Harcourt Chambers Public Law Newsletter

December 2025 Edition

Editorial

Welcome to the December edition of our Public Law Newsletter. Two Court of Appeal decisions, Re N and Re E, provide clear guidance on proportionality, evidential discipline and professional accountability. The new South East South Protocol, which applies only across Thames Valley, Milton Keynes, Buckinghamshire, Kent, Surrey and Sussex, also arrives this month. It does not signal major reform but does set firmer expectations about preparation and process within those courts. Together, these developments mark a continued effort to keep decision making steady in a system that continues to strain at the seams.

Re N and the Central Importance of Proportionality
Building on the Lessons of K H (Children)

Re N (A Child: Placement Order: Proportionality) [2025] EWCA Civ 1541 reinforces themes seen last month in K H (Children) [2025] EWCA Civ 1368. Both judgments show concern that professional anxiety and speculative reasoning can shift decision making toward precaution rather than evidence. Whether the issue is sexual risk as in K H or day to day caregiving as in Re N, proportionality remains the safeguard that keeps state intervention within lawful bounds.

> *The appellate courts are signalling that precaution cannot replace proof and that proportionality is the core safeguard on state intervention.*

The Wider Line of Authority

In K H the Court of Appeal corrected an approach in which historic behaviour and unproven allegations were treated as evidence of sexual risk. The risk was inflated by narrative rather than proof.

Re N shows the same structural issue in a different factual context. Concerns about a highly scrutinised mother and baby placement, cultural communication differences and numerous minor incidents were treated as evidence of global parenting inadequacy. In both cases the appellate court emphasised that risk must rest on

evidence. Listing concerns does not satisfy proportionality. The court must evaluate actual harm, likelihood and necessity.

The Unusual Facts and the Need for Caution

L had never suffered harm and was thriving. The mother was loving and attentive, though sometimes resistant to advice. Much of her behaviour required cultural interpretation. The environment itself was artificial and intrusive. Few parents would function normally under near continuous observation for almost two years.

As in K H, behaviours seen in stressful or unusual environments must not be assumed to reflect ordinary family life. A long chronology of minor incidents can take on a momentum of its own, but proportionality requires courts to resist that drift.

Evidence, Insight and the Illusion of Patterns

The recorder treated the mother's limited insight and defensive responses as indicators of entrenched inability. Psychological evidence showed that many of her communication patterns were culturally normal and not signs of emotional instability.

K H also warned against relying on perceived lack of insight where the facts do not justify it. Insight is not a harm and cannot be used to predict future danger without evidence. These judgments show a broader correction. Resistance or cultural difference is not danger, and personality traits must not become risk factors.

Proportionality as a Practical Tool

Re N contains a clear analysis of the statutory test. The deficiencies identified did not justify permanent separation. K H likewise stressed that safety does not mean eliminating all risk because state care carries risks of its own.

- identify the actual harm or risk
- consider supports that may reduce or mitigate it
- weigh family strengths
- decide whether the intervention proposed is the minimum necessary

In Re N, minor physical risks and episodes of frustration were treated as grounds for adoption. The Court of Appeal disagreed. Adoption was not necessary because other orders, such as supervision, could have addressed outstanding concerns.

Practical Lessons for Practitioners

Real alternatives must be evaluated
Supports such as nursery or home based services may reduce risk more proportionately than permanent removal.

Cultural context must be weighed
Communication styles and emotional restraint may be culturally normal and should not be misinterpreted.

A long list of concerns cannot create risk by accumulation
Chronology is not assessment. Each concern must be evaluated.

Insight is not a proxy for harm
Defensiveness or disagreement is not evidence of danger.

Divergent assessments must be reconciled
Where experts differ, reasons must be given for preferring one view.

Risk varies over time
As children gain independence, risks change.

Ordinary toddler hazards require restraint
Minor injuries are common and cannot justify adoption.

Artificial environments can distort evidence
Extended scrutiny alters behaviour and must be interpreted cautiously.

Professional conflict is not parental risk
Tension between professionals and parents must not be confused with harm to the child.

Conclusion

Read together, K H and Re N signal a steady appellate recalibration. Precaution must not become determinative. Proportionality demands honest evaluation rather than accumulation of narrative concern.

Re E and Implications for Professionals Working Around the Family Court

Re E [2025] EWCA Civ 1563 arose from private law proceedings about a ten year old child. Although not a public law case, it has significant implications for professionals whose work may be scrutinised in Children Act litigation.

The applicant, psychotherapist Ms Aimee Dover, worked with the child's sibling from February 2022 until the sibling's death in December 2023. She gave evidence at the fact finding hearing and was cross examined over two days. The trial judge found that she acted outside her remit, exerted undue influence and lacked proper boundaries.

> *Open justice extends to professional accountability unless compelling reasons justify anonymity.*

Procedural Background

On 16 April 2025 the judge circulated a draft judgment and indicated that Ms Dover might be named. A hearing took place on 2 May, but she did not attend. She later made written submissions. On 16 July the judge decided that the judgment should be disclosed to her regulator and employers and that she should be named.

The Court of Appeal's Decision

Permission was refused on all grounds. She had raised no fairness concerns during or after the hearing. She had been cross examined on the issues underlying the findings, and her legal team had not disputed the judge's evaluation. A challenge now would require a fresh investigation and would be unfair to respondents.

Her Article 8 argument also failed. Open justice carries substantial weight where professional practice is criticised and regulators may need to act. Naming her did not risk identifying the children. Her argument that publication would create a chilling effect was rejected. The court noted that there was no evidence that naming her would deter other professionals from working with families or giving evidence. Any such concern was considered speculative when set against the strong principle of open justice.

Implications for Professionals

- **Non party status does not insulate conduct**
  If professional work influences proceedings, the court may make findings.
- **Fairness concerns must be raised at once**
  Silence may be treated as acceptance.
- **Anonymity is exceptional**
  Reputational harm alone does not outweigh open justice.
- **Professional boundaries must be clear**
  Overreach will be scrutinised.
- **Records must be objective and accurate**
  Notes may be examined closely.
- **Therapeutic work may be tested forensically**
  Methods and interactions must withstand scrutiny.
- **Transparency about expertise and remit is essential**
  Courts expect accuracy about qualifications and limits.

Conclusion

Re E reaffirms transparency and accountability. Professionals working with vulnerable children must expect scrutiny where their actions influence proceedings. Findings may be published with individuals named unless compelling reasons justify anonymity. Good practice, clear documentation and early engagement with fairness issues remain the best protections.

A Gentle Stroll Through the New South East South Protocol

The South East South Protocol has now arrived for Thames Valley, Milton Keynes and Buckinghamshire, Kent, Surrey and Sussex. It replaces the assortment of local practices that had accumulated over the years rather like mismatched teacups in a chambers kitchen. The aim is clarity, consistency and slightly fewer moments of shared bewilderment at CMHs.

The PLO Treated With New Respect

The protocol reminds us that the Public Law Outline is meant to be followed in real life. Threshold must be pleaded properly and recent assessments must actually be recent. Pre proceedings work should not be reinvented during proceedings.

Urgent Hearings

Urgent hearings are now reserved for matters that are truly urgent rather than matters that would be quite nice to resolve quickly. The court intends to police urgency carefully, which may discourage the traditional Friday afternoon request for an emergency listing.

The CMH

The Case Management Hearing has been elevated to a pivotal event. Advocates must meet two business days before, draft orders must be filed by 11 am the previous day and parental responses must be complete.

Threshold

The protocol encourages early determination of threshold. Judges may determine threshold at the CMH if the evidence allows.

Alternative Carers

FGCs should be convened within 14 days of issue and parents must provide real details for proposed carers. The court will not normally require more than three IVAs at once.

Split Hearings

Split hearings are discouraged unless unavoidable.

Experts

The court will permit expert instruction only where necessary.

The IRH

The expectation is that most cases will conclude at the IRH or EFH.

Compliance

Non compliance requires immediate engagement and a C2 where retimetabling is needed.

FPL

Communication with the court must be via FPL except in emergencies.

Roundup

Three additions this month illustrate the familiar rhythm of family justice: tidy the rules, tidy the evidence, tidy the professionals, then hope it all holds until next Tuesday. Re N tells us to stop turning every worry into a prophecy. Re E reminds practitioners that transparency is not optional. The South East South Protocol politely requests compliance from a system that has long since run out of hours in the day. The combined effect is almost optimistic, or at least does a good job pretending to be.

Harcourt Chambers Public Law Team

This newsletter was written by James Dove on behalf of the Harcourt Chambers Public Law Team.