightly emphasised in *Mahmood* … "that the intensity of review in a public law case will depend on the subject matter in hand". That is so even in cases involving Convention rights. In law context is everything.'

[35] The reason for spending some time extracting those quotations from the *Daly* decision is that, as will be seen in the case of *CF v Home Secretary*, Munby J uses the shorthand of referring to the process he was conducting in that case as being a '*Daly* review' under the terms of that House of Lords decision. I read Lord Steyn's speech in terms as establishing the clear distinction between a merits review and a public law review, between the role in the context within which I see it of a welfare decision based on T's best interests, and, on the other hand, reviewing a decision taken by another agency, the police, in their public law role. Proportionality has a role in the matter and the context of the particular question before the court hearing a public law argument will determine the degree of proportionality that is to be applied to any particular case, either to take it, as it were, from the bottom of the range out of the *Wednesbury* unreasonableness category or to elevate it further up the scale, as was the case in *R v Ministry of Defence ex parte Smith*.

[36] Turning now to look at the case of *CF v Secretary of State for the Home Department*, a decision of Munby J, that was one of a number of similar cases involving the anxious decision by the Home Secretary (because at that time it was the Home Secretary's responsibility for the prison service) of removing babies who had been born to serving prisoners. The case, therefore, involved consideration of that decision. The mother had brought proceedings under Part 8 of the CPR, no doubt (but it is not explicit in the

judgment) relying on s 7 of the Human Rights Act 1998, seeking a declaration that the decision to separate the child was not in the child's best interests and consequently in breach of the Secretary of State's own policy and Art 8 of the European Convention. Secondly, an order that she and her child should remain accommodated together.

[37] A number of issues came for decision before the court, principally, in terms of the focus of this hearing, the court's function to review the Secretary of State's decision and not to make a primary decision itself.

[38] The judgment is extensive and, I am afraid, the quotations that I propose to make from it are similarly fairly widely based. At para [12] Munby J describes the issues in these terms:

> '[12] … four main issues have emerged. There is a dispute as to the role of the court and the approach it should adopt. There is a challenge to the legality of the Secretary of State's policy. There is a challenge to the decision-making process. And there is a challenge on the merits to the Secretary of State's decision.'

[39] In para [13] he moves to the first issue, the jurisdiction and the role of the court. He says this:

> 'There is acute controversy between the parties as to the proper role of the court in a case such as this and as to the approach the court should adopt when addressing the central argument that the Secretary of State's decision was wrong on the merits.
> [14] Mr Wise [who appeared for the mother] submits that I am here exercising a merits-based best interests jurisdiction and that I must decide for myself whether it is in LJ's best interests to be separated from CF at this juncture. He says that I should, if necessary, make whatever order is required to ensure that the Secretary of State acts in accordance with LJ's best interests – that is, her best interests as I determine them to be. Ms Richards [for the Secretary of State] disagrees. She submits that my function is limited to reviewing the Secretary of State's decision in the manner indicated in *R (Daly) v Secretary of State for the Home Department* …'

[40] At para [19], Munby J expresses himself as being in agreement with Ms Richards' submission which he says is 'quite plainly correct'. He goes on to say 'I am not here exercising a best interests jurisdiction; I am exercising a *Daly* type reviewing jurisdiction'. He goes on to expand on that and describes the position as being both clear and very simple.

[41] In para [22] says:

> 'In this case what the claimant seeks to challenge is a decision taken by the Secretary of State in pursuance of the statutory powers conferred on him by rule 12(2) of the Prison Rules 1999. This is not a case like *Re S* [to which he had made reference] where I was not being asked to impose on a public authority any burden which it was unwilling to assume and where, accordingly, the matter lay entirely within the field of private law and fell to be determined by the court by reference to the

usual Family Division criterion of best interests. This is a case, like *A v A Health Authority*, like *R (A, B, X and Y) v East Sussex CC (No 2)* and like *R (IR) v Shetty*, where in the final analysis what the claimant is seeking is the assistance of the court in thrusting upon the Secretary of State – a public authority – a burden and an obligation which he is unwilling to assume: in the present case the obligation to keep mother and child together in a [mother and baby unit]. Such a case raises issues of public law to be determined, whether, in the Family Division or in the Administrative Court, by reference to the appropriate principles of public law. It follows from this that the primary decision maker is the Secretary of State and not the court. The court's function in this type of dispute is essentially one of review – review of the Secretary of State's decision – rather than one of primary judicial decision making. It is not the function of the court itself to come to a decision on the merits.'

[42] Then at para [24] he says:

'I should add that it is nothing to the point that the present case is based upon an allegation that the Secretary of State has acted in breach of section 6 of the Human Rights Act 1998 by acting, so it is said, incompatibly with the mother's and the baby's rights under Article 8 of the Convention. The 1998 Act has not collapsed the fundamental distinction between public law and private law. A case which, properly analysed, is a public law case is not transformed into something different merely because Convention rights are relied upon.'

[43] In para [25] he says:

'Nor can it make any difference for this purpose that the claim has been brought, as here, by means of a free-standing claim in the Family Division seeking relief under section 7 of the 1998 Act rather than … by way of a claim in the Administrative Court for judicial review. As I sought to explain in *A v A Health Authority* … choice of forum or of remedy cannot affect substantive law: *procedural* pragmatism cannot affect *substantive* law.'

[44] Later at para [37], looking at the same point from a different angle, he said:

'With all respect to Mr Wise and Miss Foster they read too much into those authorities. Indeed, as I pointed out in *A v A Health Authority* at para [49], *In Re D* is itself one of the key authorities for the proposition that the court will not, indeed cannot properly, exercise its inherent jurisdiction so as to interfere with the statutory duties of public authorities.'

[45] Having reviewed extensively the merits of the individual case before him, Munby J returned at the conclusion of the judgment to make, as he called

them, some parting observations. I do not propose to read out para [209], but it sets the scene by establishing the approach to human rights claims and claims for judicial review.

[46] Then at para [211] he says this, starting with a quote from an earlier decision in a similar prison case by the Court of Appeal in *R (P) v Secretary of State for the Home Department and Another; R (Q and Another) v Secretary of State for the Home Department and Another* [2001] EWCA Civ 1151, [2001] 1 WLR 2002, [2001] 2 FLR 1122, quoting Lord Phillips MR thus:

> '… there is no statutory provision, rule or practice direction which requires such challenges to be brought in the Administrative Court, and the Family Division is the venue of preference for such cases. Needless to say, if relief is sought which is only available from the Administrative Court in CPR Part 54 proceedings, that procedure must be followed, but in any event it is desirable that the challenge should be heard by a judge of the Family Division.'

[47] Munby J then said:

> 'That last comment, of course, reflects the fact that section 31 of the Supreme Court Act 1981 and CPR Part 54.2 provide respectively that the judicial review procedure "shall" and "must" be used where the relief claimed includes an order of certiorari (a quashing order) or an order of mandamus (a mandatory order).
> [212] In my judgment it remains the position that cases of this kind can be brought in either court and by means of either procedure. But I emphasise that, whichever form of procedure is adopted, and whichever court the proceedings are commenced in, it is highly desirable that such cases should, if at all possible, always be heard by a judge of the High Court who is both assigned to the Family Division and a nominated judge of the Administrative Court.'

[48] The references to 'cases of this kind' in that decision are, in my view, to be narrowly construed as references to cases in relation to mothers in prison. But, insofar as the general points made may apply to the decision in this particular case, clearly much of what is said in *CF* may well apply.

[49] A further decision which is of assistance in understanding *CF* is the case of *R (Anton) v Secretary of State for the Home Department; Re Anton* [2004] EWHC 2730/2731 (Admin/Fam) [2005] 2 FLR 818, a decision of Munby J in which he had to consider granting injunctive relief against the Home Office in relation to the deportation of a parent who was involved in ongoing family proceedings, the background being that, as an emergency injunction, Bodey J had granted such an injunction in wardship proceedings in the exercise of the wardship, and, at a more measured and lengthy hearing after the moment of urgency had passed, Munby J, who had taken over the case, was required to consider the lawfulness of that process and the jurisdiction that the family judge had to grant an injunction in wardship proceedings restraining the Secretary of State.

[50] At para [32] of the judgment, Munby J said this:

> 'In the light of the turn the family proceedings took before Bodey J, there is one matter I need to emphasise. It is a point I made in *Re A (Care Proceedings*: *Asylum seekers*), [2003] 2 FLR 921 at paragraph 48:
>
> > "Exactly the same fundamental principles apply whether the court is exercising public law powers under Part 2 of the Children Act, its public law powers under Part 4 of the Children Act, its wardship jurisdiction or its inherent jurisdiction in relation to children, recognised and to the extent regulated by section 100 of the Children Act."
>
> I went on to explain what I had in mind:
>
> > "Proceedings under the Adoption Act apart, whatever jurisdiction he may be exercising, a judge of the Family Division can, no more than a judge of the County Court or a Family Proceedings Court, make an order which has the effect of depriving the Secretary of State of his power to remove a child or any other party to the proceedings".'

[51] Then at para [33] he said:

> 'Let me repeat, a judge of the Family Division cannot in the exercise of his family jurisdiction grant an injunction to restrain the Secretary of State removing from the jurisdiction a child who is subject to immigration control even if the child is a ward of court. The wardship judge cannot restrain the exercise by the Secretary of State for the Home Department of his power to remove or deport a child who is the subject of immigration control any more than a wardship judge can prevent the Secretary of State for Defence in sending a 17 year old soldier to Iraq or preventing the Home Department sending a convicted 17 year old to a particular young offenders' institution or prevent the same Secretary of State separating a baby from a convicted mother with whom the baby is living in a prison mother and baby unit.'

There Munby J makes express reference to *CF v Home Department*.

[52] He said in para [34]:

> 'This does not mean the family court cannot make a residence order in respect of a child who is the subject of immigration control or cannot make such a child a ward of court. Nor does it mean that the family court cannot make a care order in respect of such a child. What it does mean, however, and this is the important point, is that neither the existence of a care order nor the existence of a residence nor even the fact that the child is a ward of court can limit or confine the exercise by the Secretary of State of his powers in relation to a child who is the subject of immigration control.'

[53] Later at para [38] Munby J said:

> 'So if it is sought to obtain a judicial restraint of the exercise by the Secretary of State of his statutory powers in relation to a child, the

matter is one for the Administrative Court, not the Family Division. This is because the issue is one of public law rather than private law.'

[54] At para, [40] he said:

'I add, lest it be thought that I have overlooked the possible impact of the Human Rights Act 1998, a reference to the point I made in *CF v Home Department* at paragraph 24.'

Then he quotes the passage that I have already made reference to. It is in short terms:

'The Human Rights Act has not collapsed the fundamental distinction between public law and private law. A case which, properly analysed, is a public law case is not transformed into something different merely because European Convention rights are relied upon.'

[55] At para [64], Munby J turned to the legality of the order made by Bodey J as an urgent applications judge. The submission had been made that that order was wrong in principle and that the court should discharge it. At para [65], Munby J said this:

'Bodey J, albeit assigned to the Family Division, is one of the Justices of the High Court and as such is entitled to exercise all the jurisdiction of the High Court irrespective of the Division to which any particular kind of case is customarily assigned. He could therefore have exercised the jurisdiction of the Administrative Court if he had thought fit to do so. (Normally of course it is desirable that such jurisdiction should be exercised only by those judges of the High Court, whichever Division they are assigned to, who are also nominated judges of the Administrative Court. However, there will be occasions, particularly in cases of great urgency, where needs must and where the jurisdiction can appropriately be exercised by any judge of the High Court). But that is not, as I understand it, what Bodey J actually did for, as his order makes clear, it was apparently in the exercise of the wardship jurisdiction that he made the order restraining the Secretary of State. I am not surprised at all that Bodey J granted an injunction. Had I been in his place I would have done so as well. The only difference is that I would have given time for reflection (as Bodey J, dealing with an urgent telephone did not) and would have granted the injunction in exercise of the powers of a nominated judge of the Admin Court and upon an undertaking to issue proceedings in that court for judicial review as soon as possible and not in exercise of my powers in wardship.'

[56] The final decision to which I have been referred, which at first blush may be of assistance, is that of *Haringey London Borough Council v S* [2006] EWHC 2001 (Fam), [2007] 1 FLR 387. Care proceedings were ongoing following a complex and highly unusual allegation, and the decision was made for some of the children to be placed in the care of the father and the stepmother, but the Home Office made immigration decisions purporting to

remove those two individuals. Ryder J, on the basis that proceedings were to be issued by the relevant parties under Part 8 of the CPR making claims under the Human Rights Act 1998, granted interim declarations declaring that it was in the best interests of the children to be with those adults and not for those adults to be deported. In fact what happened, following the granting of those interim declarations and the issue of the proceedings, was that there were a number of further hearings, as the law report shows, in front of the judge, and no actual judicial review process or Part 8 hearings came on for substantive decision. The judge records that the Home Office co-operated with the process and changed its decision in the light of information disclosed to it and in the light of the judge's declaration as to where the best interests of the children did lie. Insofar as this decision is relevant to the case before me, I take the view that this court has already undertaken that process in declaring, as it did on 27 November, where the best interests of T lay on the issue of interim contact, notwithstanding the protective regime in place provided by the Metropolitan Police. In my view, the *Haringey* decision goes no further than that and does not establish that this court has jurisdiction to conduct judicial review proceedings.

[57] After that extensive review of the authorities, I need to come to conclusions and state reasons for those conclusions. (1) First of all, in my view, there is a need to look at the reality of what it is that the father and the grandparents wish to achieve. It is contact in circumstances where the current protective arrangements for the mother remain in place. That outcome is directly contrary to the decision that has been taken by police, and it would require the police to act in a manner which overrides that very decision. Whilst it is submitted that that outcome may be achieved by a declaration or by an injunction – and I have already noted that counsel have avoided submitting that it should be achieved by quashing the decision – the reality is that this court would have to quash the police decision or otherwise set it aside or otherwise grant a mandatory judicial review order requiring the police to act in a way that is contrary to the decision that they have made. Such a claim is, in my view, a public law claim and the only procedure by which the claimants (the father and the grandparents) can bring that claim before the court is under the umbrella of judicial review.

[58] It matters not, in my view, that the judicial review claim may or, indeed in this context of case, must include human rights issues or that it might be brought under the umbrella of the Human Rights Act 1998. The reality is that it is a judicial review claim because of the outcome that is sought, rather than because of the substance of the rights that are in play in the claim itself, and whether or not they are founded to some greater or lesser extent on the European Convention. In this regard the police arguments in relation to a potential abuse of process were any other course to be taken are, in my view, well made.

[59] In coming to that view, I rely on the analysis of Munby J in *CF*, as explained in *Anton*, which in terms draws a very clear line of distinction between the public law judicial review process that he was engaged in, in that case, and a Human Rights Act claim or a merits-based claim which might be entertained in the currency of ordinary family proceedings.

[60] It follows that the paternal family's representatives are, in my view, wrong to seek to characterise their potential claim as a human rights claim –

or a human rights issue, as it is referred to in the submissions – as if that in some way changed the character of what they seek which is, as I have said, the quashing of a public law decision taken by a public authority in the discharge of its statutory duty.

[61] (2) In that context, therefore, the central question is: can and, if so, should this court entertain what are in substance and effect judicial review proceedings? It is, of course, right that the family court can and in many cases must or should hear and adjudicate upon human rights issues that arise within extant family proceedings. The decision of the then President, Dame Elizabeth Butler-Sloss, in *C v Bury Metropolitan Borough Council* [2002] EWHC 1438 (Fam), [2002] 2 FLR 868 and *Re M (Care: Challenging Decisions by Local Authority)* [2001] 2 FLR 1300 a decision of Holman J, are but two examples in a long line of cases to that effect. It is also right that there are substantial advantages in one judge dealing with all the issues – be they welfare or public law-based. *Re D (A Minor)* [1987] 1 WLR 1400, a wardship case which had judicial review connotations in relation to education law, is an early example of that approach, and a number of decisions of current judges of the Division, in particular Munby J, show the value of concentrating all the issues before one tribunal.

[62] (3) In the present case this court is very well seised of the welfare issues and the background evidence. It has already made its own determination on the question of interim contact. There is a highly effective team of Special Advocates in place in these proceedings to assist the parties and the court in dealing with the disclosure of potentially sensitive information. On a pragmatic basis, there is, therefore, a deal of force in the submission that this court undertakes a further process with regard to this issue in relation to this family.

[63] (4) In answering the question I have set, I have drawn particular assistance from a close reading of the judgments to which I have already made detailed reference. In the light of that reading, the following propositions are, in my view, established: (a) this is a public law application for relief which must, by virtue of s 31 and Order 54, be sought within judicial review proceedings; (b) insofar as the paternal family seek to argue that the effect of the case of *Daly* is that this court hearing, in their phrase, a human rights review, and, in my analysis, a judicial review, the court may adopt a more welfare/merits-based approach, the paternal family would seem to be conflating two very different processes. The judge in wardship is the decision-maker on the issue of the child's welfare. The judge in judicial review proceedings is not the decision-maker and is solely tasked with reviewing the processes and resulting decision of the decision-maker, who in this case is the commissioner for the Metropolitan Police. Any judicial review case will involve some appreciation of the impact of the European Convention on human rights issues. *Daly* is authority for the need for the court to have regard not solely to the well-established principle of *Wednesbury* unreasonableness but also to issues of proportionality and balance with respect to European Convention considerations when evaluating the decision of a public authority. The context is all. Some cases will require little, if any, need to depart from the *Wednesbury* approach. Others at the other end of the spectrum may require an approach which is almost a merits-based approach. For example, *R (Wilkinson) v Broadmoor Special Hospital Authority and*

Others [2001] EWCA Civ 1545, [2002] 1 WLR 419. Where a particular case falls on that spectrum will vary according to the context of that case, but the case will remain a judicial review case and the court will be a reviewing court and not the decision-maker on a welfare or merits-based approach. There is, therefore, a danger in looking at *Daly* and considering that the court can be drawn away from the judicial review process into a merits or welfare-based adjudication.

[64] (5) The police concede that all judges of the High Court have jurisdiction to determine any cases within the jurisdiction of the High Court. As a matter of practice and in accordance with Practice Direction 54, para 2.1, all judicial review cases are assigned to the Administrative Court. The paternal family's case that this judge sitting in the Family Division should hear and determine this challenge to the police decision is at its highest when looking at the decision of Munby J in *CF*, but a close reading of that judgment, however, suggests that: (1) Munby J was clear that, notwithstanding that European Convention rights were engaged, he was conducting a judicial review of the Secretary of State's decision. I have already made reference twice to his phrase that the Human Rights Act 1998 has not collapsed the fundamental distinction between public law proceedings and private law proceedings. (2) *CF* shows that he was undertaking that review as a nominated judge of the Administrative Court sitting in the Family Division. If the matter was left in any doubt at the close of *CF*, such doubt is, in my view, resolved by reading the same judge's judgment in the cases of *Anton*.

[65] In the light of those authorities, save for any High Court judge's residual jurisdiction to hear cases of great urgency which may fall outside his assigned position, any judicial review proceedings which arise as a result of the police decision in relation to this family must, in my view, be determined within the Administrative Court or by a judge of the Family Division who is a nominated judge of the Administrative Court.

[66] (6) It follows that I do not consider that I have any discretion in this matter but, if I am wrong on that point, I should make it plain that if I had any discretion as to whether or not to embark upon a judicial review of the police decision, I would decline to do so, despite my obvious knowledge of and connection with this case. In short terms, my reasons for doing that would be:

(1) The nature and quality of the decision that is under potential review are of great significance, not only to this family but also in relation to the operation of the statutory scheme for protecting vulnerable individuals, and to that extent have a much wider public significance than merely the determination of the issues in this case.

(2) There is a need for the court conducting the review to be experienced in and cognisant of the sophisticated public law issues that must inevitably arise both as to procedure and substance when considering a review of internal operational police decisions such as this.

(3) The need to balance not only those public law issues but also the mother's Art 2 rights under the European Convention against those of the paternal family and of course T, is also in play.

(4) The fact that, for good reason, I have already expressed my

decision with regard to Ts' best interests and to that degree I may be compromised in conducting the more elaborate and differently-focused exercise that I have just described.

[67] The conclusion, therefore, on the main plank of the paternal family's case is that this court cannot and would not entertain a claim under the Human Rights Act 1998, which is, in reality, an application for judicial review in relation to the decision that the police have made. Any such challenge must be made in properly-constituted judicial review proceedings and, if it is made, must be brought before the Administrative Court as swiftly as possible. At any one time during legal term time at least one of the Family Division judges who are nominated to sit in the Administrative Court is in fact sitting in the Administrative Court and the matter, if issued, no doubt will be assigned to him or her at the earliest opportunity.

[68] I turn, therefore, briefly to consider the supplementary submissions made by the parties in relation to the court requiring a police officer to attend to give evidence, notwithstanding the decision to which I have just come. The father's case is that that is required, notwithstanding my primary decision, for the following four purposes:

(1) to determine to what extent, if at all, the police assessment should be weighed in the balancing exercise on the contact issue;
(2) to examine the extent to which any risk is reduced by the safeguards that are currently part of the interim order;
(3) to examine the economic considerations cited by the police;
(4) to establish the nature of the protection now in place as compared to what would be in place if the arrangements were withdrawn.

[69] It is submitted that not to allow oral evidence and cross-examination of the police decision-making process would breach the father's rights to a fair trial within the wardship proceedings. In terms it is said that if the police seek to have a voice in these proceedings, as they do, it is submitted that in the interests of justice they must be available for cross-examination and provide disclosure.

[70] The police position is that it would be futile to conduct that process at this stage. The process would be conducted against a background of the fact that the protective measures would be cancelled if interim direct contact took place. There is a need, submits Mr Lewis, for the court to identify the relevance and utility of requiring any officer to attend now. He submits that the April hearing is the occasion when any officer should attend, and it serves no purpose to require that step to be taken now. At the April hearing any material from the police can be analysed and understood within the context of the overall review of the evidence that will be taken at that stage.

[71] The guardian makes the submissions that I have already described, which are, to some extent, already focused upon this second stage of the case rather than the first, and I do not repeat them again.

[72] My decision is that, in short terms, I agree with the position put forward by the police. There is little information that can now be gleaned

from the police that is not already current in the open part of the proceedings. Given my decision in relation to the substantive case of the paternal family, the reality is that the Metropolitan Police decision will stand unless and until it is quashed or varied as a result of any subsequent process. Insofar as Miss Ball's submissions seek to question or further understand the decision-making process, they fall on the wrong side of the line that I have drawn between public law issues and family law issues in this case. The interim contact decision has, therefore, to be reconsidered at the hearing on Friday of this week against the background of the police decision. It seems to me that any marginal further actual information that might be gleaned by cross-examining a police officer would fall into the de minimis category when set against the substantial factors that flow from the potential withdrawal of the current protection regime. I agree that any information from the police should properly form part of the material that is before the court in April but I am not at all persuaded that it is now necessary, proportionate or indeed right to require a police officer to give oral evidence at this interim stage. I, therefore, refuse the paternal family's application to direct the attendance of a police officer at Friday's hearing.

Applications dismissed.

Solicitors: *JRB Jones* for the father
IBB for the grandparent

PHILIPPA JOHNSON
Law Reporter