



Neutral Citation Number: [2025] EWHC 929 (Fam)

Case No: WV24C50451

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/04/2025

**Before :**

**MRS JUSTICE LIEVEN**

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**Between :**

**WALSALL MBC**

**Applicant**

**and**

**MOTHER**

**First Respondent**

**and**

**FATHER**

**Second Respondent**

**and**

**SK**

**(a Child, through their Children's Guardian)**

**Third Respondent**

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**Miss Nina Bache** (instructed by **Walsall Metropolitan Borough Council**) for the **Applicant**  
**Miss Neesha Mehan** (instructed by **Star Legal Solicitors**) for the **First Respondent**  
**Miss Victoria Flowers** (instructed by **Jackson West Solicitors**) for the **Second Respondent**  
**Miss Heather Popley** (instructed by **Wace Morgan Solicitors**) for the **Third Respondent**

Hearing dates: **12 March 2025**

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 11 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LIEVEN

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

**Mrs Justice Lieven DBE :**

1. The substantive application in this case is by the Applicant Local Authority, Walsall MBC (“the LA”), for a Care Order in respect of a young child, SK, aged 6 months. The First Respondent is the Mother, the Second Respondent is the Father. The subject matter of this judgment is the Father’s application for a lay advocate.
2. The LA was represented by Miss Nina Bache, the Mother was represented by Miss Neesha Mehan, and the Father was represented by Miss Victoria Flowers. The Guardian was represented by Miss Heather Popley.
3. The child was made subject to an Interim Care Order (“ICO”) on 15 October 2024 very shortly after her birth. She has been in foster care since that date.
4. The case is listed for an Issues Resolution Hearing (“IRH”) on 24 March 2025.
5. On 30 January 2025 the father sought for the costs of the lay advocate assisting away from Court hearings to be a necessary expense on the father’s public funding certificate, and attending at Court hearings to be funded by HMCTS, arguing/relying upon Re C (Lay Advocates) [2020] EWHC 1762 (Fam). This application was consented to by all other parties. HHJ Carter (Designated Family Judge for Wolverhampton and the Black Country) listed the matter before me in the light of the President’s Guidance on the use of lay advocates, intermediaries and cognitive assessments in the Family Court, and the effect of that upon the guidance set out in Re C. Re C must now be read in the light of the President’s Guidance and of this judgment. That Guidance treats lay advocates as being “on all fours with intermediaries”.
6. The Father, in previous proceedings concerning an older child, had been subject to a cognitive functioning assessment carried out by Dr Sarah Lauлик, Forensic Psychologist, dated 25 August 2022. In that assessment Dr Lauлик had highlighted various vulnerabilities of the Father. For reasons that I will explain below it is not necessary in this case to assess the detail of the Father’s problems with engaging with the court process. However, in very broad summary, Dr Lauлик set out:
  - a. The Father reported hearing voices and having visual hallucinations; and made reference to managing his anger. He self reported a diagnosis of Emotionally Unstable Personality Disorder;
  - b. He reported a significant head injury as a child and self-reported seizures and a diagnosis of epilepsy;
  - c. He self reported that he had difficulties reading, became easily muddled, and had issues with memory, anxiety and concentration;
  - d. The assessment stated:

*“This indicates that [the Father] is able to read many simply commonplace words; however, he might struggle to make complete sense of written material he encounters and he will not be able to read and comprehend complex material. He will not be able to*

*read and understand documentation in the court bundle.”*

...

*“I believe that both [the Mother] and [the Father] would benefit from having consistency in terms of those working with them in order that they can be helped to build up a relationship of trust. This will give both parents the best opportunity to fully engage with any interventions offered; [the Father], in particular, has problems trusting and he was open that he can struggle with people who he perceives to be in a position of authority”.*

- e. Dr Laulik gives a number of specific recommendations in order to maximize the parents’ capacity to understand, retain and consider information, and if they were to give evidence in court. She also recommends that if the Father did give evidence he would require the support of an advocate.
- f. Whilst stating that she was not of the opinion that the Father required an intermediary, Dr Laulik stated:

*“I believe it important that an Advocate with experience working with clients with mental health and learning difficulties is appointed in this case. An Advocate could help to support their learning and engagement during the Court proceedings, prepare them for meetings, provide support in Court and help to record relevant information to facilitate learning and retention.”*

- 7. A number of these matters might justify the Father having an intermediary or lay advocate assisting him in the giving of evidence. I do not consider it likely that they would satisfy the tests in the Guidance or the caselaw for the appointment of an intermediary or lay advocate for the duration of the hearing, or all the preparation leading up to it. In my view this case falls well within the parameters of West Northamptonshire v KA and others [2024] EWHC 79 (Fam). The issues that Dr Laulik sets out are ones that a competent and properly qualified solicitor or counsel acting in the field of public family law should be qualified and able to handle.
- 8. In her Skeleton Argument Ms Flowers made reference to Dr Laulik’s report; to West Northamptonshire Council v KA [2024] EWHC 1762 on the use of intermediaries; and to the “compelling reasons” for appointing a lay advocate. She made no reference to the Father’s case in relation to the substantive issues before the court.
- 9. However, whilst preparing for the hearing I read the final social worker statement. In that, it was stated that the Father had told the social worker that *“he does not want a relationship with [the child] at the present time”*. When I asked Ms Flowers about this I was told that that statement was correct. The Father did not wish to contest the care plan and did not seek contact, in any form, with the child. Ms Flowers said that these

were the Father's clear instructions, after having the benefit of legal aid and a lay advocate paid for by the LA. Ms Flowers made no suggestion that the Father might change this position.

10. I was also told by Ms Bache that the Father had not attended any of the family time sessions with the child. I asked Ms Flowers how, in the circumstances, there was any possible justification for the appointment of a lay advocate and she submitted that it was the Father's "Article 6 right" to have a lay advocate. This suggested such a fundamental misunderstanding of Article 6 that I decided it would be useful to give a judgment on the extent to which Article 6 entitles parties to legal or lay advocate support in Family Court proceedings.
11. Article 6(1), which is the part that provides for civil as opposed to criminal cases, states:

*"1. In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*
12. The concept of "civil rights and obligations" cannot be interpreted solely by reference to the respondent's State's domestic law; it is an "autonomous" concept deriving from the Convention.
13. The applicability of Article 6(1) in civil matters depends on:
  - (1) The existence of a "dispute" (in French, "contestation").
  - (2) The dispute must relate to "rights and obligations" which, arguably at least, can be said to be recognised under domestic law.
  - (3) These "rights and obligations" must be "civil" ones within the meaning of the Convention.
14. For Article 6 to apply there must be a "contestataion" or dispute over the civil right in question. The word "dispute" must be given a substantive meaning rather than a formal one (*Le Compte, Van Leuven and De Meyere v Belgium* (6878/75; 7238/75 [45])). It is necessary to look beyond the appearances and the language used and concentrate on the realities of the situation according to the circumstances of each case (*Gorou v Greece (no. 2)*). The "dispute" must be genuine and of a serious nature (*Sporrong and Lönnroth v Sweden* (7151/75; 7152/75 [81])).
15. The dispute may relate not only to the actual existence of a right but also to its scope or the manner in which it is to be exercised (*Bentham v the Netherlands* (8848/80 [32])). It may also concern matters of fact.
16. It is important to note that there is a clear difference between Article 6(3(c)) where in respect of criminal charges there is a right to legal assistance if the individual does not have sufficient means to pay, and Article 6(1), which gives no such automatic right in civil (including Family) disputes.
17. The leading case on the provision of legal aid, which would be directly applicable to the appointment of a lay advocate, is *Airey v Ireland* (6289/73). In *Airey* it was held that Article 6 does not imply that the State must provide free legal aid for every dispute

relating to a “civil right.” In *Airey*, the applicant was an indigent Irish woman seeking an order for judicial separation from her husband. The European Court of Human Rights (ECtHR) held that Ireland had infringed Article 6 by not providing legal aid to her in circumstances where it was ‘not realistic’ to suppose that she could effectively conduct her own case, which potentially involved complicated points of law and the tendering of factual and expert evidence.

18. At [26] in *Airey* the ECtHR made clear that legal aid is not required to be provided in every civil case where falls within Article 6(1), it will depend on the individual case. The test set out was:

*“Article 6 para. 1 (art. 6-1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.”*

19. Therefore, the test is whether legal assistance is “indispensable” for effective access to the court.
20. It is a consistent theme of ECtHR cases that the Convention rights are “practical and effective” rather than “theoretical and illusory”. The question in *McVicar v the United Kingdom* (46311/99, [48]–[53]) was whether the applicant would be denied a fair hearing if legal aid was not provided, taking into consideration all the circumstances. At [52], the Court did not consider the fact that the proceedings were held before a High Court in person, even without a lawyer's assistance, would meet the requirements of Article 6(1).
21. In *P, C and S v the United Kingdom* (56547/00, [91], [100]), a breach of Article 6 was upheld in the context of care and adoption proceedings taken by the local authority. In that case, P and C were the mother and father of S respectively. Following S’s birth, the local authority obtained an emergency protection order, removed S from the hospital and placing her with foster parents. The local authority subsequently initiated care proceedings. Initially, P was represented in the care proceedings, but P was left without representation at the trial. The court imposed a care order on the basis that P suffered from a personality disorder which C refused to accept existed. A freeing application took place one week later at which P and C were also not represented. An application to adjourn the proceedings in order to obtain representation was refused and S was freed for adoption without any provision for continued direct contact with P and C. S was subsequently adopted and all direct contact with her parents ceased. At [95], the court found that given the complexity of the proceedings and their importance, legal representation had been an indispensable requirement in the interests of fairness and access to the court.
22. In my view, it is clear from this caselaw and the facts of this case that the Father has no right pursuant to Article 6 to a lay advocate. Firstly, there is no “dispute” (“contestation” in French) because the Father’s position is not contentious. He is not seeking to assert any Article 8 right to family life or any other civil right because he is not disputing the making of the Order, or any of its provisions. Therefore on the basis of the caselaw, Article 6(1) simply does not apply.

23. Secondly, even if there is a theoretical Article 6 right because an Order may be made concerning his child, his case does not satisfy the legal tests under Article 6 for the provision of legal aid (here for a lay advocate). Having a lay advocate cannot in any rational sense be said to be “indispensable” for effective access to the Court given that he is not seeking to assert a case in court. Therefore the test in *Airey* is not met.
24. Further and in any event, Keehan J’s judgment in *Re C* is now overtaken by the President’s Guidance and must be read in the light of that Guidance. That alone would have been sufficient to dispense with this application.
25. I should make clear that this does not mean the Father was not entitled to appropriate assistance when the application was made to ensure he made his decision not to oppose the special guardianship order with proper advice which he understood. It is essential that any such decision, which is potentially life changing for the parent and the child, must be made on the basis of properly understood professional advice. But that is an entirely different issue from whether there is an entitlement under Article 6 to a lay advocate once that decision has been properly made.
26. I therefore refuse the application.