



Neutral Citation Number: [2017] EWFC 74

Case Nos: LU12C0341/LU13C03205

**IN THE FAMILY COURT**  
**Sitting at the ROYAL COURTS OF JUSTICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20 November 2017

**Before:**

**SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION**

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**In the matter of W(Children)**  
**Application by SW (No 2)**  
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No hearing: application dealt with on paper  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

**This judgment was handed down in open court**

**Sir James Munby, President of the Family Division:**

1. I last dealt with this matter on 17 August 2017, when I handed down a judgment explaining why I had made an order which is dated 25 July 2017: *Re W (Children); Application by SW* [2017] EWFC 61. The order was in the form annexed to that judgment.
2. At that stage, as my judgment explains, SW was contemplating issuing proceedings in the Queen's Bench Division, for which purpose she sought permission, which I granted, to make use in those proceedings of certain documents generated in the course of earlier care proceedings in the Family Court.
3. By a letter from her solicitors dated 3 November 2017, SW seeks:

“the directions necessary to enable her to make an Application to the European Court of Human Rights, having been advised that this is the route she should pursue.”

The letter continues:

“Following earlier court orders permitting SW to provide documents to counsel, she has now been advised on her prospects in respect of an action for damages in the domestic courts in misfeasance in public office and under section 7(1)(a) of the Human Rights Act 1998 (HRA). Specifically, she has been advised that she is unlikely to succeed because she is unlikely to be able to establish bad faith and/or a lack of good faith; bad faith is of course a matter she would be required to prove in a misfeasance claim, and by virtue of section 9(3) HRA a lack of good faith is a pre-requisite for an award of damages for breaches of rights under Articles other than Article 5 ECHR. She has, however, been advised that she can bring an application to the ECtHR in light of the decision in *Hammerton v United Kingdom* [2016] 63 EHRR 23 for breach of Article 13 as well as Articles 6 & 8.

... SW has been advised that disclosure of the draft judgment arising from care proceedings is necessary because she relies upon harm (both to her health and to her reputation) that arose at the point at which the Judge first delivered his judgment and ordered, at the same time, that it be sent to SW's employers (at which point she was suspended from work). As the Court of Appeal later found, this harm occurred before the Judge was persuaded to embark upon a series of hearings during which he received detailed submissions made on behalf of each of these three appellants and others as to the precise content of the judgment: see §8, §86-87 of *Re W*.”

4. The letter then turns to address certain procedural issues relating to anonymity in the European Court of Human Rights:

“Rules 33 and 47(4) of the ECtHR’s Rules of Court, together with the Practice Direction on Requests for Anonymity, provide a process for anonymisation of parties to proceedings and for the President of the Chamber to decide, on application, to restrict access to a document in the interests of (inter alia) juveniles or of the protection of the private life of the parties or any person concerned.

The further directions now sought by SW seek to ensure that an application to the ECtHR can be made subject to the necessary requests pursuant to those rules, so as to protect the anonymity of the children and all members of the family concerned in the care proceedings and the appeal (and SW’s rights, to the extent to which they are engaged). As you will see from the proposed draft order SW will make the necessary application seeking to ensure that she is anonymized and that none of the documents from the care proceedings that might identify the children or their family will be made public.”

5. The letter concludes by stating:

“Copies of this letter and its enclosure have been sent to all other parties to the appeal proceedings in order that may make representations should they wish to do so.”

I have received no such representations.

6. The draft order put before me was, subject only to some very minor and for this purpose immaterial adjustments I have made, in the form set out in the Annex to this judgment. It will be noted that the safeguards set out in paragraphs 2-5 of the proposed order are rather differently structured and somewhat less stringent than those contained in paragraphs 5 and 6 of my order of 25 July 2017. That, however, necessarily follows from the need to accommodate the Rules and procedures of the European Court of Human Rights as recited in the draft order.
7. I make an order in these terms essentially for the same reasons as I made the earlier order. In my previous judgment I said this (*Re W (Children); Application by SW* [2017] EWFC 61, para 7):

“... subject always to the imposition of any necessary safeguards and conditions, family courts should not stand in the way of, and should, on the contrary, take all appropriate steps to facilitate, the proper administration of justice elsewhere. This principle is well recognised in the authorities both in relation to the criminal justice system and in relation to tribunals as varied as those dealing with medical discipline and criminal injuries compensation. It is, of course, equally applicable in relation to the civil justice system.”

It goes without saying, but there may nonetheless be advantage in spelling out, that this principle is, of course, equally applicable in relation to proceedings or proposed proceedings before the European Court of Human Rights.

Annex: the order

“UPON READING the judgment of the Court of Appeal (Sir James Munby P, McFarlane and Christopher Clarke LJ) reported as *In re W (A Child) (Care Proceedings: Non Party Appeal)* [2016] EWCA Civ 1140, [2017] 1 WLR 2415, being an appeal, B4/2015/1962, from a judgment of His Honour Judge Gavyn Arthur (sitting as a judge of the High Court in the Family Court) in care proceedings, LU12C0341/LU13C03205, relating to various children (“the Children”), the appeal being, so far as material for present purposes, by a social worker (“SW”) and a police officer (“PO”)

UPON READING the Order of the Court of Appeal (McFarlane LJ) dated 22 May 2017

AND UPON READING the Order of the President of the Family Division dated 25 July 2017 which provided inter alia as set out in the Annex to this order

AND UPON THE APPLICATION of SW seeking disclosure and the use of certain information and documents in and for the purpose of pursuing proceedings before the European Court of Human Rights (“the Strasbourg proceedings”)

AND UPON READING Article 35(2) of the European Convention on Human Rights, which provides that the Court shall not deal with any application submitted under Article 34 that is anonymous

AND UPON READING Rule 33 of the European Court of Human Rights’ Rules of Court, which provides that all documents deposited by the parties in connection with their application, except those deposited within the framework of friendly settlement negotiations, are accessible to the public; but that the President of the Chamber may decide on application to restrict access to a document in the interests of (inter alia) juveniles or of the protection of the private life of the parties or any person concerned, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice

AND UPON READING Rule 47(4) of the European Court of Human Rights’ Rules of Court, which provides that applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying

such a departure from the normal rule of public access to information in proceedings before the Court

AND UPON READING the European Court of Human Rights' Practice Direction, Requests for Anonymity dated 19 September 2016

AND UPON RECOGNISING on the authority of *Re N (Family Proceedings: Disclosure)* [2009] EWHC 1633 (Fam), [2009] 2 FLR 1152, paras 54, 59, that SW is entitled as of right to disclose in accordance with FPR 12.75(1)(c) and PD 12B para 2.1 certain of the documents that she wishes to disclose to the European Court of Human Rights for the purposes of making an application to the European Court of Human Rights (but accepting that, because of FPR 12.73(3), FPR 12.75 does not permit the disclosure of the Judge's draft judgments and that any disclosure as is permissible in accordance with FPR 12.75(1)(c) would be subject to the restrictions imposed by FPR 12.73(2)

IT IS ORDERED THAT:

1 Subject to paragraphs 2, 3, 4 and 5 below, permission is granted for SW, or any solicitor and/or barrister in connection with the Strasbourg proceedings, to disclose and/or communicate to (a) the proposed Respondent in the proceedings, being the State of the United Kingdom ("the proposed Respondent"); and (b) the European Court of Human Rights –

- (i) any documents filed with the court in connection with the appeal, B4/2015/1692 ("the appeal") and the care proceedings, LU12C0341/LU13C03205 ("the care proceedings"); and
- (ii) any judgments or draft judgments arising from the appeal and the care proceedings

as are considered necessary by her legal advisers in and for the purpose of pre-action correspondence and her application in the Strasbourg Proceedings.

2 SW shall at the time of filing her application in the Strasbourg proceedings and pursuant to Rule 47(4) of the European Court of Human Rights' Rules of Court and the Practice Direction on Requests for Anonymity, (a) indicate a wish to anonymise her name and (b) submit a statement of the reasons justifying such a departure from the normal rule of public access, in the interests of protecting the private life of the children, all members of the family and others concerned in the care proceedings and the appeal as well as protecting SW's private life.

3 In respect of any document or part thereof set out at para 1 which is not in the public domain, SW shall, at the time of filing her application in the Strasbourg proceedings, apply pursuant to Rule 33 of the European Court of Human Rights' Rules of Court for permission to restrict public access to it in the interests of juveniles and for the protection of the private life of the children and all members of the family and others concerned in the care proceedings and the appeal.

4(1) SW shall include any quotations from the documents referred to at para 1, and any information derived from the documents, which is not in the public domain in an annex to her application in the Strasbourg proceedings.

4(2) SW shall, at the time of filing her application in the Strasbourg proceedings, apply pursuant to Rule 33 of the European Court of Human Rights' Rules of Court for permission to restrict public access to the annex referred to in para 4(1) in the interests of juveniles and for the protection of the private life of the children and all members of the family and others concerned in the care proceedings and the appeal.

5(1) In communication with the proposed Respondent, SW may provide copies of and quote verbatim from currently unanonymised documents (including draft judgments) provided that before first communicating with the Respondent she provides its legal advisers with a copy of this Order and draws their attention to paragraph 5(2) below.

5(2) Other than in accordance with the foregoing paragraphs of this Order, save with the prior permission of the President of the Family Division

(a) the proposed Respondent and SW shall not disclose any of the documents referred to in paragraph 1, or any information derived from those documents, not already in the public domain to any person other than for the purpose of obtaining legal advice; and

(b) the legal advisers shall not disclose or communicate the same to any other person.

6 For the avoidance of doubt, SW may identify the Judge in the course of disclosure to the proposed Respondent and in any documents filed in the Strasbourg proceedings.

ANNEX [omitted].”