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Brides and martyrs: protecting children from violent extremism

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The media has been dominated with news stories about people travelling to Syria to demonstrate their support for ISIS or the Al-Nusra Front for most of the last year. This problem is not entirely novel as nearly 70 years ago Britain and Ireland were similarly fixated with the problem of volunteers departing for Spain to fight on both sides in the Civil War. A portrayal of the indoctrination of school age children to fight in that war even seeped into popular culture courtesy of Muriel Spark's novel, *The Prime of Miss Jean Brodie*. The current problem is, in reality far worse, given the relative ease of international travel, the reach of social media, the tactics and targets used by extremists, the ubiquity of terrorism across the Middle East and North Africa and the fact that the UK has already experienced domestic terrorism inspired by international examples.

The government believes that the radicalisation of people in the UK presents a potential significant threat to national security and has the capacity to ruin lives (for those who may be drawn to ISIS as well as potential victims). The security agencies are exercised by the possibility of people travelling to Syria and other countries and returning with the training and inclination to engage in terrorism. There are significant powers available that criminalise such conduct and the Counter-Terrorism and Security Act 2015 (s 1) provides for the seizure of passports from those intending to leave the UK in connection with terrorism and for orders to exclude people (s 2) from returning to the UK once they have left.

Recent cases before the Family Division have demonstrated that the courts are prepared to act where young people are at risk of radicalisation and are having their will suborned to encourage them to travel to Syria and other countries (see Mr Justice Hayden in a wardship case involving a 17 year old girl, unreported but in the *Telegraph* of 11 June 2015). In the case of girls there is the certainty of child sexual exploitation, sexual slavery and forced marriage (already it is reported that two of the Bethnal Green Academy schoolgirls who left in February 2015 for Syria have married) – in the case of boys, the risk is of death in combat. For both sexes there is the danger implicit in any travel to a war zone.

Duty on specified authorities

The government has recently placed its preventative strategies on a statutory footing. It is felt that this work can no longer be left to the police and security services. Increasing responsibility is now placed on all parts of the public sector including local authorities, schools, universities, hospitals and even nurseries. Section 26 of and Sch 6 to the 2015 Act places a general duty on specified authorities to have due regard to the need to prevent people from being drawn into terrorism. According to s (2) a specified authority is a person or body that is listed in Sch 6. This includes local government, police, health services, education, and child care.

The Government has defined extremism in the 'Prevent' strategy as: 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces' (*Prevent Duty Guidance*, p 2*).*The Statutory *Prevent Duty Guidance* came into effect on 1 July 1 2015, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf. Part of the duty includes monitoring, and risk assessment. How broad the expectations and responsibilities are is apparent from Part 38 of the same:

> "38. We expect local authorities to use the existing counter-terrorism local profiles (CTLPs), produced for every region by the police, to assess the risk of individuals being drawn into terrorism. This includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit". (Guidance on the CTLPs is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118203/counterterrorism-local-profiles.pdf).

The 2015 Act also placed the current "Channel" arrangements for supporting people vulnerable to being drawn into terrorism on a statutory footing. Section 36 requires that each local authority must ensure that a panel of persons is in place for its area with the function of assessing the extent to which individuals are vulnerable to being drawn into terrorism." Broader functions of the Panel include the preparation of action plans to reduce the vulnerability of individuals being drawn into terrorism and (with consent) arrangements are made to receive support (including by an approved independent provider who can address the potential radicalisation). The Channel Statutory Duty came into effect on 12 April 2015.

The *Prevent Guidance* includes a duty on local authorities to undertake assessments of the risk to children of being drawn into terrorism [para 67 of the Guidance]. This may turn out to be controversial. This has already proved to be the case with regard to the responsibilities of Universities where the University and College Union (UCU) for one, at its May 2015 congress, voted overwhelmingly in favour of a motion to boycott the implementation of the Prevent initiative in higher education on the basis that it would force its members to 'spy on learners' and be involved in the 'racist labelling of students' principally Muslims: lbeit that their lawyers have said such action may be illegal (see *Times Higher Education,* 28 May - 3 June, p 7).

Local authority and children at risk: protection and partnership

Even before the introduction of the statutory guidance some local authorities had taken steps to either prevent children from travelling to Syria or obtain the return of the same. Some of these cases have now been published and reveal the courts using powers under the inherent jurisdiction – including wardship. Once the children have been secured local authorities and the courts are left to decide

whether the children are to be the subject of care orders or wardship to protect them from significant harm (Children Act 1989 (CA) s 31).

The use of the inherent jurisdiction

The Children Act 1989 s. 100 (3) limits the use of wardship so, in effect, it is a jurisdiction of last resort and any orders made are necessary to protect children from significant harm (s 100(4) (b)). Wardship has survived the introduction of the 1989 Act - as was made clear by Nigel Lowe in *Inherently Disposed to Protect Children* (in "Fifty Years in Family Law Essays for Prof Stephen Cretney (2012) Cambridge). FPR 2010 PD 12D (updated 10 April 2014) gives specific examples of matters where the inherent jurisdiction can be used. This includes 'undesirable association' (para 3.1) injunctions which are sometimes used in cases where local authorities are seeking to prevent extremist connections and CSE and 'seek and find' orders (para 1.2).

In some of the cases involving young women an analogy can be drawn with forced marriage, It is striking that this too was combatted by the use of the inherent jurisdiction before the passing of the Forced Marriage (Civil Protection) Act 2007. (*Re SK (An adult) (Forced marriage: appropriate relief)* [2004] EWHC 3202; [2005] 2 FCR 459).Wardship has also been approved in cases where there has either been conflict between the parties per the judgment of Hedley J in *T v S (Wardship)* [2012] 1 FLR 230, and as a 'unique solution for a unique case' where there was dispute about the care of a child in *Re K (Children with disabilities: Wardship)* [2012] 2 FLR 745. This approach was approved – even in circumstances where a child was accommodated (voluntarily) under s 20 CA 1989 by the Court of Appeal in *Re E (Wardship Order: Child in Voluntary Accommodation)* [2013] 2 FLR 63.

In *London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam) FLR, Hayden J used the inherent jurisdiction to prevent young people from leaving the country by ordering that their passports be confiscated and the young persons concerned be made wards of court for their protection. By contrast, in *Re M (Children)* [2015] EWHC 1433 (Fam), FLR, Munby (P) used wardship to obtain the return of children once they had left the country (since the wardship jurisdiction extends to UK subjects outside the jurisdiction). In this case four children, were removed from the country by their parents. It was thought that the family were traveling to join ISIS. The children were made wards of court and international legal cooperation between the jurisdictions affected their safe return.

One size does not fit all

Those with whom the courts are concerned are actually a disparate group including young men – frequently 15 – 17 years of age who are groomed and drawn to fight in Syria and elsewhere, young women 15 – 17 years of age who are groomed to support the jihad, and children where it is the intention of the whole family to relocate. Most recent evidence of this is the disappearance of the Dawood families and the extended three generational Mannan family from Luton, the latter reported by ISIS as being 'safe'(sic) in Syria (see the *Guardian* of 4 July 2015).The primary destination of concern is Syria but there is some evidence of people wanting to go to Iraq and Libya. There is also concern about other countries including Yemen and Somalia given the spread of ISIS to North Africa, including Tunisia.

The focus of the courts has been on young people because the court has power under the inherent jurisdiction to make orders concerning them. The Prevent Duty also extends to adults– albeit local authorities have many fewer tools to deal with the problem unless the adults concerned are

considered vulnerable.What we know about these people is that sometimes the young people are converts/reverts/newly religious, some may have family members who have already fought – and in some cases died– in Syria. Whilst media attention has focussed on ISIS, other young people have gone to fight for the Al-Nusra Front. From this, it is obvious that to adopt a 'one size fits all' approach to cases of this sort would be unwise.

Rigorous preparation

In *London Borough of Tower Hamlets v M and ors* [2015] EWHC 869 (Fam) FLR, Hayden J was able to compare and contrast two sets of proceedings heard on successive days which presented a stark contrast in how these cases should be prepared. He stressed that it was essential that the fullest possible information is placed before the court in an entirely unpartisan way and that such evidence should be prepared rigorously documented and put properly before the court. He then distilled a number of core principles applicable to such cases (especially when initially brought ex parte):

(1) Lawyers should draft orders sought before coming to court.

2) Thought should be given from the outset as to how quickly an on notice hearing is listed.

(3) The cases require senior and experienced lawyers.

(4) The interests of the child are paramount and wider public policy considerations do not eclipse that but provide the wider canvas. The court must have full details of the wider context of the case.

(5) Verbal assurances that police (or any other service) are aware of /support the application are not sufficient. There must be hard evidence, capable of scrutiny, before the court. This may be a sworn statement, the attendance of a police officer or a secure telephone or video link.

(6) There will be public scrutiny of the process and accredited press representatives may attend court hearings (though they may be asked to withdraw at sensitive stages).

(7) Advance attention should be given to any necessary reporting restrictions which should be drafted before coming to court.

(8) When considering reporting restrictions attention should be paid to non-conventional media outlets such as social media.

(9) A co-ordinated strategy, an ongoing dialogue and respect between different safeguarding agencies are crucial.

He then went on to stress that, '[15] All involved must recognise 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, but it must be recognised that the decision the court is being asked to take can only be arrived at against an informed understanding of that wider canvas. It is essential that the court be provided with that material in appropriate detail.'

The use of child protection procedures, social workers and children's guardians as well as the family justice system in such cases raises profound questions and involves the finest of judgements. Not least of the problems is the pressure to bring care proceedings because of the religious or political views of the parents as recently advocated by Boris Johnson who has argued that the law should treat

radicalisation as a form of child abuse. (http://www.telegraph.co.uk/news/politics/10671841/).The-children-taught-at-home-about-murder-and-bombings.html This is exacerbated by the wide and nebulous definition of terrorism used in the 2015 Act. Domestic case law would suggest that this is unlikely to find favour. Caution was most clearly articulated by the Supreme Court *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 2 FLR 1075 where Lord Wilson of Culworth JSC said (para 28):

> "[Counsel] seeks to develop Hedley J's point. He submits that:
>
> > 'many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or "model" them in their own lives but those children could not be removed for those reasons.'
> > I agree with [counsel]'s submission".

It should not be forgotten that the Prevent strategy also addresses the problem of right wing extremism but in the case of *Re A (A Child)* EWFC 11, FLR, the President was keen to stress (at para [71]) that membership of an extremist group such as the EDL is not, without more, any basis for care proceedings.

In future cases it is clear that a very careful human rights analysis is called for evaluating the competing considerations of Art 8 rights to private and family life, Art 9 rights to freedom of thought, conscience and religion and Art 10 which provides a qualified right to freedom of expression. In certain cases these rights may have to be weighed against the right to life provided by Art 2 (if, for example, there was considered to be an imminent risk of a child travelling to Syria in circumstances in which it was felt that he was likely to join armed combat) and Art 3 rights to be free from inhumane and degrading treatment (which most certainly characterizes the predicament of young girls caught in the ISIS web of sexual slavery in all its forms).

It is apparent from this that fine judgement is called for. This poses real problems for social workers who might be concerned they are they being expected to be watchkeepers and spokespersons for an ideological fight against extremism – the definitions of which are imprecise - and which may jeopardise their credibility in child protection work. In a recent article, Tony Stanley and Surinder Guru (2015) *Childhood Radicalisation: An Emerging Practice Issue* Practice: Social Work in Action (Vol 27) have highlighted the potential dangers posed to social workers if they were to find themselves as pawns in an ideologically driven moral panic. They also raise questions about the sort of skills required for such work and the necessity for social workers to have regard to their values and adopt an appropriately sceptical approach to risk analysis in this area.

Will parents be frozen out?

It is important that when considering the protection of children from extremism this does not mean that guiding and overarching principles should be set aside. *Prevent* [Para 62] itself stresses that it should be read with *Working Together.* The *Channel Duty Guidance* stresses that participation is voluntary and, in the case of children, that means obtaining parental consent [77]. In rare cases where it is sought to persevere despite a lack of parental consent then Local Authorities are directed at their powers – including s 31. There is also a danger that the very strategies used to combat extremism may prove to be counter-productive – especially if used indiscriminately – with parents being further alienated, leading to despair and anger. As Stanley and Gurus argue, families who experience

surveillance or pressure in the UK may seek to leave the jurisdiction – placing their children at greater risk. What is required is discernment and fine judgements – the avoidance of a one size fits all strategy, a rigour of approach, proportionality, restraint, and an informed approach, including the respect for human rights and close scrutiny by courts.

See also Susan Edwards, 'Protecting schoolgirls from terrorism grooming' published in the current [2015] International Family Law 236.