Neutral Citation Number: [2013] EWHC 2694 (Fam)

Case No: UN13C00044

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 September 2013

Before:

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

Re J (A Child)

- -
- -

Mr Alistair MacDonald QC and Ms Julie Moseley (instructed by the Director of Democracy, Law and Transformation) for the local authority (Staffordshire County Council)
Ms Laura Slater (of Nowell Meller) held a watching brief for the children's guardian

Hearing date : 27 June 2013

- -

Approved Judgment

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

.....

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court on 5 September 2013

Sir James Munby President of the Family Division :

1. This case raises important questions about the extent to which the public should be able to read and see what disgruntled parents say when they speak out about what they see as deficiencies in the family justice system, particularly when, as here, their complaints are about the care system. The case also raises important questions about how the court should adapt its practice to the realities of the internet, and in particular social media. For these reasons I am giving this judgment in open court.

The facts

2. The essential facts are shortly stated.

3. The mother and the father have had four children: L, born in November 2002, C, born in November 2008, W, born in April 2012, and J, born in April 2013. All four children have been the subject of care proceedings. The proceedings in relation to L and C were commenced in October 2010 and concluded with the making of care and placement orders in May 2011. Both children have since been adopted. W was made the subject of an emergency protection order on the day of birth. Care and placement orders were made in November 2012. J was made the subject of an emergency protection order on the day of birth. The care proceedings have not yet concluded but are likely to do so shortly.

4. Although the present application relates only to J, I must briefly refer to events in relation to L, C and W. The father has posted much material about them on the internet, including their names and photographs. The day after W's birth the father posted on Facebook photographs of W and of a social worker, who was named, taken the day before in the hospital delivery suite.

5. A feature of these postings was the use by the father of language which on occasions was abusive, insulting, threatening and, indeed, highly offensive. Images of L and C posted in February 2012 were accompanied by the comment that each was worth £200,000 to the forced adoption system. The image of W posted in April 2012 was accompanied by text referring to the child as having been "snatched from the delivery suite by Staffordshire County Council." The image of the social worker was accompanied by the caption "This is the picture of [name] social worker waiting in delivery suite to snatch child." A copy of a letter written by the local authority to the father was posted by him on Facebook in May 2012; the accompanying text referred to the social worker in these terms:

> "Waiting in the corner, in the shadows lurks a vampire-ish creature, a wicked, predatory social worker who is about to steal the child from the loving parents. Caught on camera – [name] of Staffordshire social services creeps in the corner like a ghoul, like a dirty secret, like a stain on the wall … You are a

> wicked, wicked woman [name] – God knows exactly what you have done, you must be very afraid, now! You WILL suffer for this."

6. On 14 June 2012 Hedley J made a *contra mundum* reporting restriction order in relation to W. It remains in effect until 2030.

7. J was born at home on 4 April 2013, the local authority says against medical advice. The father announced J's birth on Facebook. It included these words: "SS banging on the door we're not answering" and "ss gone to get epo". I very much doubt that 'SS' was here being used as an innocent acronym for the local authority's social services. The internet is awash with strident criticism of local authorities, described as "the SS" or "SS", where it is quite clear from the context that the reader is meant to link the activities of the local authorities being criticised with those of Hitler's infamous SS. The comparison is grotesque and is, and I have little doubt is intended to be, offensive and insulting – grossly so. I make no such finding against the father in relation to this particular publication but I am willing to proceed on the assumption, though without finding, that the father's intent was indeed to encourage readers to make the comparison.

8. Subsequently the father posted on Facebook what the local authority says was the "covert" filming of the execution of the emergency protection order later the same day. J was referred to by name. The next day, 5 April 2013, it was picked up by a website called UK Column Live, which published it via You Tube. It has subsequently been much 'shared' on Facebook. Two days later, UK Column Live filmed an interview with the father which it uploaded to You Tube on 11 April 2013. The father and the mother are referred to by name. On 12 April 2013 the father gave an undertaking to remove all the material posted on the internet and within his control that would identify any of the children as being or having been subject to care proceedings. On 1 May 2013 he further undertook to use his best endeavours to secure removal of such material from the internet. Footage of an interview with the parents in the precincts of the court on that occasion was subsequently put on the internet by UK Column Live. W and J were identified by name. Further orders were made on 10 May 2013.

9. On 20 May 2013 the local authority wrote to the Chief Constable of Staffordshire alerting him to the material available on the internet in breach of section 97 of the Children Act 1989 (which creates a criminal offence). I understand that the police have indicated that they will not be pursuing the matter any further.

10. On 22 May 2013 committal proceedings were issued against the father alleging breaches of the order made by Hedley J and of the undertaking he had given on 12 April 2013. On 19 June 2013 the father appeared before His Honour Judge Orrell (the details can be found on BAILII). He admitted breaches of the order and undertaking and was sentenced to six weeks' imprisonment for each breach. The sentences were

ordered to run concurrently but were suspended on condition that he complied with the various orders and undertakings.

11. I need not go further into the facts. Unchallenged evidence from the local authority shows that, although some of it has been removed (in part by the father), material about J, as also about the other children, remains on the internet. Of particular concern to the local authority are two sites: Facebook, which is based in California, and UK Column Live, which is based in Plymouth.

The application

12. In these circumstances the local authority applied on 11 June 2013 for a reporting restriction order, an injunction, *contra mundum* in essentially the standard form. The application relates only to J. It is proposed that the order should have effect until J becomes 18 in 2031. Paragraphs 3 and 4 of the draft order put before me contain the core of what is sought:

> "3 This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite service for the purposes of preventing the identification (whether directly or indirectly) of the child of:
>
> (a) The names and addresses of:
>
> (i) The Child, whose details as set out in Schedule 1 to this order;
>
> (ii) The Child's parents ("the parents"), whose details are set out in Schedule 2 to this order;
>
> (iii) Any individual having day-to-day care or medical responsibility for the Child ("a carer");
>
> (iv) The Local Authority named in Schedule 3 of this order;
>
> (v) Any employee of the Local Authority named in Schedule 4 of this order;
>
> (vi) The Child's Children's Guardian named in Schedule 5 of this order;
>
> (vii) Any venue at which the parents have contact with the child.
>
> (b) Any picture, image, voice and/or video recording of and including the child, the child's parents, any employees of

> the Local Authority as specified above and the Children's Guardian.
>
> (c) Any other particulars or information relating to the child
>
> IF, BUT ONLY IF, such publication is likely whether directly or indirectly to lead to the identification of the child as being:
>
> (i) A child subject of proceedings under the Children Act 1989 or the Adoption and Children Act 2002; and/or
>
> (ii) A child who is or has been the subject of allegations of abuse; and/or
>
> (iii) A child who has been removed from the care of her [sic] parents; and/or
>
> (iv) A child whose contact with her parents has been prohibited or restricted
>
> No publication of the text or a summary of this order (except for service of the order …) shall include any of the matters referred to in this paragraph.
>
> 4 This order prohibits any person from seeking any information whether directly or indirectly relating to the child or the parents or a carer from any of the following:
>
> (a) The child;
>
> (b) The parents;
>
> (c) A carer."

13. Schedule 1 of the draft order names the child as being J. Schedule 2 names the parents as being the father and the mother. Schedule 3 names the Local Authority as being Staffordshire County Council. Schedule 4 reads as follows:

> "Allocated Social workers for the child: [name], [name] and any future allocated social worker and/or team manager.
>
> Any contact workers and/or family support workers for the child.
>
> The allocated legal representative for the Local Authority, (currently [name]) in respect of the child's proceedings."

Schedule 5 names the Children's Guardian as being [name] of Cafcass.

14. The application was supported by a witness statement, with accompanying documentation, by J's social worker dated 6 June 2013.

15. On 14 June 2013 Holman J transferred the application for hearing by me.

16. The application and supporting documents were served on the Press Association Copy Direct service by email on 20 June 2013. Receipt was acknowledged the following day. Also on 20 June 2013 the local authority sent the application and supporting documents "by way of service" by both email and 1st class airmail post to Face Book in California. There has been no response.

17. On 20 June 2013 the local authority also sent the application and supporting documents "by way of service" by 1st class post to UK Column Live in Plymouth. Again, there has been no response. I note however, that in response to an earlier letter from the local authority dated 17 April 2013 in relation to J, UK Column Live responded with the following emailed letter on 22 April 2013:

> "The actions of Staffordshire County Council transformative Social Services staff in breaking into a home and wrenching a day old baby from the arms of it's traumatised mother and father in such a cruel, callous and low-empathy manner is of immense public interest in both the UK and World Wide. The wider public has reacted with shock and revulsion … all material used by the UK Column is not only in the overwhelming pubic interest, but has also been widely available on the World Wide Web for some considerable time, and indeed still is. I am also instructed to remind you that the video of your staff 'at work' was recorded on a private video camera in the parent's private dwelling."

18. In accordance with an order I made on 18 June 2013, the application came on for hearing before me on 27 June 2013. The local authority was represented by Mr Alistair MacDonald QC and Ms Julie Moseley. The Children's Guardian had filed a position statement, confirming his support of the local authority's application and saying that he shares the local authority's concerns regarding the father's use of the internet to publicise and disseminate information regarding the current care proceedings, J and the other children. Appropriately the guardian was neither present nor represented, though his solicitor held a watching brief on his behalf. The mother was neither present nor represented, though her solicitors had written to the court saying that she did not oppose the local authority's application and was in agreement with it. The father was neither present nor represented and had seemingly not engaged with the process at all. There was likewise no attendance by or on behalf of any of the media or any internet website.

19. At the end of the hearing I reserved judgment. On 1 July 2013 Mr MacDonald and Ms Moseley filed supplemental written submissions in relation to various matters I had raised.

The legal framework

20. I can take this shortly, because most of this is now too well established to require either elaboration or extensive citation of authority.

21. What may be called the 'automatic restraints' on the publication of information relating to proceedings under the Children Act 1989 are to be found in section 97 of that Act and section 12 of the Administration of Justice Act 1960. Section 97 prohibits the publication of "material which is intended, or likely, to identify" the child. But this prohibition comes to an end once the proceedings have been concluded: *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83, [2007] 1 FLR 11. Section 12 does not protect the identity of anyone involved in the proceedings, not even the child: see *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, para [82], *A v Ward* [2010] EWHC 16 Fam), [2010] 1 FLR 1497, para [79], *In re X and others (Children) (Morgan and others intervening)* [2011] EWHC 1157 (Fam), [2012] 1 WLR 182, sub nom *Re X, Y and Z (Expert Witness)*, [2011] 2 FLR 1437, para [32]. So, just as in the case of experts, there is no statutory protection for the identity of either a local authority or its social workers.

22. The court has power both to relax and to add to the 'automatic restraints.' In exercising this jurisdiction the court must conduct the 'balancing exercise' described in *In re S (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591, and in *A Local Authority v W, L, W, T and R (by the Children's Guardian)* [2005] EWHC 1564 (Fam), [2006] 1 FLR 1. This necessitates what Lord Steyn in *Re S*, para [17], called "an intense focus on the comparative importance of the specific rights being claimed in the individual case". There are, typically, a number of competing interests engaged, protected by Articles 6, 8 and 10 of the Convention. I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [93], and in *Re Webster; Norfolk County Council v Webster and Others* [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, at para [80]. As Lord Steyn pointed out in *Re S*, para [25], it is "necessary to measure the nature of the impact … on the child" of what is in prospect. Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, para [33].

23. I should add two further points. The court may, by an appropriate injunction, extend the anonymity of the child beyond the point at which section 97 of the 1989 Act ceases to have effect in accordance with *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83, [2007] 1 FLR 11. But it is important to note the views expressed in

that case by each of my two immediate predecessors as to the likely need for specific orders protecting a child's identity beyond the conclusion of the proceedings. Both were sceptical. Sir Mark Potter P said this (para [51]):

> "given the existence of section 12 of the Administration of Justice Act 1960 which is apt to prevent publication or reporting of the substance of, or the evidence or issues in, the proceedings (save in so far as permitted by the court or as revealed in any judgment delivered in open court), I do not think that, as a generality, it is right to assume that identification of a child as having been involved in proceedings will involve harm to his or her welfare interests or failure to respect the child's family or private life."

Wall LJ, as he then was, said (para [145]):

> "My impression is that there are unlikely to be many cases in which the continuation of that protection will be required."

I shall return to this below.

24. The court may likewise, by an appropriate injunction, afford anonymity to other participants in the process, for example, an expert, a local authority, or a social worker. Such injunctions, however, will not readily be granted: see the discussions in *A v Ward* [2010] EWHC 16 Fam), [2010] 1 FLR 1497, and *In re X and others (Children) (Morgan and others intervening)* [2011] EWHC 1157 (Fam), [2012] 1 WLR 182, sub nom *Re X, Y and Z (Expert Witness)*, [2011] 2 FLR 1437. As I put it in *A v Ward*, para [181], any such application in relation to an expert or a social worker must be justified by reference to "the particular circumstances or particular vulnerabilities of specific individuals." What I referred to as a 'class' claim, that is, "a claim that any professional who falls into a certain class – and in the case of … social workers … the membership of the class is very large indeed – is, for that reason, and, truth be told, for that reason alone, entitled in current circumstances to have their identity protected, in plain language to have their identity concealed from the public", will not succeed. Anonymity should not be extended to experts, local authorities and social workers unless there are compelling reasons. Again, I shall return to this below.

Transparency

25. Before proceeding any further, I do, however, need to emphasise a number of critically important matters. There is nothing new in what follows but the matters to which I wish to refer are so important that they bear constant repetition.

26. The first matter relates to what it has become conventional to call transparency. There is a pressing need for more transparency, indeed for much more transparency, in the family justice system. There are a number of aspects to this.

27. One is the right of the public to know, the need for the public to be confronted with, what is being done in its name. Nowhere is this more necessary than in relation to care and adoption cases. Such cases, by definition, involve interference, intrusion, by the state, by local authorities and by the court, into family life. In this context the arguments in favour of publicity – in favour of openness, public scrutiny and public accountability – are particularly compelling. The public generally, and not just the professional readers of law reports or similar publications, have a legitimate, indeed a compelling, interest in knowing how the family courts exercise their care jurisdiction: *Re X; London Borough of Barnet v Y and X* [2006] 2 FLR 998, para [166].

28. I have said this many times in the past but it must never be forgotten that, with the state's abandonment of the right to impose capital sentences, 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. When a family judge makes a placement order or an adoption order in relation to a twenty-year old mother's baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 or even 70 years, and the baby for what may be upwards of 80 or even 90 years. We must be vigilant to guard against the risks.

29. This takes me on to the next point. We strive to avoid miscarriages of justice, but human justice is inevitably fallible. The *Oldham* and *Webster* cases stand as terrible warning to everyone involved in the family justice system, the latter as stark illustration of the fact that a miscarriage of justice which comes to light only after the child has been adopted will very probably be irremediable: *W v Oldham Metropolitan Borough Council* [2005] EWCA Civ 1247, [2006] 1 FLR 543, *Oldham Metropolitan Borough Council v GW & PW* [2007] EWHC 136 (Fam), [2007] 2 FLR 597, and *Webster v Norfolk County Council and the Children (By Their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378. Of course, as Wall LJ said in *Webster*, para [197], "the system provides a remedy. It requires determined lawyers and determined parties." So, as I entirely agree, the role of specialist family counsel is vital in ensuring that justice is done and that so far as possible miscarriages of justice are prevented. But that, if I may say so with all respect to my predecessor, is only part of the remedy. We must have the humility to recognise – and to acknowledge – that public debate, and the jealous vigilance of an informed media, have an important role to play in exposing past miscarriages of justice and in preventing possible future miscarriages of justice.

30. Almost ten years ago I said this (*Re B*, para [103]):

> "… We cannot afford to proceed on the blinkered assumption that there have been no miscarriages of justice in the family justice system. This is something that has to be addressed with honesty and candour if the family justice system is not to suffer further loss of public confidence. Open and public debate in the media is essential."

I remain of that view. The passage of the years has done nothing to diminish the point; if anything quite the contrary.

31. The compelling need for transparency in the family justice system is demanded as a matter of both principle and pragmatism. So far as concerns principle I can do no better than repeat what Lord Steyn said in *R v Secretary of State for the Home Department ex p Simms* [2000] 2 AC 115, 126, where, having referred to Holmes J's dissenting judgment in *Abrams v United States* (1919) 250 US 616, he continued:

> "freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. … It facilitates the exposure of errors in the … administration of justice of the country."

32. This takes me on to the next point. It is vital that public confidence in the family justice system is maintained or, if eroded, restored. There is a clear and obvious public interest in maintaining the confidence of the public at large in the courts. It is vitally important, if the administration of justice is to be promoted and public confidence in the courts maintained, that justice be administered in public – or at least in a manner which enables its workings to be properly scrutinised – so that the judges and other participants in the process remain visible and amenable to comment and criticism. This principle, as the Strasbourg court has repeatedly reiterated, is protected by both Article 6 and Article 10 of the Convention. It is a principle of particular importance in the context of care and other public law cases.

33. In relation to the pragmatic realities, I repeat what I said in *A v Ward* [2010] EWHC 16 Fam), [2010] 1 FLR 1497, para [133]:

> "… the law has to have regard to current realities and one of those realities, unhappily, is a decreasing confidence in some quarters in the family justice system – something which although it is often linked to strident complaints about so-called 'secret justice' is too much of the time based upon ignorance, misunderstanding, misrepresentation or worse. The maintenance of public confidence in the judicial system is central to the values which underlie both Art 6 and Art 10 and something which, in my judgment, has to be brought into account as a very weighty factor in any application of the balancing exercise."

34. The family lawyer's reaction to complaints of 'secret justice' tends to be that the charge is unfair, that it confuses a system which is private with one which is secret. This semantic point is, I fear, more attractive to lawyers than to others. It has signally failed to gain acceptance in what Holmes J famously referred to as the "competition of the market": *Abrams v United States* (1919) 250 US 616, 630. The remedy, even if it is probably doomed to only partial success, is – it must be – more transparency;

putting it bluntly, letting the glare of publicity into the family courts. As I went on to say:

> "… where the lack of public confidence is caused even if only in part by misunderstanding or, on occasions, the peddling of falsehoods, then there is surely a resonance, even for the family justice system, in what Brandeis J said so many years ago. I have in mind, of course, not merely what he said in *Whitney v California* (1927) 274 US 357 at 77:
>
> > "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."
>
> I have in mind also his extra-judicial observation that, and I paraphrase, the remedy for such ills is not the enforced silence of judicially conferred anonymity but rather the disinfectant power of exposure to forensic sunlight."

35. In short, the remedy is publicity, "more speech, not enforced silence."

36. The second matter is this. The workings of the family justice system and, very importantly, the views about the system of the mothers and fathers caught up in it, are, as Balcombe LJ put it in *Re W (Wardship: Discharge: Publicity)* [1995] 2 FLR 466, 474, "matters of public interest which can and should be discussed publicly". Many of the issues litigated in the family justice system require open and public debate in the media. I repeat what I said in *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895, paras [360]-[389], about the importance in a free society of parents who feel aggrieved at their experiences of the family justice system being able to express their views publicly about what they conceive to be failings on the part of individual judges or failings in the judicial system. And the same goes, of course, for criticism of local authorities and others.

37. This takes me to the third matter. It is not the role of the judge to seek to exercise any kind of editorial control over the manner in which the media reports information which it is entitled to publish. As I explained in *Re Roddy (A child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 2 FLR 949, para [89]:

> "A judge can assess what is lawful or unlawful, a judge in the Family Division may be called on to assess whether some publication is sufficiently harmful to a child as to warrant preventing it. But judges are not arbiters of taste or decency … It is not the function of the judges to legitimise 'responsible' reporting whilst censoring what some are pleased to call 'irresponsible' reporting … And as the Strasbourg jurisprudence establishes (see *Harris v Harris; Attorney-General v Harris* [2001] 2 FLR 895, at [373]), the freedom of

> expression secured by Art 10 is applicable not only to information or ideas that are favourably received, or regarded as inoffensive, but also to those that offend, shock or disturb the state or any section of the community. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. It is not for the court to substitute its own views for those of the press as to what technique of reporting should be adopted by journalists. Article 10 entitles journalists to adopt a particular form of presentation intended to ensure a particularly telling effect on the average reader. As Neill LJ recognised [in *Re W (Wardship: Publication of Information)* [1992] 1 FLR 99] a tabloid newspaper is entitled to tell the story in a manner which will engage the interest of its readers and the general public."

As the Strasbourg court has repeatedly said, "journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation:" see, for example, *Bergens Tidende v Norway* (2001) 31 EHRR 16, para 49.

38. Comment and criticism may be ill-informed and based, it may be, on misunderstanding or misrepresentation of the facts. If such criticism exceeds what is lawful there are other remedies available. The fear of such criticism, however justified that fear may be, and however unjustified the criticism, is, however, not of itself a justification for prior restraint by injunction of the kind being sought here, even if the criticism is expressed in vigorous, trenchant or outspoken terms. If there is no basis for injuncting a story expressed in the temperate or scholarly language of a legal periodical or the broadsheet press there can be no basis for injuncting the same story simply because it is expressed in the more robust, colourful or intemperate language of the tabloid press or even in language which is crude, insulting and vulgar. A much more robust view must be taken today than previously of what ought rightly to be allowed to pass as permissible criticism. Society is more tolerant today of strong or even offensive language: see on all this *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895, para [372] and *Re Roddy (A child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 2 FLR 949, para [89].

39. It is no part of the function of the court exercising the jurisdiction I am being asked to apply to prevent the dissemination of material because it is defamatory or because its dissemination involves the commission of a criminal offence. If what is published is defamatory, the remedy is an action for defamation, not an application in the Family Division for an injunction. If a criminal offence has been committed, the appropriate course is the commencement of criminal proceedings. If it is suggested that publication should be restrained as involving a criminal offence, that is a matter for the Law Officers.

40. The publicist – I speak generally, not of the present case – may be an unprincipled charlatan seeking to manipulate public opinion by feeding it tendentious accounts of the proceedings. But freedom of speech is not something to be awarded to those who

are thought deserving and denied to those who are thought undeserving. As Lord Oliver of Aylmerton robustly observed in *Attorney-General v Guardian Newspapers Ltd* [1987] 1 WLR 1248, 1320:

> "the liberty of the press is essential to the nature of a free state. The price that we pay is that that liberty may be and sometimes is harnessed to the carriage of liars and charlatans, but that cannot be avoided if the liberty is to be preserved."

The remedy, to repeat, is publicity for the truth which lies concealed behind the unfounded complaints, "more speech, not enforced silence."

The internet

41. Over the last twenty years we have lived through a revolution. In April 2004, responding to submissions from Mr Jonathan Baker QC, as he then was, I referred to the changes brought about by the internet: *F v Newsquest Ltd* [2004] EWHC 762 (Fam), [2004] EMLR 607, para [66]. A little over seven years later, Baker J, as he had then become, recalled that occasion in *Re A (Reporting Restriction Order)* [2011] EWHC 1764 (Fam), [2012] 1 FLR 239, para [35]:

> "It is sobering to recall that the judgment in *F v Newsquest and Others* was delivered in April 2004 at the very moment when Facebook, launched only a few weeks earlier at Harvard, was starting to sweep through the campuses of America. In the subsequent seven years, with the growth of Youtube and Twitter, the internet has had an even greater effect than was anticipated. The range of information available to the public is infinitely greater than twenty years ago".

42. It is probably far too soon to be assessing the true implications of all this, and there is no need for me even to attempt to do so. It suffices for present purposes to make three points, building on what Tugendhat J said in *MXB v East Sussex Hospitals NHS Trust* [2012] EWHC 3279 (QB), para [11]. First, the internet allows anyone, effectively at the click of a mouse, to publish whatever they wish to the entire world – or at least to everyone who has access to the internet. No longer does the campaigner have to persuade a publisher, newspaper or broadcaster to disseminate the message. So there is very little editorial control. The consequence is that the internet is awash with material couched in the most exaggerated, extreme, offensive and often defamatory terms, much of which has only a tenuous connection with objectively verifiable truth. Second, material once placed on the internet remains there indefinitely and, because of powerful search engines, is easily accessible by anyone wanting to track it down. Third, internet providers are often located outside the jurisdiction, in countries where practical difficulties or principled objections stand in the way of enforcing orders of this court.

43. All of this, it goes without saying, poses enormous challenges. The law must develop and adapt, as it always has done down the years in response to other revolutionary technologies. We must not simply throw up our hands in despair and moan that the internet is uncontrollable. Nor can we simply abandon basic legal principles. For example, and despite the highly objectionable nature of much of what is on the internet, we must, at least in the forensic context with which I am here concerned, cleave to the fundamentally important principles referred to in paras [37]-[40] above.

Foreign defendants

44. I need at this point to deal with the legal implications of the fact that some of the internet providers targeted by the local authority are outside the jurisdiction. They are entities incorporated under foreign laws. They have, so far as the local authority is aware, no legal, physical or commercial presence and no assets in this country. Their only connection with this country is that the websites they host are accessible from this country by the internet.

45. This raises an important point of principle of potentially wide significance in a variety of forensic contexts in the family courts: see for a recent example, in the context of section 24(1)(c) of the Matrimonial Causes Act 1973, *BJ v MJ (Financial Order: Overseas Trust)* [2011] EWHC 2708, (Fam) [2012] 1 FLR 667, para [7].

46. But at the outset I make clear that there is, in principle, no objection to the English court in an appropriate case granting injunctive relief against a foreign-based internet website provider. Mr MacDonald has helpfully drawn my attention to *XY v Facebook Ireland Limited* [2012] NIQB 96, *HL (A Minor) v Facebook Incorporated and others* [2013] NIQB 25 and *Tamiz v Google Inc* [2012] EWHC 449 (QB), [2012] EMLR 595, affirmed [2013] EWCA Civ 68, [2013] 1 WLR 2151. Other relevant cases are *G v Wikimedia Foundation Inc* [2009] EWHC 3148 (QB), [2010] EMLR 364, and *Bacon v Automattic Inc and others* [2011] EWHC 1072 (QB), [2012] 1 WLR 753.

47. I can likewise see absolutely no reason why the same principle should not apply equally in the case of what has come to be known as a *contra mundum* injunction. In my judgment there is, in principle, no objection to the English court in an appropriate case granting a *contra mundum* injunction against the world at large, including against foreign-based internet website providers.

48. But it is, nonetheless, necessary to go back to first principles in order to identify when such orders can properly be made.

49. This is a topic on which there is much authority, the earliest at least as far back as *Penn v Lord Baltimore* (1750) 1 Ves Sen 444. There is, however, no need to go that far back into history. I can start with two comparatively modern cases where the older learning was considered: *Hamlin v Hamlin* [1986] Fam 11 and *Wookey v Wookey, In re S (A Minor)* [1991] Fam 121.

50. In *Hamlin v Hamlin* the question was whether the court has jurisdiction to make an order under section 37 of the Matrimonial Causes Act 1973 in respect of foreign realty. Kerr LJ identified some "fundamental points" (page 18):

> "The jurisdiction of the courts in this field is exercised in personam against persons who are amenable, as a last resort, to the courts' coercive powers to enforce orders made against them. The orders do not operate directly upon the property, let alone in rem … it must always be borne in mind that there is a crucial difference between the existence of jurisdiction, in the sense of the competence of the court to make orders, and the question whether the jurisdiction should in fact be exercised in a given case as a matter of discretion. Thus, it is a fundamental principle that, in the exercise of their discretion, our courts will not make orders which they cannot enforce. It follows, as shown by the cases, that in relation to property situated abroad, even if the parties are present within the jurisdiction, the courts will in general not make any order the effectiveness of which depends upon its recognition or enforcement by the courts or other authorities of the foreign locus if the evidence shows that these would be denied. However, such cases go to discretion and not to jurisdiction."

He returned to the latter point a little later. Having referred to the decision of Baker J in *Razelos v Razelos (No 2)* [1970] 1 WLR 392 (a case where an order was made in relation to land in Greece against a husband resident in this country), Kerr LJ continued (page 23):

> "if there had been evidence in that case that the order would for some reason have been wholly ineffective under Greek law, then it might well have been refused in the same way as in some of the earlier authorities to which I have referred. For the same reason the court would no doubt refuse to set aside a disposition of foreign land under section 37(2)(b) of the Act of 1973 if the evidence showed that under the foreign law or for some other reason the order would be ineffective. Again, however, this does not by itself affect the existence of the jurisdiction, ie the competence of the court to consider whether or not its jurisdiction should be exercised in the circumstances."

51. In *Wookey* the question was whether an injunction can properly be granted against someone who lacks the mental capacity to understand the order or who is under age. Butler-Sloss LJ said this (page 130):

> "The grant of an injunction is a discretionary remedy derived from the equitable jurisdiction which acts in personam and only against those who are amenable to its jurisdiction; nor will it act in vain by granting an injunction which is idle and ineffectual. An injunction should not, therefore, be granted to

> impose an obligation to do something which is impossible or cannot be enforced. The injunction must serve a useful purpose for the person seeking the relief and there must be a real possibility that the order, if made, will be enforceable by the process in personam. However, the courts expect and assume that their orders will be obeyed and will not normally refuse an injunction because of the respondent's likely disobedience to the order."

52. As can be seen, there are two separate principles in play. First, that the person who is to be injuncted must be amenable to the court's jurisdiction. That goes to jurisdiction. Second, and because equity does not act in vain, that the court will not grant an injunction which is idle and ineffectual. That goes to discretion. Both require some elaboration. I deal first with jurisdiction.

53. The general principle is accurately stated in Kerr on Injunctions (ed 6, 1927) p 11, in a passage approved by the Court of Appeal in *In re Liddell's Settlement Trusts* [1936] Ch 365:[1]

> "In granting injunctions the Court operates *in personam*. The person to whom its orders are addressed must be within the reach of the Court or amenable to its jurisdiction. But the Court will not suffer any one within its reach to do what is contrary to its notions of equity, merely because the act to be done may be, in point of locality, beyond its jurisdiction.
>
> As a consequence of the rule, that in granting an injunction the Court operates *in personam*, the Court may exercise jurisdiction independently of the locality of the act to be done, provided the person against whom relief is sought is within the reach and amenable to the process of the Court. This jurisdiction is not grounded upon any pretension to the exercise of judicial or administrative rights abroad, but on the circumstance of the person to whom the order is addressed being within the reach of the Court."

54. *Re Liddell* establishes two further propositions. The first is that a defendant outside the jurisdiction is, for this purpose, "within the reach of the court" if properly served in accordance with the relevant rules of court. In *Re Liddell* the relevant rule (RSC Order XI, Rule 1) permitted service out of the jurisdiction with the leave of the court because the defendant was a British subject ordinarily resident within the jurisdiction. In *Bacon v Automattic Inc and others* [2011] EWHC 1072 (QB), [2012] 1 WLR 753, para [18], the relevant rule (CPR PD6B, para 3.1(2)) permitted service out of the

---

[1] The case may seem elderly, but the facts have a contemporary resonance. The wife had abducted the children and taken them to New York. The husband (better known to history as Guy Liddell, later Deputy Director-General of MI5) thereupon made the children wards of court. He sought, and obtained, an injunction requiring his wife, then in New York, to bring the children back to the jurisdiction.

jurisdiction with the leave of the court because the claim was for an injunction ordering the foreign defendant to do an act within the jurisdiction.

55. The other proposition established by *Re Liddell* is that where following such service the defendant is within the reach of the court, the court has jurisdiction to grant an injunction irrespective of the locality of the act to be done. As Romer LJ put it (p 374):

> "It is plain that this Court has jurisdiction to order a person in this country to perform an act abroad; but it is said that this Court has no jurisdiction to make an order requiring a person resident abroad to do an act there. Notwithstanding the strenuous argument of Mr. Archer it appears to me that his proposition is wholly untenable. The moment a person is properly served under the provisions of Order XI that person, so far as the jurisdiction of this Court is concerned, is precisely in the same position as a person who is in this country."

56. So it follows, in my judgment, that the critical question in relation to jurisdiction is whether there can be, and if there can whether there has in fact been, service out of the jurisdiction.

57. There is, in this respect, a fundamentally important difference between the provisions applicable in ordinary civil proceedings and those applicable in family proceedings.

58. Subject to various exceptions that are not relevant for present purposes, service of civil proceedings out of the jurisdiction requires the prior permission of the English court: CPR 6.36. The grounds upon which such permission can be given are set out in CPR PD6B para 3.1. Importantly for present purposes, although PD6B para 3.1(2) enables the court to give permission to serve out of the jurisdiction where a claim is made for an injunction, this is only where the claim is for an injunction "ordering the defendant to do or refrain from doing an act *within* the jurisdiction" (emphasis added).

59. In contrast, FPR 6.41 provides as follows:

> "Permission to serve not required
>
> Any document to be served for the purposes of these rules may be served out of the jurisdiction without the permission of the court."

That provision, I might add, plainly applies to proceedings, such as those before me, brought under the inherent jurisdiction: see FPR 6.1 and 12.1(1)(d). So the question in a case such as this is not whether the proceedings can be served out of the jurisdiction but whether they have been. That is regulated by FPR 6.43(3), which provides that:

> "Where the applicant wishes to serve an application form, or other document, on a respondent out of the United Kingdom, it may be served by any method
>
> (a) provided for by
>
> (i) rule 6.44 (service in accordance with the Service Regulation);
>
> (ii) rule 6.45 (service through foreign governments, judicial authorities and British Consular authorities); or
>
> (b) permitted by the law of the country in which it is to be served."

In the present case, FPR 6.44 cannot apply, because the Service Regulation operates only in the European Union, and there was no attempt to serve in accordance with FPR 6.45. So the question becomes whether service by email or letter to California is, within the meaning of the rule, "permitted by the law of the relevant foreign country".

60. I turn to the question of discretion. There is a tension here. On the one hand the starting point is that the courts expect and assume that their orders will be obeyed and will not normally refuse an injunction because of the respondent's likely disobedience to the order. Romer LJ put the point forcefully in *Re Liddell* (page 374):

> "It has been further contended that even so this order can never be enforced against Mrs Liddell if she chooses to disobey it and that the sequestration of her income would not be for the benefit of the children. It is not the habit of this Court in considering whether or not it will make an order to contemplate the possibility that it will not be obeyed."[2]

61. On the other hand, and because equity does not act in vain, the court will not grant an injunction which is ineffectual or, to use the Latin, a mere brutum fulmen. As Kerr LJ put it in the passage from which I have already quoted, "our courts will not make orders which they cannot enforce."

62. What approach should the court adopt in coming to a decision as to how to exercise its discretion? This is a matter for another day, when there is fuller argument than was appropriate in the present case. Here I merely note that in *Wookey* Butler-Sloss LJ said that "there must be a real possibility that the order, if made, will be enforceable," while in *Dadourian Group International Inc v Simms and others (Practice Note)*

---

[2] In *Re Liddle* itself there was a writ of sequestration, so the court could perhaps be more sanguine than otherwise that its order would be obeyed by the mother. As Slesser LJ said (page 373): "It has been said that this Court will not make an order which will be mere brutum fulmen. It seems that there has been a writ of sequestration. We are not to assume that the lady will necessarily disobey the Court or ignore the sanction imposed if she continues contumacious."

[2006] EWCA Civ 399, [2006] 1 WLR 2499, para [35], Arden LJ said that "the court must be astute to see that there is a real prospect that something will be gained."

63. Drawing the threads together, the court is going to need evidence on two distinct matters. First, in relation to jurisdiction, the court will expect the applicant to put before the court evidence that service by email or letter or as the case may be is permitted by the law of the relevant foreign country: *Bacon v Automattic Inc and others* [2011] EWHC 1072 (QB), [2012] 1 WLR 753, para [53]. Second, in relation to discretion, the court will need evidence as to the applicable law and practice in the foreign court, evidence as to the nature of any proposed proceedings to be commenced in the foreign jurisdiction, and evidence as to whether the foreign court would be likely to enforce the injunction: compare *Dadourian Group International Inc v Simms and others (Practice Note)* [2006] EWCA Civ 399, [2006] 1 WLR 2499. Where the injunction, as here, engages freedom of speech, the evidence will also have to detail the foreign jurisdiction's approach to such matters. Given the First Amendment, this is obviously particularly important in the case of the United States of America: cf the comments of His Honour Judge Parkes QC in *Davison v Habeeb and others* [2011] EWHC 3031 (QB), para [69].

64. If what is being sought is an injunction against named defendants it will usually be appropriate for all this evidence to be available *before* the court is invited to grant the injunction. If, however, what is being sought is, as in the present case, an injunction in *contra mundum* form, it may be more appropriate to adopt the same procedure as with worldwide freezing (Mareva) orders: see *Dadourian Group International Inc v Simms and others (Practice Note)* [2006] EWCA Civ 399, [2006] 1 WLR 2499, and the form of freezing injunction in the Annex to CPR PD 25A.

65. There the practice is to require the applicant to give the court an undertaking that "The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales" and to include the following in the order:

> "Persons outside England and Wales
>
> (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.
>
> (2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –
>
> (a) the Respondent or his officer or agent appointed by power of attorney;
>
> (b) any person who –
>
> (i) is subject to the jurisdiction of this court;

> (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and
>
> (iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and
>
> (c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state."

The detailed evidential investigation of foreign law and procedure can then be postponed until such time as the applicant seeks permission from the English court to enforce abroad.

Discussion

66. Before I arrive at the central issue for decision there are a number of preliminary points to be made.

Discussion – preliminary points

67. Mr MacDonald accepts the principle that the court should not exercise its powers to grant a *contra mundum* injunction if the interests of the child can properly and adequately be protected by an order under section 39 of the Children and Young Persons Act 1933: see *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895, para [341]. But, as he correctly points out, the now rather elderly section 39, does not, even in its more recently amended form, extend to the internet or social media: see *MXB v East Sussex Hospitals NHS Trust* [2012] EWHC 3279 (QB), para [4]. So, he submits, and I agree, if relief *contra mundum* is appropriate, an injunction is required rather than an order under section 39.

68. The next point derives from the fact that no evidence of any kind has been put before me dealing with any of the matters referred to in para [63] above. It follows that any *contra mundum* injunction I am persuaded to grant should contain an undertaking by the local authority that it "will not without the permission of the court seek to enforce this order in any country outside England and Wales" and, suitably adapted, the other provisions referred to in para [65] above.

69. The next point, and it is one of real importance, relates to what, in my judgment, is the thoroughly undesirable form of the order I was being invited to make. I have set out the key provisions above. A close reading of paragraph 3 reveals that the purpose of the proposed injunction is "preventing the identification (whether directly or indirectly) of the child" and that all it restrains is a "publication … likely whether

directly or indirectly to lead to the identification of the child". It does not, in other words, seek to prevent identification of the local authority, its social workers or others involved in the process. Mr MacDonald accepted that what he was seeking was indeed limited in that way. He was, if I may say so, wise to confine his claim. Nothing I have read in the evidence begins to suggest that this could be a case in which it would be appropriate to make an order of the kind referred to in para [24] above. I repeat what I said there.

70. But if this is so, why does the draft contain paragraphs 3(a)(iv), (v) and (vi), the latter part of paragraph 3(b), and Schedules 3, 4 and 5? Their inclusion can serve only to confuse. In the first place, I simply fail to see how naming the local authority, the social workers, the local authority's legal representative or the children's guardian, or even all of them, can in any realistic way be said to make it "likely" that J will be identified, even indirectly. The risk is merely fanciful. But if this is so, then inclusion of reference to them is apt to mislead. The casual reader may think that the order prohibits the naming of any of them. The more careful reader will realise that this is not so, but may nonetheless assume that the court thought that naming them might lead to the identification of the child and may thus be deterred from doing so for fear of falling foul of the order. Either way, the effect is highly undesirable, tending as it does to confer indirectly the very anonymity which the court did not intend. All this verbiage must be removed, for otherwise it is likely to have a seriously chilling effect. When I put the point to Mr MacDonald he did not demur. A similar point can be made about paragraphs 3(a)(iii) and (vii) and 3(c). The wording of paragraph 3(c) in particular – "*any other* particulars or information *relating to* the child" – is very wide, indeed unlimited. It would potentially embrace almost everything in paragraphs 3(a)(iii)-(vii) were they to be omitted, as well as much more besides. So if they are to go, so too should paragraph 3(c). Surely all that is needed at most are paragraphs 3(a)(i) and (ii) and the first part of paragraph 3(b).

71. As a quite separate point, what is the justification for including paragraph 4, in particular paragraph 4(b)? It is very widely phrased, preventing anyone from seeking, for example from the father, "any information" relating not merely to J but also to the father himself. The father wishes to share such information with others and, so long as he keeps within the confines of section 12 of the 1960 Act, why should he not be able to do so? And why should those who may wish to hear his views not be permitted to approach him? On one view this is in effect, if not intention, a means of indirectly gagging the father so that what from the local authority's perspective are his unpalatable views are less likely to see the light of day. It is one thing to say that something shall not be published if and insofar as it is prejudicial to J; this is very different and far more sweeping.

72. The draft order put before me contained a 'public domain' proviso in standard form.[3] Mr MacDonald submitted, however, that in the circumstances such a proviso was inappropriate. He referred me in this connection to *F v Newsquest Ltd* [2004] EWHC 762 (Fam), [2004] EMLR 607, *JIH v News Group Newspapers* [2010] EWHC 2818

[3] For the origins and form of the 'public domain' proviso see *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895, paras [92], [350], [353].

(QB), [2011] EMLR 177, para [59], *CTB v News Group Newspapers Ltd and Thomas* [2011] EWHC 1326 (QB), paras [23]-[24], and *Re A (Reporting Restriction Order)* [2011] EWHC 1764 (Fam), [2012] 1 FLR 239. I agree with Mr MacDonald that a public domain proviso would not be appropriate in this case.

Discussion – the central issue

73. The central issue is easily identified: Is there justification for extending J's anonymity beyond the point, almost certainly in the near future, at which section 97 of the 1989 Act ceases to bite?

74. The only *evidence* on this point is in the social worker's witness statement, which says only this:

> "The Authority is concerned that the material that is currently available on specific internet sites and available on the World Wide Web identifies these children as children who are or have been subject to proceedings under the Children Act 1989.
>
> The Authority is extremely concerned that such media exposure not only is in breach of the children's right to privacy but may also put the children at risk of harm now or in the future."

The nature of the harm is neither identified nor particularised.

75. The court has to proceed on the basis of the evidence, though this does not of course mean that one needs the evidence of child psychiatrists or specific evidence of, for instance, psychological harm to the child. The court can use its common sense: see *In re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 212, 226, and *Kelly v British Broadcasting Corpn* [2001] Fam 59, 85. That said, one might perhaps have hoped for something a little more detailed than I was given, though Mr MacDonald in his very helpful skeleton argument went much of the way to making good the deficiency.

76. Mr MacDonald's submissions can be distilled into the following propositions:

i) Neither section 97 of the 1989 Act nor the injunctions granted against the father have been effective to control the appearance and retention on the internet of material the publication of which is in breach of those statutory and judicially imposed prohibitions. Hence a *contra mundum* injunction is necessary.

ii) Such publication during the currency of the proceedings is not merely contrary to those prohibitions; it is neither in the public interest nor compatible with J's

welfare. In particular, publication during the currency of the proceedings of J's identifying details on internet sites whose ethos is one of campaign against what those sites contend amounts to 'child kidnap' or 'forced adoption', with comments on the morality of those involved and calls to find and rescue children, risks narrowing J's future placement options *if* he is unable to return to his family, by discouraging potential adopters should such publicity become more widely known.

iii) In the medium to longer term, as J gets older, his discovery and ongoing knowledge that not only was he a child who was the subject of care proceedings but that graphic and potentially embarrassing material demonstrating that fact exists in a form accessible by the public, and which may be re-published at any time and for potentially nefarious purposes – for example, Mr MacDonald suggests, bullying – carries with it a number of serious risks: (a) a continuing adverse emotional effect on J, (b) an adverse impact on J's development, without outside interference, of relationships with other human beings (the reference here to the well-established jurisprudence on Article 8 will be noted), and (c) additional intrusion on top of that which has already occurred, further impacting on his right to respect for family and private life. In this connection Mr MacDonald contrasts the controlled and sensitive way in which the relevant information can be conveyed to J by professionals involved in 'life story' work with the uncontrolled insensitivities of the internet.

iv) In other words, the perpetuation of what has already occurred and the possibility of further future publications, whether by the father or others, directly and very significantly engages J's Article 8 rights. And, moreover, as Mr MacDonald points out, in a situation where, in contrast to the child in *Re S*, whose mother, the defendant in a murder trial, was the real subject of the story, here J features as the central character in all the publicity.

v) The important rights of the media and the public protected by Article 10 are acknowledged, as is the importance of permitting critical, even very critical, discussion of the family justice system, but none of this can be allowed to go so far as to prejudice the rights of the individual children involved. There is a distinction to be drawn between, on the one hand, freedom to discuss the operation of the family justice system and the conduct of individual cases and, on the other hand, the freedom to disseminate identifying particulars of specific children which serves to cause, or risk causing, harm to them. There is plainly a public interest in ensuring that legitimate debate protected by Article 10 does not become a disproportionate interference in a child's rights under Article 8. Article 10 cannot be allowed to justify conduct which interferes with a child's Article 8 rights to an extent that is harmful to him (as here in J's case).

vi) Furthermore, there is a public interest in not allowing Article 10 to be used as a means of circumventing statutory protections put in place by Parliament in respect of children who are the subject of care proceedings.

vii) The need to prevent interference with J's Article 8 rights by restraining the publication of identifying information outweighs the need to prevent interference in Article 10 rights by not restraining such publication. The order sought is proportionate.

77. As can be seen, Mr MacDonald's submissions really fall into two parts. So long as the proceedings remain on foot, he submits that an order is required because the existing restraints have proved inadequate to control the placing of identifying material on the internet. In relation to the period after the proceedings have come to an end, he submits that this is a case where, despite what was said in *Clayton v Clayton*, continuing restraint is required, essentially because of the fact that identifying information, damaging to J, will remain, indefinitely and easily accessible, on the internet.

78. In the particular circumstances of this rather unusual case I am persuaded that Mr MacDonald makes good both those propositions, though I do not agree with him that this justifies an order as wide as the one he seeks.

79. The fact that the court has already made orders *in personam* against the father and extracted various undertaking from him is obviously relevant but cannot be determinative of the present application, which seeks the restraint of the world at large. So the application has to be considered on its own merits.

80. For reasons I have already explained, an injunction which cannot otherwise be justified is not to be granted because of the manner or style in which the material is being presented on the internet, nor to spare the blushes of those being attacked, however abusive and unjustified those attacks may be. The only justification, as Mr MacDonald correctly acknowledges, is if restraint is necessary in order to protect J's Article 8 rights and, in particular, J's privacy and anonymity.

81. There is, however, in my judgment, a crucial difference in a case such as this, where we are concerned with a baby a day old (though the same point will no doubt apply to somewhat older children), between restraining publication of the child's name and restraining publication of visual images of the child. There are three reasons for this. First, the reality is that although anyone can identify a baby by its name it is almost impossible, unless you are the parent, to distinguish between photographs of children of that age who have the same general appearance. Second, the reality, at least with current domestic technology where searches of the internet are by word (name) and not image, is that unless you have a name, or a mass of other identifying details, it is going to be very difficult, if not impossible, to locate anonymous postings about an individual. Third, in a case such as this, although there may be a powerful argument

for asserting that the baby who features in a filmed episode should not be named, there are at least as powerful arguments for asserting that the publication on the internet of film such as I am concerned with here, commenting on the operation of the care system and conveying a no doubt powerful and disturbing message, should not be prevented merely because it includes images of the baby.

82. Assessing these three factors together, there is, it seems to me, a very powerful argument that the balance between the public interest in discussing the workings of the system and the personal privacy and welfare interests of the child is best and most proportionately struck by restraining the naming of the child while not restraining the publication of images of the child. The effect of this is that (a) the essential vice – the identification of the child – is in large measure prevented, (b) internet searches are most unlikely to provide any meaningful 'link' in the searcher's mind with the particular child, and (c) the public debate is enabled to continue with the public having access to the footage albeit not knowing who the anonymous child is whose image is on view.

83. That, in my judgment, is the balance that needs to be struck in this case if I am to weigh and balance, as I must, J's powerful private interests against the powerful public interests that are plainly engaged.

Conclusion

84. I shall accordingly grant a *contra mundum* injunction, expressed to last until the date of J's 18th birthday. It will omit paragraphs 3(a)(iii)-(vii), paragraph 3(b), paragraph 3(c), paragraph 4 and Schedules 3, 4 and 5 of the draft which was put before me. It will *not* be subject to a 'public domain' proviso. It will contain, suitably adapted, the provisions referred to in para [65] above.