Neutral Citation Number: [2014] EWHC 6 (Fam)

Case number omitted

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 January 2014

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the Matter of E (A Child)

- -
- -

Mr Martin Downs for the applicant (local authority)
Mr William J Tyler for the first respondent (mother)
Ms Jacqueline Roach for the third respondent (E by his children's guardian)
Ms Mary Lazarus for the fourth respondent (maternal aunt)
The second respondent (father) was neither present nor represented

The names of the solicitors are omitted to protect E's identity

Hearing dates: 17-20 December 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

Sir James Munby, President of the Family Division :

1. I have been hearing care and wardship proceedings in relation to a 12 year old Slovakian boy. The case has drawn attention to three issues of very considerable general importance on which it is convenient that I give a public judgment, separate from the judgment I shall give explaining the reasons for my decision in the particular case.

The issues

2. These three issues are common to many care cases involving families from other countries in the European Union. They concern the application in such cases of (i) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility regulation, commonly known as Brussels II revised (BIIR), (ii) Articles 36 and 37 of the Vienna Convention on Consular Relations of 24 April 1963, and (iii) the jurisprudence on reporting restriction orders which I recently considered in *Re J (A Child)* [2013] EWHC 2694 (Fam) and again in *Re P (A Child)* [2013] EWHC 4048 (Fam).

3. Before addressing these issues in turn I need to say a little about the particular proceedings which have been before me. I confine myself in this judgment to what is required to put the points I wish to make in context.

The background facts

4. E was born in 2001. Although he was born in this country and has lived here all his life, both he and his mother are citizens of the Slovak Republic. E is also a British citizen. His father is British.

5. On 19 March 2013 the local authority began care proceedings, which were transferred the same day from the Family Proceedings Court to the County Court. On 21 March 2013 the District Judge made an interim care order. It was extended on 2 April 2013. On 22 April 2013 the same District Judge made a further interim care order and transferred the matter to the High Court on the ground that there were significant complexities in the case (one being the potential use of section 3 of the Mental Health Act 1983) and that it might be appropriate to invoke the wardship jurisdiction. The order recorded that the matter was listed for hearing in the High Court on 3 May 2013.

6. On 1 May 2013, and without the prior sanction of either the court, the mother or the local authority (which at that time shared parental responsibility with the mother), E was transferred to hospital and detained pursuant to section 2 of the 1983 Act. The local authority applied urgently the same day to Pauffley J, who made E a ward of

court. The matter came before Sir Peter Singer, sitting as a Judge of the High Court, on 3 May 2013. He ordered that E remain a ward of court, discharged the interim care order, and gave comprehensive directions, including directions in relation to E's treatment, which there is no need for me to rehearse.

7. Thereafter the matter came back before Sir Peter on 28 May 2013, 8 July 2013, and 15 August 2013. On the last occasion the court was told that the mother had left the country and returned to Slovakia. Sir Peter permitted Mr Igor Pokojný, Counsellor-Minister and Head of the Consular Section of the Embassy of the Slovak Republic in London to be present at the hearing "in a non-participatory capacity as an observer." The order records concerns about reporting of the case in the Slovakian press. Sir Peter directed that the matter be listed before me for a further hearing on 21 August 2013.

8. On 16 August 2013 the Slovakian Central Authority made a request to the English Central Authority seeking information pursuant to Article 55 of BIIR. The request referred to the fact that a media and social media campaign had been started in Slovakia and that the case had become "extremely sensitive" and "a focus of attention" in Slovakia. It sought information about the outcome of the forthcoming hearing on 21 August 2013.

9. At the hearing on 21 August 2013 I gave Mr Pokojný permission to be present, again as an observer in a non-participatory capacity, both at that hearing and, subject to any further order of the court, at all future hearings. I gave various directions, including a direction giving the mother's solicitor leave to come off the record as the solicitor acting for her. In response to the Article 55 request, I permitted the local authority to disclose to the Slovakian Central Authority the order I made at the conclusion of the hearing and, subject to any further order of the court, any further orders; I permitted Mr Pokojný to provide an account of the hearing to the Slovakian Central Authority; and I permitted the Slovakian Central Authority to obtain a transcript of the hearing.

10. There were further hearings before me on 30 August 2013, 25 September 2013 and 21 October 2013. Each was attended by Mr Pokojný. By now the mother was again represented. At each I gave various directions designed in part to encourage the mother, who was still in Slovakia and refusing to return, to participate in the proceedings (one of the issues was as to her capacity to conduct the proceedings).

11. On 24 September 2013 the Slovakian Central Authority had submitted a formal statement to the court, addressed to me, stating that "we do not intend to dispute jurisdiction of the court in England and Wales and fully accept the competence of the English Court." Amongst other helpful things, the statement concluded with the observation that "the minor child being also a citizen of the Slovak Republic, we would like to assure the Court that should the need arise, the Slovak Republic is fully prepared to provide the Court with cooperation and assistance" – as indeed it, and its representative Mr Pokojný, have since done, for which I am most grateful. The order I

made the following day, 25 September 2013, included a direction that the local authority disclose various documents to the Slovakian Central Authority.

12. The final hearing took place before me over four days starting on 17 December 2013. Again, Mr Pokojný attended throughout. It suffices for present purposes to note that I decided that, since it had not been demonstrated that the mother lacked litigation capacity, the hearing was to be conducted on the basis that she did. I approved a care plan providing for E to be placed in the care of the local authority but living with his maternal aunt. The wardship was to be discharged. I decided to make a reporting restriction order. I reserved judgment.

The wider context

13. Leaving on one side altogether the circumstances of this particular case, there is a wider context that cannot be ignored. It is one of frequently voiced complaints that the courts of England and Wales are exorbitant in their exercise of the care jurisdiction over children from other European countries. There are specific complaints that the courts of England and Wales do not pay adequate heed to BIIR and that public authorities do not pay adequate heed to the Vienna Convention.

14. In the nature of things it is difficult to know to what extent such complaints are justified. What is clear, however, is that the number of care cases involving children from other European countries has risen sharply in recent years and that significant numbers of care cases now involve such children. It is timely therefore to draw the attention of practitioners, and indeed the courts, to certain steps which can, and I suggest from now on should, be taken with a view to ameliorating such concerns.

15. It would be idle to ignore the fact that these concerns are only exacerbated by the fact that the United Kingdom is unusual in Europe in permitting the total severance of family ties without parental consent: see *Re B-S (Children)* [2013] EWCA Civ 1146, para 19, referring to the speech of Baroness Hale in *Down Lisburn Health and Social Services Trust and another v H and another* [2006] UKHL 36, para 34. Thus the outcome of care proceedings in England and Wales may be that a child who is a national of another European country is adopted by an English family notwithstanding the vigorous protests of the child's non-English parents. No doubt, from our perspective that is in the best interests of the child – indeed, unless a judge is satisfied that it really is in the child's best interests no such order can be made. But we need to recognise that the judicial and other State authorities in some countries that are members of the European Union and parties to the BIIR regime may take a very different view and may indeed look askance at our whole approach to such cases.

16. Before turning to address the three specific issues I have identified, a more general point needs to be made. Its importance cannot be over-stressed.

17. The English family justice system is now part of a much wider system of international family justice exemplified by such instruments as the various Hague Conventions and, in the purely European context, by BIIR. Looking no further afield, we are part of the European family of nations. We share common values. In particular in this context we share the values enshrined in BIIR.

18. In *In re T (A Child) (Care Proceedings: Request to Assume Jurisdiction)* [2013] EWHC 521 (Fam), [2013] Fam 253, para 37, Mostyn J expressed his complete disagreement with an approach which he characterised as "a chauvinistic argument which says that the authorities of the Republic of Slovakia have got it all wrong and that we know better how to deal with the best interests of this Slovakian citizen". He added that the court "should not descend to some kind of divisive value judgement about the laws and procedures of our European neighbours." I profoundly and emphatically agree. That was a case which, as it happened, also involved Slovakia. But the point applies with equal force in relation to every country which is a member of the European Union.

19. On appeal in the same case, *Re K (A Child)* [2013] EWCA Civ 895, para 24, Thorpe LJ said that:

> "there is a fundamental flaw in [counsel's] submission since it essentially seeks to elevate the professional view of experts in this jurisdiction over the professional view of experts in the jurisdiction of another Member State. That is, in my view, impermissible. We must take it that the child protection services and the judicial services in Slovakia are no less competent than the social and judicial services in this jurisdiction".

Again I emphatically agree.

20. Perhaps I may be permitted in this context to repeat what I said in an address at the International Hague Network of Judges Conference at Windsor on 17 July 2013:

> "Over the last few decades interdisciplinarity has become embedded in our whole approach to family law and practice. And international co-operation at every level has become a vital component not merely in the day to day practice of family law but in our thinking about family law and where it should go …
>
> For the jobbing advocate or judge the greatest changes down the years have been driven first by the Hague Convention (now the Hague Conventions) and more recently, in the European context, by the Regulation commonly known as Brussels IIR. They have exposed us, often if only in translation, to what our judicial colleagues in other jurisdictions are doing in a wide

> range of family cases. They have taught us the sins of insularity. They have taught us that there are other equally effective ways of doing things which once upon a time we assumed could only be done as we were accustomed to doing them. They have taught us that, beneath all the apparent differences in language and legal system, family judges around the world are daily engaged on very much the same task, using very much the same tools and applying the same insights and approaches as those we are familiar with. Most important of all they have taught that we can, as we must, both respect and trust our judicial colleagues abroad.
>
> It is so deeply engrained in us that the child's welfare is paramount, and that we have a personal responsibility for the child, that we sometimes find it hard to accept that we must demit that responsibility to another judge, sitting perhaps in a far away country with a very different legal system. But we must, and we do. International comity, international judicial comity, is not some empty phrase; it is the daily reality of our courts. And be in no doubt: it is immensely to the benefit of children generally that it should be."

21. These are vital messages that we must always have in mind. Nowhere, if I may say so, is the need more pressing than in the context of care cases. It is accordingly on care cases that I focus what I have to say.

22. I return to the three specific issues I identified above.

BIIR

23. It is a curious fact that the jurisdictional reach of the courts of England and Wales in relation to public law (care) proceedings brought under Part IV of the Children Act 1989 is not spelt out in any statutory provision (as it is in relation to private law proceedings brought under Part II of the Children Act 1989 by sections 2 and 3 of the Family Law Act 1986). The rule developed by the judges of the Family Division is that what normally founds jurisdiction in such a case is the child being either habitually resident or actually present in England and Wales at the relevant time: see *Re R (Care Orders: Jurisdiction)* [1995] 1 FLR 711, *Re M (Care Orders: Jurisdiction)* [1997] 1 FLR 456 and *Lewisham London Borough Council v D (Criteria for Territorial Jurisdiction in Public Law Proceedings)* [2008] 2 FLR 1449.

24. However, in the case of a child from another European country this is fundamentally modified by BIIR. The key point is that, where BIIR applies, the courts of England and Wales do not have jurisdiction merely because the child is present within England and Wales. The basic principle, set out in Article 8(1), is that jurisdiction under BIIR is dependent upon habitual residence. It is well established by both European and

domestic case-law that BIIR applies to care proceedings. It follows that the courts of England and Wales do not have jurisdiction to make a care order merely because the child is present within England and Wales. The starting point in every such case where there is a European dimension is, therefore, an inquiry as to where the child is habitually resident.

25. In determining questions of habitual residence the courts will apply the principles explained in *A v A and another (Children: Habitual Residence) (Reunite International Child Abduction Centre and others intervening)* [2013] UKSC 60, [2013] 3 WLR 761.

26. The provisions of BIIR which are relevant for present purposes fall into two groups: first, those which determine whether the courts of England and Wales have jurisdiction; and, second, those which apply where the courts of England and Wales do have jurisdiction.

27. The relevant provisions in relation to jurisdiction are to be found in Articles 8(1), 12, 13(1), 14, 17 and 20. Article 8(1) contains the general principle that the court which has jurisdiction is the court of the Member State where the "child … is habitually resident … at the time the court is seised." Article 12 provides that if the court of a Member State is exercising jurisdiction on an application for divorce, legal separation or marriage annulment it shall have jurisdiction in "any matter relating to parental responsibility connected with that application." Article 13(1) provides that "the courts of the Member State where the child is present" shall have jurisdiction where the child's habitual residence "cannot be established." Article 14 provides for a residual jurisdiction where no court of a Member State has jurisdiction pursuant to Articles 8 to 13. Jurisdiction is then to be determined in each Member State by the laws of that State, in the case of England and Wales, therefore, on the basis of either habitual residence or actual presence.

28. Pausing at that point, and leaving on one side those cases in which either Article 12 or Article 14 applies, it will be seen that the courts of England and Wales have jurisdiction in a care case involving a child only if either (i) the child is habitually resident in England and Wales (Article 8(1)), or (ii) the habitual residence of a child "present" in England and Wales "cannot be established" (Article 13(1)).

29. Article 17 provides that:

> "Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction."

This provision is mandatory and applies whether or not there are extant proceedings in the courts of the other Member State: see *Re B (A child)* [2013] EWCA Civ 1434, paras 76, 80.

30. The only other relevant provision is Article 20, which provides for a court in an "urgent" case to take "provisional, including protective, measures" until such time as the court of the Member State having jurisdiction has taken the measures it considers appropriate. Article 20 contemplates "short-term holding arrangements": *Re B (A child)* [2013] EWCA Civ 1434, para 85.

31. Assuming that the court does have jurisdiction, the judge in every care case with a European dimension will need to consider whether to exercise the court's powers under Article 15 to request the court of another member State to assume jurisdiction where (a) the child has a particular connection (as defined in Article 15(3)) with that other State, (b) the other court would be better placed to hear the case, and (c) this is in the best interests of the child. A recent example of a care case where the courts of England and Wales were invited by the courts of the Republic of Ireland to accept jurisdiction is to be found in *In re M (A Child) (Foreign Care Proceedings: Transfer)* [2013] EWHC 646 (Fam), [2013] Fam 308. A very recent example of the process working the other way round in a care case is *Re D (A Child)* [2013] EWHC 4078 (Fam), where Mostyn J, on a mother's application, invited the courts of the Czech Republic to assume jurisdiction.

32. Before parting from BIIR, I must draw attention to Article 55. Headed "Cooperation on cases specific to parental responsibility", it provides, so far as relevant for present purposes, that:

> "The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:
>
> (a) collect and exchange information:
>
> (i) on the situation of the child;
>
> (ii) on any procedures under way; or
>
> (iii) on decisions taken concerning the child;
>
> …
>
> (c) facilitate communications between courts, in particular for the application of … Article 15; …"

This process is plainly intended to work both ways.

BIIR – the present case

33. In the present case E was and is habitually resident in England and Wales. Although he is a citizen of the Slovak Republic he has lived here all his life. No-one has suggested, indeed it could not sensibly be asserted, that the English court does not have jurisdiction in accordance with Article 8(1) of BIIR. And although, within the meaning of Article 15(3), E has a particular connection with Slovakia, it did not seem to me that the other requirements of Article 15 were met, so as to justify making a request to the Slovakian courts. Nor, as will be appreciated, was any Article 15 request received from the Slovakian courts. On the contrary, the Slovakian Central Authority formally notified this court that it did not dispute the jurisdiction of the English court and fully accepted its competence. The Article 55 mechanism worked smoothly and effectively, facilitating in the particular case the inter-State cooperation and assistance which is so desirable in every case.

BIIR – future practice in care cases

34. What of the future?

35. It is highly desirable, and from now on good practice will require, that in any care or other public law case with a European dimension the court should set out quite explicitly, both in its judgment and in its order:

    i) the basis upon which, in accordance with the relevant provisions of BIIR, it is, as the case may be, either accepting or rejecting jurisdiction;

    ii) the basis upon which, in accordance with Article 15, it either has or, as the case may be, has not decided to exercise its powers under Article 15.

36. This will both demonstrate that the court has actually addressed issues which, one fears, in the past may sometimes have gone unnoticed, and also identify, so there is no room for argument, the precise basis upon which the court has proceeded. Both points, as it seems to me, are vital. Judges must be astute to raise these points even if they have been overlooked by the parties. And where Article 17 applies it is the responsibility of the judge to ensure that the appropriate declaration is made.

37. As I have observed, the process envisaged by Article 55 works both ways. The English courts must be assiduous in providing, speedily and without reservation, information sought by the Central Authority of another Member State. At the same time judges will wish to make appropriate use of this channel of communication to

obtain information from the other Member State wherever this may assist them in deciding a care case with a European dimension.

The Vienna Convention

38. Articles 36 and 37 of the Vienna Convention on Consular Relations are probably not very familiar to most family lawyers. So I set them out at length.

39. Article 36 is headed "Communication and contact with nationals of the sending State." It reads as follows:

> "1 With a view to facilitating the exercise of consular functions relating to nationals of the sending States
>
> (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
>
> (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
>
> (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
>
> 2 The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended."

40. Article 37 is headed "Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents." The only part that is relevant for present purposes is Article 37(b):

> "If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:
>
> …
>
> (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments; …"

41. This is not the occasion for any elaborate discussion of the effect of these provisions as a matter of either public international law or English domestic law (as to which see the Consular Relations Act 1968 and the Diplomatic and Consular Premises Act 1987). I am concerned only with what they suggest as good practice in care cases. But in that context there are, as it seems to me, three points to be borne in mind:

i) First, Article 36 enshrines the principle that consular officers of foreign states shall be free to communicate with and have access to their nationals, just as nationals of foreign states shall be free to communicate with and have access to their consular officers.

ii) Second, the various obligations and rights referred to in paragraphs (b) and (c) of Article 36(1) apply whenever a foreign national is "detained"; and where a foreign national is detained the "competent authorities" in this country have the obligations referred to in paragraph (b).

iii) Third, Article 37(b) applies whenever a "guardian" is to be appointed for a minor or other foreign national who lacks full capacity. And Article 37(b) imposes a particular "duty" on the "competent authorities" in such a case.

<u>The Vienna Convention – the present case</u>

42. In the present case no particular point arose in relation to the Convention. It seemed to me plainly appropriate that Mr Pokojný should be permitted to attend all the hearings and that he, and Slovakia, should be provided with the information to which I have already referred. So far as I was concerned, this was all entirely unproblematic. I should like to think that it went no little way towards enabling the Slovakian

authorities to have trust and confidence both in the way in which the proceedings were being conducted as also in the eventual outcome.

The Vienna Convention – future practice in care cases

43. What of the future?

44. I express no views as to the effect of Articles 36 and 37 of the Convention as a matter of either public international law or English domestic law. There is no need for me to do so and it is probably better that I do not. Nor do I take it upon myself to proffer guidance to local authorities, health trusts and other public bodies as to how they should interpret whatever obligations they may have under the Convention. That is a matter for others. What I do, however, need to do is suggest how as a matter of good practice family judges, when hearing care and other public law cases, should from now on approach these provisions.

45. In considering the possible implications of Articles 36 and 37 of the Convention, family judges should assume that, in appropriate circumstances, the court may itself be a "competent authority". They should also assume that there is a "detention" within the meaning of Article 36 whenever someone, whether the child or a parent, is being deprived of their liberty within the meaning of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, for example, in accordance with sections 2 or 3 of the Mental Health Act 1984 or, in the case of a child, in accordance with section 25 of the Children Act 1989.

46. In cases involving foreign nationals there must be transparency and openness as between the English family courts and the consular and other authorities of the relevant foreign state. This is vitally important, both as a matter of principle and, not least, in order to maintain the confidence of foreign nationals and foreign states in our family justice system. To seek to shelter in this context behind our normal practice of sitting in private and treating section 12 of the Administration of Justice Act 1960 as limiting the permissible flow of information to outsiders, is not merely unprincipled; it is likely to be counter-productive and, potentially, extremely damaging. If anyone thinks this an unduly radical approach, they might pause to think how we would react if roles were reversed and the boot was on the other foot.

47. Given this, it is highly desirable, and from now on good practice will require, that in any care or other public law case:

    i) The court should not in general impose or permit any obstacle to free communication and access between a party who is a foreign national and the consular authorities of the relevant foreign state. In particular, no injunctive or other order should be made which might interfere with such communication and access, nor should section 12 of the Administration of Justice Act 1960 be permitted to have this effect.

ii) Whenever the court is sitting in private it should normally accede to any request, whether from the foreign national or from the consular authorities of the relevant foreign state, for

a) permission for an accredited consular official to be present at the hearing as an observer in a non-participatory capacity; and/or

b) permission for an accredited consular official to obtain a transcript of the hearing, a copy of the order and copies of other relevant documents.

iii) Whenever a party, whether an adult or the child, who is a foreign national

a) is represented in the proceedings by a guardian, guardian ad litem or litigation friend; and/or

b) is detained,

the court should ascertain whether that fact has been brought to the attention of the relevant consular officials and, if it has not, the court should normally do so itself without delay.

48. If, in any particular case, the court is minded to adopt a different or more restrictive approach it is vital that the court hears submissions before coming to a decision and that it then sets out quite explicitly, both in its judgment and in its order, the reasons for its decision.

Reporting restriction orders

49. So far as concerns the applicable principles I merely refer to without quoting what I said in *Re J (A Child)* [2013] EWHC 2694 (Fam) and in *Re P (A Child)* [2013] EWHC 4048 (Fam). Those are the principles that have to be applied. Unsurprisingly, given the similarity of the issues raised in all three cases, and in particularly in the present case and in *Re P*, my approach is much the same here as previously.

50. The reporting restriction order I have decided to make in this case (no one in fact argued for any wider form of order) is essentially in the same form as the one I made in *Re P*. Since that order was annexed to my judgment in *Re P*, there is no need for me to set out in full the order in the present case. It suffices to set out below only paragraphs 1, 9, 10, 11, 13, and 15. The other paragraphs are the same as in *Re P*. Subject to any different order made in the meantime, the order will last until E's eighteenth birthday.

51. So far as concerns the principles to be applied I need add only that paragraphs 10, 11 and 13 of the order in the present case, and the corresponding paragraphs in the order in *Re P*, are designed to give effect to the important principles set out in *Re J*, paras 63-65.

52. In the present case, as in *Re P*, there is an obvious and compelling need for public debate to be free and unrestricted. And here, as in *Re P*, the mother has an equally obvious and compelling claim to be allowed to tell her story to the world. But, just as in *Re P*, neither the compelling public interest in knowing about the case, nor the mother's compelling claim to be allowed to tell her story, will be advanced one iota by identifying E or his carers. On the contrary, E's welfare demands imperatively that neither he nor his carers should be identified.

53. E's maternal aunt is in as good a position as anyone to express an informed and measured view. Her evidence, which I accept without hesitation, not least because it is entirely consistent with relevant professional opinion, is clear as to the likely effects on E were the case to attract publicity in this country which would enable him to be identified. She points to the fact that he is still in the early stages of recovery from a very severe illness and sets out her belief – which I share – that anything which might jeopardise his ability to sustain recovery should be avoided. She explains, giving reasons, that this is a very emotional time for E, and says "I do not want him exposed to any more stress if it can possibly be avoided." I agree.

54. In short, the balance needs to be struck in such a way as to facilitate public debate and enable the mother, if she wishes, to tell her story, whilst at the same time protecting E's anonymity. This is achieved, in what in my judgment is the appropriate way, by the provisos at the end of paragraphs 11 and 15 of the order.

55. The proviso at the end of paragraph 15 addresses two quite separate issues: one, the position of the foreign media, the other, the position of the mother. Obviously they are intertwined, not least because the mother has enlisted the support of various media in Slovakia, but conceptually they are quite distinct and need to be considered separately.

56. In relation to foreign media the English court must proceed with very great caution. As a general principle, any attempt by the English court to control foreign media, whether directly or indirectly, is simply impermissible. In the first place, what justification can there be for the courts in one country seeking to control the media in another? If the media in a particular State are to be controlled that must be a matter for the relevant authorities in that State. For the courts of another State to assume such a role involves an exercise of jurisdiction which is plainly exorbitant, not least as involving interference in the internal affairs of the other State. What would we think, what would the English media think, if a family judge in Ruritania were to order the Daily Beast to desist from complaining about the way in which the judicial and other State authorities in Ruritania were handing a case involving an English mother? Secondly, the exercise of such a jurisdiction would be inconsistent with the principles

I explained in *Re J*, paras 44-65. Thirdly, any such attempt would in all probability be an exercise in futility.

57. On the other hand, a different approach may be justified where internet or satellite technology is involved, for there the media have an extra-territorial effect. It is of the essence of the internet that, wherever the service provider or the service provider's servers may actually be located, the information is accessible throughout the world. So, in principle, attempts by a court to control the internet are not subject to the complaint that they are thereby interfering with the purely internal affairs of a foreign State.

58. Applying this approach, proviso (ii) to paragraph 15 makes clear that the English court is not seeking to interfere in any way with the print or broadcast media in *any* foreign country, including but not limited to Slovakia, even if it is the English language which is being used. And in relation to internet and satellite services, proviso (iii) confines the potential application of the order to those services using the English language.

59. So the mother can publish whatever she wants in the foreign print or broadcast media or, so long as it is not in the English language, on the internet. The *only* restriction on the mother's freedom to publish her story is that she must not do so in the English print or broadcast media or, using the English language on the internet, *in such a way as to identify E in one or other of the ways referred to in paragraph 15 (including by the use of her married surname).*

Annexe

60. Reporting restriction order

> "1 The applicant is E ("The Child")
>
> The First Respondent is M ("The Mother")
>
> The Second Respondent is F ("The Father")
>
> The Third Respondent is [name] ("The Local Authority")
>
> The Fourth Respondent is S ("The Maternal Aunt")
>
> …
>
> 9 Upon the making of this order the local authority shall be treated as the Applicant. Any duties an Applicant is expected to meet, shall be met by the local authority.
>
> 10 This order binds all persons and all companies or incorporated bodies (whether acting by their directors,

employees or in any other way) who know that the order has been made.

Territorial limitation

11 In respect of persons outside England and Wales:

(i) Except as provided in sub paragraph (ii) below, the terms of this order do not affect anyone outside the jurisdiction of this court.

(ii) The terms of this order will bind the following persons in a country, territory or state outside the jurisdiction of this court:

(a) The first and second respondents and their agents;

(b) Any person who is subject to the jurisdiction of this court;

(c) Any person who has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and

(d) Any person who 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;

(e) 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.

Nothing in this paragraph prevents the publication referred to in the proviso at the end of paragraph 15.

Undertakings to the court

…

13 The applicant will not, without permission of the Court, seek to enforce this order in any country, state or territory outside England and Wales.

IT IS ORDERED THAT:

…

Prohibited publications:

15 Subject to the "territorial limitation" above, this order prohibits the Respondents and any or all other persons from facilitating or permitting the publishing or broadcasting in any

newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite program service of any information, including the mother's married surname (as set out in Schedule 2) that reveals the identity or name or address or whereabouts of the child (whose details are set out in Schedule 1) or the identity, or name or address of his carers (whose details are set out on Schedule 3) or the identity, or name or address of F (whose details are set out in Schedule 2) if, but only if, such publication is likely, whether directly or indirectly, to lead to the identification of the child as being:

(a) A child who is or has been the subject of proceedings under the Children Act 1989 and the Inherent Jurisdiction; and/or

(b) A child who has been removed from the care of his parents; and/or

(c) A child whose contact with his parents has been prohibited or restricted; and/or

(d) A child who has been treated or hospitalised at a psychiatric unit; and/or

(e) A child who has been placed in the care of his maternal aunt; and/or

(f) A child of Slovakian descent;

PROVIDED that nothing in this order prevents:

(i) the publication of the mother's first name; or

(ii) the publication of anything in the print or the sound or television broadcast media in any country other than England and Wales; or

(iii) the publication of anything on any public computer network, internet website, social networking website, or satellite program service in any other language than English."