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Public Law Case Law Update

Phoebe Duterloo

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This is a summary of a judgment handed down by HHJ Redmond, which considers a Local Authority (Wolverhampton City Council) applying to withdraw their application for a care order. This judgment underscores the importance of ongoing evidential review and the need to bring care proceedings to an end once threshold is no longer realistically pursued. It highlights that proportionality, timeliness, and the child's welfare must remain central, particularly where continued proceedings cause unnecessary separation. Finally, it is a reminder of what can be achieved when practitioners, experts and parents all work together to assist the court in achieving a faster outcome, especially when separation may no longer be necessary.

Re: Q (Withdrawal of Care Proceedings) [2025] EWFC 476 (B)

Introduction [1-2]

This judgment concerns 'Q', a, now, 10-month-old child. When Q was 4 months old, she sustained a complete and displaced spinal fracture to her left thigh bone. Due to the gravity of the injury, care proceedings were placed upon her while a thorough investigation was conducted.

Having considered and having received expert evidence, the court was presented with an agreed position that the proceedings should discontinue. Permissions was sought to withdraw the application of the Wolverhampton City Council ('LA'), and this was supported by all parties.

The law [3]

The law setting out what must be considered when the LA seeks to withdraw an application is as follows:

Re GC [2020] EWCA Civ 848

a) Paragraph 19: *As identified by Hedley J in the Redbridge case, applications to withdraw care proceedings will fall into two categories. In the first, the local authority will be unable to satisfy the threshold criteria for making a care or supervision order under s.31(2) of the Act. In such cases, the application must succeed. But for cases to fall into this first category, the inability to satisfy the criteria must, in the words of Cobb J in Re J, A, M and X (Children), be "obvious".*

b) Paragraph 20: *"In the second category, there will be cases where on the evidence it is possible for the local authority to satisfy the threshold criteria. In those circumstances, an application to withdraw the proceedings must be determined by considering (1) whether withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned, and (2) the overriding objective under the Family Procedure Rules. The relevant factors will include those identified by McFarlane J in Oxfordshire County Council v DP which, having regard to the paramountcy of the child's welfare and the overriding objective in the FPR, can be restated in these terms: the necessity of the investigation and the relevance of the potential result to the*

future care plans for the child; the obligation to deal with cases justly; whether the hearing would be proportionate to the nature, importance and complexity of the issues; the prospects of a fair trial of the issues and the impact of any fact-finding process on other parties; the time the investigation would take and the likely cost to public funds."

The evidence [4 – 11]

On 20 June 2025, Q underwent a Child Protection Medical examination conducted jointly by a Specialty Doctor in Acute Paediatrics and a Community Paediatric Doctor who is also a Child Protection Consultant. The examination identified swelling, bony crepitus, and tenderness of the left thigh, along with a displaced spiral fracture of the mid-shaft of the left femur. Given Q's age and clinical history, these findings were considered a significant concern for non-accidental injury.

Q was observed to be a well-cared-for and thriving child. No additional injuries were identified on examination. All further investigations, including blood tests, ophthalmological assessment, CT scan of the brain, and a skeletal survey, were reported as normal. A positive and appropriate bond between Q and her mother was noted during the assessment.

No other acute or healing fractures were identified, and there was no evidence of any underlying skeletal dysplasia or metabolic bone disorder. By 24 June 2025, the fracture was assessed as being less than 12 days old.

An initial explanation was provided by Q's mother and maternal grandmother, namely that the grandmother had been "cycling Q's legs" to alleviate what was believed to be constipation, and that this was done without the use of excessive force. This explanation was considered by the treating medical team in light of the guidance contained within *The Royal College of Paediatrics and Child Health Child Protection Companion.* That guidance highlights that femoral fractures in children who are not independently mobile are suspicious for abuse, irrespective of fracture type. It further notes that in children under fifteen months of age, spiral fractures are the most common form of abusive femoral fracture, and that fractures do not occur in normal infants as a result of routine handling or exuberant play.

In the absence of any description of excessive force, the treating clinicians remained concerned and concluded that, without a clear and satisfactory account of the mechanism of injury or a medical explanation for the fracture, the possibility of inflicted injury had to be considered.

As a consequence, the local authority commenced care proceedings by application dated 8 August 2025 and sought further expert opinion. The proposed care plan provided for Q to be cared for by her paternal great-aunt, who would supervise all care provided by the parents, thereby allowing contact to remain flexible and not limited to formal supervision by the local authority. The court was, however, mindful of the significant strain this arrangement placed on the family. The care plan was approved, and an interim care order was made on 20 August 2025.

Two experts were instructed, Dr Olsen and Dr Morrell.

Dr Olsen, a Consultant Paediatric Radiologist, confirmed that Q sustained a complete spiral fracture of the shaft of the left femur, with the injury likely occurring at some point between 10 June 2025 and 19 June 2025. The fracture mechanism was identified as twisting of the leg, most probably involving a level of force greater than would be expected during reasonable handling, assuming there is no underlying abnormality not apparent on radiological imaging. While cycling of the legs

without accompanying twisting would not account for a spiral fracture, Dr Olsen, without commenting on the clinical presentation, noted that there is always a possibility that an initially undisplaced fracture could become displaced during reasonable handling or manoeuvring.

In relation to the explanation provided by the maternal grandmother, Dr Olsen stated that, if her account were accepted, namely that no twisting was demonstrated in the video clip shared with him and no rolling or twisting was described in the grandmother's initial statement, this would nevertheless imply an unusual twisting event involving the left leg, which he could not exclude as a possible cause of the fracture. Dr Olsen further observed that the grandmother later suggested the left leg had twisted, but he was unable to fully follow her reasoning and therefore recommended further exploration of this specific issue.

Dr Morrell, a Consultant Paediatrician, agreed that a twisting force would have been required to cause a femoral fracture. In considering the explanation offered by the maternal grandmother, Dr Morrell confirmed that a cycling movement of the legs would not be expected to result in a femoral fracture unless excessive force had been applied or there was an underlying bone fragility. He therefore recommended further assessment to exclude the possibility of an underlying fragility of the bones.

With regard to the timing of the injury, Dr Morrell was able to significantly narrow the window. Taking into account the medical examination carried out on 19 June, including movement of the leg, and Q's clinical presentation, he opined that the fracture was most likely sustained on a single day, namely 19 June 2025, within an approximate timeframe of between 3.00 pm and 6.00 pm.

The assessment of the parents raised no concerns regarding their care of Q, whom it is clear they love and cherish. They have engaged fully with the local authority, and as a consequence the frequency of social work visits was reduced from four times per week to once weekly from 21 October 2025 and further reduced to fortnightly from 21 November 2025.

While the instruction of a further expert, as suggested by Dr Morrell, could have assisted the Court in determining whether Q has any underlying bone fragility, this would involve additional delay and expense. No party has sought such an instruction.

Application of the law [12 – 20]

The court was satisfied this case fell within the second category referred to above, and therefore applied the principles set out in the Oxfordshire case, as restated in Re GC cited above.

The court summarised above the evidence derived, on the one hand, from a purely medical perspective and, on the other, from the assessment of parental capacity to care, with particular emphasis on the protective factors and the absence of identified risk factors. The fracture was confined to an exceptionally narrow period of time during which the court had evidence from the carers regarding the activities they undertook. The father was not considered to be a person of interest within that timeframe. The mother's care in all other respects was found to be exemplary, and the grandmother described a single event during which she considered the injury may have occurred.

Further investigations were suggested by the paediatrician which, by their nature, would have taken time and resulted in further delay for Q. At that time, Q was living away from her parents, and even

with the provision of generous family-supervised contact, this was likely to have been distressing for her and ought only to have been continued if necessary for the court to determine the allegation.

However, upon review of all the evidence filed to date, the allegation was no longer pursued by the local authority. This position was reached following oversight not only by the allocated social work team and their management, but also by the Service Manager and Head of Service. The Independent Reviewing Officer agreed with this position, as did the Children's Guardian.

It was accepted that any unexplained fracture in a child of Q's age would inevitably cause concern for a local authority. The initial investigation was properly undertaken, and the evidence filed provided a substantial degree of clarity as to the circumstances in which the fracture may have been sustained.

While the fracture, having regard to its type and Q's age, remained a matter of concern, there was in this case a history of a factual event within a narrowly defined timeframe. Although there were some discrepancies between that account and what a medical professional might ordinarily expect, these would have remained factual matters for determination by the court and would have required further evidence. The evidence fell to be considered as a whole, and the court bore in mind that the burden of proof rested with the local authority.

Had the injury been sustained while Q was in the care of the grandmother, as described, and no finding was made that it was, this did not readily appear from the evidence to have been reasonably foreseeable by otherwise loving parents. In all other respects, the parents' care was agreed by professionals to have been exemplary, with no significant risk factors identified amid a substantial number of protective factors. The role of the court, and the very foundation of its jurisdiction, was to intervene in family life only where such intervention was necessary and proportionate. This reflected the importance society placed on the freedom of parents to care for their children, balanced against the occasionally necessary requirement for the state to intervene for child protection purposes in order to safeguard the welfare of particularly vulnerable children.

Final comments [21 - 24]

It was for the above reasons, the court decided to have the proceedings come to an end, without any order being made.

Finally, in his judgment, HHJ Redmond stated:

"Before the court leaves the matter, it would just note matters that may assist in a future approach to cases of this type. Every day that a little baby spends away from their parents' care, or with such restrictions, counts and while sometimes that is unavoidable for a child's protection we must all ground ourselves in our humanity as to the effect such must have not only on the child, but their parents. A swift application at the beginning of the exercise brings the child under an umbrella of protection that exists outside of the authority, including appointing a children's guardian who can provide an independent voice for the child, and instating the applications for experts at the earliest stage. Once proceedings were instigated, experts were swiftly appointed and reported quickly. There had been some slight delay from the filing of the medical report in early November to this application being made. There has to be a proper analysis process by professionals, but the court was not entirely persuaded that the annual leave dates raised were a significant bar to that process taking place. Sadly, an earlier hearing had to be adjourned for the authority to complete that exercise without prior notice,

but happily the court has been able to accommodate a further hearing in swift time. Such has placed pressure on the court list but had to be balanced with giving the family a decision quickly in such difficult circumstances for them. I hope that I have been able to achieve that for them while also giving due consideration to child protection concerns reasonably raised."

Phoebe Duterloo

E: phoebe.duterloo@stmarysfamily.co.uk

T: 0115 950 3503