

Childhood Radicalisation and Parental Extremism: How Should Family Law Respond? Insights from *A Local Authority v X, Y and Z*

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Abstract:

A Local Authority v X, Y and Z (Permission to Withdraw) is a recent case in a series of cases appearing before the family courts, referred to as the radicalisation cases, which deal with concerns related to extremism, radicalisation and terrorism and their impact on children and families. The radicalisation cases represent a significant legal development and a unique legal moment, facilitating an unprecedented interaction between counter-terrorism and family law. The cases pose a number of important and serious legal questions: how should the law, and in particular family law, respond to fears that a child is at risk of childhood radicalisation? How should it deal with the terrorist and/or extremists as a parent? A Local Authority v X, Y and Z is an important radicalisation case which addresses these questions. In this article, I examine how the case deals with two issues: a) childhood radicalisation and its treatment by family law as a separate, free-standing harm which can justify compulsory state intervention and b) the question of parental extremism and/or involvement in terrorist related activity. I claim that although the case includes an important and welcome reaffirmation of the principles of family law in the face of worrying recent developments in the counter-terrorist landscape, this reaffirmation remains fragile, arguing that the case represents a missed opportunity for the family courts to critically reflect on and appraise the nature and purpose of family law's interaction with counter-terrorism.

Introduction

*A Local Authority v X, Y and Z (Permission to Withdraw)*¹ is a recent case in a series of cases appearing before the family courts, referred to as the 'radicalisation cases,'² which deal with concerns related to extremism, radicalisation and terrorism and their impact on children and families. The radicalisation cases began to attract the attention of the British media in the summer of 2015, as a growing number of children and families travelled to Syria with the intention of joining ISIS and other terrorist organisations.³ Since then, there has been a growing number of radicalisation cases appearing in the family courts.⁴

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¹ [2017] EWHC 3741.

² *Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division on 8 October 2015*; <https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf>

³ E.g. 'Judges considering fate of children as young as two amid radicalisation fears' *The Guardian* (London, 5 August 2015). Although it is worth noting that radicalisation concerns began to appear in family cases as early as 2013, see: Fatima Ahdash, *The Interaction Between Family Law and Counter-Terrorism in the UK: A Critical Examination of the Radicalisation Cases in the Family Courts* (2018) 30 *Child and Family Law Quarterly* 389.

⁴ Neville Hall, 'Cafcass responds to a DfE report on safeguarding and radicalisation'; (Cafcass blog, 4 September 2017).

In October 2015, a *Guidance* was issued by Sir James Munby, the previous President of the Family Division of the High Court, specifically addressing the radicalisation cases.⁵ According to the *Guidance*, the radicalisation cases involve three possible allegations or concerns: ‘that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or are at risk of being involved in terrorist activities either in this country or abroad.’⁶ However, since the demise of ISIS⁷ and the increasing number of men and women with children returning, or seeking to return, from ISIS-held territory to the UK,⁸ the family courts have also been dealing with and assessing the safeguarding and child-protection risks faced by the children of returnees.⁹

The radicalisation cases represent a significant legal development and a unique legal moment,¹⁰ facilitating an unprecedented interaction between hitherto entirely separate fields of law and state activity: counter-terrorism and family law.¹¹ Therefore, the cases pose a number of important and serious legal questions: how should the law, and in particular family law, respond to fears that a child is at risk of ‘childhood radicalisation’?¹² How should it deal with individuals who are extremists and/or have been convicted of terrorist related offences *as parents*? These are difficult questions that the law has not really grappled with before. For despite the long history of counter-terrorism in the UK, including the period of the Troubles in Northern Ireland, the family courts have never been directly involved.¹³ Even though many of those who were involved in and even convicted of terrorism related offences during the years of the Troubles included both children¹⁴ and parents,¹⁵ their private lives and relationships with their families were not really of concern to the state.

*A Local Authority v X, Y and Z*¹⁶ is an important radicalisation case which grapples with and addresses these questions. In what follows I both examine and critically interrogate how the case deals with two separate but closely related issues: a) childhood radicalisation and its treatment by family law as a harm which can, on its own, justify statutory state intervention in private and family life and b) the question of parental

⁵ (n2) above.

⁶ *Ibid*, para1.

⁷ Joana Cook and Gina Vale, ‘From Daesh to ‘Diaspora’: Tracing the Women and Minors of Islamic State’ (International Centre for the Study of Radicalisation, 2018), 4.

⁸ E.g ‘Syria: ‘Small number’ of children return to UK’ *BBC News* (London, 10 April 2019).

⁹ See, for example, *A Local Authority v T and Others* [2016] EWFC 30 (Fam); *A Local Authority v A Mother and Others (Fact-Finding)* [2018] EWHC 2054 (Fam) and *A Local Authority v A Mother and Others* [2018] EWHC 2056 (Fam).

¹⁰ The radicalisation cases also represent an important *political* development that has ignited much debate and controversy. See: Boris Johnson, ‘The children taught at home about murder and bombings’ *The Telegraph* (London, 2 March 2014); Fiona Hamilton, ‘Extremists should lose access to their children, says Scotland Yard chief’ *The Times* (London, 27 February 2018) and Asim Qureshi, ‘Separating Families: How PREVENT Seeks the Removal of Children’ (Cage, September 2018).

¹¹ Ahdash (n3) above, 390.

¹² Tony Stanley and Surinder Guru, *Childhood Radicalisation Risk: An Emerging Practice Issue* (2015) 27 *Social Work in Action* 353,353.

¹³ Ahdash (n3) above, 390.

¹⁴ Ed Cairns, *Caught in Crossfire: Children and the Northern Ireland Conflict* (Appletree Press Ltd, 1987), 30; Marie Breen Smyth, *Half the Battle: Understanding the Effects of the ‘Troubles’ on Children and Young People in Northern Ireland* (Incore, 1998), 39–42 and Helen Brocklehurst, ‘The Nationalisation and Militarisation of Children in Northern Ireland’ in H Brocklehurst, *Children as Political Bodies: Concepts, Cases and Theories*.

¹⁵ Paul Gill and John Horgan, *Who were the Volunteers? The Shifting Sociological and Operational Profile of 1240 Provisional Irish Republican Army Members* (2013) 25 *Terrorism and Political Violence* 435, 450.

¹⁶ (n1) above.

extremism and/or involvement in terrorist related activity. I claim that although the case includes an important and welcome reaffirmation of the principles of family law in the face of worrying recent developments in counter-terrorism law, policy and practice, this reaffirmation remains fragile, arguing that the case represents a missed opportunity for the family courts to critically reflect on and appraise the nature and purpose of family law's interaction with counter-terrorism and its potentially worrying human rights implications.

Facts of the case

In *A Local Authority v X, Y and Z*,¹⁷ the local authority applied for permission to withdraw care proceedings that had previously been initiated with regards to three children of varying ages.¹⁸ Although the children had come to the attention of the local authority almost eight years earlier,¹⁹ following the father's arrest and conviction for soliciting murder and providing financial assistance for the purpose of terrorism,²⁰ care proceedings were only initiated by the local authority as a result of more recent communications from the Counter-Terrorism Command Unit of the Metropolitan police.²¹

In initiating care proceedings, the local authority had argued that the children in question were at risk of suffering significant harm as a result of the beliefs and activities of the parents. To that end, the local authority claimed that the parents were 'part of a network of individuals'²² who are closely associated with and shared 'similar radical views'²³ to *Al-Muhajiron*,²⁴ a proscribed organisation. More specifically, the local authority had alleged that the father, who is the subject of a Terrorism Prevention and Investigation Measure²⁵ (hereafter TPIM²⁶), possessed 'radicalising material' on his laptop, including 'images of acts of terrorism and violence' which indicated his 'support for ISIS.'²⁷ The local authority had also argued that the mother 'holds or is at least sympathetic to extremist beliefs'²⁸ and had attended (with the children) and even 'led meetings and lectures' at which 'radical views justifying and supporting violence towards non-Muslims, acts of terror and the proscribed organisation of ISIS' were expressed.²⁹

However, the local authority applied to the court to withdraw the care proceedings on the basis that doing so would be in the best interests of the children.³⁰ Since evidence

¹⁷ Ibid.

¹⁸ Ibid, para 8.

¹⁹ Ibid, para 59.

²⁰ Ibid, para 7.

²¹ Ibid, para 20.

²² Ibid, para 8.

²³ Ibid.

²⁴ Ibid, para 19.

²⁵ (n1) above, para 4.

²⁶ TPIMs, which replaced Control Orders in 2011, are executive measures designed to limit the activities of individuals who are suspected of involvement in terrorism but who, due to the sensitivity of the evidence, cannot be prosecuted in a criminal court or deported out of the country. For more, see Alexander Horne and Clive Walker, *The Terrorism Prevention and Investigation Measures Act 2011: One Thing but Not Much the Other?* (2012) 6 Criminal Law Review 421.

²⁷ (n1) above, para 8.

²⁸ Ibid, para 16.

²⁹ Ibid, para 7.

³⁰ Ibid, para 44.

that the children themselves were ‘radicalised or exposed to extremist material’³¹ was entirely lacking, MacDonald J granted the local authority’s application to withdraw proceedings, finding that the evidence available did not suggest that the children ‘have suffered significant harm.’³² Therefore, MacDonald J agreed with the parents that the local authority would ‘be unable to satisfy the threshold criteria’³³ necessary for granting care orders under s.31 of the Children Act 1989.

Childhood radicalisation: extremism as a ‘freestanding’³⁴ harm

What makes *A Local Authority v X, Y and Z*³⁵ a particularly noteworthy case is that it is one of the very few radicalisation cases where concerns regarding extremism and radicalisation have been raised without any reference to the issue of travel to ISIS-held territory in Syria. The local authority’s allegation, before its decision to withdraw care proceedings, that ‘the children were likely to suffer significant emotional and psychological harm as a consequence of their likely exposure to the radical views of the parents’³⁶ is an uncommon one. This is because in the majority of the radicalisation cases, allegations that a child has been radicalised or is at risk of radicalisation due to exposure to extremist ideology have mostly been raised *alongside* parallel allegations that a child has already travelled to or is at risk of travelling to ISIS-held territory in Syria.³⁷ Stand-alone allegations of childhood radicalisation due to exposure to (parental) extremism are something of a rarity in the family courts.³⁸

However, with the decline of ISIS and the significant drop in the number of children and families travelling to Syria,³⁹ the issue of travel to ISIS-held territories has become less significant in more recent radicalisation cases. In fact *A Local Authority v X, Y and Z*⁴⁰ can be seen as a reflection of a recent development in the radicalisation cases: the identification of childhood radicalisation as a result of exposure to religious and/or political extremism as a *free-standing*⁴¹ ‘new type of harm’ that, according to MacDonald J in an earlier radicalisation case, ‘may’ on its own and without reference to the possibility of it leading to travel to Syria or engagement in terrorist violence ‘justify state intervention in family life.’⁴²

As I have pointed out elsewhere,⁴³ in more recent radicalisation cases the concern of the family courts has gone ‘beyond the question of threatened or actual removal from the

³¹ Ibid, para 59.

³² Ibid, para 61.

³³ Ibid, para 55.

³⁴ Ahdash (n3) above, 403.

³⁵ (n1) above.

³⁶ Ibid, para 18.

³⁷ Ahdash (n3) above, 403-405.

³⁸ The only other radicalisation case involving public law proceedings where extremism and radicalisation concerns have been raised without reference to the possibility of travel to Syria is *Re A and B (Children)* [2016] EWFC B43. Radicalisation and extremism concerns have also been raised alone without reference to travel to Syria in a couple of radicalisation cases involving *private* family law proceedings. E.g. *Re M (Children)* [2013] EWCA Civ 388 and *Re M (Children)* [2014] EWHC 667 (Fam).

³⁹ Clive Walker, *Foreign Terrorist Fighters and UK Counterterrorism Law* in David Anderson, *The Terrorism Acts in 2015: Report of the Independent Reviewer in the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* (December 2015) 128.

⁴⁰ (n1) above.

⁴¹ Ahdash (n3) above, 403.

⁴² *HB v A Local Authority (Local Government Authority Intervening)* [2017] EWHC 524 (Fam), para 119.

⁴³ Ahdash (n3) above, 403.

jurisdiction'⁴⁴ to war-zones and terrorist organisations in Syria. The family courts have been increasingly pre-occupied with investigating 'what materials the children have been exposed to at home' and whether or not the parent in question 'supports the cause of the so-called Islamic State'⁴⁵ not just to determine the likelihood of travel to ISIS-held territory in Syria and/or involvement in terrorism but *also* to assess the 'welfare impact of the alleged beliefs and sympathies of a parent'⁴⁶ on their children. As a result, the focus of the family courts in the radicalisation cases is 'not just [with] the *behaviours* of parents'⁴⁷ (my emphasis). Rather, the family courts are now also concerned with the question of 'whether and in what circumstances the religiously motivated *views* of parents are so *harmful* to their children that the State should intervene to protect the child' or children in question⁴⁸ (my emphasis).

The implication here is that the harm of childhood radicalisation as a result of exposure to extremism is a harm of *ideas*. As Rachel Taylor argues, the harm that is being contemplated comes from the alleged 'radicalised' or 'extremist' *beliefs* themselves rather than the 'flight risk'⁴⁹ or the terrorist violence that they might lead to.⁵⁰ And indeed, the family courts have found, in a growing number of radicalisation cases, that religious and/or political views, beliefs and ideas which are extremist and which can radicalise children are, *in and of themselves*, harmful to children. Children who have been radicalised and have adopted and espoused extremist religious and political views that are deemed to be illiberal, hateful and intolerant and that can, in the eyes of the judges, undermine liberal democratic values and principles,⁵¹ are considered by the family courts to have been subjected to 'emotional' and 'psychological' harm.⁵² Therefore, in the radicalisation cases, religious and political beliefs that are considered to be extremist and that can radicalise children are identified and treated as a *distinct* 'facet of child protection'⁵³ that can engage the jurisdiction of the family justice system.⁵⁴

This is an important development in English family law that, as I have previously demonstrated, significantly departs from established family law principles.⁵⁵ For although the family courts have in the past found the religious *practices* of parents and/or the social or secular *effects* of their religious beliefs to be harmful to children and contrary to their welfare,⁵⁶ it is extremely rare for them to find the religious and/or political *beliefs* of parents to be themselves harmful to children or contrary their best interests.⁵⁷ The radicalisation cases, influenced by recent developments in counter-

⁴⁴ *A Local Authority v HB (Alleged Risk of Radicalisation and Abduction)* [2017] EWHC 1437 (Fam) para 122.

⁴⁵ *Ibid*, para 11.

⁴⁶ *Ibid*, para 122.

⁴⁷ *A Local Authority v M and Others* [2016] EWHC 1599 (Fam), para 6.

⁴⁸ *Ibid*.

⁴⁹ Rachel Taylor, *Religion as harm? Radicalisation, extremism and child protection* (2018) 30 *Child and Family Law Quarterly* 41, 47.

⁵⁰ *Ibid*.

⁵¹ E.g. *A Local Authority v M and Others* (n47) above, para 70, *Re X (Children) (No3)* [2015] EWHC 3651 (Fam), para 96 *Lancashire County Council v M and Others* [2016] EWFC 9, para 26.

⁵² *A Local Authority v M and Others* (n47) above, annex.

⁵³ *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), para 17, para 51.

⁵⁴ Ahdash (n3) above, 403-405.

⁵⁵ *Ibid*, 404.

⁵⁶ Rex Ahdar, *Religion as a Factor in Custody and Access Disputes*, (1996) 10 *International Journal of Law Policy and the Family* 177, 108.

⁵⁷ Rachel Taylor, *Responsibility for the Soul of the Child: The Role of the State and Parents in Determining Religious Upbringing and Education* (2015) 29 *International Journal of Law, Policy and the Family* 15, 15.

terrorism policy and practice, have changed the family courts' approach to parental religious beliefs. For, as Taylor points out, in some of the radicalisation cases the family courts have found that certain orthodox or illiberal Islamic beliefs (especially those pertaining to the prohibition of homosexuality or differentiated and traditional gender roles⁵⁸) to be so 'distasteful' and objectionable that they are harmful and dangerous to children.⁵⁹

*A Local Authority v X, Y and Z*⁶⁰ draws on and reinforces this recent development in the radicalisation cases. Throughout the judgment, MacDonald J appears to be preoccupied with searching for 'any evidence' that the children have 'been radicalised or exposed to extremist material'⁶¹ and looks for 'signs' that they might have 'been drawn into a radical or extremist view of the world'⁶² or that their parents have 'exposed [them] to material propounding such views.'⁶³ MacDonald J's endorsement of the recent trend towards identifying childhood radicalisation due to exposure to extremist thinking and ideologies as a 'new facet of safeguarding and child protection'⁶⁴ that can justify coercive state intervention in private and family life is worrying. For as I have previously demonstrated, whilst the risk of travel to ISIS-held territory in Syria, despite its factual novelty, at least presented the family courts with child protection concerns that are both recognisable and familiar⁶⁵ (i.e. the possibility of death, torture or serious physical injury⁶⁶), the same cannot be said of cases where the concern of the court is (only or primarily) with radicalisation and extremism.

This is because although radicalisation and extremism have been identified as safeguarding and child-protection concerns by the government's *Prevent Strategy*⁶⁷ and the 'Prevent Duty',⁶⁸ social work academics have cautioned against 'peremptorily defining' radicalisation and extremism as 'child protection issue[s]' and safeguarding concerns.⁶⁹ As the Joint Committee on Human Rights noted, whereas 'everyone can understand the definition of safeguarding when it comes to child-neglect, physical abuse and sexual abuse,' when it comes to preventing radicalisation and extremism, there is 'no shared consensus ... as to what children would be safeguarded from.'⁷⁰ In a

⁵⁸ E.g. *A Local Authority v M and Others* (n47) above, para 70 and *Lancashire County Council v M and Others* [2016] EWFC 9, para 26.

⁵⁹ Taylor (n49) above, 49.

⁶⁰ (n1) above.

⁶¹ *Ibid*, para 32.

⁶² *Ibid*, para 60.

⁶³ *Ibid*.

⁶⁴ *A v London Borough of Enfield* [2016] EWHC 567 (Admin), para 36.

⁶⁵ Ahdash (n3) above, 402.

⁶⁶ *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam), para 70.

⁶⁷ The *Prevent Strategy* is the preventative strand of the government's official counter-terrorism policy CONTEST. HM Government (2008) *The Prevent Strategy: A Guide for Local Partners in England. Stopping people becoming or supporting terrorists and violent extremists* pages 27 and 47. See also Department for Children, Schools and Families (2010) *Working Together to Safeguard Children*, chapter 11 and HM Government (2015) *Working Together to Safeguard Children*, Chapter 1.

⁶⁸ The 'Prevent Duty' placed the *Prevent Strategy* on a statutory footing and made it a legal obligation for a number of public bodies (including local authorities and schools) to have 'due regard' to the need to prevent terrorism. See: S.26 of the Counter-Terrorism and Security Act 2015.

⁶⁹ Stanley and Guru (n12) above, 353. The lack of consensus amongst social workers regarding the extent to which radicalisation can be considered a safeguarding and child protection risk and the legitimacy of safeguarding and child protection interventions within the context of radicalisation was also echoed in the department of education's recent report on how local authorities are responding to radicalisation: Thomas Chisholm and Alice Coulter, 'Safeguarding and radicalisation: Research report' (Department of Education, August 2017), 4-6.

⁷⁰ Joint Committee on Human Rights, *Counter-Extremism (Second Report of Session 2016-17)*, HL Paper 39/HC 105

similar vein, the social work academics David McKendrick and Jo Finch have questioned 'how far current' and more established and recognisable 'types of abuse 'fit''⁷¹ within the context of radicalisation and extremism, going as far as to claim that the 'usage of the term 'safeguarding' within' the *Prevent* Strategy and wider counter-terrorism context is so 'distinct'⁷² and 'different'⁷³ that it cannot be regarded as 'traditional safeguarding.'⁷⁴

Moreover, the suspected harm of extremism and radicalisation is an 'emotional,' 'psychological'⁷⁵ and even 'ideological'⁷⁶ harm and is, by the family courts' own admission, 'insidious'⁷⁷ and, consequently, difficult to identify and assess.⁷⁸ Therefore, it is difficult to disagree with Taylor's argument here that since neither the government nor the family courts have 'articulated th[e] safeguarding risks' faced by children at risk of radicalisation with sufficient 'clarity,'⁷⁹ and given that it is not exactly 'clear how' preventing or even 'eliminating extremism' actually 'protects individual children from harm,'⁸⁰ incorporating the confused⁸¹ language of radicalisation and extremism into family law proceedings is dangerous.⁸²

At this point it could be argued that given the recent involvement of children and teenagers in terrorist related activities in both the UK and abroad,⁸³ preventing the radicalisation of children and their exposure to extremist ideologies achieves child-protection and safeguarding goals by potentially diverting them from joining terrorist organisations and becoming involved in terrorist violence.⁸⁴ The argument here, which I have previously referred to as the 'official explanation' of the radicalisation cases propagated by the government, the family judges and some academics,⁸⁵ is that by tackling radicalisation and extremism, the family courts are protecting vulnerable children from seriously harming themselves and others and safeguarding them from a life of criminality and terrorist involvement.

However, whilst this might seem like an intuitively appealing argument, it is, nonetheless, problematic for a number of reasons. Firstly, this argument rests on the flawed assumption that being exposed to and eventually holding extremist religious and ideological beliefs can lead individuals towards committing acts of terrorist violence. But the claim, which underpins the government's counter-terrorism policies and

(22 July 2016), 5.

⁷¹ David McKendrick and Jo Finch, *'Downpressor man': securitisation, safeguarding and social work* (2017) 5 *Critical and Radical Social Work* 287, 293.

⁷² *Ibid.*

⁷³ *Ibid.*, 294.

⁷⁴ *Ibid.*

⁷⁵ *A Local Authority v M and Others* (n47) above, annex.

⁷⁶ Stanley and Guru (n12) above, 353.

⁷⁷ *Brighton and Hove City Council v Mother, Y* [2015] EWHC 2099 (Fam), para 9.

⁷⁸ *Ibid.*

⁷⁹ Taylor (n49) above, 54.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, 51.

⁸² See also Taylor (n49) above, 42.

⁸³ Carolyn Hamilton, Flavia Colonnese and Maurice Dunaiski, 'Children and Counter-Terrorism' United Nations Interregional Crime and Justice Research Institute (2016), 3.

⁸⁴ A similar argument is made by Taylor (n49) above, 50.

⁸⁵ Ahdash (n3) above, 394.

discourses,⁸⁶ that religious radicalisation through exposure to and the espousal of Islamist extremist ideologies and beliefs leads to the involvement of individuals in terrorist violence lacks sufficient empirical justification and has been severely criticised and rejected by a number of prominent terrorism and political violence scholars.⁸⁷ In particular, as Taylor points out, ‘there is very little empirical research that is concerned with children and little literature that looks at violent extremism from the perspective of the threat of harm to individual children.’⁸⁸ Therefore, this argument is based on a problematic and insufficiently evidenced assumed link between Islamist radicalisation or extremism and terrorist violence, especially when it relates to children.

Secondly, even if we do accept the claim that protecting children from radicalisation and extremism may be necessary in order to prevent them from becoming involved in terrorism, we must be aware of and should guard against the somewhat selective and politicised ways in which this argument has been applied so far. For it is important to remember, as mentioned above, that the involvement of children in terrorism is nothing new to the UK. Children and teenagers were directly involved in the conflict in Northern Ireland during the years of the Troubles: they were recruited into terrorist groups, participated in violent riots and were even convicted of violent terrorist offences, including murder and firearm offences.⁸⁹ Yet the child-protection agencies and the family courts were never directly involved in preventing and countering terrorism in Northern Ireland.⁹⁰ In fact, evidence suggests that social work and probation agencies working with children and young people specifically chose to remain uninvolved with children and young people convicted of terrorist offences or regarded as being at risk of engaging in political violence,⁹¹ maintaining that involvement within a context of political violence was neither appropriate nor desirable⁹² and preferring to maintain a position of official neutrality.⁹³

Similarly, although far-right terrorism and extremism have been on the rise in recent years,⁹⁴ far-right radicalisation does not feature in the radicalisation cases and has not really been of concern to the family courts. In fact in *Re A*, Munby LJ emphatically dismissed allegations regarding the active involvement of a father with the far-right group the English Defence League (EDL) and his participation in violent protests where racist views were espoused as being ‘neither here nor there,’ asserting that ‘[m]embership of an extremist group such as the EDL was not, without more, any basis for care-proceedings.’⁹⁵

⁸⁶ Conor Gearty, *Is attacking multi-culturalism a way of tackling racism- or feeding it? Reflections on the Government’s Prevent Strategy* (2012) 2 European Human Rights Law Review 121, 124.

⁸⁷ See: Arun Kundnani, *Radicalisation: the journey of a concept* (2012) 54 Race & Class 3, 3; Jonathan Githens-Mazer and Robert Lambert, *Why conventional wisdom on radicalization fails: the persistence of a failed discourse* (2010) 86 International Affairs 889, 896 and Charlotte Heath-Kelly, *Counter-Terrorism and the Counterfactual: Producing the ‘Radicalisation’ Discourse and the UK PREVENT Strategy* (2012) 15 British Journal of Politics and International Relations 394, 397.

⁸⁸ Taylor (n49) above, 56.

⁸⁹ Breen Smyth (n14) above, 39-42 and Brocklehurst (n14) above, 30.

⁹⁰ It is also worth noting that the *Prevent Strategy* does not apply in Northern Ireland.

⁹¹ Deidre Heenan and Derek Birrell, *Social Work in Northern Ireland* (Policy Press, 2011), 23.

⁹² Greg Kelly, ‘Social Work and the Courts in Northern Ireland’ in Howard Parker (ed) *Social Work and the Courts* (Edward Arnold, 1979), 185-186.

⁹³ Marie Smyth and Jim Campbell, *Social Work, Sectarianism and Anti-Sectarian Practice in Northern Ireland* (1996) 26 The British Journal of Social Work 77, 90.

⁹⁴ Lizzie Dearden, ‘Number of far-right terrorists in UK prisons triples as arrests hit new record’ *The Independent* (London, 14 June 2018).

⁹⁵ *Re A (Application for Care and Placement Orders: Local Authority Failings)* [2015] EWFC 11, para 71.

I am not suggesting here that the threat the UK faces and has faced from Northern Irish, Islamist and far-right terrorism is the same or that these different categories of terrorism and extremism pose similar dangers to children. There are, of course, important differences. Rather, the point here is that even though protecting children from becoming involved in terrorist violence might *seem* like an obvious and self-evident child-protection or safeguarding issue, there is a notable and potentially discriminatory selectivity when it comes to which forms of radicalisation and extremism have actually been considered to be child-protection and safeguarding concerns and which have not.⁹⁶ The family courts should be wary of perpetuating this selectivity, lest they be accused of participating in constructing and treating Britain's Muslim community as a 'suspect community.'⁹⁷

But it could also be argued that even if tackling the radicalisation of children and their exposure to parental extremism will not necessarily prevent them from becoming involved in terrorism in the future, it will, nonetheless, achieve other equally important child-protection and safeguarding goals. This is because, according to the government, the harm of extremism is not limited to the role it can play in justifying, supporting and leading towards terrorist violence. The government has maintained that Islamist extremism is also harmful because it can encourage social isolation and the segregation of Muslim communities and families from British society.⁹⁸ Of particular concern to the government have been Muslim parents who home-school their children or send them to Islamic schools which provide a narrow Islamic education, fearing that such parents are isolating their children from mainstream British society and potentially inculcating them with values that contravene and even undermine 'Fundamental British Values.'⁹⁹

The issue of social isolation (especially through home-education) and its relation to the radicalisation of children was not of direct concern to the family court in *A Local Authority v X, Y and Z*.¹⁰⁰ Although two of the children were home-schooled, they were, according to MacDonald J, 'actively involved in outside activities, have sufficient and adequate education' and appeared to be 'keen on learning about a whole range of diverse subjects.'¹⁰¹ The issue has, however, been identified as a concern in a number of earlier radicalisation cases. For example, the fact that B had been 'taught at home' by her mother was problematised by Hayden J from the start in *London Borough of Tower Hamlets v B*,¹⁰² an important radicalisation case involving B, a 16 year old girl who was apprehended at an airport intending to join ISIS in Syria and who had been indoctrinated after accessing ISIS propaganda online. Throughout the case, B's home-education, which according to Hayden J 'inevitably...limited' her 'opportunities for

⁹⁶ Ahdash (n3) above, 411.

⁹⁷ Christina Pantazis and Simon Pemberton, *From the 'Old' to the 'New' Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation* (2009) 49 *British Journal of Criminology* 646, 646.

⁹⁸ *Counter-Extremism Strategy* of 2015 (HM Government, *Counter-Extremism Strategy* (Cm 9148 October 2015), 10-13. This argument was also made by the government in *R (Salman Butt) v Secretary of State for the Home Department* [2017] EWHC 1930, para 123.

⁹⁹ Martin Myers and Kalwant Bhopal, *Muslims, home education and risk in British society* (2018) 39 *British Journal of Sociology of Education* 212, 212 and Madeline-Sophie Abbas, 'I grew a beard and my dad flipped out!' *Co-option of British Muslim parents in countering 'extremism' within their families in Bradford and Leeds* (2018) *Journal of Ethnic and Migration Studies* 1, 1-4.

¹⁰⁰ (n1) above.

¹⁰¹ *Ibid*, para 60.

¹⁰² (n53) above, para 17.

social interaction,¹⁰³ was presented as an important reason behind her radicalisation and attempt to travel to Syria. Similarly, in *A Local Authority v M and Others*,¹⁰⁴ a case involving accusations by the local authority that the mother (who was apprehended with her children by the Turkish authorities at the Turkish-Syrian border) was an extremist activist who had attempted to join ISIS in Syria, Newton J found that ‘the mother’s extreme views...were reflected in the education she provided to the children, who were home-educated’¹⁰⁵ and ‘deliberately kept apart from wider society.’¹⁰⁶

Once again, the argument for treating radicalisation and extremism as child-protection concerns which can justify state intervention seems appealing. Preventing the social isolation of children and facilitating their integration into mainstream British society appears to be an appropriate goal to encourage, since it will likely improve their educational and employment prospects in the future, broaden their horizons and encourage them to have critical and open minds. It is not surprising, therefore, that in both *London Borough of Tower Hamlets v B* and *A Local Authority v M and Others* Hayden J and Newton J regarded the enrolment of the children in ‘local college[s]’¹⁰⁷ and their exposure to ‘mainstream schooling’¹⁰⁸ as essential for their immunisation¹⁰⁹ against further radicalisation by expanding their minds and sharpening their critical faculties.

However, whilst this might be a superficially attractive argument, it risks potentially contravening both English and ECHR case-law. Under English law, the freedom of parents or their parental responsibility when it comes to the religious upbringing and education of their children is widely construed.¹¹⁰ The courts in England and Wales have traditionally been very wary of evaluating the educational choices of parents for their children, especially when these parents belong to religious minorities,¹¹¹ asserting that it is sufficient for them to provide an education that prepares their children for life in their own immediate religious communities rather than life in mainstream British society.¹¹² More importantly, both English and ECtHR judges have been sceptical of ‘social isolation’ or ‘social exclusion’ arguments made against parents belonging to religious minorities and sects, pointing out that it is not necessarily ‘contrary to the welfare of children that life should be in a narrow sphere [and] subject to stricter religious discipline,’¹¹³ and warning that ‘the criterion of social marginalisation could be applied to members of any minorities as a means to strip them of their parental rights.’¹¹⁴

¹⁰³ Ibid.

¹⁰⁴ (n47) above.

¹⁰⁵ Ibid, para 49.

¹⁰⁶ Ibid.

¹⁰⁷ *London Borough of Tower Hamlets v B*, (n53) above, para 149.

¹⁰⁸ *A Local Authority v M and Others* [2017] EWHC 2851 (Fam), para 49.

¹⁰⁹ *London Borough of Tower Hamlets v B* (n53) above, para 140.

¹¹⁰ See: Carolyn Hamilton, *Family, Law and Religion*, (Sweet and Maxwell 2003)140-142 ; Anthony Bradney, *Religion, Rights and Laws* (Leicester University Press 1993), 46 and Rex Ahdar & Ian Leigh, *Religious Freedom in the Liberal State* (2010 OUP), 19.

¹¹¹ Tamara Tolley, *Hands-Off or Hands-On?: Deconstructing the ‘Test-Case’ of Re G within a Culture of Children’s Rights* (2014) 77 *Modern Law Review* 110, 110-12.

¹¹² Ibid, 121. See also: *R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust* (1985) (Times, 12 April 1985).

¹¹³ *Re T (Minors) (Custody: Religious Upbringing)* [1981] 2 FLR 239, para 248.

¹¹⁴ *Hoffman v Austria* (1993) 17 EHHR 293, paras 307–8. Although it is interesting to note here the more recent case of *Wunderlich v Germany* [2019] ECHR 12 where the ECtHR commented that the policy of compulsory school attendance in Germany to prevent social isolation and exclusion justified, in that case, the partial withdrawal of parental responsibility and the assumption made by the domestic authorities that children could be endangered by

There is also a worryingly assimilationist thrust to this argument that could be counter-productive. Limiting the statutory and human rights of minority parents to bring up and educate their children according to their religious beliefs and precepts for the sake of bringing them and their children out of social isolation risks creating a 'siege mentality' that reinforces the very isolation and segregation that the government and the courts seek to prevent.¹¹⁵ It also overlooks and even potentially exacerbates the *structural* reasons behind the segregation and social isolation experienced by minority religious families and communities including 'practices of discrimination, prejudice and racism that exclude some people from belonging to the body politic as full citizens.'¹¹⁶

Finally we must bear in mind that the harm of extremism and radicalisation pertains to the essentially 'pre-criminal'¹¹⁷ realm of beliefs, ideas and values that supposedly precede the committing of terrorist violence. Therefore, by assessing whether or not a child has been radicalised by being exposed to extremist beliefs, the family courts come dangerously close to thought-policing,¹¹⁸ with some potentially serious human rights implications, especially with regards to the religious freedom of particularly religious or orthodox children and parents belonging to minority religions and their right to a private and family life. And here the evidence from *A Local Authority v X, Y and Z*¹¹⁹ is concerning. For example, MacDonald J refers to the mother's complaint that the social worker, during the course of her assessment of the children in order to determine whether or not they had been radicalised, 'asked the children on a number of occasions' about their 'views on issues' such as the 'wearing of the hijab'¹²⁰ (the Islamic headscarf), including asking one of the girls 'what her parents would do if she did not wear it.'¹²¹ Although it is not clear how much weight the social worker and MacDonald J gave to these questions, a problematic link seems to be drawn between parents who transmit conservative Islamic beliefs and norms to their children (such as hijab-wearing) and extremism and radicalisation.¹²²

This implicit link between particularly strict forms of Islamic religious observance and extremism and radicalisation has also been made, as I have previously argued, in other earlier radicalisation cases.¹²³ For example, when exploring the reasons behind B's radicalisation in *London Borough of Tower Hamlets v B*,¹²⁴ Hayden J was clearly uncomfortable with the mother's 'zealous Islamic beliefs'.¹²⁵ So although Hayden J insisted that he was not suggesting 'that the mother held radicalised beliefs',¹²⁶ the

not being sent to school for their education. For more see: Frank Cranmer 'Homeschooling and Article 8 ECHR: *Wunderlich*' (Law and Religion Blog, 17 January 2019).

¹¹⁵ Ambalavaner Sivanandan, *Race, terror and civil society* (2006) 47 *Race & Class* 1, 3.

¹¹⁶ Aislinn O'Donnell, *Contagious ideas: vulnerability, epistemic injustice and counter-terrorism in education* (2016) *Educational Philosophy and Theory* 1, 4.

¹¹⁷ Therese O'Toole, 'Prevent: from 'hearts and minds' to 'muscular liberalism'' (Public Spirit, November 2015) <<http://www.publicspirit.org.uk/prevent-from-hearts-and-minds-to-muscular-liberalism/>.

¹¹⁸ Fatima Ahdash, 'Should the law facilitate the removal of children of terrorists and extremists from their care?' (LSE British Politics and Policy, 9 March 2018) <http://blogs.lse.ac.uk/politicsandpolicy/should-the-law-facilitate-the-removal-of-the-children-of-convicted-terrorists/>.

¹¹⁹ (n1) above.

¹²⁰ *Ibid*, para 41.

¹²¹ *Ibid*, para 42.

¹²² *JCHR Report* (n70) above, 28.

¹²³ Ahdash (n3) above, 410.

¹²⁴ (n53), above.

¹²⁵ *Ibid*, para 125.

¹²⁶ *Ibid*, para 124.

degree of the mother's Islamic observance is, nonetheless, problematised and directly linked to B's radicalisation: 'I have found on the spectrum of Islamic observance she is at the most committed end. In this family those beliefs proved to be fertile ground for B's journey to radicalisation'.¹²⁷ By the same token, a lack of 'strict Islamic observance',¹²⁸ including the fact that the father 'broke the Ramadan fast' in *Re A and B*¹²⁹ and the mother in *Re NAA*¹³⁰ 'did not wear a hijab ... or pray during the day'¹³¹ were treated as evidence that they are not extremist individuals. The danger here is that the religious freedoms of parents are being unduly restricted in a potentially discriminatory¹³² manner.

The terrorist and/or extremist parent: an important development

The discussion in the preceding section pointed out and critiqued the ways in which *A Local Authority v X, Y and Z*¹³³ reinforces a recent development in the family courts whereby parents who have indoctrinated their children by exposing them to extremist religious and political views have been found to cause their children emotional and psychological harm serious enough to justify coercive statutory intervention under s.31 of the Children Act 1989. But what about parents, like the parents in *A Local Authority v X, Y and Z*,¹³⁴ who may have committed terrorist related offences or who hold extremist beliefs but have not taken any active steps towards *actually* radicalising their children or sharing extremist beliefs with them?

This is where *A Local Authority v X, Y and Z*¹³⁵ digresses from the trajectory taken by previous radicalisation cases. For despite the fact that the father had been convicted of a (non-violent) terrorism-related offence and was considered by the Secretary of State for the Home Department (hereafter SSHD) to represent a serious enough security threat to be made the subject of a TPIM and although MacDonald J found that 'it is at least possible that a court would be able to make findings in respect of the mother' that she is an extremist who supported and even participated in the activities of extremist political organisations,¹³⁶ this was not considered enough to warrant compulsory statutory intervention in their private and family life. Since there was 'no proper evidential basis to put to the parents that they have radicalised their children or exposed them to extremist material'¹³⁷ and given the fact that the children 'display[ed] no signs of having been drawn into a radical or extremist view of the world,'¹³⁸ MacDonald J found that there was 'no evidence before the court that the children *have* suffered significant harm.'¹³⁹ What this suggests, therefore, is that a child or a group of children must have been demonstrably impacted and negatively affected by their parents' extremist

¹²⁷ Ibid, para 125.

¹²⁸ *Re A and B* (n 38) above, para 125.

¹²⁹ Ibid.

¹³⁰ [2017] EWFC B76.

¹³¹ Ibid, para 47.

¹³² I say discriminatory because the focus of the radicalisation cases has been on Muslim families and concerns arising out of Islamist extremism and radicalisation. See also David Barrett, *Tackling Radicalisation: the limitations of the anti-radicalisation prevent duty* (2016) 5 European Human Rights Law Review 530, 536-538.

¹³³ (n1) above.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid, para 57.

¹³⁷ Ibid, para 61.

¹³⁸ Ibid, para 60.

¹³⁹ Ibid, para 61.

ideology before a family court can find that they have been harmed; there must be evidence of *actual* radicalisation or indoctrination into extremist thinking before compulsory state intervention can be sanctioned.

Under s.31(2) of the Children Act 1989, a court may grant a local authority's application for care or supervision orders if it is satisfied that the child in question has suffered or is *likely* to suffer significant harm attributable to the care given or likely to be given by the parent. Notably, MacDonald J stated that evidence of actual radicalisation and indoctrination is required to establish not just that a child *has* actually suffered significant harm but also to determine 'the question of [future] *risk* of significant harm.'¹⁴⁰ MacDonald J warned that 'in the absence of any evidence of the children having been drawn into a radical or extremist view of the world...the only basis for finding that they are at risk of significant harm would be if the court were to conclude that' parents who are convicted of terror-related offences and/or hold extremist religious and political beliefs 'must *a priori* constitute a risk of significant harm to their children.'¹⁴¹ MacDonald J was clearly uncomfortable with the implications of making such an inference, emphasising that even 'risk of significant harm' must be 'established on the basis of evidence not assumptions or speculations about future behaviour'¹⁴² based on the extremist beliefs of the parents or their terrorism related convictions. Since the children in *A Local Authority v X, Y and Z*¹⁴³ had been known to the authorities for over eight years¹⁴⁴ and had not, throughout this period, displayed any signs of radicalisation, MacDonald J found that 'the proposition that the parents must, a priori, constitute a risk of significant harm to their children is wholly undermined by the evidence.'¹⁴⁵

Although it could be said that this case turns on its own facts (particularly the fact that the children had been known to the local authority for a long period of time), *A Local Authority v X, Y and Z*¹⁴⁶ warns against suggesting that terrorist and/or extremist parents, because of that fact alone, pose a risk to their children. It implies that they are not to be automatically regarded as threatening to their children. This approach contradicts the position taken by other family judges in previous radicalisation cases. For example in *Re C, D, E (Fact Finding: Radicalisation)*,¹⁴⁷ although Cobb J found that there was 'no evidence that the parents have actually exposed or taken steps to promulgate to their children'¹⁴⁸ their 'extreme and radical views about Islam'¹⁴⁹ and was, in fact, 'relieved to record...that the parents' extreme fervour has not (yet) infected the children,'¹⁵⁰ he nevertheless extended the electronic tagging of the parents, maintaining that there was 'still a likelihood that, unless unchecked, it will do so; if it does so it will cause these children really serious or "significant" harm.'¹⁵¹ Likewise, although Hayden J (rather reluctantly) granted the local authority's application in *Re K*

¹⁴⁰ Ibid, para 62.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ (n1) above.

¹⁴⁴ Ibid, para 62.

¹⁴⁵ Ibid.

¹⁴⁶ (n1) above.

¹⁴⁷ [2016] EWHC 3651 (Fam).

¹⁴⁸ Ibid, 3.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid, para 117.

¹⁵¹ Ibid.

(*Children*)¹⁵² to withdraw care proceedings in relation to three children whose parents had been accused of espousing and disseminating extremist views on the basis that there was insufficient evidence that the children had suffered or were likely to suffer significant harm, he nonetheless added that ‘it might be considered *axiomatic* that a child brought up by radicalised parent of parents is, *by virtue of that fact alone*, at an unacceptable risk of significant harm’¹⁵³ (my emphasis).

These examples suggest that before *A Local Authority v X, Y and Z*,¹⁵⁴ the children of parents who hold extremist religious and/or political beliefs had been regarded by the judges in the radicalisation cases as being, *ipso facto*, at risk of suffering significant harm, irrespective of whether or not they had been exposed to or negatively affected by their parents’ extremism. The decision in *A Local Authority v X, Y and Z*¹⁵⁵ represents, therefore, a significant deviation from previous radicalisation case-law.¹⁵⁶ This deviation was clearly expressed by MacDonald J towards the end of the judgement. For whilst MacDonald J recognised that it is ‘easy to assume that a straight line can, without more, be drawn between a parent who is said to hold extremist views or a parent who is said to be involved in terror related activity and the suffering of significant harm or the risk of significant harm,’ he reminded the local authority that the evidence available from this ‘case demonstrates that the position is more complex.’¹⁵⁷ As a result, the question of whether an extremist or terrorist parent represents an unacceptable risk to their child ‘falls to be considered carefully on a case-by-case basis’ and ‘in light of the evidence’ provided.¹⁵⁸

Concluding thoughts: a welcome development or a missed opportunity?

MacDonald J’s decision in *A Local Authority v X, Y and Z*¹⁵⁹ is, in many ways, a welcome one. The insistence on the need for tangible evidence of actual harm suffered through radicalisation and inappropriate exposure to extremism signifies a strong and confident upholding of the principles of family law which only allow for compulsory state intervention in private and family life if a child has suffered or is likely to suffer significant harm and if such an intervention is in the child’s best interests. The decision properly recognises that even though an individual has committed a terrorist offence and/or is considered by the SSHD to pose a serious enough threat to the security of the public to justify the issuing of a TPIM, this does not *necessarily* make them, without evidence of actual harm suffered by the children, a “bad parent” who poses a risk to their children. This upholding of the principles of family law ensures that a person who has already been punished for terrorism-related offences or is suspected of being potentially involved in terrorist activities is not subjected to further unjust punishment or backhanded criminalisation through the family justice system.

This is not the first time that a family judge has defended the principles of family law (in particular the harm threshold¹⁶⁰ and the welfare principle¹⁶¹) from potential erosion

¹⁵² [2016] EWHC 1606 (Fam).

¹⁵³ *Ibid*, para 12.

¹⁵⁴ (n1) above.

¹⁵⁵ (n1) above.

¹⁵⁶ Note that this position was recently reiterated by Knowles J in *Re A,B,C,D and E* [2018] EWHC 1841 (Fam).

¹⁵⁷ (n1) above, para 67.

¹⁵⁸ *Ibid*.

¹⁵⁹ (n1) above.

¹⁶⁰ S.31 of the Children Act 1989.

by refusing to allow the family courts to become another instrument in the state's ever-expanding¹⁶² counter-terrorism arsenal. In one of the earlier radicalisation cases, *London Borough of Tower Hamlets v M and Others*,¹⁶³ Hayden J stressed that in family proceedings it is 'the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter-terrorism policy or operations.'¹⁶⁴ Similarly in *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)*, whilst MacDonald J acknowledged that 'Islamist extremism and the radicalisation consequent upon it exist at present as a brutal and pernicious fact in our society,' he insisted that it is nevertheless 'important in these difficult and challenging circumstances that the courts hold fast to the cardinal principles of fairness, impartiality and due process that underpin the rule of law in our liberal democracy.'¹⁶⁵

The problem, however, is that such an upholding of the principles of family law and the refusal to partake in the erosion of the values of liberty, the rule of law and democracy that the UK government's fight against terrorism has sometimes led to¹⁶⁶ remains fragile as long as the family court accepts and endorses, as it does in *A Local Authority v X,Y and Z*,¹⁶⁷ the identification of religious and political extremism and radicalisation as free-standing categories of harm that can justify, on their own, compulsory state intervention in the private lives of the families involved. This is particularly true given the fact that the definitions of 'radicalisation' and 'extremism' that the family court is using in the radicalisation cases come from counter-terrorism *policy* where the aim is the defence and enhancement of national security rather than the protection of the individual child and the promotion of his or her best interests.¹⁶⁸ And so even though the family courts have been clear that their focus in the radicalisation cases is on whether or not a child has been *actually* harmed and whether compulsory state intervention is in their best interests, the logic of counter-terrorism policy and its aims and considerations have inevitably been used, as Taylor puts it, to 'inform'¹⁶⁹ and determine what is considered harmful to children and contrary to their best interests.¹⁷⁰

It is of course true that in recent years in the UK, the remit of counter-terrorism has significantly expanded¹⁷¹ such that its focus has gone beyond the need to defend and protect national security. With the shift from counter-*terrorism* to counter-*extremism* and counter-*radicalisation* in recent years and the construction of radicalisation and extremism as child-protection and safeguarding concerns in the *Prevent* Strategy, the education, mental well-being and welfare of children and young people have become a key concern for counter-terrorism policy, practice and discourse. This, together with the infamous indeterminacy and malleability of the 'best interests of the child'

¹⁶¹ S.1(1) of the Children Act 1989.

¹⁶² Conor Gearty, *Liberty and Security*, (Polity Press, 2013), 97.

¹⁶³ [2015] EWHC 869 (Fam)

¹⁶⁴ *Ibid*, para 18.

¹⁶⁵ (n44) above, para 103.

¹⁶⁶ Gearty (n162) above, 97-100. See more recently Helen Fenwick, *Probing Theresa May's response to the recent terror attacks* (2017) 4 European Human Rights Law Review 241, 241.

¹⁶⁷ (n1) above.

¹⁶⁸ Ahdash (n3) above, pages 396, 402 and 405.

¹⁶⁹ Taylor (n49) above, 53.

¹⁷⁰ Ahdash (n3) above, 396.

¹⁷¹ Anthony Richards, *From terrorism to 'radicalization' to 'extremism': counterterrorism imperative or loss of focus?* (2015) 91 International Affairs 371, 374.

principle¹⁷² has meant that the logic of security and the logic of child welfare have overlapped in recent years: to prevent and counter-terrorism *is* to protect children from harm and to promote their best interests.

However, these recent changes in counter-terrorism policy and practice are troubling and should be resisted rather than strengthened and reinforced by the family courts. Given the essentially contested nature of concepts such as extremism and radicalisation and the lack of clarity on exactly what radicalisation is, who the radicalised are¹⁷³ and exactly how radicalisation and extremism harm children,¹⁷⁴ I agree with those who warn against expanding the remit and reach of counter-terrorism into traditionally non-security areas such child-protection and family law and argue that the counter-terrorist state should focus on countering *terrorism* and terrorist violence.¹⁷⁵ The family courts should resist blurring the lines between security and other unrelated policy areas,¹⁷⁶ ever-increasing securitisation and the 'foregrounding' of security over all other concerns.¹⁷⁷ Otherwise, as Taylor warns, the family courts may find themselves 'becoming the quasi-enforcement mechanism for *Prevent*' and other counter-terrorism programmes.¹⁷⁸

Furthermore, MacDonald J's (rather uncritical) acceptance of the family court's recent identification of extremism and radicalisation as free-standing harms that can reach the threshold criteria on the one hand and his insistence on the importance of evidence of actual harm sustained through radicalisation and exposure to extremist thinking on the other hand has led to a somewhat odd situation. According to MacDonald J's decision in *A Local Authority v X, Y and Z*,¹⁷⁹ the fact that a parent is a convicted terrorist and/or an extremist is not enough for the court to find that a child has suffered significant harm attributable to the care provided by their parent. But, as I show in the preceding section, MacDonald J states that it is also not enough to demonstrate that a child is at *risk* of suffering significant harm. The implication here is that evidence of actual radicalisation through exposure to extremist thinking, which is considered by the court to be a harm serious enough to warrant compulsory intervention, is also required before a court can be convinced that a child is at risk of suffering significant harm. This circular reasoning indicates the fundamental difficulty and the potential problems that can arise as a result of working with and attempting to apply extremism and radicalisation, which are vague,¹⁸⁰ subjective and essentially ideological concepts that are lacking in legal certainty,¹⁸¹ in family proceedings.

Therefore, as welcome as MacDonald J's reaffirmation and upholding of family law principles is in *A Local Authority v X, Y and Z*¹⁸² is, his decision also represents a missed

¹⁷² Helen Reece, *The Paramountcy Principle: Consensus or Construct* (1996) 49 *Current Legal Problems* 267, 296.

¹⁷³ Anthony Richards, *The problem with 'radicalization': the remit of 'Prevent' and the need to refocus on terrorism in the UK* (2011) 87 *International Affairs* 143, 143-144.

¹⁷⁴ Taylor (n49) above, 51-54 and Ahdash (n3) above, 411.

¹⁷⁵ Richards (n173) above, 144-145 and Gearty (n86) above, 127.

¹⁷⁶ Anthony Richards, *Characterising the UK Terrorist Threat: The Problem with Non-violent Ideology as a Focus for Counter-Terrorism and Terrorism as the product of 'Vulnerability'* (2012) 3 *Journal of Terrorism Research* 17, 19.

¹⁷⁷ Francesco Ragazzi, *Countering Terrorism And Radicalisation: Securitising Social Policy?* (2017) 37 *Critical Social Policy* 164, 165.

¹⁷⁸ Taylor (n49), 56.

¹⁷⁹ (n1) above.

¹⁸⁰ Ahdash (n118) above.

¹⁸¹ *JCHR Report* (n70) above, 17.

¹⁸² (n1) above.

opportunity in terms of critically reflecting on the nature and remit of the family court's role in countering terrorism, extremism and radicalisation. It is not surprising, therefore, that subsequent radicalisation cases have deviated from the approach taken in this case by finding that parents who are either considered to be terrorists and/or extremists or those simply suspected of being terrorists and/or extremists represent a significant enough threat to the safety and well-being of their children that justifies compulsory state intervention even when there is no actual evidence of childhood radicalisation or exposure to extremist thinking.¹⁸³

¹⁸³ See: *Re C (No 3) (Application for dismissal or withdrawal of proceedings)* [2017] EWFC 37 and *A Local Authority v A Mother and Others* (n9) above.