

Familiarise yourself with a role-play - transcript with audio description

VOICE OVER

This film shows a role-play exercise that you may undertake if you apply to be a judge. This particular role-play was used as part of the assessment of candidates for the post of recorder, sitting in the family jurisdiction. Before watching the film it is important that you read the accompanying written explanatory notes.

[audio description]

Introduction

A pleasant, modern court room is furnished with a long, pale wood table and maroon upholstered chairs. The proceedings are viewed mainly down the length of the table with frequent close-ups of the candidate judge.

Apart from the candidate the participants are already seated. The candidate's chair is set in the centre on the left side of the table. At the far end, Mr Carson, the Cafcass officer, sits slightly back, his file resting on his lap. Next to him on the right side of the table is Mr Talbot, the solicitor. Beside him and directly opposite the candidate is Mr Janning, the litigant. Finally on Mr Janning's left is Esther Summers, his McKenzie Friend.

Mr Talbot, Mr Janning and Esther all have papers on the table in front of them. Mr Janning has copious pages in a ring binder. Some paragraphs are highlighted.

The candidate brings her papers with her and places them on the table. She consults them and makes notes as and when appropriate. She listens thoughtfully to all that is said.

The litigant is very animated, leaping to his feet, gesturing and often leaning across the table towards the candidate.

Mr Talbot, the solicitor, rises every time he addresses the candidate.

Mr Carson, the Cafcass officer, sits unobtrusively, bobbing up when addressed by the candidate.

ON SIGHT

An usher enters the court room.

USHER Please stand.

As they all rise, the candidate enters, she bows, the others bow in return.

Janning versus Janning and re a minor.

CANDIDATE Thank you, please be seated. Good morning.

OTHERS Good morning

CANDIDATE I'm Anita White, may I ask the people present to introduce themselves?

She indicates each in turn

TALBOT Yes your honour. My name is Talbot. I represent Mrs Janning in her application

CANDIDATE Thank you

JANNING My name is Edward Janning, and, er, should I stand up or sit down when I talk to you?

CANDIDATE Er, no. That's alright, you can remain seated if you wish.

JANNING And er, what do I call you?

CANDIDATE Your honour.

JANNING Yes, right. Your honour..

CANDIDATE Thank you.

ESTHER Hi. My name is Esther and I am Edward's friend.

CANDIDATE Thank you.

CAFCASS OFFICER Good morning your honour. My name is Robert Carson and I'm the Cafcass officer.

CANDIDATE Thank you very much.

Now to begin with, I would like to ask Mr Janning. I noticed that your application was issued through a solicitor.

JANNING Yes that's right.

CANDIDATE May I ask why you are not being represented now?

JANNING Well I can't afford it can I? You know,... they are taking my money, just for writing a letter. I'm sorry my pockets are not that deep love.

CANDIDATE OK

JANNING Anyway, I belong to a group called Fathers Against Discrimination. Yeah? And I know everything I need to know to do in court. They told me everything.

CANDIDATE Well that's well and good Mr Janning, but I would advise you to reconsider whether it would be wise to seek legal representation because the allegations which have been made against you are extremely serious.

JANNING (angrily) Yes, I know they are serious love, that's why I'm here.

CANDIDATE Right, yes.

JANNING I'm just saying, I can't afford to pay any more lawyers' fees and I know what I'm doing because I'm a member of Fathers Against Discrimination.

CANDIDATE OK right

JANNING But I've told you. I know what I'm doing and I can't afford it, so let's just press on shall we?

CANDIDATE Alright. OK. Can I ask you, Mr Janning, what Esther is doing in court?

Esther smiles

TALBOT Your honour, I would like to raise an objection to Miss Summers' presence. It is contrary to well established principles, with which I suggest you are no doubt familiar, confirmed by the court of appeal on numerous occasions, for someone in Miss Summers, er, how shall I say it, .. in Miss Summers' position....

JANNING What are you talking about?

TALBOT To be permitted to remain during the discussion of confidential matters relating to the family in general and the children in particular. And I would further add, that the very same point arose before a senior circuit court judge last week, your honour, and it seemed to be beyond any serious reasonable debate..

JANNING (interrupts) Your honour, can I just say...

CANDIDATE Yes, please respond to that.

JANNING Esther, is a good friend of mine – all right? Now I'm not legally represented, whilst Caroline is. So Esther, is here to provide me with moral support and to take notes

CANDIDATE Yes

JANNING That is only fair your honour. OK?! So.. and I know about McKenzie Friends as well, yeah? So she should be here in either her capacity to be my McKenzie Friend or to give me support or to take notes or to give evidence..

CANDIDATE Thank you Mr Janning.

JANNING Thank you.

ESTHER Your honour, is it OK for me to speak?

CANDIDATE Please speak, yes

ESTHER I'd just like to say that I used to work in a solicitors' office in the family law department so I do appreciate the rules and I know this hearing is confidential.

JANNING Yes, yes..

ESTHER And I am really more here to support Edward morally because it's a stressful time for him, and I just want to be able to take some notes..

JANNING She knows what she's doing.

CANDIDATE Thank you, thank you!

JANNING I wouldn't have brought just any person here.

Mr Janning grasps Esther's hand, she folds her other hand over his.

CANDIDATE Mr Janning, I just want to reiterate and explain to you properly, that a McKenzie Friend may give you advice on the law and may support you, but they may not speak or address the court in any way, and they may not give evidence. Is that clear?

JANNING Yes.

CANDIDATE All right thank you. In that case, Miss Summers, you can remain and act as Mr Janning's McKenzie Friend.

ESTHER Thank you.

TALBOT Your honour, I would at least appreciate being given the opportunity to at least have my objections heard to this..

CANDIDATE Go ahead Mr Talbot.

TALBOT I would argue, your honour, that it is quite obvious to those familiar with the authorities, your honour, that Miss Summers should not remain. Mr Janning is of sufficient intelligence to be able to conduct the case without Miss Summers' help. And, after all, he is un-represented by choice.

Mr Janning releases Esther's hand and turns to look at Mr Talbot

CANDIDATE Right, thank you for that.

JANNING What – is the choice that I'm skint?

CANDIDATE Excuse.... Mr Janning!

JANNING Is it my choice that my wife is trying to take me to the cleaners?

CANDIDATE Mr Janning, please!

Thank you Mr Talbot, you may sit down.

Um, I will just say that my decision will remain the same. Esther will be allowed to remain here as Mr Janning's McKenzie Friend. I have regard to the president's guidance of 14th of October 2008, from which it is clear that there is a presumption in allowing the assistance of a McKenzie Friend. And I would say that you, Mr Talbot, have failed to establish a basis to rebut that presumption in favour of allowing Esther to attend.

Mr Talbot, could I ask you please, why Mrs Janning is absent from this hearing?

TALBOT Well, your honour, she is absent this morning.....

Mr Janning leaps up

JANNING (interrupts) Well she's not absent from this hearing is she? Because we saw her, outside the front, on the steps, having a fag. So can you tell me, your ladyship, why she's not in here, in this hearing now. That's what I want to know.

He sits down

CANDIDATE Right, can you elucidate please, Mr Talbot?

TALBOT If I will be allowed to continue, your honour, thank you. My client is afraid of Mr Janning

JANNING Afraid! (laughs)

TALBOT ... and she really does not wish to be anywhere near him at all.

JANNING Oh poppycock!

TALBOT And she has told me already that she will not attend today because of this particular situation.

CANDIDATE I see

JANNING Afraid! Well can I tell you something, your ladyship?

He leaps up

It's a pile of rubbish. She's making up these allegations to undermine my application. Well I want to say something. She is not here today, so her application should be dismissed. And I am here today. So you should grant my application so I can see my kids. And furthermore, your honour, she is a lying bitch. I

wouldn't trust that woman...

CANDIDATE Mr Janning!

JANNING She wouldn't know the truth if it hit her in the face.

CANDIDATE Mr Janning! Mr Janning please.

Esther gently pulls him down

Mr Janning, I recognise that this is a very emotional time for you...

JANNING (interrupts) Of course it's emotional.. I want to see my kids!

CANDIDATE However.. HOWEVER! I would really appreciate it if you could calm down and if you could watch your language

JANNING I'm sorry love, I'm sorry, it's just that I want to see

CANDIDATE Thank you, you may refer to me... Please let me finish Mr Janning. You may refer to me as your honour.

JANNING I'm sorry your honour, I just want to see my children.

CANDIDATE Yes I understand that.

JANNING I can't see why that order can't be granted today.

CANDIDATE BUT!

JANNING I mean, for God's sake they want to see me! Why can't their rights be respected?

CANDIDATE Okay, okay Mr Janning. I understand what you are saying and I am going to try and sort this matter out as best I can.

JANNING Thank you

CANDIDATE I am actually going to proceed in the absence of Mrs Janning. Now let's look at the applications. I will look at Mr Janning's application first. Mr Janning, you are applying for an order of contact or residence.

JANNING That's right

CANDIDATE You were married to Mrs Janning and you accordingly have parental responsibility for both those children.

JANNING Come again? Parental responsibility?

CANDIDATE When I say 'parental responsibility' that means that you have all the rights duties, powers, responsibility and authority which, by law a parent has in relation to their own child.

TALBOT (interrupts) Your honour, with great respect, I would remind you that Mr Janning is not the father of the young lad Alan, the 11 year old.

JANNING So?

TALBOT And there is no evidence of any agreement that he should have parental responsibility for Alan. Also, the parties were not married, your honour, when Ben the younger child was born and accordingly Edward does not have parental responsibilities there either.

JANNING What's that got to do with anything?

CANDIDATE Um, I'm grateful to you for pointing that out to me Mr Talbot, I had failed to notice that position.

TALBOT Much obliged your honour

CANDIDATE Now, I can see here that an injunction was granted last September, it's still in force. And that Mrs Janning alleges that Mr Janning has breached the order by attending the marital home, where it is alleged that he was abusive and violent and she seeks an order that you should be sent to prison for that breach.

JANNING (exasperated gasp)

TALBOT Yes your honour, my client has shown that there has been a clear and blatant breach by Mr Janning of the court's injunction, on not just one, but on a number of occasions, which are set out in my client's affidavit. Also, to remind you of the abusive telephone calls, and

Mr Janning, with the greatest respect your honour, has shown nothing but contempt for the court's ruling and this merits condign punishment ...

JANNING (under breath) silly cow

TALBOT And my client need not be present as the court has her sworn evidence and that should suffice your honour.

JANNING Absolutely stupid....

CANDIDATE Mr Janning...

JANNING I'm sorry, your Ladyship, I'm just so frustrated with all these lies!

CANDIDATE Mr Janning.

JANNING All I want to do is see the children as is any father's right!

CANDIDATE Mr Janning, please! Firstly, if you interrupt while Mr Talbot is making his case, it's not possible for me to hear him. I need to be able to hear both parties so I can adjudicate this fairly. We are very constrained for time and we need to get through both these applications today. Now if you continue to interrupt I cannot hear what Mr Talbot has to say. If you do not calm down, it's going to be very difficult for me to listen to what you have to say.

Esther strokes his arm

If you are not able to calm down and conduct yourself appropriately, I may have to ask you to leave the court. Now I don't want to do that. So can we agree that you will try and conduct yourself a little more calmly?

He raises his eyes skyward, Esther rubs a soothing hand on his back

JANNING (sighs) Yes your honour. But could I just ask one thing?

CANDIDATE Yes

JANNING He was going on about 'condigned punishment'. I mean, what's that in everyday English? And furthermore, he talked about swear...sworn evidence, something like that. When I start swearing and calling Caroline, you lot start telling me off! But you are letting smarty pants get away with blue murder!

TALBOT Your honour, can I suggest that as this is the first hearing, a lot needs to be done and the court is not in a position to possibly at all make an order on Mr Janning's application today. Also, your honour, I might add that there is absolutely no merit whatsoever in Mr Janning's application and therefore it is doomed to fail and in any event, the application for an interim order should be dismissed forthwith.

CANDIDATE Mr Janning, what do you say to Mr Talbot?

JANNING Well I'll tell you, I've got a lot to say about that.

He stands up

Firstly, Caroline Janning, or whatever she wants to call herself now is a congenital liar. Yes? Now we can back that up, yes? Now not only is she a liar, but I can tell you what this whole thing is about. This whole thing is about money and jealousy, right? Ever since I started my new relationship, oh, she's been jealous hasn't she? And she's trying to wreak her revenge using the children to get back at me. Well, when I went round there on the 20th, yeah?

Mr Talbot reacts

That was as a result of Alan sending me a text saying 'Daddy I miss you. Daddy can I come and see you'. And of course, what man isn't going to run to his child who's saying 'Daddy I miss you'? And when I got round there I got a big hug! Yeah, a big hug and a kiss from both of them. If I'm so violent, your honour, why was I sent the text? If I'm so violent, your honour, why was I given a hug? I am not a violent person! There was no violence that night. Any violence came from that drunkard.

CANDIDATE Thank you. Thank you Mr Janning. Mr Talbot, please make your point.

TALBOT Yes, your honour, I only seek to make the observation that Mr Janning has just made the clearest possible admission of a breach of the court injunction by attending at the former matrimonial home on the 20th of October 2008 and I would ask that your honour proceeds immediately with my client's application.

JANNING Um,.. sorry your honour, I think I might have to go back and get my solicitor, well, certainly

his advice regarding Caroline's application. But I will say this, I don't want to leave court without getting an order for contact for my kids.

CANDIDATE Alright thank you. I think at this point it would be useful to ask the Cafcass officer, Mr Carson, for his comments.

CARSON Thank you your honour. I would assume, your honour, that the court might require a section seven report?

CANDIDATE Yes.

CARSON But it is taking some 20 weeks in Boltchester to get such a report.

CANDIDATE I see.

JANNING What's he on about – section seven?

CANDIDATE Mr Janning, a section seven report is in respect of matters relating to the children's welfare. So that the Cafcass officer, in this case Mr Carson, would be the eyes and ears of the court and would assist the court in making its decisions. Is that clear?

JANNING Yes

CARSON Your honour, please may I add that I am unable to ascertain whether there is a screening report at this stage.

CANDIDATE Right. Mr Carson, do you have any advice regarding this interim contact?

While Mr Carson replies, Mr Talbot fumbles in his pocket, takes out his mobile phone and reads a message

CARSON Um, yes your honour, I will make enquiries as soon as possible of local contact centres to ascertain whether they will be able to assist with facilitating any contact made by the court. Um, I will also see the children to get their views. I am unable to say how long this will take, but, er, I will do it as soon as possible.

CANDIDATE Thank you..

TALBOT (interrupts) Your honour may I suggest, there is no good reason why you are unable to deal with my client's application. Mr Janning did not contest the injunction application in September and he has admitted here in court today that he has been to the matrimonial home, as we've heard, in breach of the injunction. And may I further add, your honour, that I have just received a text message from my client. She is in the court waiting room, but, she is apprehensive about coming into the court for the reasons laid out beforehand – the fact that she is afraid to be in Mr Janning's presence.

JANNING Absolute.....

TALBOT Might I ask, are we able to avail ourselves of special measures in these circumstance your honour?

JANNING (interrupts) Can I just say a couple of things? Firstly, what he said, absolute rubbish, all this 'she's frightened' rubbish, and secondly, 'special measures', I haven't heard of it. Can you tell me what that is please? And thirdly, he just used his mobile phone then. I was told.... sorry your honour,.... I would like to have my little say. I was told before I came into court 'oh can you switch that off'. Yet, Mr Smarty Pants here.. is there texting away, how come he is allowed it?

CANDIDATE Mr Janning

JANNING ...or is it one rule for the lawyers and another rule for fathers fighting for justice?

CANDIDATE Mr Janning. Please calm down, please do not interrupt, take hold of yourself please. Sit down.

Mr Talbot, do you have anything more to add?

TALBOT No, nothing at all your honour.

CANDIDATE Thank you.

Right. I am ready with my rulings. We are going to look at Mrs Janning's application to begin with. The application for Mr Janning to be committed to prison must be adjourned. He must be allowed the opportunity to seek representation. The last incidence is said to have occurred on the 20th of October 2008 so there is no obvious urgency for this that I can see. In any event, it is desirable that committal proceedings should not be heard at the same time as Mr Janning's application.

Now, Mrs Janning must attend these proceedings. She has made some very serious allegations against Mr Janning and it is only right and proper that he or his representative should have the opportunity to question her or take her evidence.

I understand her anxiety about being in the same room as Mr Janning, however, any application for special measures must be made in advance and should not be left till the last minute as it has been done today.

I am not prepared to grant an order for special measures today, I would require you, Mr Talbot, to issue an application.

TALBOT Your honour, with the utmost respect, I would ask you to reconsider that, quite simply on the basis that costs, in themselves, would be saved if the order is made now ...

JANNING For goodness sake....

TALBOT ... rather than requiring a formal application to be made for consideration prior to or at the next hearing...

JANNING (to Talbot) She just said she's not going to do it.

CANDIDATE Shush Mr Janning!
All right, you make a good point Mr Talbot,

TALBOT Thank you your honour

CANDIDATE I can, and I should, make a special measures order today, all right.

TALBOT Much obliged.

CANDIDATE Now Mr Janning, you will file and serve an affidavit in reply within 21 days. Mr Talbot should then file and serve within 14 days thereafter, a schedule of allegations and responses. At the same time, Mr Talbot, you should file and serve a report from the police regarding their alleged attendance on the 20th October 2008 at the matrimonial home, and indeed any other attendances by the police at that address.

You must prepare and lodge a bundle, and provide a copy to Mr Janning if he remains unrepresented, and include a case summary by 12 o'clock noon, two working days before the hearing and the application which will now be heard on the 9th of February 2009. I estimate it will last one day.

TALBOT Yes your honour, thank you your honour. I would also like to apply your honour, for a power of arrest to be attached to the injunction granted in September. The court of the time omitted to deal with this as an oversight I understand, and I would ask that that is now remedied and the power of arrest be attached to the occupation order and a non-molestation order and also that it should continue for 12 months as of today.

JANNING Sorry love. Could you just explain what he just said, in plain English?

CANDIDATE What I am being asked, Mr Janning, is I am being asked to direct that you may be arrested by the police

JANNING Arrest....

CANDIDATE If... If you breach the injunction against you.

JANNING Alright

CANDIDATE You would then be brought to court and you'd be kept in custody and you would remain in custody for as long as the court thought fit, until the time of the hearing of that breach allegation. Is that clear?

JANNING Mmm.

CANDIDATE Now Mr Talbot. I must say that you have overlooked a change in the law in 2007.

TALBOT Excuse me your honour?

CANDIDATE A power of arrest may no longer be attached to a no-molestation order. It can be attached to the occupation order, but the power of arrest cannot continue beyond the expiry of the injunction.

TALBOT I'm obliged you honour

JANNING Sorry to show my ignorance, yet again, but could you just explain to me in plain English what I have to do regarding this application to send me to prison?

CANDIDATE Mr Janning, the order is quite clear and what you should do is to take the document that you will receive from the court in this regard and show it to your solicitor.

JANNING Sorry, can I make an order.. can you make an order that I can see my children?

CANDIDATE Right, let's deal with your application Mr Janning then.

Now, I will not make a direct contact order. The principle of contact is at issue. Allegations of violence in the presence of the children and towards one of the children have been made. There is insufficient information to order contact despite the possibility of a different order at the final hearing which is going to be a few months hence. In any event, the court does not have the benefit of advice from the Cafcass officer on this point.

I am unable to reach any conclusion today as to whether any contact is in the interests of the children and whether the safety of the children and of Mrs Janning can be secured, before, during and after, such contact.

I fully understand, Mr Janning, that you are anxious to have contact with your children. But the children's welfare is much more important than anything else. This principle can be found right at the very beginning of the statute which applies to the proceedings – The Children's Act 1989. It applies to all parties, the lawyers and the court. Of course there should be indirect contact, and by that I mean letters, birthday cards and contact by telephone.

Now I feel I have no option but to adjourn further consideration of this application until the section seven report is available.

Mr Carson, I direct that that report should be served by the 15th of April 2009.

CARSON Absolutely your honour.

CANDIDATE And that this case will be listed for further consideration on the first available date after the 15th of April 2009, with an estimated length of about 30 minutes for the hearing. Mr Carson, I expect and I direct that you should attend that hearing.

CARSON Yes your honour.

CANDIDATE I have no further orders to make.

JANNING So, that's it eh? I can't see my kids for six months.

He stands and leans across the table towards the candidate

This is unfair love. This is so unfair. The little man gets no justice in this society. And you lot, all there with your secret looks and your handshakes....

CANDIDATE Mr Janning

JANNING and God knows what else. And all you do is take people's money and stitch us up.

CANDIDATE Mr Janning.

JANNING Can I appeal against the contact decision?

CANDIDATE Well, you may appeal to the Court of Appeal in London. However, you would require permission to do so.

He subsides

That permission could be requested now. Or of the appeal court and it will only be given if the court considers the appeal would have a real prospect of some success or there is some other compelling reason why the appeal should be heard.

JANNING Right! I want to appeal now then please.

CANDIDATE Well I'm going to refuse that permission.

JANNING See? Told you! Stitch up.

CANDIDATE If you wish to take the matter further you should go to the court office who I have no doubt will be extremely helpful.

Now, does either party wish to address me any further?

Mr Janning slumps back in his chair

TALBOT No

CANDIDATE Thank you. That concludes today's hearing.

The usher appears

USHER Please stand.

The candidate judge bows and leaves the court room

END