Neutral Citation Number: [2023] EWHC 471 (Fam)

Case No: FD22P00405

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/03/2023

Before :

SIR ANDREW MCFARLANE, PRESIDENT OF THE FAMILY DIVISION

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Re P (Service on Parent in a Refuge)

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Mr Michael Gration KC and Mr Matthew Persson (instructed by **Blanchards Law**) for the **Father**
Mr Jasvir Degun (instructed by **Citizens Advice Family Legal Centre**) for the **Mother**
Dr Charlotte Proudman (instructed by **Rights of Women)** for the **1st Intervener**
Mr Jason Pobjoy (instructed by **SSJ)** for the **2nd Intervener**

Hearing date: 22 November 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3rd March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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SIR ANDREW MCFALRLANE. P

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

Sir Andrew McFarlane. P :

1. The purpose of this judgment is to provide guidance upon the practice to be adopted when court orders need to be served upon a person who is thought to be residing at a women's refuge. In such cases a tension exists between, on the one hand, the need for the court's orders to be served and, on the other, the need to ensure confidentiality of the address of a refuge for the protection of the vulnerable individuals who have sought protection there. The Family Procedure Rules 2010 ['FPR 2010'] do not make any express provision for these circumstances and there is not thought to be any previous reported authority or other guidance on the approach to be taken.

2. The issue of service has arisen in the course of ongoing proceedings. In addition to receiving submissions from the two parties to the proceedings, who are the parents of a 21 month old boy, the court has been assisted by submissions from counsel on behalf of (a) the Secretary of State for Justice and (b) Latin America Women's Aid ['LAWA'], Refuge, and the Women's Aid Foundation of England ['WAFE'], as interveners.

3. The facts of the substantive proceedings are illustrative of some of the problems that may arise when attempting service on a resident in a refuge. I will therefore give a brief description of the relevant facts to establish the context within which wider considerations and any guidance may sit.

Factual Background

4. The applicant and respondent met in 2018 when the applicant father ['F'] was transitioning from male to female. F will be identified as female in this judgment. The respondent mother ['M'] is Bolivian. They married on 15 August 2020. M left her home

in Bolivia and the parties have lived in England and Wales since the wedding. Their son, J, was born in May 2021.

5. During the course of the breakdown of the parents' relationship, each has made allegations of domestic abuse against the other. F claims that M has regularly threatened to abduct J.

6. In March 2022 F discovered that J's Red Book and birth certificate had been removed. F subsequently applied for a Prohibited Steps Order ("PSO") against removal, that application was served on M the following day. Shortly after that, M and J moved into a refuge in London. F then applied for the return of J to her care, a PSO against removal and the handing over of any and all travel documents, passports or applications for the same. That application was served on M by email. On the same day, M obtained a without notice non-molestation order against F.

7. Matters escalated further and, in May 2022, F, fearing the imminent abduction of her son, applied to the High Court for a range of orders under the Child Abduction and Custody Act 1985 (CACA 1985). It is of note that one of the orders sought was for M's address to be disclosed to F's solicitors on the basis that they would undertake not to give that information to F.

8. On the 30 May 2022, Mrs Justice Morgan made a range of orders including a location order and disclosure orders against a number of government agencies and other bodies. The court's order directed that M must attend the next hearing. Paragraph 12 of the order provided for the applicant to "effect service of this order along with a record of

this without-notice hearing on the respondent and service shall be by email, the respondent having previously responded to service by this method and her address being otherwise currently unknown".

9. Included in the disclosure orders made on 30 May was a direction requiring two named staff at one refuge and another staff member of LAWA to provide "all information relating to J's whereabouts within their knowledge or control".

10. LAWA subsequently wrote to Morgan J detailing their concerns over the orders that had been made. They highlighted that the service of similar orders in previous cases had resulted in significant harm. LAWA explained that service of the court order on the mother would result in her having to be *"immediately taken to another refuge with the child. The refuge will no longer consider it safe for her to remain at that location when the address has been compromised. It also leaves' other women and children at risk"*. Additionally, they raised concerns about the process of without notice location orders being used to continue abusive behaviour.

11. On 24 June 2022, Morgan J ordered that the letter from LAWA should be treated as an application to discharge or vary the orders relating to their organisation or employees and that this should be considered, along with the issue of how service may satisfactorily be achieved in circumstances where M was said to be residing with the child in a refuge, at a hearing on 30 June 2022. Notice was given for LAWA and the Tipstaff to attend that hearing.

12. On 30 June, the matter was heard before Mrs Justice Knowles. Knowles J discharged the location order, save for ordering that travel documents should be given to the

Tipstaff. A child arrangements order was made providing for indirect contact between F and J via photographs and a video. The court ordered F to set out her proposals for contact and living arrangements. Further directions were made and the proceedings themselves were transferred back to the Central Family Court. The High Court, however, retained consideration of the issue of service at a refuge and directions were made for the position of LAWA, the IMECE Women's Centre and Islington LBC Refuge (and their respective employees) to be considered at a further hearing. Women's Aid and Refuge were invited to intervene. The court also invited the Secretary of State for Justice to intervene to assist the court and the other parties to consider the following three issues of principle:

i. The arrangements for the service of orders on those residing in a refuge and any differences that arise when orders are made under the inherent jurisdiction of the High Court or the Family Court;
ii. Whether, pending consideration of this issue by the Family Procedure Rules Committee, interim arrangements can be made to serve proceedings on those in a refuge in a manner that balances the needs of the court and the safety of those residing in refuges;
iii. The cost and proportionality of any arrangements, present or suggested.

On 11 August 2022, Knowles J gave further directions and transferred the case into the President's list.

Secretary of State for Justice's submissions

13. In advance of the oral hearing before me on 22 November 2022 detailed written submissions made by Jason Pobjoy, counsel for the Secretary of State for Justice, had been circulated. These submissions were largely accepted by all parties and by LAWA and WAFE as providing common ground upon which guidance might be based. In the circumstances, there was no need for Mr Pobjoy to attend and the hearing proceeded on the basis of the other parties making submissions in order to develop certain points. The court is most grateful to the Secretary of State, and to Mr Pobjoy on his behalf, for the obvious care taken in assisting the court in this important matter and for doing so in a manner which has achieved the agreement of all parties.

14. Given the central prominence of them to the development of any guidance, I propose to set out Mr Pobjoy's submissions in some detail.

15. The Secretary of State ['SoS'], in common with all parties, considers that the issue of service on a person who is resident in a refuge should be considered by the Family Procedure Rule Committee. This is obviously right and I will make a formal request for the Rule Committee to take the issue up. The focus of the SoS' submissions was therefore upon what provision may be made in the interim, under the existing rules. By the end of the hearing it was, however, largely accepted that the current rules go a long way to providing a workable solution and that the proposed interim measures may, once considered by the Rule Committee, provide the basis for practice in the longer term.

16. The SoS' submissions start from the basis that disclosure and location orders, which are typically the category of orders made to identify the whereabouts of a child, normally require disclosure of information to a *court or a court officer*, rather than to an applicant. Arrangements regarding the service of such orders should therefore ensure

that the confidential and sensitive nature of information regarding location should be preserved. Reliance is placed on Family Law Act 1986, s 33:

> '(1) Where in proceedings for or relating to a Part I order in respect of a child there is not available to the court adequate information as to where the child is, the court may order ***any person*** who it has reason to believe may have relevant information to disclose it ***to the court***.' [emphasis added]

An order can be made against 'any person' who is believed to have knowledge of the child's whereabouts and that may include a refuge or an employee of a refuge. In *Re H (Abduction: Whereabouts Order to Solicitors)* [2000] 1 FLR 766, Hughes J (as he then was) held that a s 33 order could be made against a solicitor and will override the solicitor's duty of confidentiality to their client.

17. In similar terms, CACA 1985, s 24A(1) provides:

> '24A **Power to order disclosure of child's whereabouts**.
>
> (1) Where—
>
> (a) in proceedings for the return of a child under Part I of this Act; or
>
> (b) on an application for the recognition, registration or enforcement of a decision in respect of a child under Part II of this Act,
>
> there is not available to the court adequate information as to where the child is, the court may order ***any person*** who it has reason to believe may have relevant information to disclose it ***to the court***.' [emphasis added]

18. Where a child is a ward of court, FPR 2010, r 12.39 provides that:

> **'12.39**
>
> (1) Every respondent, other than a child, must file with the acknowledgment of service a notice stating –
>
> (a) the respondent's address; and
>
> (b) either –
>
> (i) the whereabouts of the child; or

(ii) that the respondent is unaware of the child's whereabouts if that is the case.

(2) Unless the court directs otherwise, the respondent must serve a copy of that notice on the applicant.'

In a case where it is proper for information as to a parent and/or child's whereabouts to remain confidential, the court would be expected to make a direction under r 12.39(2).

19. The general procedure regarding service in proceedings before the Family Court, or in the Family Division of the High Court, is set out in Part 6 of the FPR 2010; there is no difference in the procedure of these two courts in this respect. In addition, specific rules governing service in particular circumstances are set out in other parts of the FPR. There are no specific rules in the FPR or elsewhere which regulate the service of orders or other documents on those residing in refuges.

20. The rules in FPR 2010, Part 6 apply to the service of documents except where: (i) another Part of the FPR makes different provision, or (ii) the court directs otherwise [FPR r.6.1]. The court therefore retains discretion to direct a particular means of service on the facts of any given case.

21. FPR, r 29.1 separately provides that a party is not required to reveal their home address or other contact details, or the address or other contact details of any child, unless the court directs otherwise.

22. As to the default provisions (i.e. where there is no applicable specific provision in another part of the FPR and the court does not make a bespoke direction regarding service), Mr Pobjoy submitted that FPR rr.6.23-6.39 apply to the service of all

documents in the jurisdiction other than applications for a matrimonial order or civil partnership.

23. Insofar as is relevant to the issues in the present case, FPR rr.6.23-6.39 include the following rules:

    a. Method of service (r.6.23): a document may be served by any of the following methods:

        i. personal service;

        ii. first class post, document exchange or other service which provides for delivery on the next business day in accordance with Practice Direction 6A;

        iii. leaving it at a place specified in r.6.26; or

        iv. fax or e-mail in accordance with Practice Direction 6A.

    b. Who is to serve (r.6.24): a party to proceedings will serve a document which it has prepared and/or the court has issued on its behalf, except where a rule or practice direction provides that the court will serve the document, or the court directs otherwise.

    c. Address for service (r.6.26): a party to proceedings must give an address at which they can be served with documents related to those proceedings (r.6.26(1)). A party's address for service must be:

        i. the business address of a solicitor acting for the party to be served; or

        ii. if (i) is not applicable, a residential or business address of the party (r.6.26(2)).

Only where there is no solicitor acting for the party and the party does not have a residential or business address in the jurisdiction, the party must give another address for service in the jurisdiction (r.6.26(3)).

d. Service by an alternative method or at an alternative place (r.6.35): adopting the process in r.6.19 (which applies to an application for a matrimonial or civil partnership order), the court may direct that service is effected by an alternative method or at an alternative place "where it appears to the court that there is good reason to authorise service by a method or at a place not otherwise permitted by this Part" [emphasis added].

24. The provisions with regard to alternate arrangements for service in FPR, rr 6.19 and 6.35 is clearly of importance in the context of service upon a refuge resident. FPR, rr 6.19 and 6.35 expressly confer a broad discretion on the court to authorise service by an alternative method or at an alternative place where there is "good reason" to do so. These provisions are clearly "broadly crafted" and permit of any alternatives to the ordinary rules for service that a court may direct: *HC v FW (Financial Remedies: Assessment of General and Special Needs)* [2018] 2 FLR 70 (Cobb J at paragraph 7). An alternative method or place of service may be authorised by the court either at the point of making the order, or after the event: see, e.g., *AAZ v BBZ and Ors* [2016] EWHC 3234 (Fam), (Haddon-Cave J at paragraphs 124-127). The procedure for making an application for alternate service under FPR rr.6.19 and 6.35 is set out in Practice Direction 6A, paragraphs 6.1-6.4.

25. The circumstances where a court has found such a "good reason" to exist have previously included the following (in each case, the court having authorised an alternative method or place of service after it had been utilised):

    a. An applicant's legal representatives had clearly done "all they could" to bring the application to the attention of the respondent and interested parties, and those parties had "ample time" to take legal advice and respond if they had wished to do so: *Akhmedova v Akhmedov* [2020] 1 FLR 144, §31 (Knowles J at paragraph 31).
    b. Steps had already been taken to bring proceedings to the attention of a respondent (for example, by serving relevant orders and documents on solicitors rather than personally): *AAZ v BBZ and Ors* [2016] EWHC 3234 (Fam).
    c. A respondent husband was "either represented or was found to have received notice of the applications and hearings pursuant to service by one or other of [the other] methods": *Wilmot v Maughan* [2018] 1 FLR 1306, §99 (Moylan LJ).
    d. A respondent husband was served with the relevant materials "by methods which appear[ed] previously to have been successful (email, text and via a friend of the husband's), and in additional ways… which I felt were likely to bring the matters to his attention": *HC v FW (Financial Remedies: Assessment of General and Special Needs*) [2018] 2 FLR 70, (Cobb J at paragraph 7).

26. Mr Pobjoy submitted that the case law confirms that a court will authorise alternative arrangements for service where it is satisfied that, notwithstanding the adoption of an unauthorised method/location of service, everything was done to bring the relevant materials to the respondent's attention.

27. At the conclusion of this survey of the procedural landscape, Mr Pobjoy told the court that the SoS considers that a court may make an order for alternative means or location of service in respect of those residing in refuges on the basis that residence in a refuge is a "good reason" for doing so, provided that steps are taken to ensure the order is brought to the respondent's attention, as occurred in the cases to which he had referred.

Proposed interim arrangements

28. The SoS' primary position is that the present arrangements under FPR, Part 6 permit the court to direct an alternative form of service, whether by an alternative method or at an alternative place, where it considers that there is good reason for doing so. The rules in Part 6 are flexible and allow sufficient variation to accommodate cases where it is thought that a party is residing in a refuge.

29. When approaching the issue of service, the court will have to balance, as competing considerations, the need to ensure confidentiality against the need to achieve effective service. In cases of urgency, or where there is a need to draw a penal notice to the attention of the recipient of service, the need to ensure effective service is likely to be heightened.

30. The SoS proposed that, where the person to be served may be residing at a refuge, service may be undertaken as follows by:
    a. Personal service on a respondent or their representative by a court bailiff or the applicant's legal representative at the headquarters or management office of the refuge.
    b. Personal service performed by the applicant themselves could be prohibited.

c. Personal service on a respondent by a process server at some alternative agreed location.

d. Postal service at the headquarters or management office of a refuge. For this to be effective, prior confirmation would be necessary from the refuge management that documents served in this manner would be passed on to the respondent within a prescribed period of time.

e. Service by email, text, WhatsApp or other electronic service where the respondent is known to be an active user or such messaging accounts.

f. Personal or postal service on the respondent's legal representative if they have one.

31. In considering arrangements for service, the court will no doubt consider proportionality and the need to meet the overriding objective of dealing with a case justly [FPR, r 1.1(2)].

LAWA, Refuge and WAFE additional submissions

32. It was a letter to Morgan J, prepared by Dr Charlotte Proudman, counsel for the three intervening women's organisations, which first brought the general issue of service into focus in this case. The court is grateful to Dr Proudman for doing so and for her additional submissions on behalf of the interveners.

33. Before turning to the detail of any interim arrangements, Dr Proudman reminded the court of the important role refuges play by protecting the security of women through the provision of confidential addresses and rigorous security measures. Safety measures include the use of a PO Box, keeping doors and ground floor windows locked at all

times, checking the identity of visitors, turning off location settings on phones, and taking other steps to ensure security. In addition to the provision of a physically safe haven, refuges provide an environment which is staffed by individuals who are psychologically well informed and, in particular, trauma aware.

34. Dr Proudman set out the following specific considerations which apply where a party is residing at a refuge. This is a useful list and it is reproduced here in full so that it may be used as an aide memoire by courts considering service in these circumstances:

1. "Refuges are designed to be both physically and psychologically safe environments for adult and child victims of domestic abuse. They are life-saving services. Women do not choose to uproot their and their children's lives and seek refuge without cause.
2. All refuges carefully protect their residential addresses in order to protect the safety of all of the adult and child victims of abuse within the refuge. Disclosure of the address to third parties risks that safety for all residents. All residents sign an agreement with the refuge that they will not disclose the address at risk of being evicted from the refuge. All refuges provide a PO Box or office address for correspondence with residents of the refuge.
3. All refuges have careful risk assessment processes in place before any resident is permitted to join the refuge. They also have safeguarding policies in place in relation to the children that reside in their refuges. This mitigates against the likelihood of abduction.
4. All members of refuge staff, volunteers, trustees and contractors sign a confidentiality agreement as part of their contract of employment/agreement which states that disclosure of the refuge address to a third party is likely to amount to gross misconduct and, therefore, dismissal. It is never appropriate for junior members of staff to be ordered to disclose residential addresses of a refuge. Requests must be made to the CEO/Director.
5. Migrant women face multiple intersectional barriers to accessing support and experience discrimination from services when they do seek support. The

additional discrimination they face makes them particularly vulnerable. The mere fact of being a migrant woman with historic links in another country, insecure immigration status or having no recourse to public funds is not sufficient to show there is a risk of abduction. The act of seeking refuge mitigates against any risk that might exist. Refuge staff should never be expected to act as translator of court documents for a resident in the refuge".

35. In common with the other parties, Dr Proudman supported the SoS's submissions and agreed with the proposed interim arrangements subject to the following observations:

   i. Where personal service is to take place at the headquarters or management office of a refuge, there is a need to avoid any member of the refuge staff being directly named in, or otherwise subject to, a court order. Similarly, it would be inappropriate for staff members to be required to consent to an undertaking. It would, however, be possible for the CEO or director of a refuge to be referred to in an order.
   ii. Most, if not all, refuges operate via a PO Box address and this could be used rather than the management office address;
   iii. Where it is proposed that service is made via a respondent's legal representative, the interveners correctly observed that this cannot include a McKenzie Friend, who is prevented from taking part in the conduct of litigation.

36. Dr Proudman also submitted that in a true emergency personal service by a court bailiff or the Tipstaff at the refuge residential address could be sanctioned as 'a last resort' where, in an exceptional case, there was a need for immediate service. Such circumstances, it was suggested, would be extremely rare.

37. If the court does order personal service at a refuge, then Dr Proudman submitted that it would be good practice for the police or the Tipstaff to make the CEO of the refuge aware of the intention to do so on the basis that the CEO must not inform the resident in advance.

38. In many cases there will be a need to ensure that any documents that are served have been translated into the appropriate language if that is required. The responsibility for doing so is the applicant's and not that of the refuge or the respondent.

39. Where personal service is ordered on a woman who has sought protection in a refuge, this should be occasioned by, or supported by, a female bailiff or woman police officer.

40. Dr Proudman stressed that, whatever the arrangements may be, the address of a refuge must never be disclosed to an applicant or to their solicitor in any circumstances. This is so even if undertakings are offered as mistakes may still occur and the consequences of disclosure of the address, not only for the respondent but also for any other present or future residents, are wholly disproportionate to any benefit.

41. Dr Proudman rightly drew attention to the vulnerability provisions in FPR, Part 3A and PD3AA, together with the Domestic Abuse Act 2010, s 63. Where a respondent is residing in a refuge there must be a presumption that they are a complainant, if not a victim, of domestic abuse and must therefore be regarded as a vulnerable party by the court. In those circumstances the court is under a duty to consider what participation directions are required. Participation directions, it was submitted, are not limited to the giving of evidence, but extend to participation throughout the proceedings and should include questions of service.

42. With respect to the conduct of the present proceedings, Dr Proudman drew attention to the fact that, in the orders made to one refuge, two members of staff were named and, to another refuge, one member of staff was named. In each case the named staff member was required by the order to disclose information about the whereabouts of the respondent and child. The order required the staff member to state the address of the location where the child was residing, and thus give out the address of the refuge. In email correspondence, the applicant's solicitors had stated that the refuge staff would be at risk of being imprisoned for contempt of court. It was submitted that individual staff members should never be named in a court order.

43. Submissions on behalf of the refuges drew particular attention to the specific vulnerability of migrant women who, it is said, experience 'intersectional inequalities' in the sense that they are likely to experience multiple layers of inequality stemming from discrimination based not only on being women, but also as a result of other characteristics such as race, immigration status, language barriers and no recourse to public funding.

44. On behalf of the parents Mr Michael Gration KC, leading Mr Matthew Persson for F and Jasvir Degun for M endorsed the approach described by the SoS as developed by Dr Proudman. In addition, the following points were made:

    a. In determining the mode of service, there was no need for a test of exceptionality and a judge should undertake an ordinary balancing exercise;

    b. There should not be an absolute rule preventing an applicant's solicitor being informed of the address of a refuge;

c. A solicitor, or senior partner, might be expected to give an undertaking to the court not to disclose the address.

45. In particular, Mr Gration suggested that a solicitor would be likely to need the address in order to instruct private process server to effect personal service at a refuge, if a bailiff was not available to do so. In response Dr Proudman submitted that if personal service at refuge is required then this should be undertaken by the police or the Tipstaff, and not by a private process server.

Service on Refuge Resident: Guidance

46. Drawing these matters together, and pending more detailed consideration by the Family Procedure Rule Committee, the following guidance should be applied when court orders and other documents must be served on an individual who is thought to be residing in a refuge.

   i. Where a person to be served is thought to be residing in a refuge, the court should only require personal service at the address of the refuge in circumstances which are truly exceptional and urgent.
   ii. In all other cases, an alternative means of service, as sanctioned by FPR 2010, Part 6, should be used. Such alternative means include:
      a. personal service at an alternative location;
      b. service on the party's legal representative;
      c. service via post at a PO Box or office address provided by the refuge for this purpose;

d. service via email and/or text and/or WhatsApp or other electronic messaging service in circumstances where the resident is known to use these means of communication;

e. service by post via a third party whom the court is confident will provide the resident of the refuge with the documents.

iii. When service is to be via post at a PO Box or office address provided by the refuge for this purpose, the CEO or director of the refuge should be required to confirm that any material thus served will be promptly brought to the attention of the person to be served.

iv. When considering arrangements for service on a person who is residing at a refuge, the court should at all times be mindful of its duty under DAA 2021, s 63 and FPR, Part 3A and PD3AA to make participation directions with respect to an individual who is, or is at risk of being, a victim of domestic abuse;

v. When considering arrangements for service on a person who is residing at a refuge who is a migrant woman, the court should pay additional attention to the need to ensure that any court orders are appropriately translated.

vi. The alleged perpetrator or their representative must never, themselves, personally serve a resident at a refuge.

vii. Where, because of the exceptional and urgent nature of the circumstances, it is considered necessary for the court to order personal service of court documents on a resident at a refuge, the court must be alive to the factors set out at paragraph 34 above and should consider

contacting the CEO or the director of the refuge to make appropriate arrangements.

viii. Where personal service is to be made at a refuge, it should be undertaken by a court bailiff or the Tipstaff and, where possible, using female officers in plain clothing.

ix. The address of a refuge must never to be disclosed to the alleged perpetrator or to their solicitor, even if an undertaking is offered.

x. Any formal contact with a refuge, and any orders requiring information, should engage with the CEO or director of the refuge. It will never be appropriate for individual refuge staff members to be required by court order to disclose confidential information.