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Albion Chambers FAMILY TEAM NEWSLETTER

Recent adventures in the Court of Appeal

When I was asked to produce something for this newsletter I confidently said that I'd write something about a couple of cases I'd recently dealt with in the Court of Appeal, both of which (it seemed to me, though not necessarily to their Lordships) involved some matters of interest. As any believer in the theory that an infinite number of monkeys plus an infinite number of typewriters eventually equals the complete works of Shakespeare would tell you, I was due a win. Hmm. Maybe if I had an infinite number of trips to the Court of Appeal. Sadly for my professional pride (not to mention the poor client) the first case ended up with a scoreline of Wilson LJ 3 – Fuller 0. I did well to get Nil. In the second case I still have some small degree of hope. This is firstly because the judgment (reserved on 27th August) has yet to be handed down and secondly because I was representing the child in an appeal by, in effect, one parent against a decision in favour of the other – circumstances in which I'm not sure I could technically be said to lose.

A bad judgment doesn't give you a good case on appeal

In *S-H (Children)*, which is currently only reported at Lawtel *AC9700841*, I enthusiastically launched an appeal for a father against the making of a care order and a placement order by His Honour Judge O'Brien in the Cambridge County Court. My client was the father of a baby girl, with whose mother he had had a stormy relationship during the course of which he had served a short term of imprisonment for assaulting her. The mother had an older child, a boy who was three months old when the parents first began to cohabit. Care proceedings in respect of the boy were commenced while the father was in prison. The baby girl was removed at birth and placed with the same foster carers as her half brother. Mother had all kinds of problems, the Judge commenting that her chances of success were between nil and one percent (*better odds than with some local judges – Ed.*). Father had a history of violence against the mother and against a previous partner, he had lost contact with his child from a previous relationship and had failed to co-operate with a parenting assessment. He did, however, have a track record of (surprisingly) good contact with his daughter. At the trial the LA, CG and jointly instructed psychologist were in pretty much complete agreement with each other, and the Judge was in complete agreement with all of them. Mother said she'd rather both children be adopted than the girl be placed with the father. The orders were predictable. The judgment, however, was, to quote Wilson LJ, *"unlikely to be held up as a paradigm on JSB training courses."* Father wanted to appeal. Munby LJ directed a hearing of the permission application.

Permission to appeal was refused by Wilson LJ and Sullivan LJ. To my discomfort, whilst accepting most if not all of my criticisms of the judgment they also wanted to know what positive case there was on behalf of the father. Tricky one, that. The conclusion of their Lordships was that I had been "unable to breathe life into the father's case until after the judgment was given" and that, however deficient the judgment, the orders ought not to be interfered with.

Of interest may be the following:

a) The word "proportionality" did not appear in the County Court judgment. The

Editorial

This is my first Family Newsletter as Editor and I would like to say how extremely grateful I am to all the contributors who have ensured that this edition is certainly well worth a read. I would also like to thank, on behalf of all in our team, Deborah Dinan-Hayward, the departing Editor, for all her hard work in making sure that the newsletter was always of an extremely high quality during her tenure. There has been much movement in our team since the last newsletter, the sadness of departures being tempered with the success of our new recruits.

All in Chambers will miss Jane Murphy who unfortunately left us to pursue other business interests in October, we wish her well and hope she will come back to see us as often as possible. We were also very proud to announce the appointment of Tacey Cronin, Head of the Family Team, as a District Judge now sitting in Swindon. No doubt there will be many who are disappointed that they can no longer call on either Jane or Tacey's expertise for their own case.

Thankfully for the team we have, in Deborah Dinan-Hayward, a more than worthy successor as Head of the Family Team. Her leadership is unquestioned and we are all very grateful that she has taken up the helm. We also welcome, from 4 Brick Court, Stuart Fuller. Stuart will be known to many by now as even before joining us he was frequently to be seen in Bristol, and obviously enjoyed himself so much he has decided to make it home. We're all very pleased that he did and Stuart is undoubtedly an asset to the team. Another new face is James Cranfield who has joined us from Queen Square Chambers. With a mixed practice in crime and family James is a real asset to Chambers as a whole and he

is keen to pursue his work in family. Finally, we welcome Emily Brazenall and Philip Baggley to the Family Team, after successful completion of their pupillage.

They have both made an impressive start winning the praise of judges and opponents alike and their abilities and potential are a credit to Chambers' pupillage committee. Both have contributed thoughtful and analytical articles to this newsletter and we wish them all the best as they start their careers. Chambers continued its commitment to offer seminars that are informative, up-to-date and practical by delivering *'The Changing Face of Matrimonial Finance'* in May of this year. Tacey, Linsey Knowles and William Heckscher took the road show around Exeter, Cardiff and Bristol with feedback confirming that it was very well received.

Then at the beginning of October Chambers presented its Public Law day at the Thistle which was extremely well attended. Speakers included Gemma Borkowski who brought us all right up-to-date on all of the most recent developments in children cases (public and private) with a very useful summary of the main points in each case. I gave an utterly humourless talk on section 38(6) which was contrasted hugely with the thoroughly entertaining, but above all incredibly enlightening, presentation on NAI cases by Louise Price and Nkumbe Ekaney. Described as 'the new Terry and June' this was a master class highlighting the expertise required to conduct what is one of the most difficult categories of cases we come across in children matters.

We were also treated, briefly, to a performance from Stuart Fuller who was able to give first-hand experience of one of his recent trips to the Court of Appeal. We were very privileged to hear Dr Clare Sturge talk about her 'hobby horse' which is understanding what children mean when they say something that indicates they may have been sexually abused. One thing we will all remember is that such statements should not be called 'disclosures'!

Finally, the whole event was compered expertly by Geraint Norris who gave a fascinating talk on the issues when dealing with clients who have learning difficulties. Enjoy the Newsletter!

Benjamin Jenkins

Court of Appeal accepted my point (Wilson LJ going so far as to say he hadn't thought about it before!) that before making a placement order the court needs to be satisfied that to do so is a proportionate response to the child's circumstances;

b) The question of whether to make a placement order is not "a straightforward enquiry into the child's best interests"; the test for dispensing with consent is of course whether the child's welfare "requires" it. That is, or should be, trite. The Court of Appeal, however, said firstly that advocates should remind even experienced designated judges of the wording of s52 ACA 2002 and secondly that in the circumstances of the particular case it didn't actually matter that the Judge hadn't recited the correct test.

c) Wilson LJ departed from the judgment of Black J (as she then was) in the Court of Appeal in *Re A (Children) [2010] EWCA Civ 344* insofar as according to Wilson LJ the court need not "recite any mantra" about Article 8. A passing reference is now, it seems, enough.

d) Although not relevant to the appeal, and not mentioned in the judgment of the Court of Appeal, their Lordships were seemingly unconvinced by evidence at first instance to the effect that if father had been seen as capable of parenting his daughter the half-siblings should then be separated even if that meant girl with father while boy went for adoption.

What I learnt from this case is "don't appeal just because you can" and, less importantly but more interestingly, Lord Justice Sullivan's' middle name is "Mirth."

What does "allow" mean in s8 Children Act 1989?

My other recent foray to the Court of Appeal was in a case which I hope will shortly be reported, probably as *Re L-W (Children)*. It came before Lord Justices Sedley, Munby and Jacob on 27th August. Their reserved judgment is awaited. The appeal arose from long-running s8 proceedings in the Dartford County Court. Girl of about 8 lived with mother. Boy of just 11 lived with father, mother having been unable to cope with the boy's behaviour after the parents separated. At some point an order was made for mother to have visiting contact. Mostly, the contact didn't happen. The usual run of events was that mother, or one of her parents, would turn up to collect the boy. Father would open the door to them and call the boy, who would then say that he didn't want to go. Father would, in effect, shrug his shoulders, say "Nothing I can do about it" and close the door. Judge Caddick made an unpaid work order against father, then added some more hours for a later breach. That didn't work, so he then tried a suspended 28 day committal to prison. Father appealed against the committal, and at the hearing was given permission to appeal against the unpaid work orders. The central issue was whether the father had a reasonable excuse for failure to comply with the contact order, the order being that he "allow" the boy to have contact with the mother. ("Allow" is the word in s8. One often sees orders that a parent "make the child available" for contact. I don't know where that comes from.)

The Court of Appeal quashed the committal order, refused (interestingly) to stay the unpaid work orders, and reserved judgment. The feeling was that they had regarded the committal order as disproportionate but that they needed time to work out what "allow" might mean.

His Honour Judge Caddick had, I think, gone too far in his first instance judgment, in that he said he was sure that the father could persuade the boy to go to contact and that by failing to use his ability to persuade he was putting himself in contempt. In argument it seemed pretty clear that the Court of Appeal rejected that analysis.

What I think is likely to be of interest when this judgment appears is whether the Court of Appeal accept that opening the door and physically allowing the boy to leave the house is enough or whether the father has a duty "psychologically" to allow the boy to go. If the latter, what does it mean? Is it enough not to create a psychological barrier (which this father was alleged to have done) or does the father have a duty positively to create a psychological environment in which the child feels it's safe to go to contact? And where are the wishes and feelings of the child in all this? Are they the child's wishes or are they "false" wishes created by the parent? Does it matter, once the contact order is made and the issue is enforcement? We'll have to wait and see.

One thing I've already learnt from this case, however, is that Lord Justice Jacob once said "There is more than enough potato content for it to be a reasonable view that it is made from potato" – which is why Pringles are potato chips and most definitely not savoury snacks.

NB. The case of L-W has now been reported as: *Re L-W (Children) [2010] EWCA Civ 1253*

Stuart Fuller

S (A Child) [2010] EWCA Civ 705

In S *(A Child) [2010] EWCA Civ 705* Thorpe LJ dealt with an appeal by a father against an order that provided for the child to be 'cared for' by him on various occasions. It was held that there was nothing within the Children Act 1989 that allowed the court to provide that one parent or the other may 'care for' the child other than in the specific form of a contact and/or a residence order. Accordingly, the appeal was allowed and the order was set aside.

In the course of his judgment Thorpe LJ restated the observation of Ward LJ in *Re B (a child) [2001] EWCA Civ 1968* at paragraph 9. He commented that: *"…necessarily the contact order cannot be made unless it can be attached to a residence order providing there for the child to live with a person."*

Thorpe LJ however, did not specifically refer to text of Ward LJ's observation in Re B which read: *"…one cannot have a contact order without having first determined who the person is with whom a child lives because it is that person who has to allow the child to visit or stay with the applicant for the contact order."* (Emphasis added).

Ward LJ was making the fundamental point that for a Court to grant a contact order there must be someone who is the subject of the order, i.e. the resident parent. The order may then be enforced against that person to prevent it becoming meaningless in practice.

There is an argument however, that Thorpe LJ's comments added a gloss to this observation which went much further; Thorpe LJ opined that one necessarily needs a court order granting residence before a contact order can be made.

On first blush, one may understand the benefits of having settled arrangements for the child embodied in a court order. Indeed, this dicta may be thought of as a useful way to encourage a hopeful Applicant parent seeking contact to consent to a residence order in the Respondent primary carer's favour; or else as a tool to persuade the court to make a residence order.

However, there is an argument that this would be improper use of the dicta for three reasons:

The Children Act Reason

Section 1(5) of the Children Act 1989 provides the well known 'no order' principle:

"Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

The question to ask when considering a contact application is whether a residence order should be made solely for the reason that it is necessary to be made so that a contact order can be attached to it. Is that better than making no order at all?

There is a view that it is not. It is generally accepted that it is better for the parents to agree child care arrangements rather than have a court order embodying them or having the court impose its own ruling. There is the risk that a non-resident parent may feel forced into accepting a residence order for no other reason that he or she wishes to have contact with the subject child if this dicta is applied. Therefore, one may argue that it is better not to make a residence order unless it really is in the best interests of the child.

The Practical Reason

There are of course other consequences when the court grants a residence order which could give force to the argument that a residence order should not be made as a matter of course. For example, the resident parent will be given parental responsibility and will also be able to remove the child for up to 28 days from the jurisdiction without needing the other parent's consent. These side-effects need to be properly considered before granting a residence order.

The Legal Reason

The ratio of Re S was that the Court can only impose an order which is framed in statutory language and that the use of the words 'cared for' were inappropriate for a court order. One could therefore argue that Thorpe LJ's comments were obiter dicta and not binding.

Summary

It is clear that there is nothing within the wording of the Children Act which specifically requires the court to grant a residence order when making a contact order. Section 8(1) of the Children Act defines a contact order as: *"an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other"*

The Court should have in the forefront of its mind when considering a contact application where the child does and will reside before granting the order. However, there is the argument that this should not necessitate the imposition of a residence order without proper justification.

Certainly, there is one uncontentious point to be extracted from Re S which is the importance of careful drafting. A court in making an order must find its jurisdictional foundation with the statutory language of the Children Act 1989. That surely is right.

Philip Baggley

New media access laws to be reviewed

In October this year the Justice Minister Jonathon Djanogly announced that the Government will delay its decision to determine whether to allow greater media access to the family courts, until after the Family Justice Review has published its final report. The review, led by David Norgrove, is due to publish an interim report next Spring, with the final report ready in the Autumn of 2011.

The controversial measures in Part 2 of the Children, Schools and Families Act 2010 were heavily criticised by many prominent legal figures. The Bill received Royal Assent in April 2010, after being passed during the 'wash-up' before the dissolution of Parliament. Lord Justice Munby condemned the process for being *"far from transparent"* and receiving *"astonishingly little debate"*. Dame Elizabeth Butler-Sloss, who fought for greater public access during her time as the President of the Family Division, declared that she was *"shocked that this had come up before us in the wash-up without any debate or any scrutiny in either of the two Houses of Parliament."*

From April 2009, the media have had access to the family courts, albeit with judicial discretion on what is accessed and reported. Part 2 of the Act, which is yet to be implemented, will remove much of the judicial discretion.

Many campaigners pushed for a full independent review of the new law. The Government has now agreed to this review. One wonders whether the Government's position is born out of a) a desire to be different from the last government, b) concern about the effects that this legislation would have c) fear of the huge cost implications that the passing of this legislation would entail or d) a combination of all three.

Whatever the true cause, Mr Djanogly stated that the final report of the Family Justice Review would allow the Ministry of Justice "to consider the changes Part 2 of the Act would introduce in light of the Review's recommendations for reform of the family justice system". He further said that *"This is a sensitive issue, on which a broad range of views have been strongly*

expressed. It is important that the family justice system is properly understood and commands public confidence. At the same time, there is a clear need to protect the privacy of vulnerable children and adults involved in cases in the family courts."

The media bosses are not holding their breath. They feel that the review could lead to less media access rather than more. A view shared by Lord Justice Munby. Even the media seemed to have changed their tack over the last few years. Camilla Cavendish, a columnist for the Times wrote nine articles between 2006 and 2008 condemning the family courts and pushing for media access. Backed by the movement of such groups as Father's for Justice, she amongst many other media types believed that the bias would be on show as soon as the doors were open. The media argued that greater media access would deliver openness and transparency and therefore, greater accountability.

However, in September of this year, the Newspaper Society presented a submission to the House of Commons Justice Select Committee's enquiry into the operation of the family courts, claiming that the new Act will not succeed in delivering greater accountability. In their submission, they criticised the need for anonymity saying that it defeated the objective of accountability. They argue that the Act is likely to place tighter restrictions on the reporting of family cases.

Anecdotal evidence shows a distinct lack of media interest. The doors have been open to the press since April 2009, albeit with judicial discretion but no one seems to be coming to the party. It will be interesting to see whether this will change, if the judicial discretion is lifted.

One hopes that the results from the pilot studies will throw some light on the practical implications of the new law, but at this time, there is little research evidence to show how these provisions are working in practice. A study carried out by the Department of Social Policy and Social Work at the University of Oxford investigated what the experience of other countries (New Zealand, Canada and Australia) tells us about reform in England and Wales. They observed that despite the continuing demands to be allowed to publish more identifying information than the legislation currently permits; there has been little evidence of an increase in press attendance in court.

One can't help but think that the lack of media interest in the family courts is due to the lack of the sensational headlines that sell papers. The government believed that if the doors were opened, the press would take an active role in reporting on the way the family courts run. Perhaps the press feel that it is not their duty to educate the public. The commercial imperative of the press can more often than not, lead to a distorted vision of legal proceedings in newspapers. The lack of media interest could be regarded as fortunate for all of those involved. Sir Mark Potter, President of the Family Division highlighted the "habit" of the press to attend court on the first day of a case to, *"report the unpleasant allegations or exaggerated claims by a child"*, without following the progression of a case. He told a committee of MPs that although he supported the principle of opening the courts to the media, he had concerns about the implications. *"We are in a situation of first-day attendance, and what is news today has passed tomorrow, so an unfair and difficult position is left- quite apart from the welfare of the child concerned".* When the social welfare and children's charities first got whiff of the proposals for reform, they funded research into the likely implications of these new laws. As we all know, the children's welfare is the paramount consideration of the court but in drafting the bill, no one had taken the initiative to ask the children who would be subject to media reporting, how they felt. Protection of children is at the very heart of our Family Justice System, but some research showed that media access could severely jeopardise our ability to protect those most vulnerable children.

A study into *"the views of children and young people regarding media access to family courts"* was undertaken by the University of Oxford under the guidance of the Children's Commissioner. Children involved in family court proceedings were interviewed. Of the children interviewed, not one agreed with the media being allowed in to hear evidence about their lives and report on it. Some were extremely protective of their failing parents and did not want their familial dysfunctions to be publicly known. They stated that they would be unable or unwilling to talk about serious maltreatment by a parent if they thought a reporter would be in court to hear the evidence. Despite the children being made aware of the ban on publishing information that would lead to the child being identified, most children will remain unconvinced of the power of the law and other adults (judges, lawyers and experts) to protect their privacy. In local communities, people are easily identifiable even with the obviously identifying features removed.

Often children's views are overlooked, or not weighted as being as important as other factors. However, it is comforting to know that their views are being listened to this time. It could be said that a child's confidence and trust in the family courts to protect them, far outweighs the need to gain public confidence.

Emily Brazenall

Is this the way forward?

In public law cases where parental drug and alcohol use are issues?

I will begin this article with a few statistics if I may. It is estimated that 70% of children come before the family courts because one or both parents has a problem with drug and alcohol use, that 2-3% of all children in England and Wales under 16 are thought to have one or both parents who misuse illegal drugs and up to one in eleven children may be living with parents with alcohol problems.

How are the courts going to deal with such families?

District Judge Crichton who set up the London Family Drug and Alcohol Court (FDAC) in January 2008 thinks he has found the answer. He managed to raise £1.6million from three government departments - the Ministry of Justice, the Department for Children Schools and Families and the Home Office. The remainder of the funding comes from the three London boroughs served by FDAC Camden, Islington and Westminster. FDAC is on a three-year trial.

The reason Crichton set up FDAC was that he believes that families with drug and alcohol addictions have problems so complex that courts in England and Wales are unable to give them the help that they need.

"Courts simply take the children away, tell mothers to find a treatment centre and come back when they have been rehabilitated, this doesn't work because these parents don't have just an addiction problem, they have a whole raft of issues from housing to domestic violence, learning disabilities and mental health and so on. It is very difficult for these women to get themselves sufficiently organised to find a detox facility. Those with the determination frequently find there is a three-month waiting list and sink back into their old ways. The tiny percentage who stick with it often find the services disjointed and lack a focus on their specific needs. I became convinced that there had to be a better way." DJ Crichton.

FDAC is supported by a multi-disciplinary team based at the Coram Foundation in Central London. There are:

- a general manager
- a service manager
- a child psychiatrist
- an adult psychiatrist
- a clinical nurse
- a parental substance misuse specialist
- three social workers
- a parent mentor co-ordinator

from page 4 five parent mentors who have personal experience of addiction problems twelve guardians who can appoint a solicitor.

Parents facing court action relating to their children are given the choice whether to take part in the FDAC proceedings or dealt with under normal procedures. If they agree they sign an agreement to that effect and are then given intensive support by the FDAC team. The mentor provides initial support from the time of the first hearing through the assessment and planning stage. A mentor may be matched to the parent to undertake a specific type of support that will have been set out in the Parent's Individual Intervention Plan.

There are hearings every two weeks attended by the parents, a member of the FDAC team, the Guardian, the mentor and a representative from the Local Authority. The parents are not usually represented by lawyers unless a specific need arises. If a contentious issue arises which requires a longer hearing this will normally take place outside the FDAC process. The aim of the procedure is to lead to an outcome within a much shorter time frame than is usually possible. As far as possible all hearings take place before two specialised District Judges, Nicholas Crichton and Kenneth Grant.

If the parents succeed this is recognised at a graduation ceremony. If they don't graduate they are transferred to an ordinary list.

In the first seventeen months that it has been up-and-running, dealing with 37 families there have only been three graduations (the optimist in me is inclined to record that as an 8% success rate – Ed.). Yet DJ Crichton continues to see this as the way forward. Do you?

Claire Rowsell

The Man from del Monte, he say – no!

Cheat's Charter v Breach of Rights of Confidence

Before 2009, the last major case on self-help was *Hildebrand v Hildebrand [1992] 1 FLR 244, FD*. From this case the Hildebrand rules evolved which form the basis of advice by lawyers to their clients where clients are encouraged to access documents belonging to the other spouse, whether they were confidential or not, provided force is not used. The case itself however is no authority for the so-called Hildebrand rules.

The CA decision in *Imerman v Tchenguiz and Others [2010] EWCA Civ 908 [2010] 2 FLR 814* originated from the Husband's application for an injunction to prevent his Wife's solicitors from using documents taken by the Wife's brothers from the Husband's password protected computer and passing them to the Wife's solicitors for use in the her ancillary relief proceedings. The Husband and the brothers shared business premises together and the Husband was the former owner of Del Monte Foods. The Wife was claiming a lump sum and the Husband stated that he had nothing. The Wife's brothers believed otherwise and were concerned that the Husband was not disclosing his true financial position.

Eady J in July 2009 restrained the brothers from communicating or disclosing to third parties (including the Wife and Withers, her solicitors) any information contained in the documents and from copying or using any of the documents or information contained therein. He also required the brothers to hand over all copies of the documents to the Husband. The brothers appealed.

The Husband sought the return of the seven files, and any copies made of them, and an order enjoining the Wife and Withers from using any of the information obtained from the files. In November 2009, Moylan J decided that the seven files should be handed back to the Husband for the purpose of enabling him to remove any material for which he claimed privilege, but that the Husband would then have to return the remainder of the seven files to the Wife for use by her in connection with the matrimonial proceedings. The Husband appealed that decision. The Wife cross-appealed against the decision, seeking more control over the process by which the Husband could assert privilege and a reversal of Moylan J's refusal to restrain the Husband from disposing of certain memory sticks.

The Court of Appeal stated that what was done by the brothers could not be justified. There were no rules, which dispensed with the requirement that a spouse obey the law. However at the time the information was taken unlawfully, the Husband was under no obligation whatsoever to disclose his assets, still less to disclose private documents relating to those assets. The rules required him only to give full disclosure under Form E. Only thereafter might he be ordered to disclose further documents should the court think it necessary. It was therefore simply unacceptable to countenance the Wife taking the law into her own hands so as to obtain a premature advantage.

The Court of Appeal held that the information obtained could not be used to support the Wife's claim for ancillary relief. While the court could admit such evidence, it has power to exclude it if unlawfully obtained, including power to exclude documents whose existence has only been established by unlawful means.

En route to the Imerman decision are other cases of note. *White v Withers LLP and Dearle [2009] EWCA Civ 1122 [2010] 1 FLR 859* involved the case of Marco Pierre White. The Court of Appeal considered in that case that if the solicitors retained the original documents and held them on their file, then those documents were the property of the other side and should be returned. The husband claimed damages against the wife's solicitors. The Court of Appeal held that the Hildebrand rule did not sanction the use of force to obtain documents, the interception of documents, the retention of documents (other than for the purpose of copying), or the removal of any hard disk recording documents automatically; a party retained originals at his or her own risk. It was held that there had been a direct and immediate interference with husband's possession of original documents

Noble v Owens (2010) EWCA Civ 224 considered the options open to an appellate court faced with an application for a re-hearing on the basis of fresh evidence that the original judgment was obtained by fraud. The case considered the effect of the strength of the fraud allegations and whether the trial of the fraud allegation had to be by way of a fresh action. *Imerman* was referred to as an extreme example of self-help. The Wife did not even obtain the documents herself but the lesson from it is that the so-called Hildebrand rules cannot be relied upon to justify conduct, which would otherwise be criminal or actionable.

As you throw your hands up in horror and ask rhetorically, what do you do with the Husband / Wife who has not disclosed the assets that your client in truth knows about, the answer from the Court of Appeal lies at paragraph 127 of the Imerman judgment: *'..there is the availability in the Family Division, just as in the other Divisions of the High Court, of Mareva (freezing) and more particularly Anton Piller (search) orders. What is surprising, not least given what, as have seen, is the justification for the so-called Hildebrand rules, is the extreme rarity in the Family Division of any application for an Anton Piller order, something which is all the more puzzling given the relative frequency with which Mareva (freezing) orders are both sought and granted in the Division. Although involved in many cases where he or other judges in the Division had granted a freezing order, whether under s 37 of the Matrimonial Causes Act 1973 or s 37 of the Senior Courts Act 1981, Munby LJ cannot recall a single occasion during some 9 years in the Division when he was asked to make an Anton Piller order'*... [sic]

Well to me, this is not surprising. There is a reason for this lack of use – cost!

Deborah Dinan-Hayward

Albion Chambers Family Team

Louise Price
Call 1972
Clerk Michael Harding

Gerraint Norris
Call 1980
Clerk Julie Hathway

Claire Wills-Goldingham
Call 1988
Mental Health Review Tribunal (legal member)
Clerk Michael Harding

Deborah Dinan-Hayward
Call 1988
Clerk Michael Harding
Team Leader

Nkumbe Ekaney
Call 1990
Clerk Julie Hathway

Claire Rowsell
Call 1991
Former Solicitor
Clerk Michael Harding

Nicholas Sproull
Call 1992
Clerk Julie Hathway

Daniel Leafe
Call 1996
Clerk Julie Hathway

Adrian Posta
Call 1996
Clerk Michael Harding

Hannah Wiltshire
Call 1998
Clerk Julie Hathway

Charlotte Pitts
Call 1999
Clerk Julie Hathway

Marie Leslie
Call 2000
Clerk Michael Harding

Linsey Knowles
Call 2000
Clerk Julie Hathway

James Cranfield
Call 2002
Clerk Julie Hathway

Kate Goldie
Call 2004
Clerk Julie Hathway

Benjamin Jenkins
Call 2004
Clerk Julie Hathway

Gemma Borkowski
Call 2005
Clerk Julie Hathway

Monisha Khandker
Call 2005
Clerk Michael Harding
(on sabbatical until Summer 2011)

William Heckscher
Call 2006
Clerk Julie Hathway

Simon Emslie
Call 2007
Clerk Michael Harding

Stuart Fuller
Call 2007
Clerk Michael Harding

Philip Baggley
Call 2009
Clerk Michael Harding

Emily Brazenall
Call 2009
Clerk Michael Harding