Neutral Citation Number: [2018] EWHC 1037 (Fam)

Case No: FD18F00008

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(In open court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 May 2018

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of the person previously known as Jon Venables
Application by Ralph Stephen Bulger and James Patrick Bulger

- -
- -

Mr Robin Makin (of E Rex Makin and Co) for the applicants
Mr Jonathan Price (instructed by Bhatt Murphy) for JV
Mr Simon Pritchard (instructed by the Government Legal Department) for the Attorney General

Hearing date: 1 May 2018

- -

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. In 1993, Jon Venables (JV) and Robert Thompson (JT), both then aged 10, murdered two-year old James Bulger. It was a murder which shocked and horrified the country. James Bulger's parents and wider family have had to live with the dreadful consequences ever since.

2. In 2001 Dame Elizabeth Butler-Sloss P granted an injunction conferring lifelong anonymity on both JV and JT. Her reasons for adopting this unusual course were explained in a judgment she handed down on 8 January 2001: *Venables v News Group Newspapers Ltd and others, Thompson v News Group Newspapers Ltd and others* [2001] Fam 430. The order containing the final injunction was made on 4 December 2001. Subject only to comparatively minor amendments, made by Bean J in orders dated 21 June and 23 July 2010, by Popplewell J in an order dated 31 August 2012 and, most recently, by Edis J in an order dated 7 February 2018, the injunction remains in force. The amendments reflected the fact that, as is well known, JV was convicted of further offences in 2010 and again in February 2018.

3. For present purposes, it suffices to note that the core of Dame Elizabeth's reasoning is to be found in the following passages ([2001] Fam 430, paras 78, 90, 94 and 104):

> "78 What is the information sought to be protected and how important is it to protect it? The single most important element of the information is the detection of the future identity of the claimants in the community. All the other matters sought to be protected for the present, and for the future, are bound up in the risk of identification, whether by photographs, or by descriptions of identifying features of their appearance as adults, and their new names, addresses and similar information. That risk is potentially extreme if it became known what they look like, and where they are. The risk might come from any quarter, strangers such as vigilante groups, as well as the parents, family and friends of the murdered child. In the present case, the public authority, the court, has knowledge of the risk to the claimants. Does the risk displace the right of the media to publish information about the claimants without any restriction imposed by the court?
>
> 90 The evidence, which I have set out above, demonstrates to me the huge and intense media interest in this case, to an almost unparalleled extent, not only over the time of the murder, during the trial and subsequent litigation, but also that media attention remains intense seven years later. Not only is the media interest intense, it also demonstrates continued hostility towards the claimants. I am satisfied from the extracts from the newspapers: (a) that the press have accurately reported the horror, moral outrage and indignation still felt by many members of the public; (b) that there are members of the public, other than the family of the murdered boy, who continue to feel such hatred and revulsion at the shocking crime and a desire for revenge that

some at least of them might well engage in vigilante or revenge attacks if they knew where either claimant was living and could identify him. There also remains a serious risk from the Bulger family, and the father was quoted as recently as October 2000 saying that upon their release he would "hunt the boys down"; (c) that some sections of the press support this feeling of revulsion and hatred to the degree of encouraging the public to deny anonymity to the claimants. The inevitable conclusion to which I am driven … is that sections of the press would support, and might even initiate, efforts to find the claimants and to expose their identity and their addresses in their newspapers … The response of some members of the public to emotive newspaper reporting has created highly emotional and potentially dangerous situations. The misidentification of a female member of the public, thought erroneously to be the mother of one of the claimants, was potentially very dangerous and demonstrates the probable reaction of members of the public to the knowledge that one of the claimants and his family were living nearby. I also bear in mind that the media coverage has been international as well as national. The information might be gathered from elsewhere and presented to an English national or local newspaper. Once in the public domain, it is a real possibility, almost a probability, that there would be widespread reporting by the press. If photographs are taken, and they would be likely to be taken, the claimants would find it difficult to settle anywhere safely, at least within the United Kingdom. It would, however, be fair to point out that there have also been, particularly recently, thoughtful and objective articles in the newspapers, and a reasoned debate over the correct period of detention for child offenders who commit appalling murders.

94 I consider it is a real possibility that someone, journalist or other, will, almost certainly, seek them out, and if they are found, as they may well be found, the media would, in the absence of injunctions, be likely to reveal that information in the newspapers and on television, radio, etc. If the identities of the claimants were revealed, journalists and photographers would be likely to descend upon them in droves, foreign as well as national and local, and there would be widespread dissemination of the new names, addresses and appearance of the claimants. From all the evidence provided to me, I have come to the clear conclusion that if the new identity of these claimants became public knowledge it would have disastrous consequences for the claimants, not only from intrusion and harassment but, far more important, the real possibility of serious physical harm and possible death from vengeful members of the public or from the Bulger family. If their new identities were discovered, I am satisfied that neither of them would have any chance of a normal life and that there is a real and strong possibility that their lives would be at risk.

> 104 In my judgment, there are compelling reasons to grant injunctions to protect, in the broadest terms, the following information. (i) Any information leading to the identity, or future whereabouts, of each claimant, which includes photographs, description of present appearance and so on. (ii) In order to protect the claimants on their release from detention, it is necessary to have injunctions to protect their present whereabouts, any information about their present appearance and similar information. That protection must include any efforts by the media to solicit information from past or present carers, staff or co-detainees at their secure units until the claimants' release from detention. (iii) In order further to protect their future identity and whereabouts, no information may be made public or solicited from their secure units that might lead to the identification of the units for a reasonable period after their release … (iv) It is not necessary, in my judgment, to protect other information relating to their period in the secure units when they were under 18 …"

4. On 26 January 2018, Ralph Stephen Bulger and James Patrick (Jimmy) Bulger, James Bulger's father and paternal uncle ("the applicants"), issued an application in the Family Division seeking variation of the injunction. I should make clear that James Bulger's mother is *not* a party to the application. In significant part the application related to the reporting and other aspects of the criminal proceedings against JV before Edis J, which concluded on 7 February 2018; those matters accordingly no longer arise for consideration. What remains is an application for an order described in the body of the notice of application as follows:

> "The Applicants wish to seek to vary/discharge … the [injunction] in so far as it relates to the person formerly known as Jon Venables but <u>not</u> in respect of the person formerly known as Robert Thompson …"

Attached to the notice of application was a draft order, the material parts of which provide no further elaboration of what substantive relief is sought. Whilst I appreciate that this application had to be prepared in some haste, which no doubt serves to explain its deficiencies, the fact remains, as we shall see, that even now, some three months later, there has been no elaboration.

5. The application was considered by Edis J, sitting as a judge of the Family Division, at a hearing at the Old Bailey on 7 February 2018. The applicants were represented, then as now, by their solicitor, Mr Robin Makin. JV was represented by Mr Edward Fitzgerald QC and Mr Jonathan Price. Edis J was presented with written "Outline Submissions", prepared by Mr Makin and dated 7 February 2018, which included the following:

> "The challenge to the injunction is not limited to simply being able to report the current criminal proceedings and the outcome. A variation in respect of such could be made on 07.02.2018 but

> the more extensive reconsideration will require adjournment with directions …
>
> The Applicants consider that over 17 years on and with serious offending the experiment of 'anonymising' Jon Venables has not worked and that there is danger in seeking to continue with such a course. The original intention was predicated on the premise that JV was rehabilitated and could live a law abiding life.
>
> Whether due to:
>
> (1) JV's innate nature,
>
> (2) the circumstances of the murder of James Bulger …, or
>
> (3) the nature of the support and supervision of JV by the authorities [in respect of which the Applicants have immense anxiety]
>
> or any combination thereof; there needs a fundamental reassessment of the injunction Order which adversely impacts upon others (including the incurring of vast amounts of public resources).
>
> It is not necessarily the situation that JV's right to life require anonymity. Indeed the evidence appears to suggest that JV cannot cope with 'living a lie', the authorities have not been able to manage him in the community, and he appears to have reverted to committing child sex offences. Where could matters lead?"

6. At the end of that hearing, Edis J made an order listing the application for hearing before me on the first available date after 12 April 2018. The material part of this order for present purposes (paragraph 2) was in the following terms:

> "The Applicants shall have permission to file an amended application and file evidence in support and serve it on the representatives for the person formerly known as Jon Venables by 4pm on Thursday 12.04.2018."

It became apparent that these directions were unlikely to be complied with and on 23 March 2018, in response to representations received from Mr Makin (making the point that he had still not received the materials from the Ministry of Justice which he had been anticipating receiving before the date specified in the order), I made an order vacating the hearing which had been listed on 17 April 2018 and relisting it on 1 May 2018. The order provided that:

> "The Applicants shall by close of business on Wednesday 25th April 2018 file a witness statement which sets out where the matter is up to and proposals for the time needed for completion

> of the tasks needed to comply with paragraph 2 of the order of Mr Justice Edis dated 7 February 2018."

7. Thereafter, I received a joint witness statement by the applicants dated 24 April 2018; and a witness statement by Michael John Berry dated 26 April 2018.

8. The matter came on before me on 1 May 2018. The applicants were represented by Mr Makin, JV by Mr Price and the Attorney General (as guardian of the public interest) by Mr Simon Pritchard. The Ministry of Justice declined Mr Makin's invitation to be a party, for reasons set out in a letter from the Government Legal Department dated 27 April 2018:

> "The MOJ's involvement in this matter is solely as the holder of the documents which Mr Ralph Bulger seeks access to through the subject access request under the Data Protection Act 1998 … that he has made to the MOJ. MOJ have no view to give on the maintenance or otherwise of the injunction … at this stage."

That is clear enough and it remained the Ministry of Justice's stance following receipt of a further email from Mr Makin on 30 April 2018 which included the following:

> "With regard to the letter of 27.04.2018 please can you be good enough to reconsider your position and attend to assist everyone. If you do not and the matter needs to be adjourned for there to be a directions hearing at which you are involved then there will be added delay and costs. You must be aware, for example from the debate that is to occur in Parliament, as to the considerable concern as to the handling of matters by the MoJ.
>
> … A key issue is when the data long overdue has not been provided and when it will be provided. Why cannot this be done at tomorrow's hearing.
>
> … On what basis did the SoS participate before [Dame Elizabeth] and what do you contend, whether by formal joining or otherwise, does the SoS now require to obtain your participation and assistance with the provision of relevant material?"

9. The bundle prepared for the hearing by Mr Makin did not comply, whether in substance or in format, with the mandatory and deliberately prescriptive requirements of PD27A (the 'Bundles' practice direction).[1] It would be tedious to list all the details of non-compliance. I confine attention to PD27A, para 4.3, which provides inter alia:

> "At the commencement of the bundle there shall be inserted the following documents (the preliminary documents):

[1] PD27A applies (see paragraph 2.1(a)) to "all hearings before a judge sitting in the Family Division of the High Court", irrespective of whether the particular matter is governed by the Family Procedure Rules 2010 (FPR) or the Civil Procedure Rules 1998 (CPR), which is why it was issued by both the President of the Family Division and the Master of the Rolls.

> (a) an up to date case summary of the background to the hearing confined to those matters which are relevant to the hearing and the management of the case and limited, if practicable, to four A4 pages;
>
> (b) a statement of the issue or issues to be determined (1) at that hearing and (2) at the final hearing;
>
> (c) a position statement by each party including a summary of the order or directions sought by that party (1) at that hearing and (2) at the final hearing;
>
> (d) an up to date chronology, if it is a final hearing or if the summary under (i) is insufficient …"

The bundle lodged with the court by Mr Makin on 30 April 2018 contained none of these documents. The most significant omission was in relation to paragraph 4.3(c); there was no formulation either of the order being sought by the applicants at the final hearing – how precisely was it being said that the injunction should be varied or discharged? – or of the directions which I was being invited to make. Mr Makin observes that no complaint was made by the other parties as to the form or contents of the bundle. So be it, but so what.

10. No doubt, this will be dismissed by some as mere pedantry and judicial petulance or worse. I do not agree. In *Re X and Y (Bundles)* [2008] EWHC 2058 (Fam), [2008] 2 FLR 2053, a case where there had been serious non-compliance with PD27A, I said this (paras 4-6):

> "4 I wish to emphasise that the purpose of the Practice Direction is not to make the lives of the judges easier. On the contrary, it is simply a reflection of the increasing burdens being imposed upon judges at all levels in the family justice system who, faced with ever-increasing and almost intolerably overloaded lists, are required – and, I emphasise, willingly agree – to undertake a workload, much of it in their own time, which even their comparatively recent judicial ancestors would have found astonishing.
>
> 5 In the more spacious days of my legal youth, judges rarely pre-read very much … the Practice Direction has laid down – and for very good reason I should say – deliberately very prescriptive requirements as to the contents and format of the bundle and … as to the form and content of the 'preliminary documents' which are to be included in every bundle. The purpose of all this is to ensure that the judge can embark upon the necessary pre-reading in a structured and focused way, making the best and most efficient use of limited time, so that when the case is actually called on in court everyone can proceed immediately to the heart of the matter, without the need for any substantial opening and with everyone focusing upon the previously identified issues. The objective is to shorten the

> length of hearings and thereby to increase the 'throughput' of the family courts – with the ultimate objective of bringing down waiting times and reducing delay.
>
> 6 But these wholly desirable objects – wholly desirable in the public interest and in the interests of litigants generally – are imperilled whenever there is significant non-compliance with the Practice Direction."

11. I went on (para 7):

> "In the case of those who practise regularly in the family courts there is, and can be, absolutely no excuse for not being completely familiar with the Practice Direction and its contents and complying meticulously with its requirements … But nor is there any excuse for those who may find themselves in a family court less frequently or as birds of passage. It is the professional obligation of practitioners making a visit to some unfamiliar court or tribunal to identify in good time whether there is some particular Guide or Practice Direction or other document regulating practice before that court or tribunal and, if there is, to familiarise themselves with its requirements and then to carry them into effect. A family lawyer who strayed into the Chancery Division or the Queens Bench Division without having first assimilated the requirements of the *Chancery Guide* or the *Queens Bench Guide* would receive short shrift. There is no reason why similar standards should not apply and be enforced in the family courts."

I do not resile from a word of that: see, more recently, *Re L (Procedure: Bundles: Translation)* [2015] EWFC 15, [2015] 1 FLR 1417.

12. It is depressing that *eighteen* years after the Practice Direction was first issued, almost *ten* years after I gave judgment in *Re X and Y*, and *three* years since, as President, I gave judgment in *Re L*, it is still necessary to repeat these elementary points.

13. As put before me at the hearing on 1 May 2018, the applicants' case was supported by two witness statements: the joint witness statement by the applicants dated 24 April 2018 and the witness statement by Michael John Berry dated 26 April 2018 to which I have already referred. Mr Berry is a clinical and forensic psychologist who has been instructed by Mr Makin to prepare expert evidence in connection with the application. In fact, as he tells us, he has been involved in the case since 2000.

14. As appears from the following extracts, which need to be set out in some detail, the applicants' witness statement is a curious document. So far as is material for present purposes, it begins by focusing on the position of the Ministry of Justice:

> "At the hearing before Edis J, on 07.02.2018, at the Central Criminal Court, Robin Makin, explained that a request for data to the Ministry of Justice (MoJ) had been submitted but that the request was outstanding at that time. The MoJ is a vast data

> Controller and holds a substantial amount of personal data including material which is relevant for the preparation of our evidence. The material dates back to now over 25 years and is substantial. Some of it is highly relevant to what is needed to prepare out evidence.
>
> We intend to adduce further psychological evidence as to the impact of the injunction and its continuance in its present form on us. However, in order to do so material held by the MoJ needs to be obtained and provided to the psychologist.
>
> The MoJ has not complied with the information request in the way in which it ought to have done. All that has been provided is some very limited information by email on 23.03.2018 (15.47). Information held by HM Prison and Probation Service has still to be provided.
>
> Our application was served on the TSol for the MoJ. On 02.02.2018 an email was sent (13.58) by Elizabeth Mackie, Deputy Director and Joint Team Leader in the Justice and Security Public Law Litigation indicated that she would "be in contact further once a case holder has been allocated to the matter". There has been no further communication received from Ms Mackie advising as to who has been allocated to deal with the matter for the MoJ. This is a matter of immense concern to us. We had hoped and expected that once a case-holder was appointed to act for the Ministry of Justice that there could be a channel of communication. As will be appreciated what is proposed with regard to the person known formerly/formally known as Jon Venables by the MoJ is of critical importance. It is of relevance to any consideration by the Parole Board in respect of which representations will need to be made by us/on our behalf. In the past we have had justifiable concern as to what the Government has done or has proposed – for example, in the proceedings before Dame Elizabeth Butler-Sloss it was suggested that new birth certificates would be issued."

It continues:

> "We would wish the matters of concern with regard to the injunction to be dealt with fully and fairly. There is a huge disparity in resources of the parties. However, we believe that the right to life of the person formally known as Jon Venables is not now suitable for the injunction in its current format. Indeed, on any basis, the wording about the 'whereabouts' needs to be reconsidered so as to avoid as has happened reporting thereof including by the Government prior to the variation of the injunction. There are immensely serious of concern not only to us but to the public at large which are best dealt with by Court proceedings and not by the media …"

15. It concludes:

> "We have instructed Robin Makin to undertake the following steps:
>
> (a) To take up the lack of compliance by the MoJ with the Information Commissioner and ascertain what assistance her office will be able to provide and when to enable the required data to be obtained.
>
> (b) To seek to meet with the Senior Officials in the MoJ and its agencies and the Treasury Solicitor.
>
> (c) To seek the further assistance of our MP, the Rt. Hon George Howarth MP with regard to the above …
>
> (d) To meet with the clinical psychologist, Mr M J Berry, who has previously prepared reports on us …
>
> It is hoped that this statement will now focus the minds of those at the MoJ that there needs to be co-operation in accordance with the Civil Procedure Rules. Whilst at this stage it is not possible to provide time scales it is hoped that at the hearing on 01.05.2018, Robin Makin will be able to provide some more information ..."

16. The witness statement by Mr Berry has been submitted to the court in breach of the mandatory and unqualified prohibition in FPR rule 25.4(2).[2] In relation to the proposal that Mr Berry provide expert evidence, few of the steps referred to in FPR rules 25.6 and 25.7, PD 25B and PD 25D have been undertaken. Whether this is witting or unwitting on the part of Mr Makin, is, in large measure, neither here nor there. The Supreme Court has recently made clear that even litigants in person have to comply with the rules. As Lord Sumption JSC said in *Barton v Wright Hassall llp* [2018] UKSC 12, [2018] 1 WLR 1119, para 18:

> "Their lack of representation … will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules … The rules do not in any relevant respect distinguish between represented and unrepresented parties."

The case is *a fortiori* where, as here, the litigant *is* represented.

17. In the circumstances, I admitted Mr Berry's statement *de bene esse*. It also is, in certain respects, a curious document. He identifies his instructions as follows:

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[2] There may be a nice point, though it was not in fact taken by Mr Makin, as to whether an application of the present kind, albeit made, as here, in the Family Division, is governed not by the FPR but rather by the CPR. There is no need for me to explore this question further, for CPR 35.4(1) in substance is to the same effect as FPR 25.4(2).

> "I have been asked to report on what the impact of continuing the injunction in the format following the variation by Edis J on 7th February will be on the Applicants and on the wider issue as to whether it is viable to attempt to maintain anonymity and reporting restrictions in the current format regarding Jon Venables having regard to his serious and repeated offending which was not envisaged by Dame Elizabeth Butler-Sloss P when she originally granted the injunction."

In relation to this, he adds these observations:

> "As the Court will be aware there has been a great deal of public interest in this matter and there is concern not only for the right to life of Jon Venables but also for the Applicants and wider society. The current situation is unchartered [sic] territory.
>
> … As to wider issues as to how anonymity can be sought to be maintained without creating an unacceptable risk to others I do not yet have any sufficient information or idea as to what is proposed. Indeed, as indicated above the situation is unchartered territory."

18. He indicates the material he will need to undertake this task:

> "In order for me to prepare my report I will need to see materials dating back to 1993. In particular, there are materials relating to the original proceedings before Dame Elizabeth Butler-Sloss P; the proceedings regarding the setting of the tariff by Lord Woolf LCJ with which I was involved as well as more recent developments in 2010 when Jon Venables committed further offences – the impact of which was made even more difficult for the Applicants due to the Injunction.
>
> I understand that efforts have been made to obtain data held by the Ministry of Justice relating to Ralph Stephen Bulger which will provide me with official records essential to the preparation of my report.
>
> … One thing that is important to see is the risk assessment that has been undertaken on Jon Venables following his recall to prison in connection with the offences to which he pleaded guilty on 7th February 2018."

19. Unsurprisingly in this state of affairs, both Mr Price on behalf of JV and Mr Pritchard on behalf of the Attorney General are severely disadvantaged in their understanding of the case being out forward by the applicants.

20. Mr Price, in his written outline submissions dated 27 April 2018, expresses concern at the nature and scope of the challenge to the injunction, drawing attention in particular to the facts:

i) that the application notice itself is, as he puts it, vague in the extreme;

ii) that the submissions put before Edis J on 7 February 2018 appear to seek a "fundamental reassessment" of the injunction but on what he says are vague and tendentious factual grounds;

iii) that the applicants' witness statement, although it states that they are seeking their own personal data from the MoJ because that will be "relevant to what is needed to prepare our evidence", does not explain how such data is said to be relevant to or indeed is capable of having any bearing upon the present application;

iv) that there is real and worrying uncertainty regarding the expert evidence proposed to be obtained from Mr Berry, who appears to anticipate being instructed to comment not just upon the psychological impact of the injunction upon the applicants, but also upon the general workability of the injunction and even the desirability of the injunction from the point of view of JV's own interests; Mr Price does not accept that Mr Berry is competent to opine on this range of issues.

21. Mr Price submits that:

i) Edis J's directions envisaged that the applicants' case would be properly clarified prior to any directions hearing, and that at the very least, the nature of the evidence they wished to rely upon would be apparent. However, three months on, it is not clear what the applicants want: a change in the wording of the injunction; some kind of general review of that injunction; or its setting aside in its entirety insofar as it relates to JV?

ii) The pattern of directions laid down by Edis J must be adhered to. The applicants must formulate their application with greater particularity, setting out the order they seek and their basis for seeking it. They must then serve the lay evidence upon which they will seek to rely. If they seek to rely upon expert evidence they must identify the issues upon which such evidence may appropriately be led, and make proposals to the other parties.

iii) Accordingly, directions should be given for the filing and serving by the applicants of a properly particularised application notice, followed by evidence of fact and proposals for any expert evidence. At that stage, he suggests, it may be appropriate to convene a further case management conference, which if the applicants have complied with the directions suggested, may, he remarks, actually be effective.

22. Mr Pritchard, in his written submissions dated 30 April 2018, makes the same point succinctly. There is, he submits, a lack of clarity regarding the nature of the amendments to the injunction that are sought and a lack of clarity around the evidence that the applicants intend to rely upon in support of the application. With masterly understatement, he comments that this makes case management "difficult". He suggests that, unfortunately, it will not be possible to set directions at this stage to take this matter to a substantive hearing.

23. Eventually, on 1 May 2018, Mr Makin filed a written position statement. There was much focus on the position of the Ministry of Justice; his email of 30 April 2018 was set out *in extenso*. Mr Makin added:

> "It had been hoped that the MoJ would attend to assist as there could be some consideration given to actually indicating where JV is held so as to ensure that he is suitably protected and others not mistaken for him.
>
> The Order of Edis J was made after detailed submissions were made by Robin Makin as to the material that was being sought in accordance with legal rights. Time was allowed for it to be provided by the MoJ in accordance with its statutory obligations and thereafter time for preparation of the evidence. The fact that the MoJ has not complied with its obligations should not now be used against Messrs B. Attention should be directed to the MoJ and its compliance with its legal obligations and its co-operation. There may be an alternative which will produce the end result required under the FPR.
>
> As will be readily appreciated the handling of JV by the MoJ has been and is a matter of public concern. Parliament has a debate 'on hold' pending the determination of these proceedings."

24. Insofar as the applicants' case is set out, it was encapsulated in the following submissions:

> "Messrs Bulger's position is that whilst JV has a 'right to life' the means of securing it are not now necessarily best served by maintaining the anonymity injunction in so far as it relates to JV in its current form.
>
> In its current form the 'whereabouts' of JV cannot be published … This provision has caused considerable problems and continues to be breached. Some variation of it is appropriate as without such any decision to release JV indicating that his whereabouts are no longer in custody would be prohibited."

25. Mr Makin identified the following "possible directions" I should give:

> "As the MoJ will not volunteer to participate – notwithstanding that the then relevant Government Department did so in the proceedings before Dame Elizabeth Butler-Sloss P they be ordered to be joined to the proceedings.
>
> The material sought by way of the information requests made by Ralph Bulger [and possibly some other material] be ordered to be provided by the MoJ.
>
> The future proceedings shall be conducted in private.

> Consideration shall be given by the court as to the appointment of assessors and directions as to expert evidence."

The last point was accompanied by a reference to FPR 25.

26. It will be noted that, although this position statement was filed *after* both Mr Price and Mr Pritchard had filed their written submissions, Mr Makin singularly fails to engage with any of the fundamental points they had made, in particular, Mr Price's points as I have summarised them in paragraph 20 above.

27. During the hearing, Mr Makin addressed me at some length. I confess that, even then, I was little the wiser – no doubt this was due to some imperfection of understanding on my part – as to what Mr Makin's answer was to what Mr Price was saying. It was not clear to me to what extent the applicants were seeking either the variation or (though Mr Makin seemed to be indicating that this was no longer being proposed) the discharge of the injunction. I was still unclear as to precisely *why* and on *what legal basis* Mr Makin was contending for the joinder of the Ministry of Justice and the production by it of the extensive documentation he seemed to be seeking. I was still unclear as to how it was being said that Mr Berry was, as an expert, competent to opine on the wider issues canvassed in his witness statement.

28. Given that the matter is going to have to return before me for further directions at a hearing at which these issues will have to be canvassed and, if still live, resolved, it would be inappropriate for me to explore them now in any detail. That said, my provisional view is that the stance being adopted by the Ministry of Justice is entirely understandable and that there is much force in each of the points made by Mr Price. There are, however, two matters which I put to Mr Makin during the course of argument that need to be repeated. The first is that it is, in the first instance, for his clients, as the applicants, to identify with proper precision what relief they are seeking and to put before the court, and in a manner complying with the relevant rules, the evidence, lay and expert, upon which the rely. As I observed, even in the Family Division, an applicant is not permitted to demand that others first provide him with the material needed to build his case. That is the world of Humpty Dumpty: see *C v C (Privilege)* [2006] EWHC 336 (Fam), [2008] 1 FLR 115, para 50. Secondly, it is no proper part of the judicial function I am here exercising to police, let alone enforce compliance by it with, the Ministry of Justice's obligations arising in relation to Mr Ralph Bulger's subject access request under the Data Protection Act 1998. That is a matter for others in other places.

29. The immediate necessity is to give directions to have this application put in proper order:

    i) The first necessity is a direction that the applicants set out precisely the respects in which they contend that the injunction should be varied or discharged. Until this is done it is difficult to see how the matter can properly proceed. Mr Makin agreed that this could be done by 4 June 2018. I am prepared in the circumstances, notwithstanding that the best part of three months has already elapsed since the matter was before Edis J, to give the applicants that further indulgence. I emphasise that this is a date that, as with all the other dates set out in my order (see below), *must* be complied with: see *Re W (Adoption Order:*

Leave to Oppose); Re H (Adoption Order: Application for Permission for Leave to Oppose) [2013] EWCA Civ 1177, [2014] 1 FLR 1266, paras 50-53.

ii) If the applicants wish to adduce expert evidence from Mr Berry, or, indeed, from anyone else, they must make a proper application for permission to do so. That application must provide all the information set out in FPR rule 25.7(2)(a) and PD25D para 3.11. In particular, the application must set out (i) the *issues* to which the expert evidence is to relate and (see PD25D, para 3.3(c)) (ii) the *questions* which it is proposed the expert should answer.

iii) If the applicants wish to apply for orders against the Ministry of Justice either joining it as a party and/or requiring it to produce documents, they must make a proper application, setting out (i) the orders sought, (ii) the reasons why it is said that such orders should be made and, if the production of documents is sought, (iii) the documents or classes of documents whose disclosure is sought.

iv) The applicants can, if they wish, file such further non-expert evidence as they may be advised.

v) Subject to that, the matter must be listed before me for a further case management hearing.

30. Mr Makin has raised the question whether future hearings should be in private. I directed that the hearing before me on 1 May 2018 should be in public, in open court. There were, in my judgment, overwhelming reasons why, in the public interest, that hearing – which was not going to involve the analysis or discussion of any sensitive matters – should be in public, so that the media, as the eyes and ears of the public, should be (subject of course to the injunction) unfettered in their ability to report proceedings which, of their nature, were of very considerable public interest. The same goes, as it seems to me, for the next case management hearing, which should likewise be in public. Whether the final substantive hearing should be either wholly or partly in private is a matter best considered at the next hearing.

31. The order I have made, dated 1 May 2018, is in the following terms:

> "IT IS ORDERED that:
>
> 1. By 4pm on Monday 4 June 2018 the Applicants shall file and serve a draft order and statement of case in support of the Application setting out:
>
> (a) the precise terms of any variation they seek to the injunction order made in this case by Dame Elizabeth Butler-Sloss on 4 December 2001 as subsequently varied; and
>
> (b) their reasons for so seeking.
>
> 2. By 4pm on Monday 2 July 2018:
>
> (a) if so advised, the Applicants are to file and serve notice in writing that they intend to rely upon expert evidence in

support of the Application, and any such notice shall comply with the requirements set out in Part 25 of the Family Procedure Rules and the Practice Directions thereto, in particular rule 25.7, including by stating:

(i) the field(s) in which the expert evidence is required;

(ii) if practicable, the name of the proposed expert(s);

(iii) the issues to which the expert evidence is to relate;

(iv) the questions which it is proposed the expert should answer; and

(v) whether the expert evidence could be obtained from a single joint expert;

(b) if any relief is sought in relation to the Secretary of State for Justice, the Applicants are to file and serve, including upon the Secretary of State for Justice, a draft order and statement of case setting out:

(i) the precise terms of any relief sought against the Secretary of State for Justice;

(ii) if such relief includes disclosure of documents, the best particulars the Applicants are practicably and reasonably able to provide as to the categories of such documents; and

(iii) their reasons for seeking such relief.

3. By 4pm on Monday 16 July 2018 the Applicants shall file and serve the statements of any witnesses of fact upon which they wish to rely in support of the Application.

4. A directions hearing shall be listed before the President of the Family Division on the first open date convenient to the parties and their advisors on or after 17 July 2018 (such date to be fixed in consultation with the Clerk to the President).

5. Costs in the case."