Harcourt Chambers | Public Law Team Newsletter

January 2026

Author: **James Dove**, Harcourt Public Law Team

Happy New Year from all of us in Harcourt Chambers. January has, somehow, been both the first and the longest month of 2026. With courts back in full swing and diaries quickly filling, this edition highlights four recent judgments with genuine day-to-day value for public law and family practitioners.

There is a bit of everything: procedural fairness at the sharp end, statutory disclosure to the DBS, a significant transparency decision for anyone handling press requests, and a fact-rich "care order at home" case that will be familiar to many working at Circuit Judge level.

This month's themes: fairness in the hearing room, information-sharing in safeguarding, transparency and press access, and the realities of care planning at home.

1) Judicial predetermination in children proceedings

C (Children: Premature Determination) [2025] EWCA Civ 1481

This is the sort of decision that lands in busy practitioners' laps at exactly the wrong moment: mid-hearing, with high stakes, and a judge making their views increasingly clear. The Court of Appeal gives a crisp reminder of where proper judicial "steer" ends, and impermissible predetermination begins.

What happened?

During a final hearing about permanence planning, the judge indicated he did not favour adoption. That, in itself, was not controversial. Judicial indications can help narrow issues and focus submissions.

The problem came the following day, when the judge made it clear that further evidence would not make any difference. In effect, the parties were told the destination had already been reached, and the rest of the journey did not matter. The hearing was stayed and the case went to the Court of Appeal.

The Court of Appeal allowed the appeal and remitted the matter for rehearing before a different judge.

KEY POINTS FOR PRACTITIONERS

- **Indications are fine**, but they must remain provisional. Judges can (and often should) share current thinking to assist focus.
- **The line is crossed** when the judge communicates a closed mind, or suggests evidence will not be considered.
- **Delay does not dilute fairness.** Even where proceedings are long and everyone is tired, the court must still hear and evaluate the evidence properly.
- **Act fast if it happens.** Where predetermination is apparent, it needs to be raised clearly and promptly, or the risk is a wasted final hearing and a rehearing later.

A note of context

This is, in truth, more of an "interesting" decision than one that shifts the law. The lesson remains important, though: even when the outcome feels inevitable, the route still matters.

2) Disclosure to the DBS from family proceedings

In the matter of the Disclosure and Barring Service and a Local Authority [2025] EWFC 479 (Arbuthnot J)

Safeguarding frequently requires information to move between agencies, but family proceedings are (rightly) protective of privacy. This decision is a useful practical reference point for how the DBS goes about seeking disclosure, and the legal framework practitioners should have in mind when it lands in your inbox.

Why this matters

Requests for disclosure to third parties are common, but DBS requests carry particular weight because they sit squarely within safeguarding functions. Practitioners need to be clear about what the DBS is asking for, what the lawful route is, and how to keep disclosure proportionate.

What the DBS wanted

The DBS sought disclosure of findings from earlier family proceedings, including judgments and documents said to be relevant to DBS decision-making under the Safeguarding and Vulnerable Groups Act 2006. The DBS also sought to dispense with service on the parties to the original proceedings.

KEY POINTS FOR PRACTITIONERS

- **The DBS has a statutory safeguarding function** and is responsible for decisions about barring from regulated activity.
- **Section 40 SVGA 2006** provides a route by which DBS may require information from local authorities.
- **Confidentiality remains central.** Privacy protections, contempt risks, and statutory restrictions still matter even when disclosure feels "obviously" justified.
- **Get the process right early.** This is a good example of an application proceeding without notice to other parties, but practitioners should keep fairness, proportionality and necessity firmly in view.

Practical takeaway

If a DBS disclosure request arises mid-proceedings or post-proceedings, consider:

- What statutory power or duty is relied upon.
- Whether disclosure can be agreed, or whether a court order is required.
- Whether the request can be met by disclosure of judgments and findings, rather than wider evidence.
- Whether dispensing with service is truly justified, and how that is to be explained to the court.

3) Transparency, reporting, and access to private law material (including expert evidence)

Jessica Bradley v CM & Ors [2026] EWHC 125 (Fam) (Poole J)

This is a significant decision for anyone dealing with press attendance, transparency orders, and requests for access to materials that go well beyond "standard" publication arrangements. It is also a reminder that informal approaches for documents can create real procedural risk.

The case arose from an accredited journalist seeking access to documents across four private law proceedings, including expert psychological reports, Cafcass reports, and final orders and judgments, together with permission to publish aspects of that material.

KEY POINTS FOR PRACTITIONERS

- **PD12R supports transparency**, but it is not a general licence for access to everything in the file.
- **FPR 29.12 governs court file access** for non-parties and requires a discretionary balancing exercise.
- **Access is not publication.** Providing a document does not automatically permit reporting its contents.
- **Procedural rigour matters.** The judgment describes a concerning suggestion that an expert report may have been released via email without notice or proper judicial control.
- **Anonymity remains non-negotiable.** The judgment was publishable only with strict conditions preserving the anonymity of children and family members.

Practical takeaway

When a journalist or third party seeks documents, ask:

- Is the request within the standard transparency framework, or does it require a formal FPR 29.12 application?
- Who needs notice, and how is the child's position properly considered?
- What (if anything) can lawfully be published?
- Does the request involve expert or Cafcass material, requiring enhanced caution?

4) Care order at home and "exceptional reasons"

Re Q (Care Order at Home: Exceptional Reasons) [2025] EWFC 468 (B) (HHJ Patel)

This is an extremely useful Circuit Judge level decision for those recurring cases where the plan is for a child to remain at home, but the court must still decide whether the legal framework requires a care order, rather than a supervision order (or no order at all).

The context

Q was nearly one year old. Proceedings began with Q in foster care under an interim care order. Shortly before the final hearing, Q transitioned back to parental care, leaving the court to decide the final order with Q already at home. The case had run significantly beyond 26 weeks due to the amount of expert work and the complexity of parental needs and support planning.

What made this case "exceptional" on the facts?

The real value of this judgment lies in the detail. It is a reminder that "care order at home" outcomes are rarely decided by slogans: they turn on the granularity of risk and the practicality of the support plan.

Relevant features included:

- Both parents were young and had significant childhood trauma histories.
- Mother had previously had a child removed, with concerns including mental health and substance misuse.
- Father had complex mental health presentation including ADHD and personality disorder features, and the case addressed how dysregulation linked to ADHD may present in parenting.
- Substance misuse remained a live concern (including cannabis use).
- The local authority took unusually active steps to support the father in accessing ADHD assessment and medication pathways.
- There was detailed input from an independent social worker, focusing on what parenting looked like day-to-day and where risks would emerge.

KEY TAKEAWAYS FOR PRACTITIONERS

- **Risk management in practice is everything.** The court focused on what actually happens in the home, not what is promised.
- **Delay can be justified** where it produces clarity and workable planning, but the court will eventually draw a firm line.
- **Support plans must be evidence-based.** It is not enough to identify services: the plan must show how risk is controlled, by whom, and how quickly.
- **A constructive local authority approach matters.** The judgment highlights how practical support can make a plan realistic, and how courts will acknowledge that where appropriate.

Practical application

For any proposed "care order at home" outcome, it is worth asking:

- What are the protective factors, and how reliable are they under stress?
- What happens when the protective factors are absent or fail?
- What does oversight look like in the first few weeks, when risk is often highest?

Closing thoughts

This month's decisions underline three recurring themes in modern family justice practice:

- process fairness remains crucial, even in "obvious" cases;
- safeguarding information-sharing continues to evolve through statutory gateways like DBS; and
- transparency is increasing, but courts remain cautious about the reach of access and publication, particularly regarding expert and Cafcass material.

If you would like to discuss any of the cases covered, or would like support with an application involving disclosure, transparency, or care planning at home, please do get in touch with the Public Law Team.

Harcourt Chambers Public Law Team
January 2026

Author: James Dove, Harcourt Public Law Team