Neutral Citation Number: [2017] EWHC 1793 (Fam)

Case No: CM15C02520

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2017

Before :

THE HONOURABLE MR. JUSTICE COBB

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Re R (Closed Material Procedure: Special Advocates: Funding)

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Alison Ball QC and **Matthew Fletcher** for the Local Authority
Janet Bazley QC and **Sharon Segal** for the Mother
Mukul Chawla QC and **Tom Bullmore** (Mr. Bullmore from the Special Advocates' Support Office) Special Advocate for the Mother in the closed proceedings
Ian Bugg for the Father
Ashley Underwood QC (instructed by Nicola Margiotta at the Special Advocates' Support Office) proposed Special Advocate for the Father in the closed proceedings
Jeremy Johnson QC (instructed by the Head of Legal Services) for the relevant Police Constabulary
Doushka Krish for the Children's Guardian of R
David Martin from the Ministry of Justice who submitted correspondence but did not appear at the hearing
The identities of the instructing solicitors in the *Part IV CA 1989* proceedings have been omitted in the interests of preserving confidentiality.

Hearing dates: 12 June 2017

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Approved Judgment

I direct that pursuant 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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THE HONOURABLE MR. JUSTICE COBB

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr. Justice Cobb :

1. It is a first principle of fairness that each party to a judicial process shall have an opportunity to answer by evidence and argument any adverse material which the tribunal may take into account when forming its opinion (see Lord Mustill in *D v NSPCC* [1995] 2 FLR 687). The closed material procedure operates to ensure, to the fullest extent achievable, that this cardinal principle is observed even when the material in question, including that which attracts Public Interest Immunity, is highly sensitive.

2. Where such sensitive material is placed before the court, and requires to be examined and/or tested on behalf of the parties to whom it cannot be disclosed, the Court may invite the Attorney General to appoint a Special Advocate, a security cleared lawyer, to represent their interests (note the formula for the appointment of special Advocates in the civil context: per *section 9(1)/(2)* of the *Justice and Security Act 2013*). Special Advocates are appointed by the Attorney General through the Special Advocates' Support Office ("SASO"), which is part of the Government Legal Department.

3. The issue which arises for determination is how the costs of an instructed Special Advocate should be funded in these family proceedings.

4. In this instance, the closed material procedure has been invoked within public law (*Part IV Children Act 1989*) proceedings concerning one child, R. He is aged 4. He currently resides with his father. They live at a secure location which is not known to the mother, or indeed to the Court. The mother currently has no direct contact with R, nor does she have indirect contact. The mother and R have, however, recently exchanged video-recorded messages.

5. I propose to say very little about the background facts in this judgment, given its unusual sensitivity. It is sufficient for me to record that shortly after R's birth, the parents separated; there followed lengthy and bitterly contested private law proceedings. When those were at an advanced stage, the father was the victim of a serious and life-endangering attack, which he survived. This led to the trial, and convictions, of a number of people for the offence of conspiracy to murder.

6. A significant volume of evidence gathered by the Police, both used and unused in the criminal trial, has been disclosed to the parties in these family proceedings.

7. The Police have assessed, on information supplied, that there is a second, and continuing, conspiracy to murder the father; that information has been shared with the parties to these proceedings. The Police, however, resist disclosure of a small quantity of information relevant to that continuing conspiracy, arguing that disclosure of the information would materially heighten the risk to the father, to R, and to others, and would unhelpfully expose police operational details. The Special Advocate instructed on behalf of the mother has accepted that disclosure of this material would be contrary to the public interest, a view which – after a closed material hearing in the autumn 2016 – has been confirmed by the Court. This small quantity of information is thus currently not known to the parties in these family proceedings. I have recently been shown it. It has been confirmed by counsel for the Police to the parties in the family proceedings that there is no evidence that the alleged continuing conspiracy involves the mother.

8. There have been three closed material hearings in the case, two before Pauffley J and one before Theis J. At those hearings, the mother has been represented by a Special Advocate who has thus seen the limited undisclosed material, but the father has not participated in the closed hearings, by Special Advocate or at all. The mother's Special Advocate (and the support offered to him by the SASO) has been funded so far by the Police authority which investigated the original crime. Mr. Johnson QC informed me that the Police agreed to fund the mother's Special Advocate out of pragmatism, rather than any sense of legal obligation.

9. At a case management hearing on 3 March 2017, Pauffley J directed that the father should have a Special Advocate for future closed material hearings. Her order contained the following provisions about funding:

    i) "Upon the court determining that such circumstances engaged his rights pursuant to *Article 6* of the *European Convention on Human Rights*;

    ii) Upon the Court further determining that it was vital for [the father] to have the benefit of a Special Advocate (selected from the AG's panel) to afford him equivalent status and representation in closed hearings and to prevent a denial of justice;

    iii) Upon the Court determining in accordance with the President's Guidance dated 26 March 2015… the Court shall identify the most appropriate means by which such representation should be funded and concluding that justice will only be served if the costs are met by the Legal Aid Agency;

    iv) It is ordered that … The costs occasioned shall be borne on the public funding certificate of [the father] and are determined by the court who be critical to enable his right to a fair trial to be observed."

10. Although Mr. Johnson has sought to argue at this hearing before me that Pauffley J's direction for the appointment of a Special Advocate for the father could and should be discharged in its entirety on the basis that there is no longer a need for any further closed material process, I declined to accede to his submission. There has been, so far as I can tell, no change in circumstances since Pauffley J's order; the Police maintain that the threat to the father and to R (and others) remains just as significant now as it was in March 2017. In any event, having reviewed some of the relevant

documentation filed, and having heard the detailed submissions of the parties, I am satisfied that there is a need for *at least* one further closed material hearing at which I will review the sensitive information with a representative of the Police, and afford the Special Advocates opportunity to consider it. At that hearing, I will first need to determine afresh whether any of the sensitive material can in fact be disclosed into the *Part IV* proceedings, and if I conclude that it cannot or should not, I will consider the extent to which it needs to be tested in closed session, and if so in what way. In reaching my decisions about this, I will specifically focus on the extent to which (if at all) the sensitive material informs:

i) The ongoing risk to R of having any form of interim direct or indirect contact with his mother;

ii) The continuing central issue in the case, namely, with whom R should live;

iii) The issue of contact between R and the parent with whom he does not live;

iv) The question of harm or likelihood of harm relevant to the threshold criteria set out in *section 31 CA 1989*.

11. I am satisfied that at the closed hearing the interests of *both* parents should be represented. The father's significant and non-derogable rights under *Article 2 ECHR* are plainly engaged here, as are his clear and well-defined rights under *Article 6* (as recognised by Pauffley J) and *Article 8* (ibid.). Mr Johnson in fairness acknowledges that if there is to be a further closed hearing, it would be "obviously unfair" if the father were to be unrepresented.

12. The Attorney General has indicated that he will not instruct a Special Advocate for the father without a funding arrangement for the Special Advocate and SASO support being in place. No party volunteered to fund the Special Advocate and the SASO team for the father, and each relevant party argued vigorously that the responsibility should fall on another. While some of the arguments focused on the particular facts of this case, others elevated the funding dispute to one of wider principle and general application. In debating the issue with counsel, I suggested that a cost cap or other form of cost control may appropriately be imposed in this case; this was welcomed in some quarters but not in others.

13. Having heard argument, I reserved judgment.

14. Following the court hearing, Mr. Bullmore, from the SASO on behalf of the mother, wrote to the court with further submissions on the issue of costs control or a costs cap; this prompted a response by the Head of Legal Services of the relevant Police force. I afforded the opportunity to all other parties to make any further or other submissions, but no party took up the offer.

15. It should be noted that by the date of the hearing before me (12 June), the SASO and Special Advocate on behalf of the mother had generated (since July 2016) a little over £53,000 in professional fees. The SASO and Special Advocate on behalf of the father (since March 2017) had generated a little under £4,000 in professional fees.

Context

16. Before turning to the arguments, let me set a little further context. It is only reasonably exceptionally that a family court will consider it appropriate to hold closed material hearings and invite the appointment of Special Advocates: see McFarlane J (as he then was) in *Re T (Wardship: Impact of Police Intelligence)* [2009] EWHC 2440 (Fam) (*Re T*). This point was emphasised by Sir Nicholas Wall P, in describing the closed material procedures (similar to those engaged here) as "a matter of last, as opposed to first resort" (see *A Chief Constable v YK, RB, ZS, SI, AK, MH (Sub nom Re A (Forced Marriage: Special Advocates)* [2010] EWHC Fam 2438, [2011] 1 F.L.R. 1493 [92]: (*Re A (Forced Marriage: Special Advocates)*). Separately, and more recently still, Baroness Hale supported this approach, describing as "very powerful" the arguments *against* using a closed material procedure in family cases ("an inroad into the normal principles of a fair trial") in her judgment in *re A (A Child) (Family Proceedings: Disclosure of Information)* [2012] UKSC 60 [2013] 2 AC 66 at [34]. Quite apart from any other consideration, while it is recognised to be a "valuable procedure" in certain limited circumstances, it is also clearly an "imperfect" one (see respectively Lord Bingham at [35], and Lord Hoffman at [54] in *Secretary of State for the Home Department v MB* [2007] UKHL 46, [2008] 1 AC 440, [2007] 3 WLR 681).

17. Currently, there are no family procedural rules equivalent to *Part 82* of the *Civil Procedure Rules 1998* ('*CPR*') dealing with these situations in family cases; *Part 82* was inserted into the *CPR* in 2013, at the time of the implementation of the *Justice and Security Act 2013* to deal with Closed Material Procedure issues. Nonetheless, procedures have been adapted in the family court to replicate as appropriate the arrangements for a closed material process, to achieve fairness, and ensure the protection of the *Article 6* rights of the parties. The principal advice available to the family court is that referred to in Pauffley J's order (see [9](iii) above), namely the 2015 President's Guidance on the "*Role of the Attorney General in appointing Advocates to the Court or special Advocates in Family Cases*". This contains the following instruction:

> "Usually a Special Advocate is required because a public body that is a party to the litigation, often a local authority or the police, resist disclosure of sensitive documents. The Attorney General has asked that at the point of requesting him to instruct a Special Advocate the court should specifically consider and make provision (after, of course, hearing submissions from the parties) as to which party should pay the costs of the Special Advocate. The essential point is that this is not a service which the Attorney General will normally cover. I can see no reason why he should be expected to do so, and no reason why the court should not fix in advance which party will pay the costs of the Special Advocate. Please, therefore, do this." (emphasis by underlining added)

18. The 2015 guidance goes no further than the passage above underlined in relation to identifying the appropriate funding source in any given case. Indeed, in none of the authorities to which I have been referred (nor in *BCC v FZ, AZ, HZ, TVP* [2012]

EWHC 1154 (Fam): Eleanor King J, as she then was) has the issue of funding specifically been addressed in a judgment.

The Legal Aid Agency

19. The Legal Aid Agency ("LAA") responded to Pauffley J's direction by letter dated 29 March 2017 indicating that it could not fund the Special Advocate for the father. David Martin of the Ministry of Justice (responsible for the LAA) stated as follows:

> "It is the Lord Chancellor's position that where a public authority requests that evidence is withheld from a party in family proceedings then any Special Advocate appointed to assist the Court to ensure a fair hearing should be paid for by the public authority.
>
> The *Legal Aid Sentencing and Punishment of Offenders Act 2012* ('LASPO 2012') provides a comprehensive code for the funding of litigants. An individual must fulfil two conditions before legal aid is made available to them. The first is that the civil legal services they require must be of a kind described in the Act (commonly referred to as being 'in scope'). The second is that the Director of Legal Aid Casework has determined that they are eligible to receive them, in accordance with the detailed criteria set out in regulations.
>
> Legal aid is also available for matters that are not in scope to prevent a breach of an individual's human rights, again, so long as the Director has made a determination that they qualify for legal aid.
>
> None of these conditions have been fulfilled in this case. The Lord Chancellor does not, therefore, have a statutory power to provide funding for legal aid that would cover the cost of the Special Advocate. To the extent that any closed material proceedings have already occurred, the public authority that assumed responsibility for the costs of the Special Advocate should continue to do so. For the avoidance of doubt, the cost of a Special Advocate cannot be a disbursement incurred in the provision of services to an individual as it is not incidental to the services the solicitor is providing."

20. There is no doubt that funding for Special Advocates falls outside the ordinary scope of the Legal Aid scheme: see specifically *section 9* and *Part 1 Schedule 1* of *LASPO 2012*. I did not explore with the parties, and they did not raise with me expressly, whether the exceptional case funding regime in *section 10 LASPO 2012* would be available to the father for the funding of his Special Advocate. Mr. Martin's letter accurately discloses that the Director of Legal Aid casework ('the Director') has not made a determination on exceptional case funding in this case. However, as I understand it, he has not been asked to do so; no application for exceptional case

funding has been made to the Director, or to the Exceptional Cases Team at the Legal Aid Agency.

21. If an application for exceptional funding were to be made, the Director would be required to determine whether it is necessary to make legal aid services available to the father, in circumstances where a failure to do so would be a breach of the father's Convention or EU rights; the Director would need further to determine whether the father "qualifies for the [civil legal] services" (see on this point generally *R. (on the application of Gudanaviciene) v Director of Legal Aid Casework* [2014] EWCA Civ 1622; [2015] 1 W.L.R. 2247; [2015] 3 All E.R. 827). Even though, unarguably, various of the father's ECHR rights are firmly engaged in the closed material procedure (see [11] above), on the material which I have reviewed, I strongly suspect that any claim on his behalf for legal aid funding for a Special Advocate would fall outside the qualifying criteria of the exceptional case funding scheme, for a combination of the following reasons:

    i) Because he already benefits from a certificate for legal aid for his representation in the public law proceedings, and/or

    ii) Because he may well fail the *merits* criteria set out in regulations made under *section 11*, given that the availability of an alternative funding source would be considered under this head; the Lord Chancellor has plainly taken the view (see first paragraph of the letter above) that funding for a Special Advocate should be made available from the relevant "public authority"; and/or

    iii) Because he may not satisfy the *means* criteria in *section 10(2)(b)* (though I make clear that I know nothing of his finances); he would also have to qualify for legal aid under the financial eligibility criteria set out in regulations made under *section 21*.

22. Finally on the issue of Legal Aid funding of a Special Advocate, and for completeness, I should mention that I was referred to the judgment of Holman J in *Saimi Bi v Imran Mohammed* [2016] EWHC 506 (Fam) in which he took the view that:-

> "… the person or party who patently should be required and expected to pay the costs of the Attorney General is the wife/mother since it is her lawyers who so strenuously seek production of these documents" but "she has no means whatsoever and is legally aided with no doubt a nil contribution" (at [13]).

Holman J accepted that he "cannot and make clear that I do not" direct the Legal Aid Agency to pay for the Special Advocate, but considered that the funding could or should be a disbursement on the mother's legal aid certificate. He added:

> "… if some sensible accommodation cannot be reached to ensure that a special advocate is provided in a case such as this, the whole system of fair and open justice will have broken down" (at [16]).

In fact, the *Saimi Bi* case was resolved without the need for this issue to be tested. The Legal Aid Agency in this case disputes that disbursements can be used for this purpose.

The arguments – in outline

23. The position of the parties can be summarised thus: Mr Underwood QC, as the proposed Special Advocate for the father, contended that the Attorney General expects the party which wishes to rely on the sensitive material to pay for the Special Advocate and the lawyers at the SASO; accordingly, he pointed to the Police as the agency which should fund the costs, but accepted that the court could conclude that either the Police or the Local Authority should pay. Mr. Chawla QC, as Special Advocate for the mother, identified the Police as the payer (the Police – as indicated above – have agreed to pay his fees), as did Miss Ball QC for the Local Authority. Mr Bugg, for the father, contended that the costs could or should be shared between the Police and Local Authority. Mr Johnson, for the Police, argued that it should not be the Police but should be the Legal Aid Agency (as ordered by Pauffley J) or the Local Authority which should pay. No party argued that there was a fund from which the SASO could otherwise draw; there was apparent acceptance that the Attorney General's Office did not have resources for this purpose in these circumstances.

24. The rival arguments can be distilled as follows:

    i) The Police should fund the cost of the Special Advocate, as it is the Police which possess the sensitive information, which they have disclosed to the court, but in respect of which they seek to withhold key elements from the parties to the proceedings; it is argued by a number of the parties that there is an established convention that the agency which seeks to withhold disclosure should fund the costs of the Special Advocates where they are required;

    ii) The Police refute the existence of any convention in these circumstances; they rely on the fact that they are not a party to the proceedings, and have no interest in the outcome of the case (unlike the Local Authority and the lay parties); they maintain that they have fulfilled their obligation to disclose relevant (albeit sensitive) information to the court, and should not now be lumbered with a significant bill simply because they contend that this information should not be disclosed to the parties; no precedent was established, contends Mr. Johnson, by the Police's preparedness to fund the Special Advocate for the mother in this case;

    iii) The Local Authority should pay because it has brought the proceedings and is the applicant; it has an interest in the outcome of the proceedings; it has a duty to safeguard the child;

    iv) The Local Authority maintains that it should not pay arguing that it would be unprincipled for the court to use the inherent jurisdiction to plug the funding gap left by statute: see MacDonald J in *HB v A Local Authority & Another (Wardship Costs Funding)* [2017] EWHC 524 (Fam) esp. at [1] and [97]. The Local Authority plays no part, and wishes to play no part, in the closed

> material process; it has no knowledge of what is being discussed within that process, save to the limited extent that it has been outlined by Pauffley J in a judgment which she delivered to the parties in the family proceedings following a closed hearing in October 2016. The Local Authority does not in fact rely on the 2016 ongoing conspiracy in its formulation of the *section 31* threshold criteria in this case, although it does rely on the October 2016 judgment of Pauffley J, and her assessment of risk, insofar as it bears upon the issue of current contact.

Discussion and conclusion

25. As indicated above, it appears that in family cases in which Special Advocates are engaged, there has been no clear or definitive ruling on the question of who should fund Special Advocates, nor is there any apparent reliable precedent, or rule. I was referred generally to a number of funding arrangements for Special Advocates which had reportedly been devised in unnamed and unidentified family cases: in some it was said that the Police had funded the Special Advocate, in others it had been the Local Authority, in further cases there had apparently been a split of the cost between the Police and the Local Authority, or between the Local Authority and the Children's Guardian (supposedly, so far as the Children's Guardian is concerned, with legal aid authority). It was further said by Mr. Chawla QC that:

> "… there has been one occasion when funding was provided in family proceedings for a Special Advocate for a father, where the Police declined to pay. That funding required an arrangement between the Government Legal Department and Lord Chancellor under *section 2* of the *Legal Aid Sentencing and Punishment of Offenders Act 2012*, in 2015. That has not been repeated and it is doubted that the government will support its widespread use."

26. I do not doubt the accuracy of the submissions outlined in [25] above, but the references to unnamed cases, and the asserted arrangements, are meaningless without more detail and, specifically, without access to a judgment from the relevant court explaining the decision. In short, I was left with the impression that where Special Advocates have been engaged in family proceedings in the past, either no dispute has arisen about their funding, and a 'pragmatic' solution has been agreed, or the court has taken a 'pragmatic' course and imposed an outcome which no party has sought to challenge.

27. I am satisfied that the Attorney General's Office does not have a dedicated budget for the provision of Special Advocates in family cases; the President's Guidance is clear that it should not be expected to fund a Special Advocate in these circumstances as "this is not a service which the Attorney General will normally cover". I am equally satisfied that the Legal Aid Agency cannot be challenged on its conclusion that there is no statutory duty in *LASPO 2012* to fund the Special Advocate for the father.

28. In the absence of clear or authoritative steer from statute, guidance or otherwise, and relying therefore on the arguments marshalled before me, I have reached the conclusion that I should direct the agency which holds the sensitive material, namely

the Police, to fund the Special Advocate for the father in this case. This is in relation to fees already incurred (see [15] above) and to be incurred.

29. The Police have exclusive ownership of the sensitive material. The Police wish to ensure that (a) the Court is in possession of that material and that (b) the Court is aware of the reasons why disclosure of that material would be contrary to the public interest; it proposes that the sensitive information is therefore presented to the Court exclusively in closed session, and that its disclosure to the parties should be closely and rigorously controlled. In my judgment, the Police, having taken this position (which I emphasise has been approved as reasonable and appropriate thus far), should be required to broaden its obligations to ensure that those who are most affected by the information are given the fullest and fairest opportunity to have the case for non-disclosure tested. By analogy, were the sensitive material to have been adduced in the Special Immigration Appeals Commission, the Secretary of State for the Home Department, who holds and relies on the closed material, would ordinarily fund the Special Advocate deployed in the closed material hearing in that jurisdiction. I am further influenced in reaching my conclusion in this case by the fact that the Local Authority plays no part in the closed material process, and has no intention of doing so; it does not possess, or otherwise have access to, any sensitive material.

30. In defining my jurisdiction to make the order, I distinguish this situation from that which obtained in *Re HB*. While Parliament has made detailed provisions for the representation of parties in family proceedings generally (specifically through *LASPO 2012*), Parliament has not yet laid out a code for the funding of Special Advocates in these exceptional family cases. There is, therefore, room in this case (unlike *Re HB*) for implying the existence of additional powers under the inherent jurisdiction which lie wholly outside the relevant statutory code.

Should there be a costs cap, costs management, or other cost control

31. At an earlier hearing, on 19 May 2017, Mr. Johnson expressed his considerable disquiet about the scale of the costs of the Special Advocate for the mother (see [15] above), and the Police's fear of being committed to funding representation of the father in an equivalent sum. I therefore posited, in argument at this hearing, whether I should impose a cap on the extent of the funding allowance for the father (and possibly in respect of further work by the mother's Special Advocate), to what I regarded as a reasonable figure, either referable to hours of work done, or to cost incurred. Mr. Bullmore, for the mother's Special Advocate, was firmly opposed to this, arguing that it would be both unprecedented and unprincipled for the court to restrict the work of the SASO by imposing or tightening a grip on its freedom to work as it considers appropriate in this way.

32. Under the *CPR 1998*, and in other forms of public law civil litigation, the court is given wide discretion to manage costs (see inter alia, *rule 3.15, rule 3.19, rules 44-48 CPR 1998*, and the protective costs order regime discussed by the Court of Appeal in *R (Corner House Research v Secretary of State for Trade & Industry* [2005] EWCA Civ 192 at [74], [75], and [76]); the *FPR 2010* has comparable but less extensive provisions (see, for example, *rule 28* and *PD28A FPR 2010*). I raised the issue of costs management in this case with a firm eye on my general obligation to give effect to the overriding objective under *rule 1 FPR 2010* (especially *rule 1.1(2)(d)* "saving expense"); this seemed particularly apposite in a case where (a) by my judgment the

costs of the Special Advocate for the father are to be paid by a non-party agency, (b) there is no assessment process at the conclusion of the case, as the authorisation for costs is prospective and the fee-rates are fixed, and (c) the costs of the Special Advocate for the mother are already significant.

33. Mr. Bullmore's principal objection to a costs' cap is that the paying party would be able to exercise impermissible control or influence over the work of the Special Advocate. I reject that submission; as I made clear at the hearing, if a costs cap were to be imposed, it would be fixed by the *court*, and would be subject to review by the *court* on a regular basis if necessary.

34. However, I have been persuaded that I should not impose such a cap or other costs management direction in this case. I accept the argument of the SASO that a Special Advocate should be enabled to exercise reasonable autonomy in the way in which he/she undertakes his/her work; this is reflected (in analogous cases) in the provisions of the *Justice and Security Act 2013* at *section 9(4)* viz: the "person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent". Mr. Bullmore in his letter following the hearing argues that *section 9(4)* "underpins the Special Advocate's role" as it is for the Special Advocate to determine the material which they require in order to perform that role for the court, and they should be trusted to do it appropriately. I accept that submission. Furthermore, the Special Advocate appointed to represent the interests of the mother in this case appears to have had reasonably free rein to investigate matters in open and closed session; there is a potential for unfairness, certainly a perception of unfairness, if the father's Special Advocate and the SASO team working on his behalf were to be circumscribed significantly by the Court in the work they could undertake. While the court has an obligation to save expense (see [32] above), it does of course have an equally significant responsibility to ensure that the parties are on an "equal footing" (*rule 1.1(2)(c) FPR 2010*).

35. That said, I encourage the SASO and the Special Advocate for the father to adopt a reasonable and proportionate approach to its task; my assessment is that the issues arising with the closed material procedure now are not as significant as they perhaps were when the Special Advocate was appointed to protect the interests of the mother, and I would expect that the amount of work, and corresponding costs, should therefore reflect this.

36. That is my judgment.