Neutral Citation Number: [2025] EWCA Civ 42

Appeal Nos: CA-2024-002784 and CA-2025-000083
Case No: FD23P00425

IN THE COURT OF APPEAL OF ENGLAND AND WALES (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Mr Justice Williams: [2024] EWHC 3330 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/1/2025

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LADY JUSTICE KING
and
LORD JUSTICE WARBY

- -

BETWEEN:

(1) LOUISE TICKLE
(2) HANNAH SUMMERS

Appellants

-and-

(1) THE BBC
(2) PA MEDIA
(3) ASSOCIATED NEWSPAPERS LIMITED
(4) TIMES MEDIA LIMITED
(5) GUARDIAN NEWS AND MEDIA LIMITED
(6) TELEGRAPH MEDIA GROUP HOLDINGS LIMITED
(7) NEWS GROUP NEWSPAPERS LIMITED
(8) INDEPENDENT TELEVISION NEWS LIMITED
(9) REACH PLC
(10) SURREY COUNTY COUNCIL
(11) OLGA SHARIF
(12) URFAN SHARIF
(13) BEINASH BATOOL
(14–19) U, V, W, X, Y and Z (CHILDREN)
(Through their Children's Guardian)

Respondents

AND BETWEEN:

(1) THE BBC
(2) ASSOCIATED NEWSPAPERS LIMITED
(3) TIMES MEDIA LIMITED
(4) GUARDIAN NEWS AND MEDIA LIMITED
(5) TELEGRAPH MEDIA GROUP HOLDINGS LIMITED
(6) NEWS GROUP NEWSPAPERS LIMITED

(7) INDEPENDENT TELEVISION NEWS LIMITED
(8) REACH PLC

Appellants

-and-

(1) LOUISE TICKLE
(2) HANNAH SUMMERS
(3) PA MEDIA
(4) OLGA SHARIF
(5) SURREY COUNTY COUNCIL
(6) URFAN SHARIF
(7) BEINASH BATOOL
(8-13) U, V, W, X, Y and Z (CHILDREN)
(Through their Children's Guardian)

Respondents

Hearing dates: 14 and 15 January 2025

Chris Barnes (instructed by the Bar Council's Direct Access Scheme) assisted by **James Nottage** for **Louise Tickle** and **Hannah Summers** (the journalists)

Adam Wolanski KC and **Samuel Rowe** (instructed by RPC) for **the first and third to ninth Respondents in the first appeal and the appellants in the second appeal** (the Media Parties)

Jess Glass for **the second Respondent, PA Media** (PA Media) who provided written submissions

Deirdre Fottrell KC and **Marlene Cayoun** (instructed by **Surrey County Council**) for **Surrey County Council** (the Local Authority)

Cyrus Larizadeh KC and **Clarissa Wigoder** (instructed by **Osbornes Law**) for **Urfan Sharif** (the father)

Joy Brereton KC and **Amean Elgadhy** (instructed by **City Law Chambers Ltd**) for **Beinash Batool** (the step-mother)

Alex Verdan KC and **Rebecca Foulkes** (instructed by **Dawson Cornwell LLP**) for **the children U, V, W, X, Y and Z, through the Children's Guardian** (the Guardian)

William Tyzack and **Sophie Cullis** as the **Advocate to the Court** appointed by **the Attorney General**

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JUDGMENT

This judgment was handed down remotely at 10:00am on Friday 24 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Sir Geoffrey Vos, Master of the Rolls:

Introduction

1. These appeals concern the court's jurisdiction to prohibit the publication of the names of the judges who have decided particular cases in the past. The question arises in the context of historic care proceedings and private family law proceedings (the historic proceedings) relating to Sara Sharif (Sara), who was brutally murdered by her father and step-mother in early August 2023. The conclusions we reach may have wider significance.

2. On 18 August 2023, the Local Authority made a wardship application in respect of five of Sara's siblings, who had been wrongfully removed to Pakistan. Quickly thereafter, on 8 September 2023, the journalists requested disclosure of documents relating to the historic proceedings. They issued a C66 in that regard on 29 September 2023, and the BBC issued a C2 seeking similar relief on 31 October 2023. PA Media then joined the proceedings, and the other Media Parties were joined on 26 November 2024. All these applications were dealt with primarily by the Family Division judge handling the matter, Mr Justice Williams (the judge). The full details of the wardship proceedings are not relevant to what we have to decide, but many of them are contained in the judge's two judgments of June 2024 (not yet reported) and 18 December 2024 ([2024] EWHC 3330 (Fam)) (respectively, the June judgment and the December judgment).

3. The judge made a number of Reporting Restrictions Orders in the run up to and during the lengthy criminal trial of the father and the step-mother. That trial culminated in convictions on 11 December 2024 and sentencing on 17 December 2024.

4. The order now appealed was pronounced orally on 9 December 2024, just before the criminal trial concluded. It was drawn up on 11 December 2024 (the Order). It allowed the press to see and publish numerous documents from the historic proceedings. It included at [15(g)] an order preventing the media reporting the names of the judges (and other professionals) who had been involved in the historic proceedings (which related to Sara and to two of her siblings). The relevant part of the Order provided as follows:

> … no person may publish any information arising from the disclosure of the documents from these proceedings to the public, or a section of it, which includes: …
>
> 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)**. …
>
> including not repeating such information by reference to the disclosed documents even if it is already in the public domain [emphasis added].

5. When he pronounced the Order in court, no party had asked for the names of the three circuit judges who had been involved in the historic proceedings (the historic judges) to be anonymised. The judge had heard no submissions on the point. He had not

mentioned to the parties that he had in mind to make the order he did. Counsel's note of the judge's oral remarks on 9 December 2024 reads as follows:

> Naming of 3rd parties, at this stage I will not permit the naming of any 3rd parties. Social workers, guardian, and not Judges who have given verdicts save for myself. They need to be given the opportunity to make observations on whether they should be identified before in the inevitable social media pile on and being identified by name. I do not think this adds sufficiently to the story telling to outweigh impact on individuals, which is evident.

6. The journalists immediately sought permission to appeal the anonymisation of the historic judges. I shall refer to the historic judges individually as Judges 1, 2 and 3 respectively. The judge acknowledged that he had not heard argument on the point and invited written submissions, which were duly lodged. On 13 December 2024, the judge's clerk sent an email to the parties confirming that the judge had considered those submissions, and that he maintained his decision that the historic judges were not to be named and that reasons would follow. On the same day, the journalists intimated their application for permission to appeal, and the judge decided to adjourn that application to be dealt with after delivery of his reasoned judgment.

7. In his reasoned judgment of 18 December 2024, the judge said he would not name the judges "without enquiries being made of them as to their health and their response to the possibility of being named" [91], and that he would "list the matter for further consideration in 3 months' time when those who might be identified [could] be notified and given the opportunity if they wish to make representations and [he could] receive evidence about the intensity of the reactions that have been generated" [92]. The judge had no further opportunity to consider the adjourned application for permission to appeal, as I had granted permission on 19 December 2024. We granted the Media Parties permission to appeal on the same grounds on the first day of the hearing.

8. The journalists' grounds of appeal (upon which the Media Parties also rely) take four main points:

   i) It was a serious procedural irregularity for the judge not to have given reasons before anonymising the historic judges.

   ii) The judge adopted an unfair, biased and inappropriate approach to the journalists and the media generally (including relying on his own erroneous analysis of alleged media irresponsibility), thereby unacceptably encroaching on their rights under article 10 of the European Convention on Human Rights (ECHR). This ground was added by amendment and permission has not yet been granted to allow it to be pursued.

   iii) The judge ought to have held that the demands of open justice meant that anonymity for a judge could not be justified within the framework of balancing article 8 and article 10 of the ECHR.

   iv) The part of the Order anonymising the historic judges could not be justified in the absence of any specific application or evidential foundation, and was inimical to the proper administration of justice.

9. On 20 December 2024, King LJ directed that the historic judges be contacted to obtain their views (if they wished to express any). On 9 January 2025, leading and junior counsel for the historic judges filed a note indicating that: (a) none of them had sought anonymity, (b) each of them now had serious concerns about the risks which would arise if they were now identified, particularly in the prevailing circumstances, including the content and often inflammatory nature of public and media commentary arising from the intense scrutiny which has followed from the December judgment, (c) those concerns related not only to their own personal wellbeing but also to their family members and others close to them, whose interests the court might also want to take into account, (d) two of the historic judges (Judges 1 and 2, who were now retired and made only an emergency protection order and an interim care order respectively) considered that it would be right for their identities to remain protected, (e) Judge 3 was a sitting judge who was not, therefore, able to adduce evidence and did not feel it appropriate to express a position on whether their identity should remain protected, and (f) the historic judges considered that a risk assessment should be undertaken before any decision was made and that, if the anonymity part of the Order were to be varied, further assessments should be made of what (if any) protective measures should be taken before that decision was implemented, and (g) the Head of Security at HMCTS's Chief Financial Officer's Directorate had said that the Judges: "do not have secure digital footprints and the ease at which the residential address details of the judges can be accessed by anybody utilising the internet, creates very significant security/safety vulnerabilities. If there is a campaign, including potential 'hate' messages targeting [the historic judges], their personal safety and the personal safety of their family could be very severely affected".

The shape of the appeals

10. The appeals were heard over 1½ days against that rather convoluted background. I would like to compliment all counsel and solicitors on the speed and efficiency of their preparations and submissions. The court has also been significantly assisted by the written and oral submissions provided at very short notice by Mr William Tyzack, appearing as the advocate to the court.

11. In the course of oral argument, it appeared that there were really three main issues in the appeals:

    i) Whether the court had jurisdiction to prohibit the publication of the names of judges, and if so how and in what circumstances.

    ii) Whether the part of the Order anonymising the historic judges was irregular for lack of submissions, evidence or reasons.

    iii) Whether the judge's comments in his judgment demonstrated inappropriate bias against or unfairness towards the media.

12. On the first issue (jurisdiction to prohibit the publication of the names of judges), the media parties all argued that the court had no jurisdiction to anonymise the historic judges. The only basis for such an order would be section 6(1) of the Human Rights Act 1998 (section 6) which makes it "unlawful for a public authority to act in a way which is incompatible with" an ECHR right, and section 37 of the Senior Courts Act 1981 (section 37), which gives the court power to grant an injunction "in all cases in

which it appears … just and convenient to do so". So far as the historic judges were concerned, the threshold was not reached to engage any of article 2 (right to life), article 3 (freedom from torture and inhuman or degrading treatment), or article 8 (respect for family and private life). They were not vulnerable parties. They were appointed by the state to sit on cases and to be identified as the judge hearing any particular case, even a case heard in private. Open justice and transparency of justice were fundamental and paramount principles that were applicable here. The Local Authority submitted that the article 8 threshold could be reached if there were a risk that the physical or psychological integrity of the judges or their families might be impugned (see the European Court of Human Rights (ECtHR) in *Kaboğlu and Oran v. Turkey* (Applications no. 1759/08, 50766/10 and 50782/10), 30 October 2018 (*Kaboğlu*), at [50]-[51], the Council of Europe's *Guide on Article 8 of the European Convention on Human Rights* (31 August 2020) at [90]-[91], and the ECtHR in *Von Hannover v. Germany* (Application no. 59320/00), 24 June 2004 (*Von Hannover*), at [50]). The Guardian accepted that the "publication of the [historic judges'] names [was] not a … welfare issue for these children". The advocate to the court asked the court to consider carefully whether, in the modern world, the article 8 threshold might be met if social media content were so extreme as to result in the possibility of a spill over into actual physical violence (see the *Case of Spadijer v. Montenegro* (Application no. 31549/18), 9 November 2021, ECtHR (*Spadijer*) at [81]-[83] and the Concurring Opinion of Judge Yudkivska as to the "increased sensitivity" of our societies requiring bullying to be seen as a human rights abuse). The advocate to the court remained neutral as to the outcome of the appeal on this issue, and submitted that the rare and extreme factual background to this case might itself mean that the article 8 threshold had been reached. Only the father opposed the appeals on this issue, arguing that the judge had been right for the reasons he gave, pointing particularly to the welfare of the siblings, the quantity of disclosure already made to the media, and the modest curtailment imposed by the anonymisation of the historic judges. The other parties were neutral.

13. On the second issue (irregularity for lack of submissions, evidence or reasons), most of the parties accepted that the judge ought to have asked for evidence and argument before pronouncing his Order anonymising the historic judges, and that he ought to have given some reasons for that part of his Order at the time of its making. The father pointed, however, to the parties' agreement to an abbreviated timetable for the hearing as a justification for not seeking submissions or giving reasons immediately.

14. On the third issue (inappropriate bias against or unfairness towards the media), only the journalists and the other media parties made substantive submissions. As I have said, this issue was raised by an amendment to the grounds of appeal after the reasoned judgment was provided. Accordingly, we have to decide, in the first instance, whether permission to appeal on this ground should be granted. The argument relies on certain parts of the judgment (which I will summarise below) that are said to demonstrate the judge's personal *animus* against the journalists personally and the media generally.

<u>The outcome of the appeals</u>

15. I have decided that the appeals should be allowed primarily on the ground that the judge did not, in the circumstances of this case, have jurisdiction to make the part of the Order that anonymised the historic judges, but also on the grounds of procedural irregularity and unfairness. I would give permission to raise the additional ground of appeal. In these circumstances, the part of the Order granting anonymity to the historic judges will

be removed after allowing 7 days for HMCTS to consider and implement whatever measures they consider appropriate to protect and safeguard the historic judges from unwarranted attacks.

16. Against that background, I shall now give my reasons for reaching those conclusions under the following headings: (i) Brief summary of the judge's judgments, (ii) Essential rules, guidance and legislative provisions, (iii) The requirements of open justice, (iv) The special position of judges, (v) The threshold to engage article 8, (vi) Issue 1: Was there jurisdiction to prohibit the publication of the names of judges? (vii) Issue 2: Was there irregularity for lack of submissions, evidence or reasons? (viii) Issue 3: Was there inappropriate bias against or unfairness towards the media? (ix) Conclusions and disposal.

Brief summary of the judge's judgments

17. It would unnecessarily extend this judgment if I were even to summarise all the judge's 50-page June judgment and his 34-page December judgment. The former is said at [3] of the latter to form the foundation on which it rests.

18. The June judgment dealt at [29]-[74] with the applicable legal framework and at [75]-[85] and [106]-[114] with article 10 and the open justice principle. The judge's evaluation at [86]-[105] and [135]-[146] concluded by rejecting the media's various applications because the balancing exercise between articles 8 and 10 was not capable of being undertaken at that stage ([135] and [141]). He did, however, say at [146] that the applications for relaxation of the reporting restrictions could be renewed and he, therefore, adjourned those applications until, in effect, the criminal trial was closer to a conclusion.

19. The December judgment stated at [27] that the judge had identified in the June judgment 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 am not sure that that is an accurate description of what the judge had previously said, not least because the expression "shielded justice environment" (which was criticised by all the media parties) was not one used in the June judgment. But it may not matter, since the judge certainly did, for example at [83] of his June judgment, suggest that open justice had to be viewed in the specific context in which it was being considered.

20. In describing the detail of the historic proceedings at [18]-[26] and at [69] of the December judgment, the judge explained why, in his view, the decisions of the historic judges (and the social workers) were, in effect, appropriate, justified and justifiable at the times they were made. No one has sought on this appeal to challenge that assessment made by the judge. It is important, though, to emphasise what can be drawn from the judge's lengthy description of the historic proceedings. Judges 1 and 2 are now, as I have said, retired. One made a single protective order removing the children into care on an emergency basis. The other made an interim care order ensuring that the children did not return to the care of either parent whilst risk assessments were being carried out. At the conclusion of the care proceedings, the children were placed with the mother (Olga Sharif) under a child arrangements order. The children eventually returned to live with the father and the step-mother in 2019 with no involvement from the court. The

mother and father then jointly applied to the court to have the existing child arrangements order varied by consent, with the support of the social workers' team. Judge 3 was not prepared to approve the variation of the child arrangements order on that basis, and ordered a full report to be prepared by Surrey Social Services. That report concluded that the children were being given stability and appropriate guidance by the father and step-mother and recommended that a child arrangements order should be made in the father's favour. Having considered the evidence, the report and with the consents of the parties, that order was made in late 2019. It is not for this court to evaluate the course of the historic proceedings. But it should be noted that the historic judges had, as in all cases of this type, the difficult task of assessing the risk of future harm which could only be done against the background of the evidence before them.

21. At [71] of the June judgment and [27] of the December judgment, the judge referred to Lord Steyn's now famous *dictum* in *Re S (A Child)* [2005] 1 AC 593 (*Re S*) at [17]. He said that he would be applying the 4-stage test as follows:

> First neither [articles 8 nor 10] has **as such** [original emphasis] precedence over the other.
> Secondly, 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.
> Thirdly, the justifications for interfering with or restricting each right must be taken into account.
> Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test.

22. At [143] of the June judgment and [30] of the December judgment, the judge said that convictions in the criminal case would "give the Article 10 rights [in favour of disclosure and reporting] a compelling weight that might outweigh all but the most sensitive documents". His balancing exercise in relation to disclosure and reporting of many of the documents emanating from the historic proceedings (subject to clearly defined terms and conditions) culminated at [40]-[41]. The details do not matter for our purposes.

23. In setting out the legal framework to the anonymisation of the historic judges at [42]-[62] of the December judgment, the judge disagreed with two recent *dicta* from other first instance judges.

24. At [42]-[45] of the December judgment (which refers to [84] of the June 2024 judgment), the judge disagreed with the *dictum* of Nicklin J in *PMC v. A Local Health Board* [2024] EWHC 2969 (KB) (*PMC*) to the effect that: "[a]ny 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".

25. At [53]-[54], the judge disagreed with Lieven J's reasoning at [28]-[39] in *Derbyshire County Council v. Marsden* [2023] EWHC 1892 (Fam), [2024] 1 FLR 537 (*Marsden*), where there was an issue as to the anonymity of magistrates and a legal adviser. Lieven J had 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.

26. At [55] of the December judgment, the judge reached an interim conclusion that the court retained a discretion to refuse permission to publish the names of social workers, experts and judges. It was at that stage that the judge began his exposition of how the world had changed in the last 30 years "through the web, the way information is disseminated, the way people respond to it and the consequences for those involved", saying that that had "transformed the landscape for shielded and open justice". He said that "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". He then referred to criminal offences committed against certain named circuit judges, and the concerns of the magistracy, and the age of disinformation. At [57], he explained his views about how "shielded justice" is different from "open justice" in order to protect its participants.

27. At [47] and [59] of the December judgment, the judge acknowledged two important authorities, with which I would respectfully agree. First, he referred to the well-known dictum of Lord Rodger in *Re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 AC 697 (*Guardian News and Media*), where he had explained why it was so important

for the press to be allowed to name individuals. Secondly, he mentioned what Lord Burnett CJ had said in *Re British Broadcasting Corporation* (*R v. Sarker*) [2018] EWCA Crim 1341, [2018] 1 WLR 6023 at [32], in effect, that the court should proceed on the footing that any reporting of the proceedings would be responsible, fair and accurate.

28. After the latter citation, the judge gave his own examples of bad reporting in order to demonstrate that it may lead "those with malign intent rapidly [to] distort information to meet their own purposes with devastating real-world consequences". The judge then robustly criticised the journalists at [60] specifically for reporting that he had refused permission to appeal in this case, when in fact he had adjourned that application. He concluded by comparing the assumption that press reporting would be fair, accurate and responsible with the "Emperor's New Clothes": everyone, he said, knew that assumption to be false.

29. At [61]-[62] of the December judgment, the judge concluded that there was no presumption that judges should be named in "shielded justice cases", despite the fact that section 12 of the Administration of Justice Act 1960 (AJA 1960) contemplated that "their name[s] will be open". Those starting points were, he said, subject to case specific evaluation involving consideration of what it was legitimate to infer "from the accumulation of knowledge we have about risks arising".

30. The judge made his evaluation on the anonymity of the historic judges at [63]-[89] of the December judgment, concluding that naming them would amount to a disproportionate interference with their article 8 rights. Calling on his own experience of making risk assessments for judges, he said the following at [88]:

> 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.

31. In his reasoning, the judge described the media parties' submissions that the public interest in naming the historic judges was equal to that of naming the father and step-mother as "risible" [64]. He also compared holding the historic judges accountable for what occurred as "equivalent to holding the lookout on the Titanic responsible for its sinking" or "blaming the soldiers who went over the top in the Somme … for the failure of the offensive" [70]. At [71]-[74], the judge suggested that naming judges who did an acceptable job was disadvantageous as it would distract from criticism of the systems that may not have prevented the tragedy of Sara's death.

32. At [75] of the December judgment, the judge accepted that anonymity for the judges was an exceptional step. He balanced that with the exceptional level of attention to the case that would range into "rude and discriminatory slurs, moving onto vilification, abuse and threats". He said:

> 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.

33. At [77]-[81] of the December judgment, the judge said that "the likely level of online abuse [would] be high", and that "the reality currently is that in addition to that there is real possibility of some individuals going further – much further", giving recent examples of death threats to an MP and attacks on solicitors and a judge. He said that he had "experience as the Family Presiding Judge of taking on cases from judges who [had] been worn down by the barrage of abuse they [had] suffered at the hands of litigants joined by the virtual lynch mob", and that "[b]eing subject to abusive behaviour was not part of the job", giving further examples from his own experience.

34. At [82] of the December judgment, the judge referred to the article 8 rights of the historic judges, saying that he did not accept that evidence needed to be "individual specific". He said that:

> to leave the judges [out of anonymisation] … 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.

Essential rules, guidance and legislative provisions

35. In this section, I will record the substantive and procedural provisions that are relevant to the issue we have to decide. The judge repeatedly referred to a system of "shielded justice". That is, so far as I am aware, an entirely new phrase. He must have been referring to the regime established in section 12 of the AJA 1960 and section 97 of the Children Act 1989 (section 97).

36. Section 12 of the AJA 1960 provides as follows under the heading "Publication of information relating to proceedings in private":

> (1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say —
>
> (a) where the proceedings —
>
> (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
>
> (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor; …

(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.

(3) In this section references to a court include references to a judge … and to any person exercising the functions of a court, a judge or a tribunal; …

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

37. Section 97 provides as follows under the heading "Privacy for children involved in certain proceedings":

(2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify — (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or (b) an address or school as being that of a child involved in any such proceedings. …

(4) The court … may, if satisfied that the welfare of the child requires it …, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.

38. CPR Part 39.2(4) (which does not, under CPR Part 2.1(1), apply to family proceedings) provides that:

(4) The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person.

39. Practice Direction 12I (PD12I) in the Family Procedure Rules 2010 under the heading "Applications for reporting restriction orders" provides as follows:

This direction applies to any application in the Family Division founded on Convention rights for an order restricting publication of information about children or incapacitated adults. …

3.1 Section 12(2) of the Human Rights Act 1998 means that an injunction restricting the exercise of the right to freedom of expression must not be granted where the person against whom the application is made is neither present nor represented unless the court is satisfied – (a) that the applicant has taken all

practicable steps to notify the respondent, or (b) that there are compelling reasons why the respondent should not be notified. …

3.3 The court will bear in mind that legal advisers to the media (i) are used to participating in hearings at very short notice where necessary; and (ii) are able to differentiate between information provided for legal purposes and information for editorial use. …

3.4 The court retains the power to make without notice orders, but such cases will be exceptional, and an order will always give persons affected liberty to apply to vary or discharge it at short notice.

40. Section 6 of the Human Rights Act 1998 (HRA 1998) provides as follows under the heading "Acts of public authorities":

(1) It is unlawful for a public authority to act in a way which is incompatible with [an ECHR] right.

(3) In this section "public authority" includes—(a) a court or tribunal, …

41. Section 12 of the HRA 1998 provides as follows under the heading "Freedom of expression":

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the [ECHR] right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied —

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the [ECHR] right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to —

(a) the extent to which — (i) the material has, or is about to, become available to the public; or (ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code. …

42. Articles 2, 3, 8 and 10 of the ECHR provide as follows in material part:

2.1 Everyone's right to life shall be protected by law.

3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

8.1 Everyone has the right to respect for his private and family life, his home and his correspondence.

8.2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

10.1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. …

10.2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The requirements of open justice

43. In *Scott v. Scott* [1913] AC 417 (*Scott v. Scott*), the House of Lords explained the principles of open justice in the context of nullity proceedings. Viscount Haldane LC said at 439 that: "[a] mere desire to consider feelings of delicacy or to exclude from publicity the details which it would be desirable not to publish is not, I repeat, enough as the law now stands. I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made". Lord Atkinson said at 463 that: "[t]he hearing of a case in public may be, and often is, no doubt, painful, humiliating, or [a] deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means for winning for it public confidence and respect". Lord Shaw of Dunfermline described the "publicity in the administration of justice" as "one of the surest guarantees of our liberties". A violation of the principle of open justice would be "an attack on the very foundations of public and private security".

44. The open justice principle was more recently summarised by Lord Judge CJ in *R (on the application of Mohamed) v. Secretary of State for Foreign & Commonwealth Affairs* [2010] EWCA Civ 65 at [38] as follows:

> 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 judgment is on trial. So it should be, and any exceptions to the principle must be closely limited. In reality very few citizens can scrutinise the judicial process: that scrutiny is performed by the media, whether newspapers or television, acting on behalf of the body of citizens. Without the commitment of an independent media the operation of the principle of open justice would be irremediably diminished.

45. This principle is applicable as much in family proceedings as in any other proceedings. The statutory limitations contained in section 12 of the AJA 1960 and section 97 do not displace the open justice principle or create any separate "shielded justice" environment. They provide a degree of privacy for certain proceedings relating to children according to their terms. Munby J explained at [83]-[86] in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142 (*Re B*) the court's jurisdiction to relax and increase the statutory restrictions on reporting, and the reasons for those restrictions. Lord Dyson MR (with whom McFarlane and Burnett LJJ agreed) in *Re C (A Child) (Private Judgment: Publication)* [2016] EWCA Civ 798, [2016] 1 WLR 5204 approved what Munby J had said in *Re B* at [12], and said this at [22]-[23]:

> The judge [Pauffley J] rightly recognised at para 10 of her judgment that open justice is at the heart of our system of justice and vital to the rule of law. As she said, it promotes the rule of law by letting in the light and allowing the public to scrutinise the workings of the law. There is a particular need for the media to act as a public watchdog in care proceedings in the Family Court "because of the intrusion or potential intrusion into family lives of those concerned and what could be a serious interference by the state in family life".
>
> She rightly also recognised that this was a powerful argument in favour of publication. As the Practice Guidance makes clear, permission for the publication should have been given unless there were compelling reasons why not to do so. The Practice Guidance accurately reflects the law.

46. The President of the Family Division published an article entitled *Confidence and Confidentiality: Transparency in the Family Courts* in October 2021. It led to the Reporting Pilot, for which Guidance was published in August 2024. It is, perhaps, sufficient to refer to [21] of Sir Andrew McFarlane's article which makes clear that the Family Court, as I suggested in oral argument, is not "another country". He said this:

> The Family Courts are part of the overall justice system. 'Open justice' is a fundamental constitutional imperative, to which there may be exceptions. Through open justice, the workings of the justice system are held up to public scrutiny by hearings being open to the public and/or by permitting media reporting of the proceedings. The work of the Family Court is of significant importance in the life of our society, yet, as is plain, the current limited degree of openness does not permit effective public scrutiny. It is by openness that judges are held to account for the decisions they make so that the public can have confidence that they are discharging their important role properly.

47. In *Various Claimants v. Independent Parliamentary Standards Authority* [2021] EWHC 2020 (QB), [2022] EMLR 4 (*IPSA*) at [52], Nicklin J recently cautioned, in the context of MPs, against excessive caution in evaluating the risks that might arise from open justice:

> Finally, and as Mr Barnes QC frankly recognised, the evidence put forward by the Claimants falls a long way short of demonstrating a credible risk that if the Claimants were named (and their addresses provided) that they would be exposed to some risk of harm. There might exist a very small number of people whose attitude towards MPs (and those who work for them) is so hostile that they might conceivably be moved to offer some threat of physical violence to them, but this risk is remote. **The Claimants have not put forward any credible and specific evidence that one or more Claimants is at particular risk of any such threat. The civil justice system and the principles of open justice cannot be calibrated upon the risk of irrational actions of a handful of people engaging in what would be likely to amount to criminal behaviour**. If it did, most litigation in this country would have to be conducted behind closed doors and under a cloak of almost total anonymity. As a democracy, we put our faith and confidence in our belief that people will abide by the law. We deal with those who do not, not by cowering in the shadows, but by taking action against them as and when required. [Emphasis added.]

48. In *Abbasi v. Newcastle upon Tyne Hospitals NHS Foundation Trust* [2023] Fam 287 (*Abbasi*), [2023] EWCA Civ 331, the Court of Appeal was concerned with the anonymity of physicians who had treated children before their deaths. The UKSC's decision on the appeal is awaited. Lord Burnett CJ emphasised at [75]-[78] the "high value attached to freedom of speech in our domestic common law order which is reflected in article 10 of the [ECHR]". At [118]-[119], Lord Burnett endorsed Lord Steyn's emphatic holding at [20] in *Re S* that it was not for the courts "except in the most compelling circumstances" to create new exceptions to the principles of open justice. The judge drew comfort at [56] from [118] in *Abbasi*, where Lord Burnett referred to the courts being astute to protect individuals caught up in litigation, and to the fact that experience had shown that end-of-life proceedings could cause "a fire-storm on social media". I make two points at this stage. First, judges are not people "caught up in litigation" (as to which see the next section of this judgment). Secondly, Lord Burnett concluded [118] by making clear that indefinite anonymity orders required "careful scrutiny, clear evidence and an intense evaluation of competing interests".

49. Finally, in this connection, I would record and approve what Nicklin J said in *PMC*, where he refused an application for the anonymity of a child claimant to a clinical negligence claim. I have already mentioned that the judge said he disagreed with a part of the *dictum*. Nicklin J said this at [41]:

> Whilst, in a very broad sense, in assessing the engaged convention rights on any application for a derogation from open justice, the Court is carrying out a 'balance' between them, the scales do not start evenly balanced. The Court must start from the position that very substantial weight must be accorded to open justice. 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.

50. We have not been referred to any authority that minimises the importance of open justice. Indeed, section 12(4) of the HRA 1998 (see [42] above) provides expressly that: "[t]he court must have particular regard to the importance of the [ECHR] right to

freedom of expression". It does not seem to me to matter whether section 12(3) of the HRA 1998 was strictly applicable (on the basis that the court was restraining publication "before trial"), since section 12(1) certainly was engaged (the court was considering whether to grant relief which might affect the exercise of the ECHR right to freedom of expression).

The special position of judges

51. There have not been many cases in which it has been suggested that the identity of persons sitting in a judicial capacity in courts in England and Wales should be anonymised. That is not surprising since it is common ground that section 12 of the AJA 1960 makes clear that its provisions do not apply to judges hearing cases about children. To be clear, section 12(2) allows publication of the text of an order made by a court (unless expressly prohibited), and section 12(3) makes clear that "court" includes "judge" for this purpose. Court orders always name the judge, so, in that way, section 12 of the AJA 1960 expressly excludes anonymity for the judge.

52. It was argued in *R v. Felixstowe Ex p. Leigh* [1987] 2 WLR 380 (*Felixstowe*) that magistrates should not be named. Watkins LJ rejected the proposition at 392–393 (drawing on the authority of Lord Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440, 449-450, referring to *Scott v. Scott*) as follows:

> So far as I have been able to ascertain, anonymity has never been claimed other than by the number of justices I have mentioned by anyone who can be said to be a judicial or quasi-judicial person. This applies as much to High Court judges and circuit judges as to, for example, members of tribunals. … Many of the persons I have mentioned are subjected to criticism, vilification even at times, and suffer from being pestered by telephone and otherwise by persons who bear some grievance, and, moreover, occasionally by being wrongly approached by the press. But such intrusions into their private lives judges and others have inevitably to put up with as a tiresome if not worse incidence of holding a judicial office. … I would regard and I believe the general public likewise would regard a policy such as that maintained by the Felixstowe justices and their clerk to be inimical to the proper administration of justice and an unwarranted and an unlawful obstruction to the right to know who sits in judgment. There is, in my view, no such person known to the law as the anonymous [Justice of the Peace]. I do not for one moment suggest that the right to know involves the disclosure of any more than the name of a justice. No one can demand the address and still less the telephone number of a justice of the peace. Moreover, a clerk to justices would, it seems to me, act with justification in refusing during and after a hearing to give the name of one of the justices to a person who the clerk reasonably believes requires that information solely for a mischievous purpose. Save for such considerations as that, I would hold that the bona fide inquirer is entitled to know the name of a justice who is sitting or who has sat upon a case recently heard.

53. In *Harris v. Harris; Attorney-General v. Harris* [2001] 2 FLR 895 (*Harris*), Munby J said this at [372] about the position of judges, when faced with press criticism, and the need for them to be resilient:

> But it is certainly not a contempt of court to engage in reasoned criticism of the judicial system or of the judiciary, whether that criticism be of an individual judge

> or of the judiciary as a whole, and even if the criticism is expressed in vigorous, trenchant or outspoken terms. For that which is lawful if expressed in the temperate or scholarly language of a legal periodical or the broadsheet press does not become unlawful simply because expressed in the more robust, colourful or intemperate language of the tabloid press or even in language which is crude, insulting and vulgar. Judges, after all, are expected to be, and I have no doubt are, men and women of fortitude, able to thrive in a hardy climate, and the vehemence of the language used cannot of itself measure the power to punish for contempt. On the contrary, so long as it does not undermine what in Art 10(2) is referred to as 'the authority and impartiality of the judiciary', such criticism is healthy.

54. I am conscious that *Harris* was decided 23 years ago at a time when the future power and influence of social media could not have been anticipated. Now, judges are faced with threatening, as well as the "crude, insulting and vulgar" behaviour, mentioned in [372] of Munby J's judgment. It should be made clear that, whilst judges are required to show resilience and fortitude, they are not required to tolerate bullying or abusive behaviour. As regards anonymity, however, as Lieven J recently explained in her reasoning at [28]-[39] in *Marsden*, (see [25] above), the statutory restrictions on information in children's proceedings are to protect the anonymity of the children and not the professionals.

55. In my judgment, judges are indeed in a special position. The authorities that concern anonymisation of social workers, experts and others involved or caught up in the justice system are not directly applicable to judges. I will return under issue 1 to the correct jurisdictional approach to the anonymisation of judges. In the meantime, it suffices to say that judges are appointed to fulfil a crucial public office. The independence and integrity of our judges is a cornerstone of our democracy. It is the duty of judges to sit in public, save in circumstances that are closely delineated by statute (e.g. section 97), procedural rules (e.g. CPR Part 39.2) and the common law (see *Scott v. Scott* at [43] above). In accepting office, all judges will or should be aware that that is the expectation, because public scrutiny of judges and the justice process is essential to the rule of law.

<u>The threshold to engage article 8</u>

56. The judge took the view, as I have said, that the historic judges' article 8 rights were engaged on the basis of the generic material he recited, which seems to have originated from his own knowledge and experience. He also intimated that articles 2 and 3 might be relevant. He did not consider the nature of the threshold for any of articles 2, 3 and 8. As Lord Burnett explained in *Abbasi* at [60], the normal position is that an applicant for an order protecting article 8 rights has to show that "the publication in question had constituted such a serious interference with his private life as to undermine his personal integrity" (see Lord Rodger at [37]-[42] in *Guardian News and Media*). I accept the Local Authority's submission recorded at [11] above that the article 8 threshold could, in a normal case, also be reached if there were a real risk that a person's physical or psychological integrity might be undermined (see *Kaboğlu* and *Von Hannover*).

57. This is a high threshold. Guidance about reaching the threshold in the case of risks of harassment and potential violence is found in [84]-[92] of Lord Burnett's judgment in *Abbasi*. As I have already said, I do not accept that the authorities that concern third

parties to family proceedings generally are directly applicable to the case of the anonymisation of the historic judges.

58. I turn then to consider the issues that I have identified as requiring determination in these appeals. In the light of what has been a lengthy introduction, I can take them relatively shortly.

Issue 1: Was there jurisdiction to prohibit the publication of the names of judges?

59. The critical jurisdictional question is the one that, it seems to me, the judge ought to have asked himself when it came into his head to order anonymity for the historic judges at the end of the hearing on 9 December 2024. At that point, no party had suggested that such anonymity was necessary. Moreover, no evidence of any kind had been filed supporting the making of such an order. The position at that date was, notionally at least, that the names of the historic judges had been in the public domain since the hearings over which they presided years before. It is true that the cases before them would have been heard in private and covered by section 12 of the AJA 1960 and section 97, and would, in all likelihood have been listed as something like "Re S (children)". But the historic judges' names appeared on each of the orders that they made. Orders are public documents. Further, the fact that these judges were sitting on the days in question at the courts in question was public knowledge as it should have been. In these circumstances, once the matter occurred to the judge, he ought, in my view, to have asked himself on what legal basis he could order the anonymity of the historic judges.

60. Neither the Local Authority nor the Guardian had submitted to the judge at any stage that the protection of the children required that the historic judges be granted anonymity. That remains the position. Accordingly, the *parens patriae* inherent jurisdiction of the court to protect the children was not engaged. Whilst there was no application for an injunction under section 37, the court would, in theory, have had power to grant an injunction to restrain the publication of the historic judges' names (see the wide scope of that section as explained by the Judicial Committee of the Privy Council in *Convoy Collateral Ltd v. Broad Idea International Ltd* [2021] UKPC 24, [2023] AC 389 at [57], and by the UKSC in *Wolverhampton City Council v. London Gypsies and Travellers* [2023] UKSC 47, [2024] AC 983 at [145]-[153]). It would have been very unusual for the court to grant such an injunction of its own motion without any application being made or intimated by the historic judges or anyone else. In any event, it has not really been suggested by anyone that section 37 (without section 6) gave the judge the jurisdiction to order anonymity. For the avoidance of doubt, no cause of action, whether in misuse of private information, breach of confidence or anything else was being asserted before the judge.

61. It seems to me, therefore, that the only realistic jurisdictional foundation for the judge's decision was section 6 of the HRA 1998, perhaps taken alongside section 37. Section 6 provides, as I have said, that it is "unlawful for a public authority to act in a way which is incompatible with" an ECHR right. Accordingly, **if** the judge had, on the 9 December 2024, reason to believe that the historic judges' article 2 or 3 rights would or might be engaged by allowing the press to publicise their names, he would have had to refrain from doing that, and if he had had reason to suppose that their article 8 rights would be engaged, he would have had to undertake the balancing exercise envisaged in *Re S*.

62. It is clear, in my judgment, that articles 2, 3 and 8 apply as much to judges as to any other person. It is less clear, however, that judges, even in cases like this, need to consider, of their own motion, when asked to relax reporting restrictions, whether to anonymise the names of the judges who have heard the cases in question. I have considered very carefully the submissions of the advocate to the court to the effect that the rare and extreme factual background to this case might itself mean that the article 8 threshold for the judges had been reached. I have looked carefully at the judge's later reasoning that explains why he thought that social media and reporting risks to judges have, in the modern world, became sufficiently alarming and serious to reach the threshold.

63. I have, however, concluded that the judge was wrong. He had no jurisdictional foundation for making the anonymity order he did. Section 6 did not require him to trawl through his own experience to see if there were risks that he could imagine facing the historic judges. If, notwithstanding the lack of evidence to that effect, the judge was concerned about their being named, there were other, more appropriate, ways to protect them. He could have contacted HMCTS to warn them of the Order that he was making and the risks that he foresaw. HMCTS would, in that event, as has happened now, have considered how the judges could be protected.

64. I should interpose that nothing I say here should be interpreted as minimising the risks that judges in the position of the historic judges face. I have taken very seriously what the historic judges and HMCTS have said. But none of that material, which substantially relates to the potential impact on the judges of the publicity generated following the making of the Order, was before the judge. He had no evidential basis on which to think that the threshold for the application of articles 2, 3 or 8 had been reached.

65. It is the role of the judge to sit in public and, even if sitting in private, to be identified, as explained in *Scott v. Scott, Felixstowe* and *Marsden*. Judges will sit on many types of case in which feelings run high, and where there may be risks to their personal safety. I have in mind cases involving national security, criminal gangs and terrorism. It is up to the authorities with responsibility for the courts to put appropriate measures in place to meet these risks, depending on the situation presented by any particular case. The first port of call is not, and cannot properly be, the anonymisation of the judge's name. That must be particularly so, where those names are already notionally in the public domain. Moreover, it is no answer as was suggested, to say that there is only a limited interference with open justice, because the historic judges' names add little to the story. For all the reasons given in the cases I have cited, it is not for judges to decide what the press should report or how journalists should do their jobs.

66. The authorities that I have cited demonstrate that judges are in a special position as regards open justice. The integrity of the justice system depends on the judge sitting in public and being named, even if they sit in private. The justice system cannot otherwise be fully transparent and open to appropriate scrutiny.

67. For the avoidance of doubt, I am not saying that judges are obliged to tolerate any form of abuse or threats (see [54] above). Nor am I saying that it would never be possible for section 6 of the HRA to allow, or even require, a court to consider, even conceivably of its own motion, making an anonymisation order relating to judges. In my judgment, however, it is very hard to imagine how such a situation could occur. That is for three

reasons. First it is difficult to see that such an order could be justified without specific compelling evidence being available as to the risks to the judges in question. Secondly, the court would have to be satisfied that those risks could not be adequately addressed by other security measures. Thirdly, the court would have to conclude that the risks were so grave that, exceptionally, they provided a justification for overriding the fundamental principle of open justice.

68. The first reason is sufficient to dispose of the anonymisation of the historic judges in the Order in this case. There was no evidence before the judge on 9 December 2024 that the judges had been physically threatened, and none supporting the proposition that their article 8 rights were in jeopardy. The judge had no evidence about the historic judges' private or family life, and did not need to speculate as to the generic risks that family judges might face in the modern age of social media. I agree with what Nicklin J said in the *IPSA* case (see [47] above) about the threshold that needs to be reached and the need for resilience. I acknowledge that the case of *Spadijer* recognises the changes that have occurred in our societies and the increased sensitivity of our era, but I do not think that affects the need for judges to operate in the open.

69. In these circumstances, I take the clear view that the judge had no basis, in the absence of specific evidence affecting the historic judges, on 9 December 2024, to think that articles 2, 3 or 8 were or might be engaged. He, therefore, had no need to undertake any balancing exercise between article 8 and article 10. The historic judges' identities were in the public domain and ought to have remained in the public domain.

70. We do not know whether the judge ever became aware of the fact that abusive threats against the historic judges have, since the verdicts against the father and step-mother, most regrettably appeared on the internet in social media posts. The father's counsel obtained a sample of these threats and sought to admit them in evidence on the appeals. We looked at them *de bene esse* (for what they were worth). I would admit them in evidence, since they were not available before the hearing on 9 December 2024, and it was useful for the court to know about them in its deliberations. To my mind, however, these threats do not alter the position. They are not threats from parties affected by the orders that the historic judges made. They are generic threats of the kind that are, unfortunately, all too commonly now made against politicians and public figures of all kinds. It is one thing for an internet troll to post a message saying that "politician X should be strung up", and quite another for a party to litigation to threaten the judge directly. Likewise, the generic fears of the historic judges and the recently expressed concerns of HMCTS do not, in my judgment, alter the position. There are, as I have said, other ways of protecting the historic judges.

71. In the circumstances of this case, the judge had no jurisdiction to anonymise the historic judges either on 9 December 2024 or thereafter. He was wrong to do so, and the Order must be varied accordingly. I will return to the process by which that is to be achieved in the final section of this judgment.

Issue 2: Was there irregularity for lack of submissions, evidence or reasons?

72. I have already decided that, in the absence of specific evidence about risks or threats to the ECHR rights of the historic judges, the judge ought not to have taken any steps to anonymise them under section 6. The primary question under this heading is, therefore, now academic, since no specific evidence has, even now, become available.

73. It is obviously good practice for a judge to delay making any order of their own motion until he has sought and obtained evidence from the parties. There may, however, be circumstances where the situation is so urgent that it would be appropriate to make an order first and then seek submissions. In this case, the judge had no appropriate reason to raise the question of the anonymity of the judges or to seek submissions. Had the idea of anonymising the judges occurred to him, he ought, on consideration, to have dismissed the idea for the reasons given in this judgment. If in real doubt (which I would say he could not properly have been), he should have asked for submissions (and any available evidence) before doing anything. He knew he had no evidence, and he could have realised that the judges would not wish to provide any evidence (as has happened). In short, the whole idea of anonymising the judges was, I have to say, misguided. In saying this, I do not (to repeat) in any way minimise the generic risks that the historic judges have now identified and the legitimate fears they have.

74. I do not think we need to decide whether the anonymisation of the historic judges should be set aside on the grounds only of the irregularities alleged. There was no jurisdiction to anonymise the historic judges and that part of the Order must be set aside for that reason. For the avoidance of doubt, though, I do think the appeals should be allowed on this ground too on the basis that the judge ought, in the circumstances of this case, to have asked for submissions and evidence prior to making his decision. I do not think the judge can be criticised for his failure to produce a detailed reasoned judgment on 9 December 2024. He told the parties the basic reason for his decision as I have recorded at [4] above.

Issue 3: Was there inappropriate bias against or unfairness towards the media?

75. I have set out some of the colourful language used by the judge at [27] and [30]-[33]. It is said that the judge demonstrated unfairness and bias against the media in general and the journalists in particular. This ground is also academic now that I have decided that the judge had no jurisdiction to do as he did.

76. I do, however, think that the threshold for permission to appeal on this ground is met, and I would accordingly give that permission on the basis that the ground had a real prospect of success. It was, I think, unfair of the judge to say, with such vehemence, at [60] that the journalists had been guilty of inaccurate, unfair and irresponsible reporting. The decision to adjourn the journalists' application for permission to appeal just before the end of term was akin to dismissing the application. The distinction was, in the circumstances, a technical one. The decision to adjourn necessitated the application to me for permission to appeal, which I granted on 19 December 2024. At the time that the judge adjourned the application for permission to appeal on 13 December 2024, the parties thought, as the judge had told them, that his reasons would not be available until the New Year. It was excessive in the circumstances to accuse the journalists of irresponsible reporting even if the application for permission had been technically adjourned rather than dismissed. His sarcastic remark at [60] about the Channel 4's Dispatches programme of 20 July 2021 was unwarranted. He said, for no reason that I could discern: "[t]hank goodness that journalists don't have to operate as the courts do and hear both sides before delivering their verdict!". Such sarcasm has no proper place in a court judgment.

77. There are other examples in the judgment of the judge taking an excessively strong line about the quality of reporting in other cases. It was inappropriate for him to have prayed

in aid other cases within his experience (as, for example at [59]) to support the position he had adopted without any of the parties asking him to do so.

78. I do not intend to proliferate my remarks. The mistake the judge made was to think that he could properly trawl through his own experiences to create a case for anonymising the judges. He should not have done so. Courts operate on the basis of the law and the evidence, not on the basis of judicial speculation and anecdote, even if it is legitimate to take judicial notice of some matters. In short, the judge's judgment demonstrates, to put the matter moderately, that he got carried away.

79. It is not necessary to decide whether the judge's inappropriate and unfair remarks about the press and the journalists amounted to actual or apparent bias. He undoubtedly behaved unfairly towards the journalists and Channel 4 – and that is enough to allow the appeals. The judge lost sight of the importance of press scrutiny to the integrity of the justice system. The case should be remitted for further hearings to a different Family Division judge.

Conclusions and disposal

80. For the reasons I have given, I would allow the appeals primarily on the jurisdiction ground, but also on the grounds of the judge's failure to seek submissions or evidence before giving his decision, and his unfair treatment of the journalists and Channel 4. I would, as I have said, give all the media parties permission to raise the additional ground of appeal. I would deprecate the judge's use of anecdotal material and his own experiences to create a case for anonymising the judges.

81. The historic judges have asked for time to prepare themselves if their names are to be revealed. Since that is the result of allowing the appeal, I would order that they be given 7 days from the date of this judgment before their names are published, to allow HMCTS to put measures in place to protect them from any potential harm once their names are released.

Lady Justice King:

82. I agree.

Lord Justice Warby:

83. I also agree.