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Case number omitted

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 May 2017

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

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In the matter of a Ward of Court

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court

Sir James Munby, President of the Family Division :

1. I am concerned with a teenager who is the subject of proceedings brought by a local authority and who is also a ward of court. I propose to say nothing more about the circumstances of the case – which is allocated to another judge of the Division – except to note that radicalisation is an issue in the proceedings.

2. The specific issue with which I am concerned arises out of the fact that the teenager was approached by an officer of the Security Service – see the Security Service Act 1989 as amended – acting in the course of that officer's exercise of functions as an officer of the Security Service. That approach, so far as I can see, was entirely proper. The concern about what happened arises solely because the officer's approach was to someone who is a ward of court. When the local authority became aware of what had happened, it wrote to the Security Service suggesting that the approach should not have taken place without the prior authority of the court and that the officer was at serious risk of being in contempt of court.

3. The matter has been twice before me. On the first occasion, having heard Leading Counsel on an application made by the Security Service without notice, I made an order containing the following recital:

> "UPON the Court being satisfied that there is no requirement for the Security Service to obtain the permission of the Court to fulfil its statutory functions in accordance with the Security Service Act 1989 in so far as its actions relate to the Ward of Court in these proceedings."

   On the second occasion, having had the assistance of Leading Counsel for the local authority, I made an order containing the same recital.

4. It is quite clear to me, though I do not for obvious reasons propose to elaborate the point, that there is a pressing need, having regard both to the interests of the ward and of the operational requirements of the Security Service, that there should be no identification either of the ward or of the local authority. I have therefore taken the unusual step of concealing in this judgment the case number, the dates of the hearings (which were not listed) and the names of Leading Counsel and of those who instruct them.

5. I make no criticism whatever either of the Security Service or of the local authority. What this episode has highlighted, however, is a startling lack of clarity in the law, which needs to be resolved in the interests of all who may be involved in similar matters in future and, indeed, in the wider public interest.

6. Before proceeding further, I need to emphasise that, although the issue has arisen in this particular case in the context of the activities of the Security Service, exactly the same point can arise in the context of the activities of, for example, police officers, officers of Immigration Enforcement and, no doubt, officers of other investigatory, enforcement or regulatory agencies.

7. I repeat, so that there is no room for misunderstanding, a point I made in paragraph 12 of *Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division on 8 October 2015*:

> "The police and other agencies recognise the point made by Hayden J [*The London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam), para 18(iv)] that "in this particular process it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations." The police and other agencies also recognise the point made by Bodey J [*Y v Z* [2014] EWHC 650 (Fam), para 30] that "it is no part of the functions of the Courts to act as investigators, or otherwise, on behalf of prosecuting authorities … or other public bodies.""

General principles

8. The issue with which I am concerned lies at the intersection of two well-known principles of wardship law. One, long-established, is that no "important" or "major" step in the life of a ward can be taken without first obtaining the approval of the wardship judge. The other, more recently recognised, is that the wardship court cannot exercise its powers, however wide they may be, so as to intervene on the merits in an area of concern entrusted by law to another public authority. Not much reflection is needed to appreciate the potential for tension between these two principles. The present case is a good example.

General principles: the *A v Liverpool City Council* principle

9. The starting point, in my judgment, is the fundamentally important principle identified by the House of Lords in *A v Liverpool City Council* [1982] AC 363 and re-stated in *In re W (A Minor) (Wardship: Jurisdiction)* [1985] AC 791. For present purposes I can go straight to the speech of Lord Scarman in the latter case. Referring to *A v Liverpool City Council*, Lord Scarman said, at p 795:

> "Authoritative speeches were delivered by Lord Wilberforce and Lord Roskill which it was reasonable to hope would put an end to attempts to use the wardship jurisdiction so as to secure a review by the High Court on the merits of decisions taken by local authorities pursuant to the duties and powers imposed and conferred on them by the statutory code."

10. He continued, at p 797:

> "The High Court cannot exercise its powers, however wide they may be, so as to intervene on the merits in an area of concern entrusted by 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. If Parliament in an area of concern defined by statute (the area in this case being the care of children in need or trouble) prefers power to be exercised

> administratively instead of judicially, so be it. 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."

11. Lord Scarman was not of course disputing the High Court's power of judicial review under RSC Ord 53 (what is now CPR Pt 54) when exercised by what is now the Administrative Court. What he was disputing were the High Court's powers when exercising in the Family Division the parens patriae or wardship jurisdictions. This is made clear by what he said, at pp 795–796:

> "The ground of decision in *A v Liverpool City Council* [1982] AC 363 was nothing to do with judicial discretion but was an application in this field of the profoundly important rule that where Parliament has by statute entrusted to a public authority an administrative power subject to safeguards which, however, contain no provision that the High Court is to be required to review the merits of decisions taken pursuant to the power, the High Court has no right to intervene. If there is abuse of the power, there can of course be judicial review pursuant to RSC Ord 53: but no abuse of power has been, or could be, suggested in this case."

It is important to appreciate that Lord Scarman was not referring to a rule going to the exercise of *discretion*; it is a rule going to the proper ambit of the *powers* of the wardship court.

12. What for convenience I shall call the *A v Liverpool City Council* principle has been reiterated at the very highest level on a number of occasions in recent years: see *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, *Aintree University Hospitals NHS Foundation Trust v James* [2013] UKSC 67, [2014] AC 591, and, very recently, *N v ACCG and others* [2017] UKSC 22.

13. The *A v Liverpool City Council* principle arises in many different and varied contexts. There are many cases to be found in the reports where a child is affected by some decision of a public official or a public body. Examples include (I list the examples in roughly chronological order and without providing exhaustive lists of the relevant cases) an education authority: see *In re B (Infants)* [1962] Ch 201 and *In re D (A Minor)* [1987] 1 WLR 1400; the Secretary of State for the Home Department in relation to a child subject to immigration control: see *In re Mohamed Arif (An Infant)* [1968] Ch 643 and *R v Secretary of State for Home Department ex p T* [1995] 1 FLR 293; a local authority exercising child care functions: see *A v Liverpool City Council* [1982] AC 363; criminal prosecuting authorities: see *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1 and *In re R (Wardship: Criminal Proceedings)* [1991] Fam 56; an adoption agency: see *In re W (A Minor) (Adoption Agency: Wardship)* [1990] Fam 156; the Secretary of State for Defence in relation to a boy soldier: see *In re JS (A Minor) (Wardship: Boy Soldier)* [1990] Fam 182; the Secretary of State for the Home Department in relation to a baby living with its mother in a prison mother and baby unit: see *CF v Secretary of State for the Home*

Department [2004] EWHC 111 (Fam), [2004] 2 FLR 517, and *Islington London Borough Council v TM* [2004] EWHC 2050 (Fam);[1] police decision-making in connection with police protection: see *In re T (Wardship: Review of Police Protection Decision) (No 2)* [2008] EWHC 196 (Fam), [2010] 1 FLR 1026; the statutory duties of housing authorities: see *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413; and, very recently, the National Probation Service: see *R (ZX) v The Secretary of State for Justice* [2017] EWCA Civ 155 (the case involved an adult but the principle is the same).

14. In many ways, the modern starting point, albeit it pre-dated *A v Liverpool City Council* [1982] AC 363, is the much-cited judgment of Russell LJ in *In re Mohamed Arif (An Infant)* [1968] Ch 643, 662, which it is helpful to set out again:

> "When an infant becomes a ward of court, control over the person of the infant is vested in the judges of the Chancery Division of the High Court. It is for the judge to say by order from time to time where the ward is to reside and with whom, and disobedience to such an order is contempt of court by anyone who knowingly breaches or is party to a breach of that order. Moreover, even without any judge's order forbidding it, it is a contempt to remove a ward outside the jurisdiction of the High Court. It is, however, quite obvious that there are circumstances in which control over the person of a ward is not committed or referred to the judge but is by the law of England committed or referred to another agency or person. As a simple illustration, it could not be contended that the judge would have any jurisdiction to order that a criminal ward be transferred from place of detention A to place of detention B, however much of the medical evidence before the judge suggested that the ward would be in better health at place of detention B. The reason is that the jurisdiction of the judge over the person of the ward is necessarily restricted by the fact that the law has given that aspect of control over the ward's person exclusively to another agency. Similarly, the judge would have no right to complain of or countermand a lawful posting overseas of a ward who was in the armed forces. The law refers the military control of the ward to the military authorities. Similarly, any lawful deportation order affecting a ward must be outside the normal position which I have mentioned already, that a ward must not leave the jurisdiction without permission of the judge; indeed, it would override any existing express order of the judge in the wardship proceedings that the infant was not to depart from the jurisdiction."

That last point, which gives striking emphasis to the *A v Liverpool City Council* principle, was reiterated by Hoffmann LJ in *R v Secretary of State for Home Department ex p T* [1995] 1 FLR 293, 297.

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[1] The key paragraphs are quoted in *R (Anton) v Secretary of State for the Home Department; Re Anton* [2004] EWHC 2730/2731 (Admin/Fam), [2005] 2 FLR 818, para 39.

15. Related to, in fact an aspect of, the *A v Liverpool City Council* principle, is the important principle that wardship does not privilege a ward over a child who is not a ward and does not give a ward an immunity not available to other children. The point was put very pithily by Lord Denning MR in *In re F (orse A) (A Minor) (Publication of Information)* [1977] Fam 58, 86:

> "The existence of wardship does not give the ward a privilege over and above other young people who are not wards."

Millett LJ made the same point in *In Re R (Wardship: Restrictions on Publication)* [1994] Fam 254, 271, where, having referred to Russell LJ's judgment in *In Re Mohamed Arif*, he continued:

> "This limiting principle may be expressed more generally by saying that the wardship court has no power to exempt its ward from the general law, or to obtain for its ward rights and privileges not generally available to children who are not wards of court; or by saying that the wardship court can seek to achieve for its ward all that wise parents or guardians acting in concert and exclusively in the interests of the child could achieve, but no more."

16. The same thinking underlies an important observation by Lord Donaldson of Lymington MR in *In re R (Wardship: Criminal Proceedings)* [1991] Fam 56, 65-66:

> "This principle we would state in the following terms. Children, whether wards of court or not, are citizens owing duties to society as a whole (including other children), which are appropriate to their years and understanding. Those duties are defined both by the common law and by statute. In the context of the conduct of criminal proceedings in court, the definition and enforcement of these duties have been entrusted by law exclusively to the court in which the proceedings are being conducted and it is not for the wardship court, whatever the theoretical scope of its jurisdiction, to use that jurisdiction to interfere with the performance by the criminal courts of their lawful duties. If it were thought that the criminal courts had insufficient discretion to enable them to balance the public interest in the welfare of child witnesses, whether or not wards of court, against the public interest in the achievement of justice between the state and the accused, the remedy lies not in the exercise of the wardship jurisdiction, which could only assist wards, but in the conferment of new and wider discretions upon the criminal courts."

<u>General principles: the 'no important step' principle</u>

17. I turn to the principle that that no "important" or "major" step in the life of a ward can be taken without first obtaining the approval of the wardship judge. I start with what I said in *Egeneonu v Egeneonu* [2017] EWHC 43 (Fam), para 26, in large part

repeating what I had earlier said in *Kelly v British Broadcasting Corpn* [2001] Fam 59, 71, 75:

> "Wardship confers on the ward "certain forms of protection which arise automatically by reason of the wardship:" Lowe & White, Wards of Court, ed 2 1986, para 5-1, a book of high authority although we rejoice in the continued vigour of both its authors. As I said in *Kelly v British Broadcasting Corpn* [2001] Fam 59, 71, "wardship confers on the ward a status to which the law attaches certain incidents." I continued, 75-76,
>
> > "As is well-known, no "important" or "major" step in the life of a ward of court can be taken without the prior consent of the court. This is not some empty exhortation or mere platitude for, subject to proof of knowledge that the child in question is a ward of court, it is a contempt of court to undertake or facilitate any such step without the consent of the court.
> >
> > … Understandably no one has ever sought to define what constitutes an "important" or "major" step for this purpose. I certainly do not propose to do so. [Lists and discussions in various textbooks] show that included in the category of "important" or "major" steps for this purpose are: marrying the ward; removing the ward from the jurisdiction; making a material change in the ward's education, residence or whereabouts (including placing the ward in secure accommodation, moving the ward between foster parents or placing the ward for adoption); instituting adoption proceedings or freeing for adoption proceedings with respect to the ward; changing the ward's name; making an application on behalf of the ward to the Criminal Injuries Compensation Board; administering a police caution; or subjecting the ward to the more significant forms of medical treatment (for example, an abortion or a sterilisation).
> >
> > Also included in the list … are: a psychiatric examination for forensic purposes; interviews by an independent social worker; police interviews; and interviews on behalf of a defendant in criminal proceedings.""

18. One of the textbooks to which I had referred in *Kelly* was Hershman & McFarlane's Children Law and Practice. In the current edition, the authors say this (Vol 1, para B[1060]-[1062]):

> "Each of the following, being an 'important step' or a 'major change', certainly requires the court's leave: … an interview of the ward by … police …"

This is elaborated (para B[1081]-[1085]):

> "Consent must be obtained by the police to interview a ward … The procedure to obtain leave to interview a ward is regulated by Practice Direction [PD12D, para 5].
>
> If an interview has taken place as a matter of urgency, then the court should be appraised of the matter as soon as possible. Practice Direction 12D, paras 5.5 and 5.6 contain detailed guidance on the circumstances which may justify such action and the procedure that should be followed."

19. These seemingly confident assertions that judicial consent is required before the police can interview a ward of court immediately invite two questions: How can this be reconciled with the *A v Liverpool City Council* principle? Is this not giving a ward an impermissible and unprincipled privilege over other children?

20. In fact, as a close examination of the authorities shows, the asserted rule rests on very insubstantial foundations. I need therefore to explore the issue in some detail.

Police interviews with wards of court

21. I start with Lowe & White, Wards of Court, ed 2 1986, where the law is stated as at 1 October 1986. It is a very striking and, in my judgment, very telling fact that the authors are, seemingly, unaware of any principle that police interviews with a ward of court require judicial approval. Chapters 5 and 8 contain detailed discussions of the 'no important step' principle, but are bare of any suggestion that it extends to police interviews. Specific discussion (para 5-28) under the heading "Interviewing the ward" is as illuminating for what it does *not* say as for what it does:

> "Unless the court expressly orders otherwise … personal contact with a ward is not generally fettered. In two specific instances, however, interviewing a ward is or may be forbidden without prior leave. It is expressly provided by *Practice Direction (Minor: Independent Reporter)* [1983] 1 WLR 416, [1983] 1 All ER 1097 that an 'independent' reporter may not interview the ward without the court's leave. It may also be wrong for the media to interview the ward."

There is then a reference to certain observations of Russell LJ in *In re T(AJJ) (An Infant)* [1970] Ch 688, 689, as to which see now *Kelly v British Broadcasting Corpn* [2001] Fam 59.

22. So, as of 1 October 1986, the asserted rule was apparently unknown. Yet within less than three months what was previously unknown had been discovered by Booth J in her judgment on 16 December 1986 in *In re S (Minors) (Wardship: Police Investigation)* [1987] Fam 199. She said this (at 202):

> "So it is still necessary to seek directions from the court whenever it is proposed to take a major step in the lives of the wards.

> In my judgment, the disclosure to the police of the medical records and recordings for the purpose of criminal investigations falls into this category of decision … the effect of granting the application could be far reaching. Indeed, the result of it could lead to the direct involvement of the ward in criminal proceedings, a fact which could be regarded as detrimental to his or her interests. It is, therefore, clearly a step of considerable importance in the life of any child. Similarly, if the police are to interview and conduct medical examinations of the wards then leave of the court must first be given. Such medical examinations do not have a therapeutic purpose, but a forensic purpose and, as in the case of the disclosure of the medical records and the video recordings, they may lead to the wards' direct involvement in subsequent proceedings. But if leave is given for the disclosure of those records and video recordings it seems to me that it must follow that leave must also be given to the police to conduct interviews with and, if necessary, examinations of, the wards. Having enabled the police to start upon an inquiry it would not be realistic, save in exceptional and presently unforeseen circumstances, to impose such limits upon them."

So far as appears from the report, no authority was cited in relation to the question of police interviews and no reference was made to either *A v Liverpool City Council* [1982] AC 363 or *In re W (A Minor) (Wardship: Jurisdiction)* [1985] AC 791.

23. Next, the decision of Waterhouse J in *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1, a case where children had been interviewed by the police *before* they became wards of court. The present point seems to have gone by concession, because (at 6) Waterhouse J said this:

> "Mrs Puxon accepts on behalf of the Crown Prosecution Service that, in general, it is the practice of the police to obtain the consent of a parent who has the custody of a child before interviewing the child as a potential witness. Similarly, the police work in close co-operation with social services departments in whose care children have been placed and obtain the consent of the department (as in this case) before interviewing a child in care. It is accepted also that, in the case of a ward of court, leave should be obtained from the wardship court before an interview by the police takes place."

I note that, amongst the authorities cited to Waterhouse J, was the decision of Booth J in *In re S (Minors) (Wardship: Police Investigation)* [1987] Fam 199. He went on:

> "Once a prosecution has been instituted however, the statutory procedure must (it is said) take its normal course. The Crown Prosecution Service will, of course, consider any representation that may be made by a parent or a local authority about the potential adverse impact upon a child of having to give

> evidence. This may be one of the matters to be considered in deciding whether or not to proceed with particular charges, but the discretion is vested in the prosecuting authority rather than the parent or the local authority. In the present case, it is said further, an extraordinary and anomalous situation would arise, if the wardship court were to intervene, because the minors might be "protected" from the operation of the statutory rules governing the compellability of witnesses, whereas the other children involved in the case would have no similar protection."

Precisely so. It appears from the report that *A v Liverpool City Council* [1982] AC 363 was cited to the judge; *In re F (orse A) (A Minor) (Publication of Information)* [1977] Fam 58 seems not to have been cited, but counsel plainly had the 'wardship does not privilege a ward' point well in mind.

24. Waterhouse J set out his conclusions (at 11) as follows:

> "I have no doubt that I should decline to exercise the wardship jurisdiction by either giving leave for the minors to be called as witnesses or by giving a direction in the matter in another form. In my judgment, it is neither necessary nor appropriate in child abuse cases for the Crown Prosecution Service to seek the leave of the wardship court to call a ward as a witness either before or after committal proceedings.
>
> It is necessary, first of all, to set my conclusion in its proper context. In many cases, the wardship court is likely to be involved at an early stage because leave will have to be sought for the police to interview a ward. In such circumstances it is inevitable that the court will have to perform a balancing exercise, weighing the potential damage to the child against the public interest, as a responsible parent would do. In reaching a decision, the best interests of a child may not be the first and paramount consideration, for reasons that I have sufficiently explained. It is clear also that the court will have in mind that, if leave to interview the child is granted, a prosecution based on the child's evidence, at least in part, may ensue."

25. He continued:

> "Once a statement has been obtained, however, the responsibility for deciding whether or not a prosecution shall be initiated rests with the prosecuting authority and, in my view, it would be a constitutional impropriety for this court to intervene at that stage. To do so would be to invoke powers not possessed by any responsible parent or custodian of a child. More seriously, it would involve the court ultimately in assessment of matters of policy and discretion that are vested by law in the prosecuting authority as a branch of the executive.

> The argument against intervention by the wardship court is even more overwhelming, in my judgment, once the prosecution has been set in train. By that time the defendants will have been arrested and charged, and may (as in this case) have been detained in custody. The procedure to be followed is strictly prescribed by statute, as I have outlined earlier in this judgment, and the limits of the discretion in relation to the calling of witnesses whose statements have been tendered are closely defined. On the other hand, a defendant has a virtually unfettered right to call as a witness anyone who can give relevant and admissible evidence on his behalf. If the wardship court were to attempt to intervene in this process, it could lead to conflict between it and the Crown Court, to the prejudice of the administration of justice generally, and could result in disparate treatment of child witnesses, despite the express statutory provisions dealing with them.
>
> For all these reasons, therefore, I rule that it is unnecessary for this court to give leave for the minors to be called as witnesses in the pending trial of their parents, and that it would be inappropriate to do so. I prefer not to base my decision on consideration of the theoretical limits of the wardship jurisdiction because it is unwise and undesirable to attempt to define them. It is more correct, in my judgment, to refuse to invoke the wardship jurisdiction for the purpose of granting leave or giving a direction because it would be contrary to public policy to do so. In my view, this conclusion conforms with the reasoning of the Court of Appeal in *In re Mohamed Arif (An Infant)* [1968] Ch 643."

26. The decision in that case on 24 August 1987 led to the publication on 11 November 1987 of *Practice Direction (Ward: Witness at Trial)* [1987] 1 WLR 1739, issued by Senior Registrar Tickle at the direction of the President, at that time Sir John Arnold P. The material part of the Practice Direction was in the following terms:

> "Where the police desire to interview a child who is already a ward of court application must be made for leave for the police to do so … If it is desired to conduct any interview beyond what is permitted by the order further application should be made for this purpose.
>
> … The President directs that all of the above applications be made to a judge on summons on notice to all parties."

27. I have to say, with all respect to those responsible for it, that the terms of this Practice Direction are surprising. Quite apart from the fundamental question of how it accommodated the *A v Liverpool City Council* principle, in at least two respects the Practice Direction simply did not address the operational realities. First, what if a policeman, having stopped a 17-year old, wants to talk to him on the pavement, or, having arrested him, wants to interview him at the police station, but is then told:

"You cannot do this, I am a ward of court." What is the policeman to do? Secondly, supposing that a sensitive ongoing police investigation relates to someone – the ward's estranged parent for example – who is party to the wardship proceedings but is someone who, from the police perspective, should not be alerted to what is going on, is that person nonetheless to be served?

28. In fact, these obvious deficiencies were addressed with the publication on 18 July 1988 of *Practice Direction (Ward: Witness at Trial) (No 2)* [1988] 1 WLR 989, issued by Senior Registrar Turner at the direction of the President, by then Sir Stephen Brown P. The material part of the Practice Direction was in the following terms:

> "The registrar's direction of 11 November 1987, Practice Direction (Ward: Witness at Trial) [1987] 1 W.L.R. 1739, set out the procedure to be followed to obtain leave for the police to interview a child who is a ward of court. It provided that all applications for leave should be made to a judge on summons on notice to all parties.
>
> That procedure is hereby modified to the extent that where a party may become the subject of a criminal investigation and it is considered necessary for the ward to be able to be interviewed without that party knowing that the police are making inquiries, the application for leave may be made ex parte to a judge without notice to that party. Notice should, however, where practicable be given to the guardian ad litem.
>
> There will be other occasions where the police need to deal with complaints, or alleged offences, concerning wards where it is appropriate, if not essential, for action to be taken straight away without the prior leave of the wardship court. Typical examples may be: (a) serious offences against the ward such as rape, where the medical examination and the collection of forensic evidence ought to be carried out promptly, (b) where the ward is suspected by the police of having committed a criminal act and the police wish to interview him in respect of that matter, (c) where the police wish to interview the ward as a potential witness. This list is not exhaustive. There will inevitably be other instances where immediate action is appropriate.
>
> The President and judges of the Family Division are of the opinion that, where any such instances are encountered, the police should notify the parent or foster parent with whom the ward is living or other "appropriate adult" within the Home Office Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, so that that adult has the opportunity of being present when the police interview the child. Additionally, if practicable the guardian ad litem (if one has been appointed) should be notified and invited to attend the

> police interview or to nominate a third party to attend on his behalf. A record of the interview or a copy of any statement made by the ward should be supplied to the guardian ad litem. Where the ward has been interviewed without the guardian's knowledge he should be informed at the earliest opportunity and (if it be the case) that the police wish to conduct further interviews. The wardship court should be appraised of the situation at the earliest possible opportunity thereafter by the guardian ad litem, the parent, foster-parent (through the local authority) or other responsible adult."

29. In *In re A (A Minor) (Wardship: Police Caution)* [1989] Fam 103, decided on 28 June 1989, Cazalet J had to consider the role of the wardship court where the police wished to caution a ward of court. The question fell into two parts. In relation to the first, Cazalet J said this (at 106):

> "The decision as to whether to caution in lieu of prosecuting is a matter which is wholly within the discretion of the appropriate prosecuting authority. The question has been raised as to whether, when the juvenile concerned is a ward of court, the court has any power to intervene or play some part in such decision-making process."

Having referred to *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1, he continued:

> "In my view, similar considerations apply in the present circumstances, and it is for the prosecuting authority and that authority alone to decide whether to caution in lieu of prosecuting in a particular case. The court has no power to intervene in this decision-making process."

30. In relation to the second part of the question, whether it was necessary to obtain the consent of the wardship court before the caution could be administered – the Home Office guidelines for administering such a caution requiring the "consent" of the "parents or guardian" to the caution being issued – Cazalet J (at 109) posed the question: "Who, then, when a child is a ward of court, is the appropriate parent or guardian to give the required consent under the guidelines?" His answer (at 110-111) was this:

> "The important consequences which may flow from the giving of a caution to a juvenile means that there should be a proper and considered decision taken by those who have the ultimate parental responsibility for the child as to whether consent to a caution should be given … The making of a decision as to whether to consent to a caution being administered may well involve an anxious and carefully balanced value judgment. Under the wardship jurisdiction the court supersedes the ward's actual parent, and in effect becomes the ward's parent. It is the person who is in such parental authority over the child who

> must be the person best suited to making this decision, and to the applying of a responsible mind to the relevant question …
>
> For the reasons which I have given, and in particular because I regard the consequences of any caution as having a serious impact on a juvenile's life, I consider that the necessary consent required by the police authority must, in wardship proceedings, be given by the court as the parent or guardian within the meaning of the guidelines. The giving of such consent must be regarded as an important step in the life of the child and I regard the court's consent, when a child is a ward, as being a necessary pre-condition to a caution being issued."

31. The next case is the decision of Ewbank J on 15 December 1989 in *Re B (A Minor)* [1990] FCR 469, a case involving a ward who was 17½ and had been arrested by the police for burglary. Ewbank J said this:

> "After he was arrested he was interviewed by the police who did not know that he was a ward of court. They became aware that he was a ward of court at his trial, and the police accordingly brought the matter to the attention of the wardship court on the basis of the Practice Direction of 18 July 1988 …
>
> It is suggested that the wording of … paragraph [(b)] implies that, if there is no urgency about the interviews, leave ought to be sought; and if prior leave has not been obtained, subsequent approval should be sought. I am told that these matters are going to be the subject of an application to the President in due course …
>
> The statutory provision in relation to interviews with children in police detention are contained in s 57 of the Police and Criminal Evidence Act 1984. This provides that where a child or young person is in police detention various steps must be taken. These provisions apply to children under 17 and do not apply to children over 17. The ward was 17½, and accordingly under the statutory provision it was not necessary to inform anyone of the arrest or detention of the child.
>
> In the circumstances, in a case of a child over 17 who is a ward of court, in my judgment, it is accordingly not necessary for prior leave to be sought or for subsequent approval to be sought of any steps taken by the police in respect of the arrest or detention of the child. I accordingly make no order on the application in this case."

32. In *In re JS (A Minor) (Wardship: Boy Soldier)* [1990] Fam 182, Hollis J was concerned with a boy soldier who had gone absent without leave and returned home to his parents. His mother issued wardship proceedings. Hollis J struck out the proceedings. Having referred to *In re Mohamed Arif (An Infant)* [1968] Ch 643, *A v*

Liverpool City Council [1982] AC 363 and *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1, he said (at 188):

> "It would obviously, I think, be inappropriate and, I consider, contrary to policy to continue the wardship on the facts of this case, however sympathetic one might be towards the ward, and indeed his parents …
>
> From what I have gleaned from the facts of this case, it may be in neither the minor's best interest nor in the interests of the public, that he remain a member of the Army, but that is not a matter for me to decide."

33. The forthcoming case before the President to which Ewbank J had referred in *Re B (A Minor)* [1990] FCR 469 was, it seems, *Re G; Re R Note (Wards) (Police Interviews)* [1990] 2 FLR 347, in which Sir Stephen Brown P gave judgment on 19 March 1990. It was a case in which the police sought permission, which was granted, to administer cautions to two wards of court. Sir Stephen Brown P said this (at 348-349:

> "There is, therefore, no difficulty over the granting of leave in these two cases. However, the occasion has prompted the Commissioner to seek clarification of the appropriate procedure to be followed by the police generally in cases involving minors who are wards of court … The problem which is perceived by the Commissioner relates to the duties of the police which arise when they arrest a minor who turns out to be a ward of court. The Registrar's Direction of 18 July 1988 [1988] 2 FLR 260 endeavoured to give guidance and instructions in circumstances where it becomes necessary for the police to seek to interview a child who is a ward of court either as a potential witness or as a victim of a crime or more particularly as a suspect. The Direction sought to take into account the practical difficulties arising where as a matter of urgency it was necessary that the police should take immediate action … However, I am told that the police are still in doubts as to what their duties are in relation to a minor who in fact is a ward whom they wish to investigate for alleged complicity in a crime, that is to say, to interview him as a suspect. It is strongly contended on behalf of the police that there ought not to be any special requirement laid upon them in those circumstances over and beyond the duties which are laid down as of general application to juveniles by the Police and Criminal Evidence Act 1984.
>
> I would seek at this stage, pending further consideration of the general position relating to the interviewing of wards, to assist by stating the position so far as the police are concerned when they wish to interview a suspect or a victim who is in fact a ward. In the majority of cases there will be no time, in any event, to seek the court's leave before the interviewing of a

minor in such circumstances. Provided that the requirements of the Police and Criminal Evidence Act 1984 with regard to juveniles are complied with, the duty upon the police is discharged. They have no extra duty to perform. There is, of course, a duty upon those having the care of the minor to inform the court at the earliest practical opportunity of what has taken, place, but there is no further duty upon the police themselves in those circumstances. At this stage I do not consider that it would be appropriate for me to be thought to amend, as it were, the Practice Directions dealing with the interviewing of wards. It is my intention that the whole matter should be considered in the light of the representations and submissions which have been made to me today and I have indicated to counsel for the Official Solicitor and to counsel for the Metropolitan Police Commissioner that it would be helpful if representations were to be made administratively to me identifying the particular difficulties which are perceived at present. It is clear that there are misunderstandings and I am assured that the police are anxious fully and properly to discharge their duties. They are anxious for assistance in order to make their position clear. Accordingly, I do not propose to give an instant 'Practice Direction' at this stage. I make it clear for their assistance that when they arrest a minor who in fact is a ward then they may properly proceed to interview him in accordance with their normal procedure provided of course that they comply with the provisions relating to all juveniles under the Police and Criminal Evidence Act 1984. It will then be for the person having charge of the minor to notify the court of what is taking place or has taken place.

It must be remembered, however, that the status of wardship is important and because the court is involved its interest cannot be overlooked. The court must maintain its authority over the minor and over significant events which affect the minor. It is for that reason that I believe the matter should be further considered so that a satisfactory overall direction may be given. It is probably desirable for the sake of clarity that the position of a ward as a suspect or potential defendant should be dealt with separately from that of a ward whom it is desired to interview for other purposes, for example, as a witness. I will, therefore, take time for consultation and consideration. In due course, I hope that a further Practice Direction may be issued which will clarify the matters which are at present giving rise to concern. For the moment, however, I wish to make it clear that the court cannot relieve the police or any other person from the general duty of seeking the leave or consent of the court before taking steps which significantly affect the life of a ward of court.

> That is the fundamental position, but where a suspect is arrested, then it seems appropriate that I should make it clear that the police should not be inhibited from following their normal procedures with regard to such a person. That is all that I propose to say at this stage while indicating that the matter will receive further consideration with a view to giving directions in an appropriate form in due course."

34. I do not know what, if any, follow up there was to this. Perhaps unsurprisingly at this distance in time, inquiries both of the Official Solicitor and of the Metropolitan Police have drawn a blank, and there is nothing in the papers in the office of the President of the Family Division which throws any light on the matter. What is clear, however, is that whatever may or may not have happened, no changes were made to the two Practice Directions which, as we shall see (below), remained in force until replaced in 2010 by PD12D.

35. Next, there was the important decision of the Court of Appeal (Lord Donaldson of Lymington MR, Balcombe and Beldam LJJ) in *In re R (Wardship: Criminal Proceedings)* [1991] Fam 56, a case where the defendant in criminal proceedings in the Crown Court sought permission, refused by the wardship judge, to interview and call his son, a ward of court, as a witness. The Court of Appeal reversed the judge on both points.

36. In relation to the first point, Lord Donaldson of Lymington MR began by observing, at 62:

> "That the court in the exercise of its wardship jurisdiction is entitled to require that its consent be obtained as a precondition of the right of anyone to interview a ward is beyond doubt and was not questioned on the hearing of this appeal.[2] This jurisdiction is exercised in accordance with two practice directions."

He then proceeded to consider the two practice directions to which I have already referred, commenting that, although they referred only to interviews by the police they should be understood as applying mutatis mutandis to interviews by the defence. Consent to interview the ward was given for reasons explained at p 68.

37. In relation to the second point, Lord Donaldson considered in turn *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1 and *In re JS (A Minor) (Wardship: Boy Soldier)* [1990] Fam 182,[3] from which he quoted the lengthy passage from the

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[2] As appears from the report, I appeared in the case on behalf of the appellant. It may be useful to make two points. The first is that, as appears from pp 57-58, no-one referred the court to the decision of Sir Stephen Brown P in *Re G; Re R Note (Wards) (Police Interviews)* [1990] 2 FLR 347. The second is that, as appears from p 60, I made the concession, without reference to any authority, that "In exercising the wardship jurisdiction the judge is entitled to grant or refuse permission to interview a ward, whether on behalf of the prosecution or the defence." I have checked the report against my skeleton argument and list of authorities, which bear out the accuracy of the report.

[3] As appears from the report, p 59, the court had also been referred to *A v Liverpool City Council* [1982] AC 363.

judgment of Russell LJ *In re Mohamed Arif (An Infant)* [1968] Ch 643 which I have already set out. He said (p 67):

> "In our judgment that case was rightly decided and the present appeal should be determined consistently with the judgment of Russell LJ."

He went on:

> "Although there were undoubtedly two separate applications before the judge, namely one for consent to interview the ward and the other for consent to call him as a witness in the criminal proceedings, the judge did not separate them in any way. Indeed he confused what in our view is the function of the judge presiding over the criminal trial with that of the wardship judge …
>
> We are quite unable to support this approach and accordingly, in so far as any court has a discretion in the exercise of its wardship jurisdiction in relation to these applications, it is a discretion which we must exercise afresh.
>
> Dealing first with the application for consent to give evidence, we did not give that consent because, for the reasons which we have already given, it was not needed. Whether the judge presiding over the criminal trial will conclude that S can give sworn evidence or can only give unsworn evidence or should not be permitted to give evidence at all (see section 38 of the Children and Young Persons Act 1933) is a matter for him."

38. The final authority is the decision of McFarlane J, as he then was, in *Re T (Wardship: Review of Police Protection Decision) (No 2)* [2008] EWHC 196 (Fam), [2010] 1 FLR 1026. The ward and his mother were taken into police protection. The issue was whether the father should have interim contact, something which the police were not prepared to contemplate if the protective arrangements were to remain in place. The father and the grandparents (para 7) sought orders quashing the police decision and requiring the police to continue to provide the current level of protection, notwithstanding that interim contact might take place. Rejecting the father's claim, McFarlane J said this (para 57):

> "there is a need to look at the reality of what it is that the father and the grandparents wish to achieve. It is contact in circumstances where the current protective arrangements for the mother remain in place. That outcome is directly contrary to the decision that has been taken by police, and it would require the police to act in a manner which overrides that very decision. Whilst it is submitted that that outcome may be achieved by a declaration or by an injunction – and I have already noted that counsel have avoided submitting that it should be achieved by quashing the decision – the reality is that this court would have to quash the police decision or otherwise set it aside or

> otherwise grant a mandatory judicial review order requiring the police to act in a way that is contrary to the decision that they have made. Such a claim is, in my view, a public law claim and the only procedure by which the claimants (the father and the grandparents) can bring that claim before the court is under the umbrella of judicial review."

39. I referred above to what I had said about police interviews with wards of court in *Kelly v British Broadcasting Corpn* [2001] Fam 59 and in *Egeneonu v Egeneonu* [2017] EWHC 43 (Fam). The point did not in fact arise for decision or discussion in either case. In *Kelly v British Broadcasting Corpn* [2001] Fam 59, the question was whether, as suggested by what Russell LJ had said in *In re T(AJJ) (An Infant)* [1970] Ch 688, 689, a *journalist* required the prior permission of the court to interview a ward. I held that he did not. In *Egeneonu v Egeneonu* [2017] EWHC 43 (Fam), I was concerned to analyse the *status* of a ward of court in relation to alleged contempts of court. In each case my reference to police interviews was merely in passing.

40. With the introduction of the Family Procedure Rules 2010, what had previously been contained in the Practice Directions of 1987 and 1988 became subsumed in PD12D, *Inherent Jurisdiction (including Wardship) Proceedings*. Under the sub-heading *Criminal Proceedings*, PD12D, para 5, provides as follows:

> "5.1 Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child subsequently becomes a ward of court, the permission of the court deciding the wardship proceedings ('the wardship court') is not required for the child to be called as a witness in the criminal proceedings.
>
> 5.2 Where the police need to interview a child who is already a ward of court, an application must be made for permission for the police to do so. Where permission is given the order should, unless there is some special reason to the contrary, give permission for any number of interviews which may be required by the prosecution or the police. If a need arises to conduct any interview beyond the permission contained in the order, a further application must be made.
>
> 5.3 The above applications must be made with notice to all parties.
>
> 5.4 Where a person may become the subject of a criminal investigation and it is considered necessary for the child who is a ward of court to be interviewed without that person knowing that the police are making inquiries, the application for permission to interview the child may be made without notice to that party. Notice should, however, where practicable be given to the children's guardian.
>
> 5.5 There will be other occasions where the police need to deal with complaints, or alleged offences, concerning children

> who are wards of court where it is appropriate, if not essential, for action to be taken straight away without the prior permission of the wardship court, for example –
>
> (a) serious offences against the child such as rape, where a medical examination and the collection of forensic evidence ought to be carried out promptly;
>
> (b) where the child is suspected by the police of having committed a criminal act and the police wish to interview the child in respect of that matter;
>
> (c) where the police wish to interview the child as a potential witness.
>
> 5.6 In such instances, the police should notify the parent or foster parent with whom the child is living or another 'appropriate adult' (within the Police and Criminal Evidence Act 1984 – Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers) so that that adult has the opportunity of being present when the police interview the child. Additionally, if practicable the child's guardian (if one has been appointed) should be notified and invited to attend the police interview or to nominate a third party to attend on the guardian's behalf. A record of the interview or a copy of any statement made by the child should be supplied to the children's guardian. Where the child has been interviewed without the guardian's knowledge, the guardian should be informed at the earliest opportunity of this fact and (if it be the case) that the police wish to conduct further interviews. The wardship court should be informed of the situation at the earliest possible opportunity thereafter by the children's guardian, parent, foster parent (through the local authority) or other responsible adult."

41. Collation of the various texts shows that, some minor up-dating apart, the substance of the earlier Practice Directions was carried forward unchanged: paras 5.2 and 5.3 derive from the Practice Direction of 1987, and paras 5.4, 5.5 and 5.6 from the Practice Direction of 1988, hence, no doubt, the somewhat jarring juxtaposition of the seemingly unqualified paras 5.2 and 5.3 and the important qualifications set out in paras 5.4 and 5.5.

42. The very fact that the substance of the earlier Practice Directions was carried forward unchanged into PD12D would strongly suggest that those responsible for the drafting of PD12D did not have in mind what Sir Stephen Brown P had said in *Re G; Re R Note (Wards) (Police Interviews)* [1990] 2 FLR 347 and consequently never addressed themselves to the problems it had thrown up. In fact, an examination of the relevant minutes of the Family Procedure Rule Committee and of its Children's Proceedings Working Party which has been undertaken at my request shows that they

are silent on the point and I am told that the relevant papers contain no reference to *Re G* or to what Sir Stephen had said.

43. Finally, I need to mention that paragraph 7(i) of *Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division on 8 October 2015* noted that:

> "Judges hearing cases falling within the description in paragraph 1 above will wish to be alert to … the need to ensure that the operational requirements of the police and other agencies are not inadvertently compromised or inhibited either because a child is a ward of court or because of any order made by the court."

The footnote to that paragraph read as follows:

> "Examples of forms of order designed to guard against this can be found in the orders set out in the judgments in *Re M (Children)* [2015] EWHC 1433 (Fam) (see the second recital to the order set out in para 22) and *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam) (see the sixth recital to the order set out in para 13). It may be appropriate to make an order providing, for the avoidance of doubt, that the fact that the child is a ward of court, or otherwise the subject of proceedings, does not, of itself, require the police or other agencies to disclose the existence of live investigations, especially if the investigation is covert."

Discussion

44. Pulling together the threads of this analysis, a number of things, in my judgment, are quite clear:

i) In relation to interactions between the police and wards of court, the court has been fully alive to and careful to apply both the *A v Liverpool City Council* principle and the 'no privilege over other children' principle: see, for example, in *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1, *In re A (A Minor) (Wardship: Police Caution)* [1989] Fam 103, *In re R (Wardship: Criminal Proceedings)* [1991] Fam 56 and *Re T (Wardship: Review of Police Protection Decision) (No 2)* [2008] EWHC 196 (Fam), [2010] 1 FLR 1026.

ii) The authorities relating to police interviews with wards of court stand in startling contrast to this general run of authority.

iii) The principle or rule that judicial consent is required before the police can interview a ward of court was unknown to the authors of Lowe & White and was first discovered by Booth J in *In re S (Minors) (Wardship: Police Investigation)* [1987] Fam 199, where, it seems, no authority was cited on the point and no reference was made to either *A v Liverpool City Council* [1982] AC 363 or *In re W (A Minor) (Wardship: Jurisdiction)* [1985] AC 791.

iv) In *In re K (Minors) (Wardship: Criminal Proceedings)* [1988] Fam 1 the point seems to have gone by concession.

v) In *In re R (Wardship: Criminal Proceedings)* [1991] Fam 56 the rule, by then bolstered by the Practice Directions of 1987 and 1988, was not challenged. I draw attention in this context to the decision of the Court of Appeal in *Regina (Kadhim) v Brent London Borough Council Housing Benefit Review Board* [2001] QB 955, para 33, a case which involved the effect of a previous decision of the Court of Appeal, to the effect that "a subsequent court is not bound by a proposition of law assumed by an earlier court that was not the subject of argument before or consideration by that court."

vi) In none of the authorities bearing on the point has there ever been any attempt to explain how the asserted rule (or, for that matter the two Practice Directions of 1987 and 1988) can be reconciled either with the *A v Liverpool City Council* principle or with the 'no privilege over other children' principle.

45. In my judgment, and leaving on one side for the moment the various Practice Directions, there is not and never has been any principle or rule that judicial consent is required before the police can interview a ward of court. With great respect, I think that Booth J was wrong to hold that there was, and the subsequent authorities, where the point was not in fact argued, take the matter no further. For the reasons explained in *Regina (Kadhim) v Brent London Borough Council Housing Benefit Review Board* [2001] QB 955, even the clearly stated view of the Court of Appeal in *In re R (Wardship: Criminal Proceedings)* [1991] Fam 56 is not determinative.

46. The short point, in my judgment, is that the asserted principle or rule that judicial consent is required before the police can interview a ward of court, is impossible to reconcile either with the *A v Liverpool City Council* principle or with the 'no privilege over other children' principle.

47. The reality, of course, is that, in very large measure, the asserted principle or rule that judicial consent is required before the police can interview a ward of court has been hollowed out, almost to the point of extinction, first by the Practice Direction of 1988 (now PD12D, paras 5.4 and 5.5) and even more so by the subsequent decisions of Ewbank J in *Re B (A Minor)* [1990] FCR 469 and, even more significant in its impact, of Sir Stephen Brown P in *Re G; Re R Note (Wards) (Police Interviews)* [1990] 2 FLR 347.

48. The consequence of all this is that, as matters stand, the position is exceedingly unsatisfactory, to use no stronger word. The concerns raised by the Commissioner of the Metropolitan Police as long ago as 1990 (concerns which I can well understand and which prompted Sir Stephen Brown P to think that a further Practice Direction might be needed to clarify the matters giving rise to concern) have not been appropriately addressed, although they remain at least as valid today as 27 years ago; and the world continues to be presented with a Practice Direction which in significant part is, in my judgment, simply wrong and which in any event cannot properly be understood unless read in conjunction with what Sir Stephen Brown P said in *Re G; Re R Note (Wards) (Police Interviews)* [1990] 2 FLR 347.

49. There is, in my judgment, a pressing need for paragraph 5 of PD12D to be considered as a matter of urgency by the Family Procedure Rule Committee. Radical surgery will probably be required.

50. In the meantime, police officers, officers of the Security Service and others in a similar position should follow the guidance given by Sir Stephen Brown P in the following passages in his judgment in *Re G; Re R Note (Wards) (Police Interviews)* [1990] 2 FLR 347 (emphasis added):

> "In the majority of cases there will be no time, in any event, to seek the court's leave before the interviewing of a minor in such circumstances. *Provided that the requirements of the Police and Criminal Evidence Act 1984 with regard to juveniles are complied with, the duty upon the police is discharged. They have no extra duty to perform.* There is, of course, a duty upon those having the care of the minor to inform the court at the earliest practical opportunity of what has taken, place, but *there is no further duty upon the police themselves in those circumstances*.
>
> … I make it clear for their assistance that *when they arrest a minor who in fact is a ward then they may properly proceed to interview him in accordance with their normal procedure provided of course that they comply with the provisions relating to all juveniles under the Police and Criminal Evidence Act 1984. It will then be for the person having charge of the minor to notify the court of what is taking place or has taken place*.
>
> … *where a suspect is arrested*, then it seems appropriate that I should make it clear that *the police should not be inhibited from following their normal procedures with regard to such a person*."

The Police and Criminal Evidence Act 1984 does not apply to the Security Service. In relation to the Security Service and other agencies to which it does not apply, Sir Stephen's references to the 1984 Act should therefore be read as referring to the relevant legislative framework governing the functions of the Security Service or other agency involved.

51 The local authority has queried what the position would be in relation to a child who is either accommodated by a local authority in accordance with section 20 of the Children Act 1989 or subject to a care order (interim or final) in accordance with section 31 or section 38 of the 1989 Act. This is really a matter for another day, but in principle I cannot see how the fact that the local authority is exercising its statutory powers in either of these ways under the 1989 Act can either privilege the child over a child who is not the subject of such arrangements or prevent another statutory agency such as the police or the Security Service from exercising its powers in precisely the same way as they would in relation to a child who is not the subject of such arrangements. The fact that, in a sense, a local authority may be acting as a

corporate, statutory parent, does not, vis-a-vis the police or the Security Service or any other agency, put the local authority in any different or more powerful position than a natural parent. So, unless the legislative framework governing the functions of the relevant agency requires, for example, consultation with or consent from a parent (as in *In re A (A Minor) (Wardship: Police Caution)* [1989] Fam 103), a statutory agency is not required to consult with, let alone obtain the consent of, the local authority. It must, as a matter of principle, be for the relevant agency, not the local authority, to decide how it should act. This is the principle which, for example, we see in action where a child in care is living with its mother in a prison mother and baby unit (see *Islington London Borough Council v TM* [2004] EWHC 2050 (Fam)) or subject to immigration control (see *R (Anton) v Secretary of State for the Home Department; Re Anton* [2004] EWHC 2730/2731 (Admin/Fam), [2005] 2 FLR 818) or involved in proceedings in SENDIST (see *X County Council v DW, PW and SW* [2005] EWHC 162 (Fam), [2005] 2 FLR 508).