

# Andrew Bainham

Year of Call: 2009

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## Introduction

Andrew Bainham is one of the country's leading commentators on the law relating to children having taught Family Law at the University of Cambridge for over 20 years. He is Emeritus Reader in Family Law and Policy at Cambridge and a former Fellow of Christ's College. He has written or contributed to over 40 books on Family Law, including the first book on the Children Act 1989 and the leading student text on children law.

Since his call to the Bar in 2009 he has practised in public law and private law children cases and has appeared in every level of court from the Magistrates Court to the Supreme Court. He specialises in representing parents and children in public law proceedings. In January 2015 he represented the respondent father in *Re S (A Child)* in the Supreme Court (on the issue of local authorities' liability for appeal costs) having successfully secured the setting aside of final care and placement orders in the Court of Appeal.

Andrew's background as an academic means that he has a particular expertise in arguing points of law and undertaking appellate work as well as cross-examining experts. His background as editor of the *International Survey of Family Law* gives him a special insight into children cases with an international element. In the private law he has published extensively on parentage and therefore has knowledge of cases which raise parentage issues.

In 2014 Andrew was shortlisted for the award of Family Law Commentator of the Year and in the 2015 Family Law Awards he was shortlisted for the award of Family Law Junior Barrister of the Year.

Andrew has recently represented the children in two important cases:

First, he represented the 15 year old applicant in the High Court in *Local Authority X v HI, IW, I and JAW (Disclosure to Other Parties)* (2016) EWHC 1123 (Fam) which was concerned with the relationship between adolescent autonomy and the rules governing disclosure in care proceedings.

Second, he represented the intervening complainant children in *Re E (A Child)* (2016) EWCA Civ 473 in the Court of Appeal. The case is now a leading authority on when children should give evidence in care proceedings, specifically in this case where the allegations relate to sexual abuse.

### Qualifications and Appointments:

- Emeritus Reader in Family Law and Policy, University of Cambridge
- Formerly Fellow of Christ's College Cambridge
- LLB (Wales); LLM, PhD (Cantab)

### Memberships:

- Family Law Bar Association
- International Society of Family Law
- Society of Law Scholars

## Reported Cases:

- Staffordshire County Council and B and V [[2016] EWHC 3183 (Fam)
- Birmingham City Council and O [2017] EWHC 3780 (Fam)
- Northamptonshire County Council and AB and CD [2017] EWHC 3695 (Fam)
- Re M (Children) (Suspected Trafficking: Competent Authority) [2017] EWHC 56
- Baby N (Child: Fact-Finding) [2018] EWFC B5
- Re S (Appeal from Care and Placement Orders) [2014] EWCA Civ 135, [2015] 1 FLR 130
- Re S (A Child) [2015] UKSC 20
- Re I (A Child) [2016] EWHC 910
- Local Authority X v HI, I and JAW (Disclosure to Other Parties) [2016] EWHC 1123 (Fam)
- Re E (A Child) [2016] EWCA Civ 473

## Publications: (Selected)

- 'The Forbidden Territories' (2018) Family Law pp1150-1156
- Children: The Modern Law (with Stephen Gilmore) (4th Edition, 2013, Jordans) International Survey of Family Law (edited from 1994-2006)
- A Bainham and H Markham, 'Living with Re B-S: Re S and its implications for parents, local authorities and the courts' (2014) 44 Family Law pp 991-1002
- A Bainham, 'Private and public children law: an under-explored relationship' (2013) 25 Child and Family Law Quarterly pp 138-158
- A Bainham, 'Interim care orders: Is the bar set too low?' (2011) 41 Family Law pp 374-381
- A Bainham, 'Rowing back from Re G? Natural parents in the Supreme Court' (2010) 40 Family Law pp 395-402
- A Bainham, 'Is legitimacy legitimate?' (2009) 39 Family Law pp 673-679
- A Bainham, 'Arguments about parentage' (2008) 67 Cambridge Law Journal pp 322-351

## Public Law Care and Adoption

Andrew has had extensive experience of representing parents, children through their guardians and extended family members in public law proceedings. The cases in which he has been involved have covered the full spectrum of neglect, sexual abuse and non-accidental injury. On more than one occasion he has successfully prevented the local authority from establishing that threshold was crossed following contested hearings.

In January 2014 he persuaded the Court of Appeal to set aside final care and placement orders where neither father nor child had been properly assessed. Following further assessment the child concerned has been reunited with her father. In January 2015 he undertook the advocacy in the Supreme Court in resisting the local authority's appeal against the costs order made in the Court of Appeal. The judgment of the Supreme Court is eagerly awaited by both local authorities and those representing parents

## Private Law Children and Domestic Abuse

Andrew has appeared many times on behalf of parents in private law children cases including international child abduction cases in the High Court. He has a particular interest in the relationship between the private and public law and in cases which have elements of both. He published an article on this subject in the Child and Family Law Quarterly in 2013 (see publications above).

Among his more interesting cases was his representation of a mother in a private law case in which sexual abuse of the child was not proved against the father, but in which mother and child continued to resist contact with him.

# Direct Access

Andrew is qualified to take direct access cases. He welcomes instructions in private law children cases and in public law cases where legal aid is unavailable.