

The use of intimate images in private children proceedings: a reminder

By [Ayesha Bell-Paris](#)

It has now been over 3 years since the High Court handed down the judgment of Knowles J in **M (A Child – Private Law Children Proceedings- Case Management- Intimate Images) [2022] EWHC 986 (Fam)**, giving much-needed guidance in relation to how the use of intimate images should be managed in the context of private law proceedings.

Since that time, technology continues to advance; the quality of camera functions on mobile devices has become more refined and powerful, thus placing into people's hands the ability to take high resolution images instantly and (as has been evidenced in some of my recent cases), covertly.

The taking of intimate images or 'nudes' as we so often hear them referred to - whether we agree with it or not - has and will continue to become a more widespread practice within the technological capability of modern society.

For the most part these images will remain private, never to see the light of day and protected by a mutual understanding between consenting adults. That however is not always the case. When these images after the breakdown of a relationship are said to be probative or evidential, the Courts have rightly begun to build a legal framework upon which all parties must abide when considering their admission into proceedings.

The reason for that is obvious. These are immensely private images that were never intended to be either passed between lawyers or paraded before a court.

I have had recent reason to revisit the guidance, having been instructed in a number of cases which have involved one (or both) parties wishing to rely on intimate images of the other party – or indeed themselves - in evidence.

In my experience this issue has arisen in cases involving:

- allegations of sexual abuse (when the images are sought to either prove the abuse itself, or used in defence to prove a wider context of a consensual sexual relationship or practise);
- allegations of inappropriate sexual boundaries, for example children having been provided with and/or allowed access to intimate images on electronic devices. The images being sought to prove the existence of the same, in circumstances where this is denied by the accused.
- allegations of inappropriate sexual attitudes and behaviours more generally.

Re M was the first (and is to my knowledge remains the only) reported case to deal with how such cases should properly be managed, to ensure that the use of intimate images are a) flagged at the outset b) carefully and sensitively managed c) only permitted to be adduced into evidence if relevant, of sufficient probative value and proportionate and d) that the further sharing of the images into the proceedings does not itself constitute abusive or humiliating behaviour or impact upon a parties' ability to engage fully with proceedings. The latter point is particularly important given that images obtained and/or shared without consent, could amount to a potential criminal offence ("revenge porn").

A definition of an intimate image in the context of private law proceedings is provided in paragraph 47 as "*an image of a person, whether an adult or a child, naked or partially naked. Such an image can include part of a person's body, clothed or unclothed, such as breasts, genitalia or the anus, which are generally regarded as private. Intimate images include those of a person engaged in what is normally regarded as private behaviour such as washing, urinating, masturbating or engaged in other sexual acts either alone or with another being*". Knowles J deliberately did not make reference to the definitions contained in criminal law, considering that these did not seem to meet the needs of the family court.

In Re M it was the mother, the alleged victim of sexual abuse, who first put the intimate images into evidence, including 6 videos of the parties engaging in sexual activity. No pre-warning had been given to the court or the father that material of this nature had been filed. The father then exhibited 32 videos to his statement in response, to which the mother replied with more intimate material. At the first instance fact-finding, the judge had viewed the intimate videos and images, with no party raising objection. Knowles J considered that the use of intimate images in that case had been "*wholly un-boundaried and disproportionate*".

The court should use its case management powers as set out in the overriding objective, including the power to control the evidence the parties may seek to adduce in support of their respective cases (FPR r 22.1). These case management powers should be viewed in conjunction with those set out in paragraph 19 of PD12J in cases involving allegations of domestic abuse.

Knowles J distilled the Court's guidance to practitioners into 12 succinct points, set out at paragraph 77 of the Judgment, which are extremely helpful when dealing with such cases and should always be the starting point.

My three short points to take away from this article are, however, as follows:

1. As practitioners, it is essential that in any case whereby it becomes apparent that a client seeks to rely on intimate images (and that the same is truly necessary), this should be raised at the earliest possible stage in proceedings. This issue is likely to impact upon the trajectory of the case: for example, it may justify re-allocation.
2. Prior to any such evidence being adduced to the court or any other party, there must be a proper written application – I would suggest simply describing the nature of the images and their relevance to the issues in the case, as opposed to appending them to the application at that stage.
3. Consideration is required in each individual case as to how, if permitted, such images can be exhibited in a way which strikes a balance between allowing a party to put their case; but also respecting the dignity of the parties and avoiding further trauma insofar as possible. For example, in one of the cases I have been involved in (where a client sought to rely on intimate images of herself) I invited the court to direct that the images should be blurred or redacted, or that the client should simply describe the content of any particularly sexually explicit images in the first instance, with a further review as to the necessity of the actual images being disclosed as the case progressed and issues became more crystallised.

I hope that this article serves as a helpful reminder of this important guidance, which has in my experience perhaps been lesser known amongst the profession. I have recently noted that the Family Justice Council guidance on covert recordings published on 15th May 2025, now contains a specific reference to intimate images within section 4, and excerpts of Re M in appendix 3. It would certainly appear that Knowles J was correct when foreseeing that the use

of such images is unfortunately becoming increasingly common within our private law cases. I have repeated her clear and helpful guidance below.

I do wonder how long it will be before the Courts are also required to adapt to an accelerating artificial intelligence and deep fake capability within the tech world and whether we will soon also find ourselves in some cases even disputing the very provenance of these images in the first place.

M (A Child – Private Law Children Proceedings- Case Management- Intimate Images) [2022]
EWHC 986 (Fam), paragraph 77:

- A) Sexually explicit or intimate videos and photographs should not be filed as part of evidence without a written application being made to the court in advance.
- B) Any such application will require the court's adjudication, preferably at an already listed case management hearing.
- C) It is for the party making such an application to persuade the court of the relevance and necessity of such material to the specific factual issues which the court is required to determine.
- D) The court should carefully consider the relevance of the evidence to the issues in the case together with the likely probative value of any such evidence.
- E) As part of its analysis and balancing exercise, the court will need to consider all the relevant factors including (i) any issues as to vulnerability in relation to any of the parties and the likely impact on any such parties of the admission of such evidence and the manner in which it is used in the proceedings; and (ii) if it is able to do so at a preliminary stage, whether the application/use of such images is motivated, in whole or in part, by a desire to distress or harm a party.
- F) The circumstances in which a court will permit the inclusion in evidence of sexually explicit or intimate videos or photographs of any person are likely to be **rare**, in particular, in circumstances in which that person does not consent to such material being admitted.

G) Where the court is being asked to admit such material, the court should consider whether there may be a range of alternatives to the viewing of such material, for example but not limited to:

- i) seeking an admission/partial admission in respect of the alleged conduct
- ii) agreed transcripts and/or descriptions of any videos
- iii) playing only the audio track of any video recordings
- iv) using a still image rather than a video or a short excerpt from a longer video
- v) editing images to obscure intimate parts of the body
- vi) extracting meta data as to the timing and location of the evidence
- vii) focused and specific cross examination on the issues
- viii) consideration of the use of other evidence to prove the particular fact in issue instead.

H) If the court decides to admit any sexually explicit or intimate images/videos for any purpose, care should be taken to limit the volume of such evidence to that which is necessary to fulfil the purpose for which it is admitted;

I) The court should determine who can view the material that is to be admitted and limit this where necessary, bearing in mind its private character and the humiliation and harm caused to those both depicted and involved in the proceedings;

J) If the evidence is considered relevant, a starting point should be to say that it should incorporate the lowest number of images, seen by as few people as necessary, and viewed in the least damaging way;

K) It would be helpful to consider how best to ensure that the evidential security of such material can be maintained (for example, by using only password protected files) both within the hearing itself and outside it, and how the material is deployed within the proceedings;

L) Likewise, specific consideration should be given to the protection and safeguards necessary in respect of any video evidence relied upon (for example, such evidence being made available on a single laptop and brought to court, or the distribution being limited to a core specified legal team on behalf of each party).

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