



Neutral Citation Number: [2023] EWFC 188

Case No: TR21C50014/TR23P00076

**IN THE FAMILY COURT**  
**SITTING AT TRURO**

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Truro Combined Court  
Edward Street, Truro, TR1 2PB

Date: 02/11/2023

Before :

**MRS JUSTICE JUDD**

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Between :

**CORNWALL COUNCIL**

**Applicant**

- and -

**M**

**1<sup>st</sup> Respondent**

-and-

**F2**

**2<sup>nd</sup> Respondent**

-and-

**C and K**

**3<sup>rd</sup> Respondent**

(by their Children's Guardian, Adele Stanbridge)

-and-

**F1**

**4<sup>th</sup> Respondent**

-and-

**SM**

**Intervenor**

-and-

**DEVON AND CORNWALL POLICE**

**Interested  
Party**

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**Samuel Castlehouse** (instructed by **Cornwall Council**) for the **Applicant**  
**Yvonne Sutherland** (instructed by **Coodes Solicitors**) for the **1<sup>st</sup> Respondent**  
**Rawdon Crozier** (instructed by **Stephens-Scown Solicitors**) for the **2<sup>nd</sup> Respondent**  
**Charlie Barrass-Evans** (instructed by **Walters Barbary Solicitors**) for the **3<sup>rd</sup> Respondent**  
**Emma Favata** (instructed by **Nalders Solicitors**) for the **4<sup>th</sup> Respondent**  
**The Intervenor** appeared in person on 24<sup>th</sup> October  
**Ian Darcy** (instructed by **Devon and Cornwall Police**)

Hearing dates: 19<sup>th</sup>, 24<sup>th</sup>, 26<sup>th</sup> October 2023

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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 2<sup>nd</sup> November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JUDD

This judgment was delivered in private. The publication of this judgment will be considered once the parties have advised as to anonymisation. Until then, the judge has not given leave for this to be published.

**Mrs Justice Judd :**

1. This is an application by the mother in this case for a section 8 order prohibiting the father from exercising his parental responsibility to give permission for the police to interview the parties' daughter (F), who is now aged 9.
2. This case has a very long history which for the sake of brevity I will very much summarise. The family proceedings were commenced following an allegation by F that she had been sexually abused by the mother's partner (T). Criminal proceedings were also commenced. A fact finding hearing in the family proceedings came to the conclusion that T had sexually abused F with the knowledge of the mother. Both those findings were set aside by the Court of Appeal which was, amongst other things, critical of the way in which the ABE interviews of the child had been carried out. The issue of whether T had abused F was remitted for a rehearing which was listed for this week.
3. In the meantime the judge presiding over the criminal proceedings made a ruling that the original ABE interviews were inadmissible due to flaws in the process. Shortly before start of this fact finding hearing the local authority became aware that the police and Crown Prosecution Service had decided to carry out another one, even though almost three years have now passed since the alleged events. The mother had not been consulted about the decision to reinterview T but the father had given his agreement.
4. At the pre-trial review the mother, local authority and Guardian in these proceedings expressed grave concerns about the proposal to conduct another ABE interview, not only so far as the probative value was concerned, but also because of the effect on the welfare of F herself and her relationship with her mother and younger sibling. The mother in particular evinced an intention to apply to the court for an order preventing the police from carrying out the interview. This issue was listed before me today, the fact finding hearing having been adjourned not only because of the issues concerning the interview but also because the intervenor had been taken ill.
5. Those representing the mother duly made an application to the court. In advance of the hearing, Mr. Castlehouse for the local authority in an extremely helpful skeleton argument, set out the issues which he submitted were before the court, namely:-
  - a) Whether the police can undertake an interview of a child notwithstanding the refusal of one of the adults with parental responsibility;
  - b) Whether there is any remedy available to the mother by means of an order pursuant to section 8 CA 1989 to prevent the father from consenting to a further ABE interview;
  - c) Whether the court has power to prevent the police from undertaking a further ABE interview;
  - d) If so, whether I ought to exercise such a power in this case.

6. I can deal with the first question swiftly. Although counsel for T (supported by some of the other parties) submitted to me in the first instance that the police could not undertake an ABE interview if one parent alone refused consent that issue has subsequently fallen away. Consent is dealt with at paragraphs 2.50, 2.54 and 2.60 of the 2022 Achieving Best Evidence Guidance on Interviewing Victims and Witnesses. In the first sentence of paragraph 2.54 it is stated that ‘the consent of an adult with parental responsibility is required where the child is not able to understand the implications of participating in the interview..’. The second and third sentences read ‘In cases where an adult with parental responsibility refuses to allow a child to be interviewed and the child is not able to consent in their own right the interview cannot take place. A strategy discussion between the police and social services should consider whether it is appropriate to make an application for an Emergency Protection Order (EPO)...and to seek a direction from the court under s44(6) for an interview to take place’.
7. It seems to me to be plain on reading that paragraph that the police only need to have the consent of one parent to go ahead with an interview, even if the other parent withholds consent. It cannot be the intention of the guidance (and it should be noted that it is guidance rather than law) that the police must apply to the court whenever one parent objects even if the other consents. There are many cases in which there are allegations of criminal conduct by one parent or child against the other parent. It would be wholly impractical for the police to have to apply to the family court in the event that one parent agreed to the child being interviewed and the other did not. The answer to (a) is therefore, a clear yes.
8. This leaves (b), (c) and (d). In the event none of the parties pursued an application for an injunction against the police today. In those circumstances what I have to determine is the mother’s application for a prohibited steps order against the father, which the local authority suggest is better framed as an application for a specific issue order. Nonetheless, given the effect of the order as sought by the mother would be to leave the police unable to carry out the interview without making an application to the court it is important to bear in mind the case law which relates to the making of orders preventing the police from exercising their statutory function.

The law

9. A prohibited steps order is defined under s8(1) Children Act 1989 as ‘an order that no step with could be taken by a parent in meeting his parental responsibility for a child, and which is of a type specified in the order, shall be taken by anyone without the consent of the court’.
10. A specific issue order means ‘an order giving directions for the purpose of determining a specific question which has arisen, or may arise, in connection with any aspect of parental responsibility for a child’.
11. In *Chief Constable of Greater Manchester vi KI and KW (by their Guardian) and PN [2007] EWHC 1837* an application was made by the police for a specific issue order, or alternatively for a declaration under the inherent jurisdiction permitting the police to interview a child. The child’s mother who held sole parental responsibility, refused to agree. Ryder J, as he then was held that the grant or refusal of consent to an interview of a child was an aspect of parental responsibility which could be controlled

by the court (either under section 8 or the inherent jurisdiction). He held that the test to be applied by the court was a balance of rights of interest within which the child's welfare was not the paramount consideration. The reasonable parent would weigh up the child's interests against the public interest and the rights of others.

12. In *Re B* [2022] EWCA Civ 982 the Court of Appeal overturned an order of Keehan J made under the inherent jurisdiction prohibiting the police from interviewing children who had made allegations against the father. Whilst the court found that the High Court's *parens patriae* jurisdiction could in theory permit the court to prohibit a police officer from questioning children, the Court emphasised that the exercise of that jurisdiction must be approached by reference to a considerable body of jurisprudence. In *A Ward of Court (Wardship Interview)* [2017] Fam 369, Sir James Munby P quoted from Lord Scarman in *Re W (A Minor)(Wardship: Jurisdiction)* [1985] AC 792 where he stated:

“The High Court cannot exercise its powers, however wide they may be, so as to intervene on the merits of an area of concern entrusted to Parliament to another public authority. It matters not that the chosen public authority is one which acts administratively whereas the court, if seized by the same matter, would act judicially..... The courts must be careful in that area to avoid assuming a supervisory role or reviewing power over the merits of decisions taken administratively by the selected public authority”.

13. The Court of Appeal noted that the core duty that arises from police powers and obligations is to protect the public, including by detecting and preventing crime, although there is no duty to investigate every crime. The making of an order preventing the police from carrying out their core duties must be considered highly exceptional. It appears from the judgment of Macur LJ that the issue of parental consent was raised, but only at the eleventh hour. It was not raised before Keehan J at all.

#### Submissions

14. Ms Sutherland seeks to argue that the provisions of section 8 permit the court to exercise its powers to prohibit the father from consenting to the interview. She submits that the mother's reasons for inviting the Court's intervention are child focussed, with the welfare of both children at the fore. In support of her application she draws attention to what she says is the police's failure to consult her as the child's mother, and the dubious purpose of the proposed interview. She states that there has been no apparent welfare analysis by the police and that the likely probative value of the interview itself must be minimal as the events alleged are said to have occurred so long ago. F has already been poorly interviewed twice and has made no further allegations for some two years. She notes the Court of Appeal criticism of the two ABE interviews and the decision of the criminal court that they should be excluded but also points out that the ABE guidance governing decisions to conduct further interviews does not seem to have been followed. There also seems to have been some decision to approach the school to work with F without informing her parents, the local authority or the guardian.

15. Drawing these threads together Ms Sutherland says that a parent should have a reasonable expectation that the investigative process should be governed by a sound working knowledge of the guidance and strict adherence to standards of best practice. Lending consent to anything less, she submits, is ill-advised, and asks the court to prohibit the father from letting that happen. She acknowledges that the Family Court is not the forum to seek injunctive relief against the police but states that the advantages of the Prohibited Steps Order, restricting the father's ability to give consent is that 'it will force the police's hand to properly address the matters set out in the ABE guidance' and that if consent is not forthcoming they will need to make an application to the court setting out the reasons for the proposed interview, 'satisfying the court of its welfare analysis and providing a landscape for the pre-interview and interview planning'.
16. Ms Sutherland in addition provided a separate document setting out an analysis of the law.
17. On behalf of the father, Ms Favata submits that there is no sound basis for the mother's application and that there is insufficient analysis of the legal basis upon which the court could make such an order. The father is acting on the advice of the police, and in so doing, is behaving in an entirely reasonable manner.
18. On behalf of the local authority Mr Castlehouse is neutral, pointing out that the local authority does not hold parental responsibility for F. He invites the court to frame this application as one for specific issue order and draws the court's attention in particular to the authority of *Chief Constable of Greater Manchester v KI and KW* as cited above. He sets out a number of relevant factors for the court to take into account, submitting that the test for the court to apply is as set out by Ryder J (as he then was), namely that welfare is not paramount but that the court must carry out a balance of rights of interest, as a reasonable parent would weight up their child's interests against the public interest. At the end of his skeleton argument he poses the question as to whether the grounds here for making an order are made out for the family court to interfere with the investigation in that way.
19. On behalf of the 2<sup>nd</sup> Respondent, Mr Crozier has filed two skeleton arguments, drawing the court's attention to the wording of the ABE guidance so far as it relates to the need for parental consent and the factors to be taken into account by the police when coming to decisions about interviewing children. He also submits that there is a web of duties of care that exist around F, owed to her not only by the police, local authority and Guardian, but the court too.
20. Mr Barrass-Evans on behalf of the children submits that the court has power under either the inherent jurisdiction or s8 to determine whether the police should be permitted to interview F.
21. He argues that a prohibited steps order is not appropriate and submits that the court should not interfere with the police's exercise of their statutory functions unless the welfare concerns of the child are such that their intervention is both necessary to protect the child and justified having reference to the wider considerations including the investigation and prosecution of serious sexual offences. Mr Barrass-Evans states that it would be premature for the court to make such an order given that the police

have agreed that a welfare analysis should take place, and have not made a final decision.

22. The police were represented at the hearing, but given there was no application for injunctive orders against them, Mr. Darcy did not make any submissions save to say that the police decision was subject to the advice of the CPS and also counsel. The final decision would be taken after the intermediary assessment.

#### Discussion and conclusions

23. Whilst the application before the court is framed as one for a prohibited steps order on behalf of one parent against the other, there can be no disguising the fact that the ultimate aim is, at the very least to require the police to submit to the jurisdiction of the family court in having to justify their decision to conduct an ABE interview. I am inclined to agree with counsel for the local authority and guardian that this is best framed as an application for a specific issue order, but for the purposes of my decision I do not think that it really matters.
24. There is no doubt that the current decision to hold another ABE interview subject to the intermediary assessment is an unusual one. As a matter of observation it is not difficult to see problems with the reliability of evidence from an ABE interview where the events in question were said to have happened almost three years ago when F was only six. More than this, F was the subject of leading questions in the old ABE interviews and consideration is bound to have to be given as to whether suggestive questioning affects reliability now as well as then. If the interview is carried out, this is something that the family court will have to grapple with, as will the criminal court if the case there proceeds.
25. Additionally there are quite proper concerns about the short and long term effects on F of conducting another interview. The Re W assessment (which related to the issue of whether F should give evidence in the family proceedings) carried out in June 2022 by Ms Scallan noted that F was a vulnerable child who risks regression if traumatised by further questioning. The weight on her of responding to more questions may be distressing and triggering for her. There could be serious damage to the relationship with her sibling and her mother.
26. I accept that the court has the power to make orders either under section 8 or the inherent jurisdiction. Nonetheless and despite the significant concerns about the efficacy and effect of a further ABE interview on F I am not persuaded that I should make the order sought on behalf of the mother or a specific issue order either preventing the father from agreeing to a further interview or determining that it should not go ahead.
27. In the case of *Chief Constable of Greater Manchester v KI and KW* Ryder J was not exercising the court's jurisdiction (whether under the inherent jurisdiction or s8) in a way which would interfere with the exercise of the functions of a public body. It was the mother who exercised her parental responsibility to refuse to agree to the police request, and the decision for the court was whether to set that aside in order to allow the police to conduct their enquiry. The circumstances in which Ryder J made his

decision are not precisely analogous to those here where it is the court itself which is invited to interfere with the decision making process of the police and CPS. In my judgment, notwithstanding the application is for a prohibited steps order against the father, the proper test to be applied is that of *Re B* and all the cases cited therein. Parliament has entrusted to the police the duty of investigating crime and it is not for this court, when one parent has consented, to exercise a supervisory power over that process save in exceptional circumstances, whether that be by orders preventing the father from giving consent, making a specific issue order or injuncting the police.

28. Whilst the concerns expressed by the mother and indeed all the professional parties are entirely valid, this court should not seek to supervise the investigation. The police are required by guidance and statute to take into account all relevant matters which include the welfare of the alleged victim. If they have not done so sufficiently to date it is very much to be hoped that these applications have caused them to focus on the various factors (including those related to welfare) with more intensity. They now have the report of Ms Scallan, and will be conducting a further assessment.
29. I should make clear that even on the application of the test of a balance of the rights of interest I do not find that the court would be right to set aside the father's decision to consent. Whilst it is natural for the parties here and this court to focus on the welfare of the child (and indeed both children) there are other factors at play. One such factor is that if there is no further interview it is likely the prosecution will come to an end.
30. If the prosecuting authorities do not act according to their professional standards and guidance they will have to answer to the criminal court. They are also subject to the possibility of judicial review if they act in a way that is irrational or unreasonable. Recourse to this court under the inherent jurisdiction or s8 is available, but in my judgment the circumstances to date do not justify its exercise.
31. At the hearing before me police agreed to provide this court with more evidence regarding the welfare analysis to date, the outcome of the intermediary assessment and their updating position. It was agreed that this would be forthcoming no more than two working days after the intermediary assessment and that there would be a short period of time before the assessment and the interview (if the decision is to go ahead) in order to allow the parties to take stock and consider whether to make any further applications. I ask the parties to keep in mind the test to be applied and the risk of harm to both F and her younger sibling by further delay in formulating their responses.