[2024] EWHC 3330 (Fam)

Case No: FD23P00425

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2024

Before :

THE HONOURABLE MR JUSTICE WILLIAMS

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Between :

(1) LOUISE TICKLE **Applicant**
(2) HANNAH SUMMERS
(3) THE BRITISH BROADCASTING CORPORATION
(4) PA MEDIA
(5) ASSOCIATED NEWSPAPERS LTD
(6) TIMES MEDIA LTD
(7) GUARDIAN NEWS AND MEDIA LTD
(8) TELEGRAPH MEDIA GROUP HOLDINGS LTD
(9) NEWS GROUP NEWSPAPERS LTD
(10) INDEPENDENT TELEVISION NEWS LTD
(11) REACH PLC

- and -

(1) SURREY COUNTY COUNCIL **Respondent**
(2) OLGA SHARIF
(3) URFAN SHARIF
(4) BEINASH BATOOL
(5 – 10) U, V, W, X, Y, Z
(by their Children's Guardian, Sarah Gwynne)

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Chris Barnes (instructed by **Bar Council Direct Access Scheme**) for the **1st and 2nd Applicants**

Samuel Rowe (instructed by **RPC**) for the **3rd and 5th-11th Applicants**

Callum Parke, a journalist for the **4th Applicant**

Deirdre Fottrell KC, Emily James and Marlene Cayoun (instructed by **Surrey County Council Legal and Democratic Services**) for the **1st Respondent**

The 2nd Respondent was neither present or represented

Cyrus Larizadeh KC and Clarissa Wigoder (instructed by **Osbornes Law**) for the **3rd Respondent**

Joy Brereton KC and Amean Elgadhy (instructed by **City Law Chambers**) for the **4th Respondent**

Rebecca Foulkes (instructed by **Dawson and Cornwell LLP**) for the **5th-10th Respondent Children**

Hearing date: 9 December 2024

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity and other confidential matters relating to the children must be strictly preserved in accordance with the terms of the Reporting Restriction Order made on 11 December 2024. The substance of those restrictions is contained in paragraph 41(i) and (ii) of this judgment. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Williams J:

1. Sara Sharif was born on 11th of January 2013. We now know she was murdered by her father and step-mother and died on 8th August 2023; the cumulative effects of sadistic torture in which she sustained multiple injuries eventually overwhelming her. Rest in Peace. Her father has now been sentenced to 40 years in prison for her murder; her step-mother to 33 years for her murder and her paternal uncle to 16 years for causing or allowing her death. The sentencing remarks of Mr Justice Cavanagh on 17th December 2024 made horribly clear the appalling brutality she had been subjected to by her father and step-mother over the months and years preceding her death. Even having regard to other notorious murders of children by their supposed carers – Victoria Climbie, Peter Connelly, Star Hobson – the violence and cruelty Sara was subjected to was extreme. The very high sentences imposed no doubt reflect that.

2. This is my judgment in respect of the applications by 11 media parties for disclosure of the papers from historic Family Court proceedings relating to Sara Sharif and for the relaxation of the statutory reporting restrictions imposed by section 12 of the Administration of Justice Act 1960 so as to enable them to publish information contained within those papers. This judgment has been prepared under some pressure of time as one of my decisions is the subject of an appeal and the Court of Appeal indicated they would hear the appeal prior to the Christmas vacation; that vacation being the time when I had originally intended to write this judgment. The urgency of the judgment's preparation necessarily means it may not be as comprehensive in its account of my reasoning or may not record every matter I would otherwise have wished to record including all of the parties' helpful submissions. However, the nature of the case and the hearing necessarily led to less fulsome exploration of the issues than might have occurred with more time and I accept that the issues engaged warrant expedition.

3. I have previously delivered a judgment in June 2024 on the media applications following a hearing in March 2024. That judgment forms the foundations on which this rests and must be read together with this, in particular in relation to the legal framework which I am applying. I had previously permitted limited disclosure to the media parties of information from the historic proceedings (the green material) which was informative but did not comprise the evidence which was contained in the court bundles which had been sub-divided into amber and red material depending on its sensitivity and relevance.

4. That June judgment is in the process of being anonymized and redacted so that it can be published. I concluded in that judgment that the applications were incapable of determination at that time as it was not possible to carry out any meaningful balance between the Article 8 rights to respect for private and family life which were engaged (particularly those of the children) and the Article 10 freedom of expression rights of the media; that being the core evaluation (the ultimate balancing exercise) that a court must undertake. At that time the criminal trial of Mr Sharif, Ms Batool and Mr Malik was listed in October 2024 and it was the range of possible outcomes to that trial which was key in preventing that meaningful balancing exercise being undertaken. I therefore adjourned the applications. In that judgment I said that a verdict or plea would justify renewed consideration of the applications.

5. As the criminal trial progressed the media parties requested the restoration of their applications in anticipation of a verdict being delivered. I was able to list the matter for

hearing on two days, the third and fourth of December. However, when it became apparent that a verdict was not likely to have been returned the media parties sought to vacate that hearing although they were aware that I was not able to accommodate a further two day hearing prior to the Christmas vacation but was only available for half a day on 9th December 2024. It became clear prior to 9th December that a verdict would not be available on that day but, given I had no further availability, the decision was taken to proceed with that hearing. It seemed to me that the nature of the defences that Mr Sharif and Ms Batool were running and the evidence that Mr Sharif had given may be sufficient for my purposes within the family jurisdiction to now undertake the ultimate balancing exercise.

6. I therefore heard submissions from the parties on 9th December. Given the jury were still out I directed that no reporting of the hearing or outcome was to take place. As it had been clear to all there was not sufficient time for me to deliver a judgment, I gave my decisions on the various issues which required determination so that in the event of the jury returning a verdict the media would be in a position immediately to exercise their right to report. I reserved judgment, indicating that it was unlikely that my judgment would be available before the commencement of term in January 2025. In the course of delivering my decisions it emerged that the media parties considered there was a distinction to be drawn between identification of third parties and the identification of judges and so, although the parties had made submissions in relation to whether third parties should be identified by name or remain anonymous, I permitted written submissions to be made on the issue of identifying judges. Those submissions were delivered to me on the 10th and 11th of December. On 13th December 2024, having since Monday 9th December delivered a judgment at the conclusion of a 1 day Extended Civil Restraint Order case, a further judgment at the conclusion of a 2 day Special Guardianship case and dealt with 3 other cases, I was able to consider the further submissions on naming provided by Ms Tickle/Ms Summers, the other media parties and the Press Association and I concluded that the original decision to maintain the confidentiality of the names of the judges was correct. An application for permission to appeal was received shortly after that decision was communicated and later that evening (18.34GMT) I adjourned that application until the judgment was provided and gave my reasons for adjourning that application:

i) Ground 1: It was procedurally irregular to make such an order at the hearing on 9th December 2024 without having raised, in the course of the hearing, that such an order would, or might, be made and actively inviting submissions where no such application was before the court;

The issue of naming third parties was raised by the Guardian and by the father – that appeared to me to include the judges. When it became clear that the media parties distinguished between social workers, experts, guardians and judiciary I gave the parties the opportunity to make further submissions.

ii) Ground 2: The absence, even following the review undertaken leading to the decision today, of even brief indicative reasoning to support an order that has immediate effect, and is the point from which any time for an application for permission to appeal runs, is procedurally irregular;

The issue is hardly a simple one and as the Media parties submissions make clear, attempting to give even indicative reasons (as were canvassed in the hearing on 9th December 2024) carries with it a risk of misinterpretation. Issues of this importance warrant proper consideration and explanation. The parties had the option of a 2 day hearing on the 3rd and 4th December which I had made available to them at the expense of other matters that might have been heard, recognising the importance of giving the case a proper time estimate in order specifically so that I could give a judgment*. The parties elected to vacate that hearing knowing that I was unable to give them anymore than ½ a day for an adjourned hearing with the consequence that I would be unlikely to do anything more than give a decision. This is recorded in Recital C to the order of 2.12.24 adjourning the hearing of 3 and 4 December 2024. I therefore do not consider it is open to the applicant to argue any injustice arising from this – it occurred as a result of their application to vacate.*

iii) Ground 3: On the merits: an order restraining the naming of any of the Judges who heard the historic proceedings (relying, for the avoidance of doubt, on the arguments set out in our additional note) is unprecedented and unsustainable and could not be contemplated (i) in the absence of any specific application (whether from any of the Judges concerned, or otherwise), and (ii) in the absence of any specific evidential justification (which for the avoidance of doubt has not been provided);

The authorities referred to in the additional submissions confirm that the decision to be taken is the ultimate balancing exercise between the Article 8 rights of the individuals concerned and the Art 10 rights of the press. The Court of Appeal decision in Abassi and other authorities make clear there is no class of individual who falls outside the ultimate balancing exercise which would include the judges and that the court must undertake an exercise in which those rights are balanced including the likely response to the publication of names by reference to specific and generic knowledge. My judgment *will contain my analysis of the competing rights and how I have come to the conclusion I have. It may make provision for further consideration once the relevant individuals have been approached to ascertain their positions and to confirm whether they are any additional individual specific matters which might bear upon the decision. The Local Authority referred to the section 7 author having particular concerns and the experience of Ms Arthurworry in the Victoria Climbie case would suggest this sort of event and subsequent publicity can have profound implications for the health and well-being of the individuals concerned which may require further consideration. Once the genie of publication is released from the bottle it cannot be coaxed back inside. Any delay in the determination of the issue will cause minimal prejudice in the context of a matter of weeks and holding the ring requires non-publication rather than publication.*

iv) Ground 4: The issue of the naming of Judges is a matter of exceptionally high constitutional and public importance, and in the context of the case the issue is urgent and cannot await reasoning in January;

The Court of Appeal function is to review the decision by reference to the reasons given. It is not a court of first instance who may consider the issue afresh save where it has determined the decision is wrong. The court of appeal will not be able to fulfils its statutory function until they have my judgment which regrettably due to the

parties election of a later ½ day hearing rather than an earlier 2 day hearing will not be completed before I leave the jurisdiction at the commencement of my vacation.

v) Ground 5: The appeal enjoys sufficient prospects of success, and its overall importance justifies an immediate grant of permission to appeal.

The prospects of success are indeterminable although as I will apply the legal framework set out in my of June 2024 which was not appealed and which I therefore assume contains an appropriate and correct analysis of the law it would seem likely any appeal will have to revolve around my case specific weighing of the relevant factors.

7. The decisions that I reached on 9th December were broadly speaking as follows;

i) The evidence heard in the criminal trial pointed to the likelihood of Mr Sharif being found guilty of murder or possibly manslaughter or causing or allowing Sara's death and to the possibility of Miss Batool being found guilty of murder or manslaughter or causing or allowing Sara's death.

ii) That Ms Tickle and Ms Summers' application for further disclosure of amber and red material was granted forthwith subject to a redaction scheme to withhold the disclosure of highly sensitive information about the children. In practice this meant that the information would be disclosed to the other media parties as well.

iii) That the media applications to relax the statutory reporting restrictions were granted to allow them to publish the information disclosed to them but subject to restrictions relating to the identification of the children and their protected characteristics, the identification of third parties and judges involved in the historic proceedings. These in fact amount to an extension of the statutory reporting restrictions as section 12(2) AJA 1960 would permit identification of the children's names and the judge.

iv) That the permission to publish was conditional upon verdicts being returned that Mr Sharif or Ms Batool were guilty of murder, manslaughter or causing or allowing the death of Sara **and** that no retrial of any of the three defendants was proposed.

v) I refused to authorise disclosure of documentation from the current wardship proceedings beyond that which had already been disclosed or to report upon the current wardship proceedings.

vi) I authorised the publication of the following judgments subject to the application to them of the redaction scheme which relates to documents and the confidentiality scheme relating to identification of the children **and** third parties/judges

a) The welfare judgment of 8th March 2024

b) The disclosure judgment of June 2024

c) This judgment.

vii) I prohibited any reporting of the hearing of 9th December 2024 until after the returning of verdicts

viii) I permitted parties and third parties to discuss the historic proceedings with the media but not to disclose information save in accordance with the redaction and confidentiality schemes

8. On 11th December 2024 the jury returned their verdicts and, as Mr Sharif and Ms Batool were found guilty of Sara's murder and the condition which permitted publication was met, I approved a Reporting Restriction Order at about 20.36 GMT on that day.

The Parties' Positions

9. In the disclosure judgment I had said at [74] and [143]:

[74] In undertaking the intense focus on specific rights, the court should where possible focus on the specific evidence which relates to the particular case rather than on generalities. However, that is not to say that the court can only take into account facts which are established. It is clear that some aspects of the balance cannot be proven as a fact – how could one evidence the future risk of harm to a child from publication of sensitive information? The court can only conduct an assessment of risk based on what is known of the child but also based on the views of those who know or represent the child and the body of knowledge that emerges from the case law and other sources and the court's general experience. In considering the importance of 'open justice' in this case it may be impossible to predict how important it may be to the press to see the information. If it emerges from the criminal trial or otherwise that SS did not die at the hands of her parents and they are innocent of her death the basis of the open justice points would be much diminished if not extinguished – there would be little of interest in the police, Family Court and social services' previous involvement if her death was a tragic event but unconnected to those earlier decisions. On the other ***hand if, as is suggested by the murder charge and what we are told of the post mortem findings, she died at the culmination of a lengthy period of inflicted injury then the open justice points would gain more weight; as a minimum the father or BB are likely to have failed to protect if the murder was committed by the uncle but that would not necessarily create a causal chain back to October 2019 and earlier.*** *So where possible the court must reach its decision by reference to specifics but it may also need to weigh in the balance generalities which apply in the circumstances of the case. [my added emphasis]*

[143] ..... the conviction of the father and/or BB for murder, particularly if accompanied by evidence of on-going safeguarding concerns for a lengthy period prior to SS's death would give the Article 10 rights a compelling weight that might outweigh all but the most sensitive documents (medical or otherwise).

10. Given the fact that verdicts of guilty of murder have now been returned in respect of Mr Sharif and Ms Batool some of the arguments which were deployed during the hearing on 9th December have been overtaken by events and I do not propose to consider them in any detail; the argument that the evidence of Mr Sharif in itself and

without any verdict was sufficient to justify disclosure and publication is now arid ground.

11. The media parties made common cause in submitting that the evidence of Mr Sharif amounted to an acceptance on his behalf that he had killed Sara at the culmination of a period of abuse extending over many months. Added to this a safeguarding referral had been made by Sara's school to the local authority in March 2023 which had led to a brief investigation and no further action. Furthermore, the cross-examination of Mr Sharif on behalf of Ms Batool disclosed that she had been sending messages to her sister since about February 2020 which referred to Mr Sharif physically abusing Sara. This combination of evidence, the media submitted, amply demonstrated that the circumstances which I had predicted would give the Article 10 rights a compelling weight were fulfilled. As Mr Barnes said the facts

> "*crystallise an overwhelming public interest in understanding: (i) how Sara came to be placed in the care of her father, (ii) the effectiveness of the safeguarding undertaken by the Family Court, local authority, and CAFCASS, and (iii) the local authority's understanding of the risk posed by the father from its lengthy involvement with the family1 in light of the referral made by Sara's school on 10th March 2023 in relation to which the local authority made a decision to take no further action by 16th March 2022."*

12. Insofar as Ms Tickle and Ms Summers were concerned, this together with the fact that information about the children (save Z) had been put in the public domain in the criminal trial, which reduced the weight of the children's Article 8 rights, supported their application for disclosure of unredacted copies of the green documents, in particular to remove the redactions which related to allegations made by Z. They also sought disclosure of some amber and red documents subject only to redaction of the most sensitive information about Z's complex needs. These were helpfully identified in the colour coded annex to their Position Statement. They sought permission to report on the content of all the documents that were disclosed. They observed that the Guardian was seeking a maximal level of protection which was in contrast to the local authority's more pragmatic (so they said) acceptance of the extent to which disclosure and publication should be permitted. They accepted that some highly sensitive information like specific diagnoses should not be reported upon but that, save for material which fell into this category, other sensitive material such as the psychologist's report, which led to Z remaining in care and U and Sara remaining with the mother, should still be disclosed. In particular they refuted the suggestion on behalf of the Guardian that other forums, such as the safeguarding review or the criminal trial itself, met the public interest in a sufficiently fulsome way to justify rejection of their application for further disclosure and onward publication. Mr Barnes maintained that in an exceptional case such as this the external perspective of the press in their watchdog role with access to as full a picture as was compatible with the most weighty Article 8 rights was the proper way in which the public interest in what had happened to Sara could be fulfilled. The Guardian's and Mr Sharif's teams had raised the issue of identification of third parties and the local authority added their concerns. Ms Tickle and Ms Summers opposed the withholding of the identity of social workers, guardians, experts, other professionals and the judges who had heard the historic proceedings. They also sought disclosure of the evidence in the current wardship proceedings and to

report on the hearings and to report on the hearing of 9th December immediately upon the verdicts being released.

13. The BBC and other media parties adopted broadly the same argument but sought a narrower permission. They sought permission to report on the contents of the green documents already disclosed and they provided a 56-page Annex which set out exactly the information they sought to publish. I have nothing but admiration for the thoroughness of this document and in an ideal world, would have liked to have the time to read and digest it. Sadly, we do not operate in an ideal world. In particular Mr Rowe advanced the argument that disclosure and publication should be permitted even in the absence of a verdict. They accepted that the children's identities should not be disclosed but opposed the withholding of further information about the children including their sex or age. In particular they relied on the fact that much of this was already in the public domain. They sought similar orders in relation to previous judgments, the wardship proceedings and sought to identify any of the third parties and judges referred to in the historic proceedings. I shall return to the arguments in respect of this in a little more detail later.

14. The Local Authority accepted the balance of Article 8/Article 10 had now moved decisively in favour of disclosure and publication and did not oppose the media parties' applications. That was on the basis that the media parties said that they did not seek to publish information about Sara's siblings in a way which would enable members of the public to identify which specific child in question was the subject of the information nor the individual identities of the siblings. The local authority proposed a coda to anonymize the children's identities and submitted that the court should consider that their anonymity should extend to the particular characteristics of the siblings including age and sex along with other characteristics which were private and confidential. They referred to the previous consideration of Z's characteristics which the court had accepted were highly sensitive and justified redaction even in the face of an overwhelming public interest argument in favour of publication. They acknowledged that the Guardian as the custodian of the children's rights was the appropriate advocate for their article 8 rights.

15. The Guardian took the lead in seeking to limit the extent to which documents were disclosed to the press and in seeking to limit the extent to which the press was able to report on any disclosed documents. The Guardian relied on various aspects of the children's Article 8 rights in submitting that no further documents should be disclosed and no reporting beyond that which had been disclosed should be permitted. The Guardian's team also took the point that third parties should not be identified without notice being given to them and had gone through the BBC's Annex to highlight the names of third parties which should be withheld. I note now – although I had not at the hearing on 9th December – that this does highlight only social workers, experts, guardians and other child protection professionals or similar NOT the judiciary. The Guardian accepted that the case was of significant public interest and that reporting of **some** information from the historical proceedings was justified. In support of the need to protect the children and that their Article 8 rights outweighed the Article 10 right to more extensive publication the Guardian relied on the following:

    i) The Guardian had been able to speak to U: There was no *discussion at that stage of the media applications for disclosure and publication. During their second conversation, the CG and U did discuss the media applications and U*

stated that he does not want any of his information to be published and that he wants "none of it" (i.e. information from the historic proceedings) to be shared. O*n 6 December 2024, U reiterated to the solicitor for the children that he does not want anything about himself, his siblings and family published. He was adamant and anxious that there should be anonymity and that nothing should be published that would identify him or any of his siblings.*

ii) The Guardian also submitted that Z's position required particular consideration.

The manager of Z's accommodation told the CG on 7 November 2024 that Z is aware of the criminal trial but the unit are doing their best to limit Z's exposure to reporting and Z has been advised not to Google anything but to come to staff members if Z has any questions or wants further information. She shared that Z was doing well but they were seeing a little bit of tension in Z, which was being monitored and reassurance offered.

iii) *What has not changed is that, since August 2023, the younger five children have experienced trauma and disruption at an unprecedented level. Further they have had very limited access to professionals, meaning that there has been no possibility of assessing the extent of the emotional and psychological impact on each of them arising not just from the events of the past seven months but of their life experiences generally. The full extent of what they have witnessed and experienced remains an unknown quantity although it is clear that they were in a home where severe physical abuse of their sibling was a regular occurrence.*

iv) *The subject matter of the reporting therefore has the potential of re-traumatising the children and the risk of causing them further harm, including through the public response to that information on social media which will not be subject to any editorial control, as already evidenced by some of the public responses to the limited reporting that has occurred (see paragraph 47 of the CG's analysis). As a result, the risks of harm to these children arising from further disclosure and publication are higher even than in other comparable situations, and that factor goes directly to the balancing test and the proportionality assessment.*

v) *Z is the most exposed of the sibling group to the destabilising effect of public reporting and the most affected on a social and emotional level as a result of Z's [complex needs]. Although Z's chronological age is 17, Z was assessed in 2022 as operating at the level of a* [younger child]. *Nonetheless Z is being supported to gain some independence, which is critical for Z's self-esteem. However, that increasing independence and exposure to third parties plus the change in support services as Z turns 18 in 2025 all mean that Z is likely to become more rather than less vulnerable as Z enters adulthood. Particular risks arise for Z relating to Z's potential to overshare information about himself and the family and the risk of exploitation by unsafe adults, which would be exacerbated by the disclosure and publication of information about the family generally and particularly of information about Z, with consequences for Z that could be profound for Z's stability, safety and emotional security. In those circumstances, Z's right to and need for respect of Z's Article 8 rights is particularly important and would require extremely compelling public interest reasons to justify any interference with them.*

16. Ultimately the Guardian accepted that redactions from the 'green' material should be removed which would disclose in particular Z's allegations but that further disclosure and publication should be limited by reference to the Article 8 rights of the children. The Guardian also raised particular concerns that social media commentary in relation to that which was already in the public domain demonstrated racist and xenophobic elements which were a concern for the Guardian as to the likely response of some parts of the community to further publication.

17. Both Mr Sharif and Ms Batool aligned themselves with the Guardian in relation to the protection of the children's Article 8 rights and those outweighing the Article 10 rights.

    i) Mr Larizadeh KC on behalf of Mr Sharif did not oppose further disclosure to the press in order to enable them to better understand the context and background to the case but he opposed publication. He accepted that parties would be named but questioned whether naming third parties was appropriate without them being given an opportunity to make representations and suggested to name them without an opportunity to make representations would be a disproportionate interference in their Article 8 rights.

    ii) Ms Brereton KC on behalf of Ms Batool opposed any further publication of information relating to the wardship proceedings given they are still on-going with decisions still being taken in England and Pakistan. She accepted that the material from the 2019 historic proceedings in which she was a party was disclosable and publishable although she did not wish for any identifying information about the children to be published including, names, ages, gender. She also raised the question that there may be particular issues with some of the third parties that may be relevant to their Article 8 rights which should be ascertained before a decision was taken to put their names into the public domain.

Background

18. Having had conduct of the wardship proceedings and the disclosure applications since September 2023 I have had the opportunity to read much of the historic documentation initially by extracting it from the hard copy yellow files and subsequently by reference to the digital bundles which Surrey have produced. I dare say that I have had the opportunity to spend significantly more time reading the material over the intervening 14 months as a result of the importance that the case has gained than any other judge including those who decided the cases in 2012-2019.

19. Concerns about the children date back to 2010 when the police notified Surrey that the mother was fleeing domestic abuse by Mr Sharif and that both U and Z had been hit by him and Z had sustained an injury – a visible hand print was seen on Z's back after being hit by Mr Sharif.

20. In 2012 care proceedings were issued by Surrey. On 19 September 2013 a final hearing took place. Extensive investigations had taken place including psychological assessments of the parents and the children. The local authority and the Guardian agreed that the children should be placed with the parents subject to a supervision order and a written agreement. The threshold was agreed and appears to have included physical harm caused by both parents, emotional abuse including leaving the children

unattended and exposure to domestic abuse between the parents. The court approved a 12-month supervision order together with the written agreement and the agreed threshold. That outcome was one which was well within the parameters of predicted decision making on that evidence at the time. Indeed, any other decision would have been a significant departure from what would have been expected to be proposed by child protection professionals and lawyers familiar with the law and practice at that time and that would be expected by a family court judge faithfully applying the law and practice required of them by statute, case-law and Guidance. No fact finding was considered necessary because the legal framework did not require one.

21. On 17 November 2014 the local authority applied for an emergency protection order in respect of the three children, Z having attended school with a bite mark on the arm which Z said had been caused by the mother. The mother was arrested and charged with ABH albeit it seems the case was eventually disposed of with a caution. The court made the emergency protection order and the children were taken into care.

22. There followed further care proceedings based on further allegations of physical injury including a burn with an iron, Z being bitten by both Mrs and Mr Sharif, ongoing conflict between the parents including violent conduct by the father. Further allegations were made by Z whilst in foster care of Mr Sharif hitting Z and of being violent towards Mrs Sharif which both Mrs and Mr Sharif denied. In due course in May 2015 a final hearing was listed. The mother had broadly denied all of the allegations against her although she accepted she had bitten Z during play. The father also denied the allegations against him although accepted the mother had bitten Z. During the course of the hearing Mrs Sharif changed her position and an Agreed Threshold emerged which included concessions by both parents that they had bitten Z; the iron burn was accepted as being accidental. The mother also said that the father had been subjecting her to serious domestic abuse and said she wished to separate from him. The proceedings in respect of U and Sara were adjourned; the mother was assisted into a refuge; U and Sara accompanied her. A care order was made in respect of Z who remained with foster carers. A written agreement for the mother to undertake domestic abuse work and for the father to undertake a parenting course was approved. Further assessments were undertaken and there were concerns that despite their separation the mother and father continued to meet each other over the summer of 2015 and consideration was given to the removal of the children and on 24 July they were removed from the mother. However, the mother said she intended to divorce Mr Sharif and had realised her error in continuing to meet him and the children returned to her care. The application was listed for final hearing on 12th November 2015. The evidence which was produced from the assessments, including a psychological assessment of the parents and the children led all parties to conclude that the welfare of the children would be met by a child arrangements order being made for the children to live with Mrs Sharif, for Surrey to have a 1-year supervision order and for Mr Sharif to have supervised contact. The fact that the proceedings had been underway for nearly 52 weeks illustrates to some extent both the twists that the case took, in particular the change in position of the mother in May 2015, but also the extent of the assessments that were undertaken. As with the position in 2013 that outcome was one which I think the vast majority of child protection professionals, lawyers and judges would have predicted at that time faithfully applying the relevant law and practice.

23. In March 2017 an anonymous referral was received that Mrs Sharif was hitting the children and leaving them unattended, but they continued living with Mrs Sharif until about April 2019. Mr Sharif had reported to Hampshire Social Services (presumably where Mrs Sharif and the children were living at the time) that he was concerned at her chastisement of the children. Hampshire closed the case on the basis that Mr and Mrs Sharif had reached an agreement that the children would live with Mr Sharif in Surrey. Subsequent to that agreement, on 17 May 2019 the father and Ms Batool issued an application seeking a variation of the child arrangements order made on 12 November 2015. The respondent to the application was Olga Sharif.

24. The court directed a section 7 report from Surrey social services and this was filed in October 2019. The social worker allocated the case was relatively recently qualified but this would not be unusual given the apparent nature of the case and the pressures on social services departments in terms of social worker shortages, caseloads and turnover of staff. The social worker interviewed Mr Sharif, Ms Batool, Mrs Sharif and the children and conducted a variety of other enquiries including referring back to the previous proceedings. By this time Mr Sharif and Ms Batool had had 3 children of their own who lived with them. Mrs Sharif said that she had no concerns about the children living in their father's care and in particular said that Ms Batool was coping well with Sara whose behaviour she (Mrs Sharif) struggled with. She said she would like U to return to her care. Ms Batool told the social worker that she was managing well and she felt that both children were safe and had stable lives whilst living in her and Mr Sharif's care. She wanted both to continue living with them. She thought that the children should have supervised contact with the mother. Mr Sharif said that the children were afraid of their mother and that she had threatened to burn Sara with a lighter and had dipped her head in water and could not control her anger. He thought the children were being given stability and appropriate guidance whilst living with he and Ms Batool. Both Mr Sharif and Ms Batool told the social worker that there were no issues within their relationship, they were financially stable and that they were a strong couple. Both Sara and U told the social worker that Mrs Sharif hits them and that they were scared of her and they said they were happy living with Mr Sharif and Ms Batool and felt safe with them. The social worker spoke with the school which the children attended and they had no safeguarding concerns whilst the children were living with Mr Sharif and Ms Batool. The social worker had concerns about Mrs Sharif's ability to resume the care of either U or Sara and recommended that they live with Mr Sharif and Ms Batool and that they should have contact with Mrs Sharif supervised by a family member or trusted friend. Whether what Mr Sharif and Ms Batool and Olga Sharif (Domin) told the social worker was the truth is impossible at this stage to know. The fact the children mirrored what the adults said may be a reflection of the truth of what was being said or may have been the product of manipulation or coercion. What Ms Batool said about Mr Sharif may have been the truth or may have been her covering up. With the benefit of hindsight now it would seem very probable that the reality of life in the Sharif/Batool household was not being depicted truthfully.

25. On 8 October 2019 Mr Sharif, Ms Batool and Mrs Sharif all attended court in person together with the social worker who wrote the section 7 report and the Surrey team manager. The judge heard from the social worker and the team manager and from Mrs Sharif. At the conclusion of the hearing the court made an order that the children should live with Mr Sharif and Ms Batool and that they should have such contact as could be

agreed between them and to be supervised either by Ms Batool or another friend or family member or at a contact centre.

26. At that point the court involvement with the family concluded. The decision reached at that time on the evidence available was one which to me seems entirely predictable and inevitable. The previous allegations against Mr Sharif had been addressed in previous proceedings and the Threshold contained the findings which bound the court. Undetermined allegations in our legal system acquire a nil return – they do not amount to findings and in any event the suggestion that anybody should have been aware of undetermined allegations still less acted on them upwards of 5- 7 years after they had been made and not pursued would be to ignore both the legal framework but also the reality for social workers and the judiciary operating in a resource-limited environment. The suggestion – reported since 9th December – that the judge who made the decision on 8th October 2019 was aware of the historic allegations is, with respect, like suggesting that every journalist should be aware of every piece of source material they looked at for an article they wrote 4 years previously. I can well see that a case can be made for things to be different in future and for social workers and judges to be sufficiently numerous in future to have the time to re-read all that the files contain but that will require a decision to be taken by those with the power to allocate resources and I express no view on that – it is a political choice. In the environment that existed in 2019 and which continues to this day the work conducted by the social worker (to my judicial eyes at any event) was not obviously flawed but on its face appears appropriate, the recommendation of the social worker was logical and the decision of the judge was what was indicated by faithful application of law and practice mandated.

Legal Framework

27. I set out the legal framework governing disclosure and publication in my judgment of June 2024. In that judgment, I identified that the historic proceedings occurred in the shielded justice environment of the family court, not the open justice environment of the criminal and civil courts and that that environment was created by statute which displaced the open justice principles. I identified that the decision on disclosure and publication was reached by application of the ultimate balancing exercise identified by Lord Steyn

    i) *neither article has as such precedence over the other.*

    ii) *where the values under the two articles are in conflict**, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary**.*

    iii) *the justifications for interfering with or restricting each right must be taken into account.*

    iv) *the proportionality test must be applied to each.*

    This is how I will approach the present case.

28. I observed in my earlier judgment that how the first principle applies will depend on context. As will emerge later in this judgment, there seems to be a degree of uncertainty over whether in the open justice environment the Article 10 arguments have some

presumptive weight which logically would mean that as a consequence in the shielded justice environment the Article 8 rights have some presumptive weight; – in my June judgment I considered there was effectively a clean sheet. I also identified the jurisprudential trail that led to the conclusion that child welfare was not the paramount consideration but a primary consideration in these applications. I also explored in my June judgment how 'specific' rights cannot sometimes be founded on hard evidence but must be evaluated based on inference and risk assessment. I note that the Court of Appeal in *Abassi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2023] EWCA Civ 331 considered that interference with Article 10 rights based on generic concerns about the impact on recruitment of clinicians or morale were said not to be relevant in contrast to the decision of the President but that generic concerns about the impact on individuals arising from the 'firestorm' associated with end of life cases were relevant. I am not sure whether those conclusions are at large in the Supreme Court whose decision is awaited.

29. I identified that the court has the power both to relax the statutory reporting restrictions by reference to that ultimate balancing exercise but also to tighten those restrictions.

Evaluation: Disclosure and Publication

30. I said in my judgment following the March hearing that the outcome of the criminal trial would justify renewed consideration of the media parties' applications for disclosure of papers and for the relaxation of the statutory reporting restrictions to enable them to publish material. I said

'[…] the conviction of the father and/or BB for murder, particularly if accompanied by evidence of on-going safeguarding concerns for a lengthy period prior to Sara's death would give the Article 10 rights a compelling weight that might outweigh all but the most sensitive documents (medical or otherwise).'

31. The media parties record that in the criminal trial WhatsApp messages between Ms Batool and her sister were read into evidence covering the period between February 2020 and August 2023 detailing the father's physical abuse of Sara. Although it is conceivable that this abuse of Sara only commenced after the social worker had concluded her visits to the family on 26th September 2019 the temporal proximity of Ms Batool's complaints of the father's violence to her attending court with Mr Sharif on 8th October raise a very big question as to whether she and indeed the children gave a true account to the social worker between August and September when they were being spoken to by social services. Given the track record pointing towards the father's violent nature which dates back to 2010 and which was a significant component in the proceedings in 2012/13 and 2014/15 there is a legitimate question, given Sara's subsequent killing, as to whether there was an unbroken chain of violence (albeit not necessarily frequent) during that period, whether the risk assessments were in some way flawed, whether the approach of the Guardian and the court was sufficiently alive to the risks. The alternative – that the domestic abuse programme and/or other factors had shifted his behaviour, but it re-emerged within a short period – is a possibility although anyone would be sceptical of this scenario.

32. Although there appears to have been a break in the chain of safeguarding concerns known to children's services or the court the fact that Ms Batool was raising such concerns over such a protracted period suggests the possibility either that she and Mr

Sharif undertook a concerted effort to keep Sara's abuse hidden from the school and others who might have made a referral to the police or children's services at an earlier stage. Another possibility might be that concerns were raised but did not result in action; I am aware that the school made a safeguarding referral in March 2023 which was followed by a decision by Surrey to take no further action on 16th March 2023.

33. I accept that there is now considerable force – indeed compelling weight – behind the submissions as Mr Barnes puts it extracted below. That is not to say that all that he submits is correct or that I necessarily agree with it, but the questions posed are legitimate ones which justify exploration by the press.

> *(a) The criminal trial has served to crystallise an overwhelming public interest in understanding: (i) how Sara came to be placed in the care of her father, (ii) the effectiveness of the safeguarding undertaken by the Family Court, local authority, and CAFCASS, and (iii) the local authority's understanding of the risk posed by the father from its lengthy involvement with the family1 in light of the referral made by Sara's school on 10th March 2023 in relation to which the local authority made a decision to take no further action by 16th March 2023; b. The "unbroken chain of causation" back to the family proceedings in 2013, 2015/6, and 2019 is now very clearly established.(c) c. The school referral in March 2023 was referred to within the criminal trial and reported, as was the fact of an order being made by the Guildford Family Court in 2019…..*

34. From the point of view of a judge who has practised in family law for 35 years and sat as a judge for 9 years including 4 years as the Family Presiding Judge for the South Eastern Circuit (which includes Surrey) my perspective on the investigations which took place, the assessments which emerged, the recommendations which were made and the decisions which were taken by the family court in 2013, 2015 and 2019 appear to be well within the boundaries of what one would typically encounter in a case of this nature.

35. However, it is perhaps precisely that perspective and the subsequent shocking murder of Sara which illustrates why there is a compelling public interest in the media being able to undertake their own consideration of the material and to question or test how we approached the issues and to ask the legitimate question of whether there were things that the system could have done differently or better. Nothing can bring Sara back, nothing can undo the harm that must inevitably have been done to her siblings from their exposure to what appears to have been sadistic long-term torture of her. The sentencing judge described it in all its appalling detail. There will be other processes which will examine the responses of the system but those other avenues do not in any way undermine the compelling public interest in the media being able to discuss the history of Sara's involvement with the child protection system including the courts from the moment of her birth until her tragic death. If that discussion highlights shortcomings in what was done and whether Sara might have been better protected then those are issues which those of us in the family justice system will have to listen to and consider, those in children's services will and those who have control of the resources made available to the Family Justice System and to child protection services and safeguarding generally will need to reflect upon and consider whether we can and should do anything differently and whether more resources in terms of child safeguarding and protection or within the Family Justice System are required to minimise the risk of this happening

again. On the other hand, that exploration and discussion by the media may only reveal that parents who are sufficiently determined and manipulative can thwart the system.

36. The force of the arguments in favour of disclosure and publication are of compelling weight in my view notwithstanding the gap in time between the last involvement of the family justice system and significant child protection involvement in 2019 and Sara's murder in August 2023. The genuine public interest in the background is exceptionally high. However, that does have an obverse side which is relevant to the rights of third parties to protection of the right to private and family life.

37. The children's Article 8 rights do remain a primary consideration and have considerable residual weight. I accept the force of the arguments set out by Ms Foulkes on behalf of the Guardian that:

    i) The children do not wish more material to be disclosed.

    ii) They do not want more information published about their family and want to remain anonymous.

    iii) The children have likely suffered harm of an exceptional level having lived in a household and almost certainly being aware their sister was being tortured and eventually murdered.

    iv) For Z there are also compelling welfare-based reasons for insulating Z as a far as possible from being identified or having information about Z placed in the public domain.

38. I have sought to balance the compelling public interest reporting arguments with the need to protect the children as far as one can and to preserve their anonymity and confidentiality as much as I can and to minimise the risk of them being re-traumatised or further traumatised by publication of further sensitive information given their welfare has already suffered dreadfully through exposure to the torture of Sara, their peremptory removal from all that was familiar, the loss of their mother (step-mother) and father, and the probable knowledge that they had murdered Sara.

39. The children's Article 8 rights justify some limitations being placed on the press Article 10 rights. Conversely the Article 10 rights justify some infringement of the children's Article 8 rights. I would like to accede to U's request for nothing further to be disclosed or published and to the submission that nothing further about Z should be disclosed but it would be a disproportionate interference with the Article 10 rights to stop the press being able to report on what U and Sara said to the social worker in 2019 or not to allow the press to know what Z's allegations were in the historic proceedings.

40. The ultimate balance I have struck is to allow disclosure and publication of all the material sought in the green category by permitting reference to Z's allegations, by allowing disclosure and publication of the further material sought by Ms Tickle and Ms Summers from the amber and red categories but subject to schemes which are designed to ensure that the material disclosed and publishable is focused on the adults and the allegations and the processes of assessing and determining risks and deciding on placements but to minimise the exposure of the children to being identified and to

material about them which is sensitive in nature including about their medical and developmental needs and their relationships with each other.

41. The schemes I approved to implement that balance were as follows

i) Redaction

a. The name of the child referred to as Z shall be redacted where it appears in circumstances unconnected to allegations made by Z of physical abuse or neglect of Z by adults;

b. Information relating to Z's behavioural appearance or inference regarding Z's behaviour and whether it emerges from medical conditions or exposure to abuse shall be redacted;

c. Highly sensitive information about the children including medical and/or developmental information of the children (and in particular Z and the twins), and the relationships between the siblings shall be redacted;

d. The psychological assessments of the children shall be redacted;

e. The names of extended family members of the subject children (for example, a half-sibling of Sara's who was not subject to proceedings in England and Wales, and that child's father) shall be redacted; and

f. The names of any other child, unrelated to the family, shall be redacted.

ii) Identification

a) The name or date of birth of any of the subject children in the case (for the avoidance of doubt their respective ages in years may be reported);

b) The current address of any of the children (for the avoidance of doubt the fact that U, V, W, X, and Y are living with their paternal grandfather in the city of Jhelum in Pakistan may be reported);

c) The name or address of any current or former foster carer or residential unit of any of the subject children;

d) Any current school or hospital of the subject children;

e) The details of any of the subject children's protected characteristics and their additional learning needs and/or any diagnosed condition(s), save to the extent described in the approved published version of the judgment dated 7 June 2024;

f) Photographs or images of the subject children; and

g) The name of any third parties referred to in the historic proceedings for the avoidance of doubt including social worker, guardian other named professionals and experts instructed in the proceedings and any Judge who heard the historic proceedings (save for Mr Justice Williams)

Legal Framework: Naming Third Parties and Judiciary

42. The media parties each made further submissions focused on the naming of judiciary. Ms Tickle and Ms Summers sought to re-open the issues I had decided on naming third parties and reporting protected characteristic. In their submissions the media parties submitted in various formulations;

    i) *The restriction of the naming of a Judge – especially in the instant case where the Article 10 interests are very significant – infringes the established principle of Open Justice in an unprecedented manner on the basis of generalised concerns (not even in evidence, but on the basis of the court taking judicial notice) about potential public/social media reaction.[*Tickle/Summers]

    ii) *the Court reached a conclusion that is an extraordinary and unjustifiable interference with the media and public's Article 10 rights and an unsustainable derogation from the principle of open justice. Only in the most exceptional circumstances could it ever be permissible to prevent judges from being named in connection with court proceedings over which they have presided. The instant case is not one of those exceptional cases. [*BBC and other Media parties*]*

    iii) *to impose an RRO on the names of judges involved in the Historic Proceedings would be an unjustified departure from the open justice principle and contrary to the public interest* [PA]

    iv) *It is a derogation from the principle of open justice and an interference with the media and the public's Article 10 rights that could only be justified save in the most extreme cases and obviously cannot be justified on the facts before the Court. The balance falls decisively in favour of permitting the media to name the judges involved in the Historic Proceedings. [*BBC and other media parties*]*

43. In support of this I was referred to a number of decisions including

    i) Toulson LJ in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420 at [2] as *"[open justice is] a constitutional principle which has been recognised by the common law since the fall of the Stuart dynasty*".

    ii) *R (C) v Secretary of State for Justice* [2016] UKSC 2 at [1], Baroness Hale described the principle as "*one of the most precious in our law. It is there to reassure the public and the parties that our courts are indeed doing justice according to law*".

44. Reliance was also placed on the decision of Nicklin J in *PMC v A Local Health Board* [2024] EWHC 2969 (KB) as authority for the proposition that the administration of justice takes place in public and that the public have the right to attend, for the proceedings to be reported, that names of parties could be reported, and that any order which restricted normally reportable details would be a derogation from the principle of open justice and an interference with the Article 10 rights of the press and public. In that authority Nicklin J said

"*Any derogation from, or restriction upon, open justice is exceptional and must be based on necessity. Any restriction on the public's right to attend court proceedings, and the corresponding ability to report them, must be shown, by "clear and cogent evidence" to fulfil a legitimate aim, be necessary and proportionate*:

But he went on to clarify that this did not apply where "*statute grants automatic restrictions*" and that where derogation from open justice was sought on the basis of interference with another qualified Convention right the court had to undertake the Lord Steyn 'ultimate balancing exercise' of the competing rights, the justification, and the proportionality of the interference.

45. Interestingly in *R (Rai) -v- Winchester Crown Court* [2021] EWHC 339 (Admin), the Divisional Court confirmed that there was no need to identify the public interest in publishing information that was available because the hearing was in open court. The converse would appear logically to be the case for information relating to shielded justice cases where open justice does not operate by the decision of Parliament enacted in statute. Nicklin J said that in open justice cases where a derogation is sought "*the scales do not start evenly balanced*" which would appear to run counter to the arguments deployed by the press in applications to relax the statutory reporting restriction which is that the balance does not start in favour of restriction but that the court must start from a clean sheet. I explored this issue in the June judgment (see #84) where I concluded that the Lord Steyn dicta about neither Article 8 nor 10 having precedence over the other meant the court simply had to undertake the balancing exercise and determine whether the outcome was sufficient to displace the statutory restrictions imposed by Administration of Justice Act 1960 s.12 or Children Act 1989 s.97 or to displace the laws as to public hearings (or open justice). Contrary to the view I expressed at #84 Nicklin J considered

Any balance starts with a very clear presumption in favour of open justice unless and until that is displaced and outweighed by a sufficiently countervailing justification. That is not to give a presumptive priority to Article 10 (or open justice), it is simply a recognition of the context in which the Re S 'balance' is being carried out

46. The Administration of Justice Act 1960 s.12 contemplates that an order of the court which would almost always include the names of the child and the judge is not captured by the restriction which in itself demonstrates that the section needs reconsideration as it is accepted across the board in all the reported jurisprudence, the Reporting Pilot Guidance and (I think) the amendments to the Family Procedure Rules that introduce 'Transparency' to all courts that the children's names should almost always be anonymised. I do not need to consider here the mechanism by which the Reporting Pilot which introduces a presumption in favour of reporting information relating to proceedings before the court by Guidance is brought into line with the terms of a statute which makes publication of information a contempt of court.

47. Lord Rodger posed the question "*What's in a name?*" in *In re Guardian News and Media Ltd* [2010] 2 AC 697:

"[63] What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how

particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: News Verlags GmbH & Co KG -v- Austria 31 EHRR 246 [39]... More succinctly, Lord Hoffmann observed in Campbell -v- MGN Ltd [2004] 2 AC 457 [59], "judges are not newspaper editors". See also Lord Hope of Craighead in In re BBC [2010] 1 AC 145 [25]. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive." "

48. Lord Sumption in *Khuja* at [13], referred to the significance of the open justice principle has:

"*if anything increased in an age which attaches greater importance to the public accountability of public officers and institutions and to the availability of information about the performance of their functions."*

49. In *Re J* [2013] EWHC 2694 (Fam), Sir James Munby P said at [27] that arguments in favour of transparency are "*particularly compelling*" in cases involving "*interference, intrusion, by the state, by local authorities and by the court, into family life*" and he explained that the reason for this was: "*Orders of the kind which family judges are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make*".

50. I observe that in the historic proceedings the orders made were not the most drastic but rather the reverse and that the 2019 proceedings were private law proceedings.

51. It is submitted that there is a powerful public interest in enabling the public to scrutinise the actions of professionals within the courts system. The media parties submit that this applies irrespective of whether or not the court concludes they have carried out their functions to the standard expected of them, and that this public interest weighs heavily against anonymising those individuals (see eg *R v Felixstowe Justices, ex p. Leigh* [1987] QB 582 at 595 (concerning magistrates); *Lu SRA* [2022] EWHC 1729 (Admin) (concerning solicitors) and *Cannon v BSB* [2023] EWCA Civ 278 (concerning barristers)). I accept there is such a public interest, but I would add that the weight to be attributed to it will be context specific. No class of persons (save the children and persons associated with them who would identify them) are automatically to be subject to anonymity or to publication of their names. There may be circumstances in which a starting point will exist – experts in family proceedings, judges in all proceedings – but that does not mean that there are not circumstances in which exceptions exist. In cases such as Charlie Gard or the Abassi case the court may well concluded that anonymity (at least for a period of time – the crucible of the events and their aftermath) should be afforded to, for instance, clinicians and health professionals.

52. The Court of Appeal identified in *R (on the application of Mohamed) v Secretary of State for Foreign & Commonwealth Affairs* [2010] EWCA Civ 651:

'*38. Justice must be done between the parties. The public must be able to enter any court to see that justice is being done in that court, by a tribunal conscientiously doing its best to do justice according to law. For that reason, every judge sitting in is on trial. So it should be,* ***and any exceptions to the principle must be closely limited [****my added emphasis****]***

53. Ms Tickle and Ms Summers opposed the withholding of the names of anyone; social worker, guardian, expert or judge although all the media parties most vigorously oppose the confidentiality of the judge being maintained. In part they submit that no one has applied to withhold the identity although the Guardian and Mr Sharif refer to it although it seemed to me to be an obvious point. In any event how would those concerned know it was due to be determined? Perhaps less attention was given to it because of the decision of Lieven J in the Finlay Boden case. They rely in particular on the decisions of Lieven J, the judge with responsibility for delivering the Transparency Pilot and her approach culminating in the decision in *Derbyshire v Marsden* [2023] EWHC 1892 (Fam) (a case with an exceptionally close temporal proximity between a decision to return and the death of a child). Lieven J said this.

"[28] The next issue is whether the names of the Magistrates and the Legal Adviser should be allowed to be published. As I said in Tickle v Herefordshire CC [2022] EWHC 1017, it is important to be clear that the statutory restrictions on information relating to care proceedings have the purpose of protecting the anonymity of the children (and possibly their families) in proceedings rather than professionals involved. At [78] I said:

> "*However, the powers of the Court to order anonymisation in relation to professionals need to be exercised with considerable care. Social workers are employees of a public authority conducting a very important function that has enormous implications on the lives of others. As such, they necessarily carry some public accountability, and the principles of open justice can only be departed from with considerable caution."*
>
> *[29.] The role of the judge is one that beyond any doubt requires public accountability and openness. No party submitted that the Magistrates should not be named. Further, I was shown no case that gave any support to an argument that the names of judges in a case could not be publicly named.*
>
> *30. Society is necessarily very grateful for the role undertaken by Lay Justices for no remuneration and involving giving up much of their time. However, Lay Justices are judges and, in cases such as this, making very important decisions that impact on children and families in the most significant way. As such, there is no case for their names not to be in the public domain when decisions are made, in the same way as would the names of judges who had made such decisions.*
>
> *[38]. As such, the Legal Adviser is an integral, and legally required, part of the decision making process. As such it appears to me to be right that their names can in principle be placed in the public domain. Again, no person specific*

circumstances were put before me as to why this particular Legal Adviser should not be named.

[39]. For these reasons I find that the press are entitled to name, if they so wish, both the Lay Magistrates and the Legal Adviser who were involved in this case.'

54. With the greatest respect to Lieven J, I am not bound by her decision and I do not agree with all of her reasoning. It runs contrary to the decision in *Abassi* in that it appears to suggest that as a class some people like social workers or legal advisers or judges can automatically be named, which the President rejected at first instance and which the Court of Appeal would appear to endorse by their affirmation that the ultimate balancing exercise applies in all cases.

55. The authorities all demonstrate that the court retains a discretion to refuse permission to publish the names of social workers, experts and judges. The fact that a social worker is carrying out a public function with potentially huge implications for families does not mean that public accountability requires identification in all or even most cases. The way in which the world has changed through the web, the way information is disseminated, the way people respond to it and the consequences for those involved has transformed the landscape for shielded and open justice. Thirty years ago, a social worker's name appearing in a news report might generate some letters to the Editor and the possibility of being recognised in the street. In 2024 the placing of a name in the public domain opens the door to both (a) the generation on social media of the equivalent of a lynch mob albeit with limited ability to tie their victim to the nearest tree but (b) the identification of the home address of the named person, their family, and their movements. Recent convictions of the perpetrators of criminal offences against HHJ Simon Oliver and HHJ Carol Atkinson demonstrate the vulnerability of individuals in the information free for all that the internet constitutes to those who wish to harm them. The Magistrates and the Magistracy have experienced the consequences of being named in the Marsden case which was notified through the Circuit Magistrates Oversight Group. One resigned and one was 'shattered'. The Magistrates Association says

Yet the possibility of being named isn't made sufficiently clear to us when we apply or train for our roles in the family magistracy. Where it is mentioned in training and onboarding of new magistrates, the full implications and possible risks are not made clear. I for one didn't think too much about it at the time. It is also one thing to be named in a local paper. It is quite another to be named in the national press.

It is particularly troubling that we don't have clear guidance on who to turn to if we are named in the media. There is no protocol in place for our leadership magistrates or judges about how they should support members of the family panel who deal with particularly traumatic, controversial or high-profile cases

I say this as an aside to some extent because general issues with the Magistracy arising from the possibility of being named is an issue which would I think fall into the category of consideration identified in para 125 of Abassi as being an illegitimate consideration in the Article 10/8 balancing exercise. However, I think it illustrates that the assumption that those involved in the family justice system could expect to be named were they unfortunate enough to be involved in a case which developed into one of national interest is erroneous. Most social workers, magistrates, legal advisers and judges would

never expect to feature in a case of this complexity and of national interest in contrast to the High Court Judges who would and where it is part of the Job Description.

56. In *Abassi* (above) the Court of Appeal said

> *The courts will be astute to protect from harm individuals caught up in litigation when it is appropriate to do so. In appropriate circumstances that protection will include the use of injunctions to mitigate the risk of future harm. The civil and criminal law both provide protection from various aspects of online attack, some preventive and other to provide a remedy for legal wrongs. To that extent nobody is obliged simply to 'put up with' abuse. However, the courts cannot shut down legitimate debate save when the rights of those affected by that debate, or put differently, the adverse consequences, are of such strength as to outweigh the right to free expression. Experience has shown that end-of-life proceedings can generate a fire storm on social media, sometimes fanned and taken advantage of by organisations and individuals with strongly held beliefs about the morality of withdrawing treatment. The fire storm often overwhelms calm debate. RROs become essential to protect the integrity of the proceedings and those caught up, directly and indirectly, in them. Indefinite orders are a different matter. They require careful scrutiny, clear evidence and an intense evaluation of competing interests.*

57. If one applies fundamental principles properly what it all comes down to is the 'ultimate balancing exercise' conducted on the basis of evidence and experience. To say that it is 'beyond doubt' that magistrates can be named is to paint the issue in a bright line manner which I do not think is appropriate. The assertion that the statutory restrictions exist to protect the anonymity of children "and possibly their families" is also not consistent with earlier authority which identify a number of reasons why family proceedings may be a form of 'shielded justice' not simply the anonymity of the children. I have considered in some detail the open justice points in my June judgment. Much of the jurisprudence on open justice is drawn from cases heard in public and so is of less applicability to cases where Parliament has implemented a statutory regime which is an exception to the open justice principle. That is for good reason because open justice is displaced by shielded justice in order to protect the participants in it – usually the individual children and the parents but also so that those who might enter the system feel they can be honest and open without their dirty laundry being exposed to public gaze and a number of other matters. A stark illustration of how different the shielded justice system is to the open justice system is section 98 Children Act 1989 which removes the right to silence in care and EPO proceedings and makes a person a compellable witness, allows the court to draw inferences if they fail to answer questions (see *Re K (Threshold- Cocaine Ingestion – Failure to Give Evidence)* [2020] EWHC 2502 (Fam)) and makes such evidence inadmissible elsewhere.

58. The implementation of transparency across the family courts does not amend the statutes on which the exceptions are founded, and it seems to me that the power of greater transparency comes with greater responsibility on the media but also on the judges who decide to relax the statutory reporting restrictions particularly in the information and disinformation age.

59. The media submit that authority supports the proposition that the Court must proceed on the footing that any reporting of the proceedings will be responsible, fair and accurate (*R v Sarker* [2018] 1 WLR 6023at [32(iii)(b)]). That may be a useful starting

point, but experience regrettably shows that some reporting is better than others and that it is not a reliable end point. It is also the case that once the media applicants have published the information it is available to anyone to do with it as they wish and in an age of disinformation and anti-fact the court must have an eye to what onward use may be made of the information. As the reporting of the murders of Alice da Silva Aguiar, Bebe King and Elsie Dot Stancombe demonstrates all too clearly, those with malign intent can rapidly distort information to meet their own purposes with devastating real-world consequences. As I said in the course of the hearing the reality is that there will be a spectrum of reporting – even within the represented media parties. Many will indeed report matters responsibly, fairly and accurately. Some will not. Contrast the extract of a judgment and a headline in a well-known national daily newspaper reporting it.

Extract

What this case is not about though is whether an Islamic marriage ceremony (a Nikah) should be treated as creating a valid marriage in English law.

Headline

A British court has recognised sharia law for the first time in a landmark decision as a judge ruled that a wife can claim her husband's assets in the split. The High Court ruling on Wednesday said their union should be valid and recognised because their vows had similar expectations of a British marriage contract.

60. On Friday 13th December 2024 I responded to an application for permission to appeal made on behalf of Ms Tickle and Ms Summers and adjourned the application pending this judgment giving reasons for doing so. On Saturday 14th December at 19.18 GMT the Guardian carried a story written by Ms Tickle and Ms Summers reporting that I had refused permission to appeal. Accurate – no; fair – no; responsible – I would venture to suggest not. I could make several observations about how fairly, responsibly and accurately the Dispatches programme broadcast on 20th July 2021 depicted a number of decisions of the family courts. Thank goodness that journalists don't have to operate as the courts do and hear both sides before delivering their verdict! Is reporting which only presents one side of the story fair, responsible and accurate? By any ordinary meaning of those words, I would suggest not. What it is very close to is advocacy or campaigning and that is one aspect of reporting but so is sensationalism as well as good investigative reporting. To apply some broad presumption which equates the sort of reporting undertaken by Nick Wallis to that of Andy Coulson is simply wrong. The Leveson Inquiry and the imprisonment of members of the press for egregious infringements of the Article 8 rights of hundreds of individuals makes abundantly clear that some elements of the media do not always adhere to high standards. So with respect it seems to me that to create an assumption that the press reporting will be fair, accurate and responsible is to create the equivalent of the Emperor's New Clothes narrative which everyone knows is false, but no one dare state. Many of the media no doubt will adhere to that standard but regrettably experience of the real world as opposed to some utopian ideal teaches us that some will not - including amongst the mainstream media. Authorising disclosure to the press of extensive material about sensitive shielded justice proceedings and permitting reporting on it does not mean they will all report it fairly, accurately, and responsibly and the more extensive the disclosure and publication

authorised the more the court is entitled to balance that with minimising the risks of disproportionate infringements of Article 8 rights of those concerned.

61. My conclusion on the naming of third parties and judiciary is therefore that there is no presumption that they should be named in shielded justice cases. For the judiciary I would accept that there is an assumption in shielded justice cases of naming because s.12 Administration of Justice Act 1960 contemplates that their name will be open notwithstanding the presence of the broader shield. In relation to other third parties – social workers and other child protection professionals – I would be inclined to a starting point that shielded justice preserves anonymity for them. For experts, jurisprudence and the Reporting Pilot provide a starting point of identification.

62. But these starting points must always be subject to a case specific evaluation which will involve consideration of elements relating to the case itself, the individuals and what it is legitimate to infer from the accumulation of knowledge we have about risks arising in the same way we may infer risk to children arising from publication and risks to health professionals in contentious medical treatment cases like Charlie Gard and Zainab Abassi.

Evaluation

63. The media parties' submissions in favour of identification of the judiciary are broadly speaking as follow.

the public interest in naming the judges involved in the Historic Proceedings is exceptionally high; equal to the public interest in being able to name the Third and Fourth Respondents;

64. I confess that I find this such an extraordinary submission that I caution myself against dismissing it out of hand. That a judge who in what appears to have been an appropriate exercise of their judicial functions on the evidence and recommendations before them and in compliance with the statute and case -law placed a child with a parent and step-parent who nearly 4 years later murdered her generates the same weight of public interest in being named as the murderers is risible. However, I accept that there is a significant public interest in naming the judge who made the decisions. The 'what's in a name' point undoubtedly applies with some force but see below as to the possible downsides. Attaching a name would draw attention to the content and personalise the story.

The decision making should be subject to a high degree of scrutiny which can only achieved to a proper extent by naming the judges in question. The public interest in enabling the public to scrutinise the decision making that led to SS being returned persistently to the home in which she was killed by a relative with parental responsibility over her extends to permitting the media to name the judges. It far outweighs the rights and interests of judges who must expect to be named in connection with proceedings that they have presided over, irrespective of whether or not those proceedings took place in public or private

65. I have authorised disclosure and publication of both the Section 7 report which was the main evidential basis upon which the parties and the court determined the application for Sara and U to be the subjects of a Lives With order in favour of Mr Sharif and Ms Batool. The transcript of the hearing also discloses the way the court and the judge approached the matter. I accept that scrutiny of a named individual is more scrutiny.

The media parties know the name of the judge although I accept that is not the same as publishing it although if they want to undertake further scrutiny, they could submit the information to expert advice to reach their own conclusion on whether my evaluation is correct. If that suggests the judges acted improperly or failed in their duties, they can apply back to me or bring it to the attention of the JCIO.

66. I accept that the public interest in scrutinising the decision making is very high indeed compelling and that is why I have made the orders for extensive disclosure and permitted extensive publication but the public interest that I accept is established as compelling relates not so much to the individual who made the decision (although there is a degree of public interest in that) but in whether the law, practice and procedure that the judge operated within bears responsibility. I accept there is a very great public interest in understanding how it is that serious allegations against Mr Sharif in particular were not the subject of determination in the Family Courts and I accept that the question likely to be posed of "why ever not?" is entirely legitimate and requires an answer.

67. Since the shocking murder of Peter Connelly in 2007 and what the Serious Case Reviews revealed in 2009/10, applications for care orders rose from 6,500 in 2008/9 to 8,700 in 2010 increasing to 14,200 in 2016/17. With public law cases running at about 16,000 per annum currently (they were about 19,000 in 2019) the number of cases in the system at any one time is 10,500; roughly what it was in 2019. For private law the number of applications is around 53,000 per annum now and was 56,000 in spring 2019 with 36,000 cases in the system and about 40,000 now. In 2016 the President of the Family Division Sir James Munby drew attention to the issue saying that the system was at full stretch and facing a clear and imminent crisis. Much work has been done to address this crisis in the Family Courts but what has never been possible is to hold a fact finding hearing in every case because resources in the form of court time, judges, legal aid and availability of lawyers have never permitted that and the experience of the Family Justice System would suggest that a fact finding in every case could be counterproductive for all sorts of reasons. The Family Justice system has in fact been obliged to move in the opposite direction in order to ensure the cases in the system are dealt with in something resembling a timely way.

68. The focus in public law cases – the historic proceedings in 2012/13 and 2015 – has had to be whether the s.31 threshold criteria is satisfied. Only where it is proportionate to do so will the court embark on a Fact Finding Hearing where the threshold is conceded. The principles to be applied were those set out by McFarlane J (as he then was) in *Oxfordshire County Council v DP, RS and BS* [2005] EWHC 1593 (Fam); principles more recently endorsed by the Court of Appeal in *Re H-D-H (Children)* [2021] EWCA Civ 1192. The decisions in 2013 and 2015 in the historic proceeding to accept agreed threshold was entirely in line with that approach. Similarly, the need for Fact Finding Hearings in private law cases has long been a subject of scrutiny and there is an obvious tension between the Harm Panel Report which would tend to support a Fact Finding hearing in every case and the approach of the courts in cases such as *Re H-N* [2021] EWCA Civ 448, *K v K* [2022] EWCA Civ 468 and the Practice Guidance issued by the President of the Family Division on 5th May 2022. The decision taken in the historic proceedings in October 2019 not to hold a fact finding hearing was in accordance with the terms of FPR PD12J and the jurisprudence applicable at the time, which the subsequent decisions referred to above re-affirmed and solidified. Thus, if there is an

issue as to accountability, I do not see it so much in terms of individuals but rather systems and practices.

69. In a case such as this why should individuals be held up to public scrutiny rather than the system? Individual accountability is for the JCIO or the HCPC or Social Work England or Cafcass. In extreme cases the public interest in an individual might be such that it would support their being held accountable in the public interest and the public eye but that would likely be associated with evidence of some misconduct or failure to adhere to proper professional practice. In this case the evidence suggests that social workers, guardians, lawyers and judiciary acted within the parameters that law and social work practice set for them. Certainly to my reasonably well trained eye there is nothing (save the benefit of hindsight) which indicates that the decisions reached in 2013, 2105 or 2019 were unusual or unexpected. Based on what was known at the time and applying the law at the time I don't see the judge or anyone else having any real alternative option. Having worked in family law for nearly 40 years in legal aid, as a family lawyer and as a full-time judge for 7 of them the way the court and children's services dealt with the proceedings appears to me to be well within the parameters of proper practice.

70. Seeking to argue that individual social workers or guardians or judges should be held accountable is equivalent to holding the lookout on the Titanic responsible for its sinking rather than the decision making of Captain Smith and the owners of the White Star Line or blaming the soldiers who went over the top in the Somme on 1 July 1916 for the failure of the offensive rather than the decision making of the generals who drew up the plans.

71. If there is to be a debate about whether children's services and courts should investigate and conduct fact findings in all cases where there are allegations of physical abuse or domestic abuse to ensure that no one falls through the net that I accept is a question of legitimate public interest and it brings with it questions of resourcing such a system and political priorities which are plainly not a matter for me to comment on. The Senior Judiciary, myself included as the Family Presiding Judge of the South East Circuit for 4 years know very well that social services and legal departments have operated for many years with staff shortages and high turnover. The Family Justice system operates in parts of the country with significant shortages of full-time judges; 80 District Judges are being sought for the South Eastern Circuit at present and vacancy rates in judicial complements ranging from 25% up to 75% have not been uncommon in the last few years. The McAllister review showed the system remains in crisis with high vacancy rates in social services departments, high turnover of staff and agency workers and too high caseloads. The Children Act 2004 implemented some changes which emerged from the Laming Inquiry into the death of Victoria Climbie including Contact Point an integrated information sharing system. That was discontinued after 2010.

72. The sentencing hearing confirmed that the abuse of Sara amounted to a sustained campaign of torture which is so far removed from the severity of the allegations made in the historic proceedings that a predictive causal nexus between those earlier allegations and Sara's murder is a difficult trail to follow - although not impossible - with many potential breaks or kinks in the chain of causation leading back from Sara's murder to earlier examples of violent behaviour by the father. It seems likely from the sentencing remarks in relation to Beinash Batool no trail exists and that her collaboration in the abuse of Sara was a recent development and so the identification of

her as a protective factor in 2019 was prima facie founded on reasonable grounds (or at least those disclosed or visible) at the time.

73. In this case there are positive disadvantages to scrutiny in naming - suggesting that individuals are responsible distracts from the important point that these individuals, as far as I can tell, did their jobs in at least an acceptable way. Giving names and faces inevitably makes names and faces the focus - people connect with personalities in a way they do not with systems. How much more relatable it is to see a face and name and be able to blame them than to look at systems, practices and resource choices. Identifying an individual is a distraction and whilst it is of interest to the public to have a name and perhaps a face of the judge in their appointment photo or a social worker snapped outside their office with an accompanying attention-grabbing headline that does not equate in weight terms to the public interest in accountability of the systems.

74. So whilst I accept that there is a serious and weighty issue related to public scrutiny of decision making and accountability, that must be framed in the correct context and whilst I accept individual accountability plays a role in this, it is not the be all and end all and in fact there is it seems to be a strong counter argument based on the diversion of proper attention from systems onto individuals.

It would be an exceptional step in any circumstances to prevent the media from naming judges who have overseen court proceedings and authorised court orders. Even where the parties are anonymised or the court is sitting in private (such as in family justice proceedings involving children), the judge's name is by custom and in furtherance of the open justice principle visible in the court list. Where a judgment is handed down or an order is made, the judge's name will be visible on the face of the judgment or order

The naming of a judge is an inherent part of the open justice principle.

The decision to prevent the naming of the judges must be supported by proportionately clear and cogent evidence that the rights and interests of the judges will be not just interfered with by them being named, but that such an interference outweighs the weighty public interest in open justice (see PMC at [41]. Given the extent of derogation from the open justice principle, absent an extant and clear risk to a judge's safety rising from being identified in connection with the Historic Proceedings (such as would give rise to a positive duty on a public authority under Articles 2 and 3 ECHR), the judge's Article 8 rights do not weigh heavily in the balance.

75. Not naming those involved is not an exceptional step although not naming the judges is I accept an exceptional step. As the media parties have relied on in support of their application for extensive disclosure and publication rights it is the exceptionality of the case that warrants that level of disclosure and publication. However, the obverse side of that exceptionality coin is that individuals associated with the case will I have no doubt be subject to an exceptional level of attention. That attention will I have little doubt range from measured commentary through to rude and discriminatory slurs, moving onto vilification, abuse and threats. That I think is reasonably certain in the online world where a virtual lynch mob will readily be assembled in the current febrile atmosphere engendered online and fanned by the undermining of the rule of law and the judiciary worldwide notably in the USA but in this country also where a headline identifying senior judiciary as "Enemies of the People" was seen as legitimate comment.

76. The likely level of online abuse will be high. However, the reality currently is that in addition to that there is real possibility of some individuals going further – much further. The BBC reported only last week on the case of a man who attacked a firm of solicitors identified in the Daily Mail as being involved in processing asylum applications. Hotel's housing asylum seekers were firebombed. That is not to make the press responsible for the actions of those who perpetrate such acts but putting names and faces in the public domain bring with it potential consequences from those who are unstable, aggrieved, fanatical. Attacks upon those in authority by those with grievances have led to death (Jo Cox) and serious assault (HHJ Perusko), arson on the home of an expert witness (although the perpetrator accidently fire-bombed the neighbour's home) and stalking (judges).

77. In my role as Family Presiding Judge of the South Eastern Circuit I and the other Presiders reviewed security threats to judiciary on a regular basis. Abusive and threatening communications, threatening and abusive behaviour in court, stalking and online abuse are regrettably a growing phenomenon to the extent that judicial security in the aftermath of the assault on HHJ Perusko has been the subject of an extensive review. The March 2023 version of the Potentially Violent Persons Protocol disapplied the need for a Risk Assessment in family cases because so many cases would have required one and HMCTS could not have carried them out. When this was realised in the aftermath of the assault on HHJ Perusko this was rapidly disapplied (Senior Presiding Judge Notice 6 December 2023 Message from the SPJ: Serious security incident – Judicial Intranet). The Review into Security which commenced a little over a year ago has not been released but my experience suggests that the events of last November 30 (the date of the attack on HHJ Perusko) brought very sharply into focus for all judges their vulnerability in and out of court. The last Judicial Attitudes Survey of 2022 showed 27% of salaried judges were concerned about their safety in court, 19% outside court and 8% relating to social media and overall 54% were concerned about personal safety of judges and 83% concerned about attacks on the judiciary in the media. The 2024 Survey results are not available but given events of the last year it would not be a surprise to see even higher levels of concern. I have experience as the Family Presiding Judge of taking on cases from judges who have been worn down by the barrage of abuse they have suffered at the hands of litigants joined by the virtual lynch mob.

78. Being subject to abusive behaviour is not a part of the job. For the senior judiciary we accept that we are in the public eye and we apply for the role knowing that it will involve cases of the greatest public interest and accompanying scrutiny and being identified is part of that territory. For magistrates, the district and circuit bench that is not part of their expectation. This case when it was before the Family Court in 2013, 2015 and 2019 was not exceptional. It has become exceptional because Sara was murdered by her father and step-mother. I do not accept the contention based on Lieven J's observations that judges, experts, social workers who work in child protection and the family justice system are by that fact in a category who can and should be identified in reporting. A discretion undoubtedly exists to name or not name them. For the judiciary their name falls into the open justice arena under s.12 Administration of Justice Act 1960. That means that when the balance comes to be applied to the judge the expectation would be for naming. However, the greater the notoriety of the case and thus the greater the risk of infringement of the Article 8 rights and the more serious the

potential consequences (extending to Article 2 at its height) the more that will weigh in the balance against naming.

79. It will be of no comfort to those named if the risk comes to pass that it was a small one. Who willingly would accept a risk of serious assault or worse? The impact on individuals of being named in relation to such cases is vividly captured by Lisa Arthurworry's account following Victoria Climbie's death; she was cleared of any professional misconduct 6 years after Victoria's death. [Interview Guardian 19 Feb 2007.]

I had expected to be suspended from my job, but what absolutely killed me was being placed on the Protection of Children Act list in 2002. Now I was a child murderer who had become a pervert. If I looked in the mirror, I didn't see Lisa, just a dirty paedophile. In September the same year, I was sacked and referred to the psychiatric service, diagnosed with a 20% loss of faculties. I couldn't remember my past - where I'd come from, what I used to do - and could see only what was in front of me. By 2003, my grief finally began to come out. I was on antidepressants and alcohol and worn out through lack of sleep. My weight fell to five and a half stone. Whenever I left my flat all I could see was red - the colour I associate with Victoria in that kilt and jumper. By now it was clear I was having a breakdown. I spent five weeks in a psychiatric hospital and when I came out, I began tentatively, to get back into the world.

80. In just one example of my own cases in which I delivered judgment on 1 December 2023 (soon to be published) a baby was murdered (my conclusion on the balance of probabilities) by his step-father the day after social services had visited to notify the mother that they were closing their assessment. The mother and step-father had both lied extensively to the social worker about the step-father's erratic and violent behaviour and so the social worker's decision to close the assessment was flawed but not by her negligence. Nonetheless the social worker could not return to work and the impact was so great that when she was due to give evidence, she had a breakdown. I was told by Ms Fottrell KC that the social work author of the section 7 report in 2019 was being 'supported' by the local authority – no further information was available, but I would assume that the impact on the social worker of the realisation that she had been the last social work professional to have significant dealings with Sara was profound. Given that most social workers, guardians, lawyers, experts, and judges working in the family justice system do so out of a sense of vocation they are often their own harshest critics and I have little doubt that all involved in Sara's cases will be suffering to one degree or another.

81. The exceptionality of this case and it really is exceptional even within the confines of appalling child murders and the very highly charged emotional responses which will accompany it – understandably – may readily go beyond online and intrude into the real world that the judges and third parties live in.

82. The judges and social workers have their own Article 8 rights which are not to be infringed unless that is a proportionate infringement justified by the fuller upholding of the Press Article 10 rights

83. The evidence set out above establishes a clear and imminent risk of serious infringement of the Article 8 rights of all the third parties including the judiciary. I do not accept the submission that evidence needs to be individual specific.

84. For the third parties their Article 8 rights need to be of less weight to displace the Article 10 rights to name them and I am satisfied that the balance falls in favour of not naming them. For how long and it what circumstances that might endure I will return to.

85. Having concluded that the social workers, guardians, and experts should not be identified another significant component in the infringement of the Article 8 rights of the judges is this; to leave the judges or the judge as the single identifiable individual would make them a lightning rod for all the negative attention of the virtual lynch mob and the only exposed target for anyone who chose to give effect to their feelings in the real world. Delivering a potential scapegoat or a herd of scapegoats is not only likely to risk a profound infringement of their Article 8 (and in a worst case scenario potentially their Article 2 rights) I know myself from being the target of both social media abuse and threats within proceedings the impact of this and that is in proceedings which are of far less contentiousness than these. Having to implement additional security measures and being on alert when returning home is corrosive to well-being and even if such fears do not come to pass, they are all too real at the time.

86. I don't disagree with any of the dicta relied upon by the media in support of their arguments although in respect of the accountability submission I cannot believe that the media parties seriously suggest that there is no difference to the weight to be given to the accountability points depending on context. Given that the range might be from egregious misconduct through to exceptional diligence there plainly would be greater weight in favour of identifying someone guilty of egregious misconduct which would readily displace all but the most powerful Article 8 rights although probably not Article 2 rights. Conversely the weight to be given to accountability might be limited where the individual had acted with exceptional diligence and the Article 8 rights might well outweigh that aspect of Article 10. I accept that withholding the identity of a judge is an exceptional course to take – in the sense that it is an exception to the usual rule. The issue ultimately though as is recognised by the Court of Appeal in *R (on the application of Mohammed)* (above) and as the media parties also tacitly accept is that the discretion exists to withhold their name from the material the court authorises publication of. One can speculate about the circumstances in which it would be justified. Does one have to have credible intelligence from the police or security services of a viable threat to the life of a judge to exercise it? What of a case of a person with a known psychiatric frailty where identification might give rise to real risk of self harm? Each case has to be judged on its facts and context. As I have pointed out in other judgments, risk assessment is inevitably a process involving inference and is predictive. It must base itself insofar as is possible on known fact but must also take account of what can properly be inferred from previous experience. If it could not it would be too one dimensional as it would not take account of relevant matters.

87. Ultimately the issue falls to be decided by the undertaking of the ultimate balancing exercise where due weight is given to open justice, the additional traction that a report may gain with a name, the issue of accountability and scrutiny of public officials balanced against the risk of infringement of Article 8 (and potentially other) rights and vice versa and where the court must ultimately determine what is the proportionate outcome on the very specific facts before it.

88. In evaluating the risk of infringement of Article 8 rights it is ultimately a matter of risk assessment. Having had responsibility for judicial security in the SEC for 4 years and been the Presiding Judge for Milton Keynes and the aftermath of that and all else that I

have recorded, I have to undertake an assessment of the risk to the judges. I conclude that there is a real risk arising from them being named that would actually infringe their Article 8 rights in a serious way in terms of a guarantee of abuse and threats but extending beyond that into a real (not de minimis and capable of dismissal) risk to their physical safety engaging positive obligations under Article 3 and potentially Article 2. Those outweigh the public interest in naming them.

89. In relation to the judge, I therefore also concluded that naming the judge would amount to a disproportionate interference with their Article 8 rights taking into account all the likely impacts and risks I have referred to before and given that the disclosure and publication I am permitting will fulfil in very large measure the Article 10 rights of the press. The residue of those rights which relate to naming the judges do not have sufficient weight – giving it all due weight that open justice emerging from a shielded justice environment attracts – to make it a proportionate interference.

The Future

90. As the *Abassi* (above) case illustrates, decisions on naming (or indeed on any other aspect of disclosure and publication) are not set in stone for ever. As in *Abassi* the grant of anonymity to an individual is likely to be based on dynamic factors which will change. What is the likely risk at the time of verdict or sentence - as the hurricane approaches - may change after it has passed and then a different and perhaps better and differently informed decision will be possible.

91. I would not name any of those involved without enquiries being made of them as to their health and their response to the possibility of being named. The consequences could be devastating for them emotionally already, quite separate to any consequence emotional or physical to the fact of having their name placed in the public domain and linked to being responsible in some way for Sara being in the care of her father and step-mother who murdered her.

92. None of the third parties who might be named were given any formal notice of the application and the possibility of their name appearing in headlines along with the likely assertion that they bore some responsibility for her death. Nor would the judges have been aware. No enquiries had been made as to whether anybody who might by default have been named had any vulnerability or other particular Article 8 right which they might wish to put forward in support of a claim for anonymity. In future cases of this nature, it would seem wise to identify these points in advance and to give notice to parties the press wished to name so that they could be notified

93. The extent to which I have permitted disclosure and publication is to enable scrutiny of the processes and decision making which occurred. If, contrary to my own provisional evaluations there are serious failings in individuals those might justify further consideration by me (either before or after any other process has concluded) for permission to put that name into the public domain so that there can be a degree of public accountability of an individual. However, at this stage my decision to allow extensive disclosure and publication is on the basis that individuals are NOT exposed given my view of the apparent absence of personal or individual culpability which outweigh any Article 10 right to report their name.

94. The responsibility for Sara's death lies on her father, her step-mother and her uncle not on social workers, child protection professionals, guardians or judges.

95. I will list the matter for further consideration in 3 months' time when those who might be identified can be notified and given the opportunity if they wish to make representations and I can receive evidence about the intensity of the reactions that have been generated. The Guardian's observation of racist and xenophobic elements of social media commentary to date suggest the near certainty of grossly discriminatory, offensive and threatening commentary in some quarters. However, I have been known to be wrong – as Mr Barnes points out my predictions of what might be referred to in the criminal trial did not come to pass but that is the problem of not having a crystal ball – predicting the future is risk assessment – a matter of probabilities and any probability assessed at less than 100% encompasses a chance it may not turn out as predicted. I appreciate that even then it will be an exercise conducted to some extent in the dark as it is the name of the individual that might provoke the social media firestorm or virtual lynch mob but at least we will have been able to dip a toe in the water and sense whether it is dangerously boiling, uncomfortably hot or has reduced to something tolerable

Conclusions

96. Having undertaken the ultimate balancing exercise in relation to the various maters before me I have concluded that

    i) The press should have access to further information from the historic proceedings; their Article 10 rights outweigh the Article 8 rights (once the redaction protocol has applied) of the children and the third parties and make this a proportionate interference with such rights.

    ii) The press should be able to report the information disclosed; their Article 10 rights outweigh the Article 8 rights (once the anonymity provisions are applied) of the children and the third parties and make this a proportionate interference with such rights.

    iii) The press cannot name third parties; their Article 10 rights are outweighed by the Article 8 rights of the third parties and would make naming them a disproportionate interference with such rights.

    iv) The press cannot name the judges; their Article 10 rights are outweighed by the Article 8 rights of the judges and would make naming them a disproportionate interference with such rights.

    v) The press cannot report on the on-going wardship proceedings or receive further evidence filed in those proceedings save by further order by me; their Article 10 rights are outweighed by the Article 8 and 6 rights of the children and some of the parties.

    vi) I will list the matter for further consideration in March 2025 to consider any further representations in relation to naming third parties and judges.

97. That is my judgment.