



## James Cleary

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### Practice Areas

Family

Family Finance

Alternative Dispute Resolution

### Contact

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## Summary

James has an outstanding practice spanning the fields of children law, matrimonial finance and protective injunctions. He has a reputation as a skilled and experienced advocate who deals with high profile, complex and sensitive cases. He has acted as leading Counsel and also led on numerous occasions by various Silks.

## References & Recommendations

Team Manager, Local Authority Child Protection Team

"James Cleary was a complete superstar – we were in court for the majority of the day but he was amazing. We were not hit with an ICO but can 100% guarantee that he not been representing us, we would have ended up with one."

Legal 500 2023 – Child Law (Public and Private) Ranked: Tier 2

"James is methodical, articulate, and approachable. He is always well prepared and spends time with the clients to ensure their understanding. He is a great sound board and is always available to answer any queries in between hearings."

Legal 500 2022 – Child Law (Public and Private) Ranked: Tier 2

'Exceptional ability to explain complexities to a client with learning difficulties and who required the use of an intermediary.'

Legal 500 2024

Family: Children & Domestic Violence Ranked: Tier 2

## Reported Cases

Throughout his career James has appeared on a large number of notable cases. A sample of James' published cases include:

Derbyshire County Council v Marsden & Ors [2023] EWHC 1892 (Fam). Led by King's Counsel for the local authority. An application by three media organisations for the release of documents from family proceedings. The application related to the murder of a baby by his parents. The court considered whether the identities of three Magistrates and a Legal Adviser – who took part in a hearing where the child was returned to the parents – should be released.

A Local Authority v The Mother & Ors [2022] EWHC 3640 (Fam). Appeared for a local authority against King's Counsel. An application for a reporting restrictions order. A social worker and children's guardian were due to give evidence in the criminal trial of parents accused of murdering their baby. The local authority and CAFCAS applied to prevent the names of the social worker and guardian being published. No reported cases on the issue.

F and G (Children: Sexual Abuse Allegations) [2022] EWCA Civ 1002. Appeared with Queen's Counsel for a father. An appeal by the mother's boyfriend against findings that he had inflicted serious sexual abuse on a four-year-old girl. The father was the only party to oppose the appeal. The local authority and children's guardian did not oppose. The court upheld the findings.

RL v. Nottinghamshire County Council & Anor [2022] EWFC 13. Appeared for the local authority. An application by a mother to reopen findings, made six years earlier, that she was the possible perpetrator of a rib fracture and bruising to her baby daughter. Mr. Justice Mostyn considered whether the



general rules on 'issue estoppel' applied in public law children proceedings. The Judge noted 'Mr. Cleary's extremely well-written skeleton for the LA'.

A City Council v. Mother [2021] EWHC 3375 (Fam). Appeared for a local authority. Application by the mother for an injunction that the local authority should not consult with the father in respect of their child – who was now in the care of the local authority. The father had a history of very serious violence against women. No reported cases on the issue. The court determined such an injunction was lawful and appropriate in the circumstances.

X (A Child) (Jurisdiction and Habitual Residence Issue) [2021] EWFC B81. Appeared for a local authority. A child resident in Australia had been left with a relative for an extended stay in Britain but had not been returned due to the imposition of Covid-19 travel restrictions. The court had to decide whether the travel restrictions meant the usual rules on habitual residence should apply. Nottinghamshire County Council v. J (The Mother) [2021] EWHC 1651 (Fam). Appeared for a local authority. An application for a declaration that spinal surgery on a fourteen-year-old boy was in his best interests. The court was asked to balance the potential benefits of the surgery against the risks of death or disabling injury.

O (A Child) (Judgment: Adequacy of Reasons) [2021] EWCA Civ 149. Appeared for a local authority. An appeal against findings that a father had anally raped his four-year-old daughter on successive occasions during contact sessions. Guidance given on the circumstances in which it is appropriate to ask for clarification of a judgment.

N (A Child) (No.1) (Fact Finding: Induced Illness) [2019] EWFC B83. Appeared for a local authority. Finding of fact hearing in respect of a mother presenting her young child over a long period as being seriously ill from an unknown cause. The mother had in fact been starving the child and administering overdoses of laxatives. The child was near death when protective measures were taken. See also N (A Child) (No.2) (Psychological Assessment) [2019] EWFC B83 and N (A Child) (No.3) (Content of Care Plan) [2020] EWFC B58. R, S and T (Children) [2019] EWFC B86. Appeared for a local authority. Appeared for a local authority. The court made findings that a mother had vaginal and anal sex with her learning-disabled son, whilst her other children watched. The court also found that the father had raped his daughter on several occasions in the family home, and the mother assisting in facilitating the father's sexual abuse of their daughter. See also

M (Children) (Risk of Serious Harm: Contact) [2019] EWHC 39 (Fam). Led by Queen's Counsel for a local authority. The court considered allegations that a mother had abducted her children, believing that this was necessary to protect them from sexual abuse by their father, and later co-operated in an arson attack on the father's home after the children had been placed with him.

M (Children) (Admission of Expert Evidence) [2018] EWCA Civ 607 and All ER (D) 39 (Apr). Appeared for a local authority, against Queen's Counsel for the parents. The court dealt with an appeal against a finding that a mother had given her two children sedative drugs, in an attempt to 'frame' the father and support her case that he had sexually abused them. Other cases in which James has been involved include:



LA v. MS and others [2019] EWHC 3329 (Fam).  
LA v. X and others [2018] EWHC 2437 (Fam).  
LA v. X and others [2018] EWHC 2307 (Fam).  
YZ v. LCC and others [2018] EWHC 2262 (Fam).  
A, B, C, D and E (Children: Placement Orders: Separating Siblings) [2018] EWFC B11.  
A, B, C, D and E (Children: Care Plans) [2017] EWFC B56 and [2017] All ER (D) 41 (Sep).  
H (Care Order: Designated Local Authority) [2016] EWFC 39 and [2017] 1 FCR 389.  
C (Children) [2015] EWCA Civ 1634.  
R (on the application of H) v Kingston Upon Hull City Council and others [2013] EWHC 388 (Admin) and [2014] 1 FLR 1094.  
R v Boyes [2013] EWCA Crim 441.  
A (Interim Contact: Observations on Parents) [2012] EWHC 4273 (Fam).  
R v Cosgrove [2011] EWCA Crim 764.  
R v Johnson [2010] EWCA Crim 2833.  
Robbie the Pict v Crown Prosecution Service [2009] EWHC B10 (Admin).

## Professional Experience

### PUBLIC LAW:

James deals with cases involving serious violence, sexual abuse and the chronic neglect of children. He has particular experience of cases involving:

Factitious and induced illness;  
Serious injuries to children involving disputed medical evidence;  
Abduction/missing children;  
False allegations of abuse;  
Sexual abuse rings;  
Serious criminality (e.g. murder, arson, 'gang wars');  
Threats to the safety of social workers;  
Suicidal children;  
Litigants in person (with mental health problems).

He has experience in applications under the inherent jurisdiction to restrict the liberty of vulnerable children, stop inappropriate associations and to prevent publication of information (including details of criminal proceedings).

He has been instructed by the Official Solicitor and for vulnerable clients (e.g. autism, deafness).

Examples of James' recent public law cases include:

A mother who stabbed her boyfriend, with him then dying in the presence of the child.

A mother starving her young child near to death, whilst convincing medical professional that the child was suffering with a serious illness.

The abduction of two children by their mother, she having become convinced that the father posed a serious sexual risk despite the court ruling that this was not the case.

A large-scale drug dealer in a 'turf war' with other criminals, including – amongst other concerns – a shooting at the children's home, an arson attack and the use by the local authority of covert surveillance.



A traveller family with a series of difficult issues arising, including: a father suspected of murder; an aunt suspected of feeding a child bleach and allegations of the social workers being under surveillance by the family.

**PRIVATE LAW:**

James is experienced in cases with allegations of domestic abuse, serious harm to children and parental alienation.

Examples of James' private law cases include:

A self-described doctor who attempted to abduct the child to Mexico, and subsequently attempted a further abduction from contact.

Allegations that a mother was grooming the children to join an overseas terrorist group. Appeared against Queen's Counsel.

A dispute between parents as to whether their child should go to Poland for medical treatment that was illegal in Britain.

**Additional Info**

James has experience of applications for the range of protective injunctions available in the family courts – principally non-molestation/occupation orders, forced marriage protection orders and female genital mutilation protection orders. Particular examples are:

An FMPO case in which a teenage girl had been taken abroad to marry her cousin and consequently attempted suicide. Issues around the extent of reliance on hearsay when key witnesses withdrew their co-operation.

An FGMPO where the child was en-route to the airport to leave the jurisdiction.

James also has experience of other legal applications arising from family law cases. This has included claims under the Human Rights Act where local authorities have breached the rights of children, applications for judicial review of the decisions of local authorities in respect of children, drafting applications to the European Court of Human Rights arising from family cases and advising on the powers of the criminal court to restrict publication of information about children. Examples include:

Acted for a child in a claim that a local authority breached her human rights by placing her in care without the legal authority to do so.

Advised on a claim for two children that a local authority had breached their human rights by failing to provide necessary therapy.

James formerly practiced in crime before specialising solely in family law. His criminal cases included:

Advising on an appeal to the Privy Council (Supreme Court) from Jamaica where the client had been convicted of murder during a burglary. Issue around whether he could receive a death sentence if convicted at a re-trial. Defence of two BT engineers who provided the address of a couple under witness protection to a criminal gang. The information was used to locate and murder the couple.

Prosecution of a thirteen year old boy for inciting two six year olds to perform a sex act. One of the six year olds gave evidence at trial.