

Neutral Citation Number: [2018] EWHC 3312 (Fam)

Case No: FD18P00234

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/09/2018

**Before:**

**MS F JUDD QC**  
**(Sitting as a Deputy High Court Judge)**

**(In Private)**

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**B E T W E E N :**

<b>C</b>	<b><u>Applicant</u></b>
<b>- and -</b>	
<b>D</b>	<b><u>1<sup>st</sup> Respondent</u></b>
<b>and</b>	
<b>B (A Child) (BY HIS GUARDIAN, JOHN POWER)</b>	<b><u>2<sup>nd</sup> Respondent</u></b>

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**Ms Mackenzie of Counsel, appeared on behalf of the Applicant Mother**

**The 1<sup>st</sup> Respondent Father did not attend and was not represented**

**Ms Jaffar of Cafcass Legal, appeared on behalf of the Child**

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**JUDGMENT**

**This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

## **MS F JUDD QC:**

### **Introduction**

1. This is an application by C, the mother of B, a child born in 2012, for orders (a) removing the father's parental responsibility, (b) a change of surname, and (c) for an extension of a non-molestation order which was made in November 2017. In the event that I do not terminate the father's parental responsibility, the mother also asks for an order that she may apply for a passport for B without the father's consent.
2. B's father is D. He has parental responsibility for B by virtue of being registered on the birth certificate. He has not attended today although I am satisfied that he has been made aware of the hearing. He was served by email on 12<sup>th</sup> June 2018 by the process server, who also posted the documents through the post box at his address. I note that various attempts were made to contact him by John Power, the Guardian, as set out in his report. This included sending a hard copy which was posted to him on 3<sup>rd</sup> September 2018 which was signed as received on 4<sup>th</sup> September 2018. Mr. Power told me he had emailed D as well but that he had had a receipt from that address saying that it did not accept emails from an unknown individual. It is clear to me that the father has taken a conscious decision not to engage with these proceedings, as is apparent from his email to the court dated 16<sup>th</sup> May 2018 which he sent again on 5<sup>th</sup> September 2018. He opposes the applications to terminate his parental responsibility and to change B's surname, but agrees to the passport application. As there has been no formal application to extend the non-molestation order, the father has not responded to this.
3. B is represented by Mr Power as Guardian, who supports the mother's applications.

### **Background**

4. The parents were in a relationship for about two years, which ended not long after B was born in 2012. The mother and B then went to live with her parents, where they remain. It appears that Children's Services were involved with the family from a very early stage and in 2012 there was

a Child Protection Case Conference when B was registered under the category of emotional abuse. Despite the difficulties as set out in the first Cafcass report, the mother and father appeared to have agreed that B should spend time (unsupervised) with the father and the case was closed in 2013. In July 2016 the mother applied for specific issue and prohibited steps orders to enable her to take B for assessments with respect to his autism, and also for him to be immunised. Orders were made permitting these in December 2016. The father did not attend that hearing or any others. During the currency of those proceedings he wrote a number of emails to various professionals.

5. In October 2017 the reports of B's autism assessment were received, setting out in some details of his condition and the support that he would need. The report was sent to the father. Following this he sent a number of deeply unpleasant emails to various people, the details of which I will come to later. He also attended B's school and posted written material through the letterboxes of the mother's neighbours about B.
6. As a consequence of this, the mother made an application for a non molestation order which was granted without notice in November 2017 and continued at a later hearing, on notice to the father. Thereafter she issued this application.

### **The mother's case**

7. The mother's case as set out in her statements and in the submissions made on her behalf is that the father has repeatedly obstructed her efforts to ensure B receives the medical and educational support he requires and is likely to continue to do so. The father is extremely difficult to deal with, not only for her but for the professionals involved in B's care. The father is angry and intimidating. He makes decisions and then changes his mind. In 2016 specific issue orders were made which allowed B to be assessed and to receive his immunisations, but as soon as the father received the assessment reports he began the course of behaviour summarised. It is apparent from the assessments that B is going to require a lot of professional support, and for decisions to be made about his treatment and welfare on occasions and in ways that are not always possible to predict. If the father has parental responsibility, he will be able to use it in a way that is detrimental to B's welfare, by refusing to agree to things, causing delay, being impossible to speak to about matters in B rational fashion, by reacting in an angry, unfocused and intimidating way to all those engaged in trying to help B, and generally creating a great deal of stress for the mother, her parents, and then B. This is what he has done to date, and, as B gets older, this will affect him and the family more and more.

8. In her brief oral evidence the mother said that B returned unsettled after having contact with his father and it took several days to calm him down. She gave an account of the last time that the father had visited B. He had arrived unannounced on the doorstep in about June 2016 with a rock that he had obtained when he was on holiday. When he had arrived, he had wanted to give it to B personally and so she had called him downstairs. When B appeared the father gave him the rock and asked him if he had sent him a card for father's day (which he had not). The mother then told me that the father had not sent B Christmas or birthday presents or cards for a considerable period of time. She said that the original idea of changing B's surname had come from the father and that he had subsequently changed his mind. She found that the father to be difficult and intimidating and she felt that his name was well known in her area

### **The father's case**

9. The father sent (and then recently resent) two long emails, both dated 16<sup>th</sup> May 2018, setting out his response to the mother's applications. In it, he strongly opposes the application to remove his parental responsibility, pointing out that such orders have only been made a few times in the past, and in circumstances where there are the most serious child protection issues. He says that should he (and he does not) withhold consent for autism treatment or support, this can be dealt with by specific issue orders as happened in 2016. He agrees to B receiving support for his autism and points out that it is a condition not an illness. Additionally, he says removing his parental responsibility is not in B's best interests generally. So far as the application to change B's surname is concerned, he says his previous agreement to change it was given under duress as the mother threatened to make new domestic abuse allegations, and he now opposes it. Finally, he agrees to B having a passport.
10. The rest of the email sent by the father is wide ranging and includes a number of complaints. It is clear from what he says that he sees himself as a victim and that he harbours great resentment, not only against the mother, but also against numerous professionals, including NHS staff and the mother's solicitors for the way he perceives that he has been treated. He justifies distributing a publication (which I take to be an email written by him dated 15<sup>th</sup> November) to parents at B's school because he felt it was pointless making complaints or further complaints about the NHS staff who had assessed B.

### **The Guardian**

11. Mr. Power, who is an experienced Cafcass officer and Guardian and who has been involved in a number of cases such as this, fully supports the mother's applications. He reports that B's needs

are special because of his autism, and that this impacts on his ability to learn, his emotional regulation and thus his physical safety. He needs (like all children) constancy, security, validation and love. Access to the resources that B will need on an ongoing basis is slow, somewhat bureaucratic and still at an early stage. He believes that if the mother's applications are successful, B will be "defended, safeguarded and ring fenced from his father's unwanted, unwarranted and pernicious incursions into his private family life". Mr. Power says also that B needs "a happy confident mum, free from the anxiety, uncertainty and worry that she fears she will suffer if the father retains his parental responsibility". Mr. Power believes that the father has not behaved responsibly towards his son and that, if the mother's case is accepted by the court, the father's involvement in his son's life is more about his need to coercively control her than to be a co-parent to their son.

## **The Law**

### **Parental responsibility**

12. Parental responsibility is defined in section 3(1) of the Children Act 1989 as "all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to a child and his property.

13. Section 4 of the Children Act 1989 as amended provides:-

"(1) Where a child's father and mother were not married to each other at the time of his birth, the father shall acquire parental responsibility for the child if

(a) he becomes registered as the child's father under any of the enactments specified in subsection (1A);

(b) he and the child's mother make an agreement (a 'parental responsibility agreement') providing for him to have parental responsibility for the child or

(c) the court, on his application, orders that he shall have parental responsibility for the child.

(1A) the enactments referred to in subsection (1)(a) are

(a) paragraphs (a) (b) and (c) of section 10 (1) and of section 10A (1) of the Births and Deaths Registration Act 1953 ....

(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.

(3) The court may make an order under subsection (2A) on the application

(a) of any person who has parental responsibility for the child... "

14. When determining an application to remove parental responsibility the court is considering a question with respect to the upbringing of a child meaning that the child's welfare is the court's paramount consideration; Re D [2014] EWCA Civ 315 (per Ryder LJ at paragraph 12). By section 1(4) there is no requirement on the court to consider the factors set out in the welfare checklist but the court may find it helpful to use this as an analytical framework. The court must also consider whether making such an order is better for the child than making no order at all. Under section 1(2A) the court is to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

15. Parental responsibility is an extremely important facet of family life. In Re W (Direct Contact) [2012] EWCA Civ 999, McFarlane LJ stated:

*"Whether or not a parent has parental responsibility is not simply a matter that achieves the ticking of a box on a form. It is significant matter of status as between a parent and a child, and just as important, as between each of the parents. By stressing the 'responsibility' which is so clearly given prominence in the Children Act 1989, section 3 and the likely circumstance that that responsibility is shared with the other parent, it is hoped that some parents may be encouraged more readily to engage with the difficulties that undoubtedly arise when contemplating post separation contact than may hitherto have been the case".*

16. It is very unusual for parental responsibility to be terminated by order of the court, and it is undoubtedly an interference with the father's right to respect for his private and family life pursuant to Article 8 of the European Convention of Human Rights. Before 2013 there appeared only to be one reported case concerning such an application, a decision at first instance of Singer J in Re P (Terminating Parental Responsibility) [1995] 1 FLR 1048.

17. In the course of his judgment, Singer J said as follows (at page 1052):

*"I start from the proposition that parental responsibility – both wanting to have it and its exercise – is a laudable desire which is to be encouraged rather than rebuffed. So that I think one can postulate as a first principle that parental responsibility once obtained should not be*

*terminated in the case of a non-marital father on less than solid ground, with a presumption for continuance rather than for termination.*

*The ability of a mother to make such an application therefore should not be allowed to become a weapon in the hands of the dissatisfied mother of the non-marital child: it should be used by the court as an appropriate step in the regulation of the child's life where the circumstances really do warrant and not otherwise.*

*I have been referred in outline to four authorities as to the circumstances in which a court will make an order for parental responsibility [here the learned judge identified the well-known authorities dealing with such applications] ....*

*Such applications for parental responsibility orders are governed by the considerations set out in section 1(1) of the Children Act, namely that the child's welfare is the court's paramount consideration. I can see no reason why that principle should be departed from in considering the termination of a parental responsibility order or agreement.*

*Key concepts to the consideration of the making of an order are evidence of attachment and a degree of commitment, the presumption being that other things being equal a parental responsibility order should be made rather than withheld in an appropriate case."*

18. Applying those principles to the facts of that case, Singer J concluded (at page 1053):

*"I have to say, notwithstanding the desirability of fostering good relations between parents and children in the interests of children, I find it difficult to imagine why a court should make a parental responsibility order if none already existed in this case. I think the continuation of a parental responsibility agreement in favour of the father in this case has considerable potential ramifications for future adversity to this child. I believe it would be a message to others that he has not forfeited responsibility, which to my mind it would be reasonable to regard him as having done. I believe that it might be deeply undermining to the mother and her confidence in the stability of the world surrounding (the child)."*

19. Later, he added (on page 1054):

*"I believe that there is no element of the band of responsibilities that make up parental responsibility which this father could in present or in foreseeable circumstances exercise in a way which would be beneficial for the child. I therefore conclude that it is appropriate to*

*make an order as sought under section 4...bringing to an end the parental responsibility agreement entered into...."*

20. In the case of CW v SG [2013] EWHC 854, a decision that was approved on appeal by the Court of Appeal in Re D above, Baker J endorsed the approach of Singer J.

### **Change of surname**

21. In Re W, Re A, Re B (Change of Name) [1999] 3 FCR 337, [1999] 2 FLR 930, Butler-Sloss P, following Dawson v Wearmouth , set out a list of factors which would be relevant to any determination of change of surname, including:

- i) on any application the welfare of the child is paramount, and the judge must have regard to the section 1(3) criteria;
- ii) among the factors to which the court should have regard is the registered surname of the child and the reasons for the registration, for instance recognition of the biological link with the child's father. Registration is always a relevant and an important consideration, but it is not in itself decisive;
- iii) the relevant considerations should include factors which may arise in the future as well as the present situation;
- iv) reasons given for changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent making the application do not generally carry much weight;
- v) the reasons for an earlier unilateral decision to change a child's name may be relevant;
- vi) any changes of circumstances of the child since the original registration may be relevant;
- vii) in the case of a child whose parents were married to each other, the fact of the marriage is important; there would have to be strong reasons to change the name from the father's surname if the child was so registered.

22. In Re B and C (Change of Names - Parental Responsibility - Evidence) [2017] EWHC 3250 (Fam) Cobb J stated (at para 33):-

*“A surname defines, and is defined by, familial heritage and genealogy. A person's forename invariably identifies gender, and often personifies culture, religion, ethnicity, class, social or political ideology. A forename and surname together represent a person's essential identity.*



*From very earliest childhood, one's name is an intrinsic part of who you are, and who you become. Thus, the naming of a child "is not a trivial matter but an important matter", and any change in the name "is not a question to be resolved without regard to the child's welfare" (Dawson v Wearmouth [1999] UKHL 18; [1999] 2 AC 309; [1999] 2 All ER 353; [1999] 2 WLR 960; [1999] 1 FCR 625; [1999] 1 FLR 1167). Where two or more people have parental responsibility for a child then one of those people can only lawfully cause a change of surname if all other people having parental responsibility consent or agree, or the court otherwise orders."*

## **Discussion**

23. A decision to remove parental responsibility from a father is a very serious matter. It is almost always in the interests of a child for his or her father to have parental responsibility and thus an order terminating it will be rare. The father is right to point out in his statement that the reported cases where this has happened are almost always where the father concerned has perpetrated serious physical abuse, if not upon the subject child, then upon other members of the family. The situation here is very different.
24. The removal of parental responsibility is a decision governed by the welfare of the child, and it is not a punishment for a parent (even though it may feel as if it is) and the circumstances of each case will vary enormously. Here, the central issue is the father's behaviour towards the mother and others, and the way in which it has and will affect decisions about B. There are a lot of examples of this, and I mention the following in particular:-
  - (a) B was registered under the category of emotional abuse at a Child Protection case conference in August 2012 because of concerns about the father's intimidating and controlling behaviour. The mother agreed to remain living with her parents which was considered to be a protective factor, even though she appeared unwilling to end her relationship with the father. At another case conference in January 2013 it was recorded that the father had failed to cooperate to facilitate a risk assessment. In 2013 it appeared that the father was having unsupervised contact with B despite local authority misgivings, but that he looked well cared for.
  - (b) After the mother issued the specific issue application in 2016, the father sent a number of emails to professionals stating that he was not wasting his time by attending court, that he would no longer be providing for B in any way, saying in one of them that "*depending on how autistic and fucked up he is, by way of having some capability to understand as to why he hasn't seen his dad for 13 years, he will receive a 2 ½ foot stack of paperwork*

*which is what I have accumulated over the last 5 years from the never ending dramas of C (the mother) and domestic violence allegations that always get dismissed". He emailed a health professional at the NHS Foundation in the following terms "How dare your department include information about me on here say [sic] from C without checking with me first in the above report" and "I can assure you I will be coming to see you personally within a week of your return from leave in which time I expect the above report corrected with all my points stated above".*

- (c) When a Cafcass employee mistakenly asked him to confirm his email address after he had said he would not be responding to further emails or attending court the father responded by saying that he would expose Cafcass on Facebook if his email address was used again without permission.
- (d) After, a process server, served the 2016 papers on the father, he received a phone call from a man who said *"This is D, did you come round my house?"*, and when he was told that the process server had visited to serve papers he said in an agitated tone *"Where is the rest of them you fucking prick?"*.
- (e) After being sent a copy of B's assessments for autism, the father sent another series of emails to a variety of people responsible for B's care. On 7<sup>th</sup> November 2017 he wrote to the mother's solicitor as follows: *"I have the greatest pleasure knowing that C (the mother) is struggling to cope with her retarded son and that she will now be spending a lot of her time with various autism support and parenting programmes etc and given the severity of her son's autism the pleasure of her son going to a special school for retarded children in the future. I also have great pleasure in knowing that C (the mother) and her son continue to live as they have done so for the last 5 years in her parents bedroom whilst her parents sleep in the front room on sofas. I will continue to ensure that my income will continue to remain below the threshold to qualify for any maintenance payments whatsoever"*.
- (f) In another email sent on the same day the father said he would never request contact again, and in yet another he said *"I give my consent IN FULL now and at any time in the future for C (the mother) to change her son's name to B and I further state that it would be in her sons interests for her to make such a deed pole (sic) name change"*.
- (g) On 30<sup>th</sup> October 2017 the father posted a number of notes through the doors of various of the mother's neighbours saying words to the effect that B was retarded and therefore unable to enjoy 'trick or treat' or Halloween.
- (h) On 15<sup>th</sup> November 2017 the father complained by email to the NHS trust about the contents of B's autism assessment, and shortly after that he attended B's school and handed out copies of that email. His actions were such that the school called the police. The school described the father's behaviour on that day as intimidating the mother

publicly. She said that when given a chance to apologise for his behaviour, the father emailed, saying *“I cannot reassure you that I would not take such actions again but you would bring similar situations to my attention before considering to do so.....so if I want to attend the school I will and do not intend to cause a disturbance or nuisance on school grounds”*.

- (i) The father was banned by the school in January 2017 for being aggressive and intimidating towards staff members and because he had used inappropriate language in a setting where young children could overhear. The school stated that when the father was given an opportunity to make written representations to the school on that occasion he wrote in response *“I don’t give a toss about a school ban, I will go where I want and if I wish to discuss parental responsibility matters with you or any other staff at the school I will attend there”*.

25. It is clear from the history set out above that the father has repeatedly behaved in an abusive, intimidating and deeply unpleasant manner to the mother and other people who are involved in B’s care and support. His responses are repeatedly belligerent, and nowhere does he appear to enter into a constructive discussion about what is best for his son. At some points he has agreed to treatment, testing or assessments and at others he has not. The mother had to resort to applying to the court to allow B to be immunised and assessed for the support he needs, and then the father declined to attend, or even to talk to the Cafcass Officer. There does not seem to be any prospect of a change in the father’s attitude. Ms Greensmith of Cafcass said in 2016 that if the father was able to acknowledge some responsibility for his conduct, he could be referred to a suitable programme. She said that it would give him the opportunity to reflect on and modify his behaviour in the hope of seeing B if he completed it. It is instructive that he has not done so.

26. Professionals looking after B need to be able to get on with the job they have to do without impediment. I have set out above various examples of the father’s conduct towards medical personnel as well as the school. No doubt they are accustomed to dealing with difficult or emotional parents, but the father’s behaviour is particularly challenging. I note that Mr. Power said in his oral evidence that the school was concerned there would be repercussions for them because of the letter written to him by the school. This is an unacceptable position for any school to find itself in.

27. B is not able to express his views on this application, but I am sure he would wish to be brought up in a secure environment with as little conflict as possible. He is a child with special needs, who will need a great deal of support and assistance in the coming years. I have no doubt that he is an immensely rewarding child to care for, but there are also likely to be times when looking

after him is demanding and challenging, and there will be various decisions to be made in consultation with professionals as to the best way to support him in his health, well-being, education and upbringing generally. This is all set out in the mother's statements and the reports attached. Looking at the assessments, he is a child who benefits from routine and stability.

28. B has probably already suffered some harm as a result of the conflict he has been exposed to in his early life, but the most significant risk to his welfare lies in the future. His general care will be compromised if his family is placed under stress and if the need to make decisions about him leads to conflict and delay. If his father continues to write about B in disparaging and rejecting terms this is likely to cause him further distress and emotional harm.
29. The mother has cared for B very capably with the help and support of her parents, but unsurprisingly she has found the father's interventions extremely stressful. Mr. Power is right to say that B needs a happy confident mum, free from the anxiety, uncertainty and worry that she fears she will suffer if the father retains his parental responsibility. She will need energy and resources to devote to his care, which would I consider would be undermined by further verbal abuse and criticism from the father, whether it is expressed directly to her or to others. The same applies to members of the wider family, such as B's grandparents. He lives with them, and they are an important part of his life and his support network. The father has not shown that he is capable of meeting B's needs.
30. Turning to the principles which fall to be considered on an application for parental responsibility, the father has not shown any significant commitment to B in the sense of being genuinely concerned for his well being in the last few years. Given B's age and circumstances the question of attachment is difficult to gauge, but I accept the mother's evidence that B came back from contact with his father distressed, and that he has seen him only rarely since about 2015. I cannot see any attachment developing either, for the father is so bound up in himself and his own anger that he has been prepared to write about his son in dreadful terms, terms that will be deeply distressing to B if he ever comes to know about it, and this is likely to happen again. The father's interventions in and responses to decision making about B have led to conflict, delay and stress, without his seeming to offer anything at all constructive to the issues. If this was an application for parental responsibility the conclusion I would come to is that his reasons for wanting the order to be made (and in this case continued) are so that he can object and by doing so control the mother and others.
31. I have considered whether or not any lesser order than removal of parental responsibility would be sufficient. It is true that orders could be made permitting the mother to arrange all treatment

and support for B (for his autism, or indeed any other condition), and to make decisions about his schooling, at the same time as prohibiting the father from contacting her or other professionals, but it is not possible to cover every eventuality. If the menu of orders does not cover a particular issue, I think it likely that the father will make use of the situation and behave as he has done to date.

32. I have therefore come to the conclusion that it is in B's best interests for his father's parental responsibility to be removed. In the words of Singer J, I believe that there is no element of the band of responsibilities that make up parental responsibility which this father could in present or in foreseeable circumstances exercise in a way which would be beneficial for the child.
33. It is undoubtedly a sad situation for B, who will have to grow up for the foreseeable future without the benefit of having a father with that status and involvement. It is sad too for the father, who may have deep rooted and unresolved difficulties of his own which lead him to behave in this way. Unless he is willing to address these, there is little that anyone can do for him.

### **Surname**

34. I have also come to the conclusion that it is in B's best interests for his name to be changed to remove his father's surname. The mother said that the father's name was known in the locality where they live, and that this caused her embarrassment. Mr. Power confirmed that the area where the mother lives (which he knows) is a close knit one, and that people are inclined to remember names. B was registered in his father's name but the link with his father has caused, and is likely to cause, significant problems for him. B's identity is very much bound up with his mother and maternal family, and I think that for him recognition of this is most significant.
35. I think it is quite possible that the father will again propose a change of surname for B. I do not accept that the father previously agreed to a change of surname for B because of intimidation or pressure from the mother. On the contrary, I think he proposed it when his anger took the form of rejecting his son. The email of 7<sup>th</sup> November 2017, which was one of a number of emails sent that day to the mother's solicitor, makes this clear. It would be better to change B's surname now than to expose him again to such rejection from his father.
36. A change of surname will mean that the overt link between B and his natural father will not be recognised in his name, but I do not think that this factor overrides the others. The mother has a

photograph of the father on her phone which she shows B from time to time, and I am satisfied he will grow up knowing who his father is, and may at some point wish to contact him.

37. As I have concluded that the father's parental responsibility should cease, there is no need to make any order with respect to B's passport.

#### **Non-molestation order**

38. The mother has applied for an extension to the non-molestation order which was made on 22<sup>nd</sup> November 2017, which was to last for a year. There was no formal application for this, and therefore the father does not have notice of it. I have thought about it, and whether I should extend it now given the very difficult and distressing behaviour exhibited by the father on various occasions in the weeks leading up to the making of this order. I understand that he has not breached the order since it was made.
39. I have come to the conclusion that it would not be right for me to continue what is a wide ranging order without notice to the father. The current order lasts until 22<sup>nd</sup> November 2018, giving time for the mother to apply for a renewal of the order, perhaps for a longer period than 12 months. I know it will mean bringing another application before the court, with all that goes with it, but in the end I think this would be the most appropriate way to proceed. In making this decision I know that the mother and B will be protected in the aftermath of this decision.
40. I want to record my thanks to the Guardian, Mr. Power, and to solicitors and counsel for their great assistance in this case.