

ENGLAND AND WALES / JUDGMENT

A Local Authority v O & Ors

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Neutral Citation Number: [2026] EWFC 27 IN THE FAMILY COURT SITTING AT THE ROYAL COURTS OF JUSTICE IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF A, B and C Case No: PO25P50028 The Royal Courts of Justice Strand, London, WC2A 2LL Date: 11/02/2026 Before : THE HONOURABLE MRS JUSTICE JUDD

- ----- Between : A Local Authority
- and - Mrs. O -and- Mr. O -and- A, B and C (through their Children's Guardian) -and- The Disclosure and Barring Service (DBS)
- -----
- ----- Applicant 1 st Respondent 2 nd Respondent 3 rd -5 th Respondents Intervenor Anthony Hand (instructed by A Local Authority) for the Applicant Steven Howard (instructed by Abels Solicitors) for the 1st Respondent John Ward-Prowse (instructed by Preston Redman LLP) for the 2nd Respondent Daniel Nother (instructed by Child Law Partnership) for the 3rd-5th Respondents Fiona Scolding KC (instructed by DBS Legal Services) for the Intervenor Hearing dates: 26th January 2026
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 11th February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. THE HONOURABLE MRS JUSTICE JUDD This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors Mrs Justice Judd : 1. 2. 3. 4. 5. 6. The local authority in this case made an application to allow them to disclose findings of fact made by the court to the Disclosure and Barring Service (the DBS). This was opposed by the first and second respondents, who are parents of children who are the subject of these care proceedings. When it became apparent to the parties that the local authority was authorised to make the disclosure they sought without permission, the first and second respondents themselves asked the court to make orders restraining them from doing so. The DBS, who were served with the original application, have very helpfully provided a position statement setting out the procedure which is followed with respect to disclosure to and from the DBS,

and a skeleton argument which supports disclosure. They applied to become intervenors, an application which I granted.

Background

After a lengthy trial last year, I made findings about the death of a child who was in the care of the first and second respondents, whilst the first respondent acted as her childminder. I found that the child died as a result of injuries that were inflicted on her by one or other of the first and second respondents, but I was not able to say which one. I also found that they each must have known what happened but had both lied and covered up what happened. I further found that the child suffered an earlier injury, also inflicted by one or other of them. Whilst those are the specific findings I made against the first and second respondents, there are also a number of observations and factual matters that I dealt with in the judgment, including the fact that the first respondent looked after children as a childminder without being registered, that there were five children under two years old at the house on the day that the child died, and that the first respondent left the house for two hours in the middle of the day leaving the second respondent looking after the children by himself. Since the fact-finding judgment, the first and second respondent have sought employment. In particular, the first respondent has sought employment in a care home, albeit as a cleaner. The local authority was concerned that the respondents might seek to work with vulnerable people, whether children or adults, and made this application as a result. In fact it is now apparent that the local authority did not need the court's permission to make such a disclosure to the DBS, but now they have done so the first and second respondents seek to argue that I should make orders preventing it. The DBS The DBS was set up in 2012 with the aim of providing a system whereby those who have engaged in behaviour which could place vulnerable adults or children at risk are placed on a 'barred list'. It is the DBS itself which is tasked with maintaining lists for both adults and children in a process which is set out in detail in the Safeguarding Vulnerable Groups Act 2006. I do not intend to set that out here save to say that the criteria requiring an individual to be placed on a barred list is that they have engaged in relevant conduct, have, or may be, engaged in regulated activity relating to children THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors 7. 8. 9. 10. 11. 12. 13. or adults and that it is satisfied that it is appropriate to include the person in the list. Relevant conduct is conduct which endangers a child or is likely to endanger a child, including harming a child, causing a child to be harmed, putting a child at risk of harm, attempting to harm a child or inciting another to harm a child. A person included on those lists is prohibited from engaging in regulated activity relating to children or vulnerable adults. The DBS must give a person the opportunity to make representations as to why he should not be included in the barred lists and there is a right of appeal against such a decision which lies to the Upper Tribunal. Depending on the type of employment sought, employers may, or must, require prospective employees to obtain checks from the DBS which range from a basic check which discloses unspent convictions and cautions, a standard check which shows both spent and unspent convictions and adult cautions (convictions for offences involving injury/harm to a child and violent offences will always be disclosed) and enhanced checks which can only be requested if

someone is going to work in a regulated activity (these relate to both adults and children and are specifically defined in section 5 of the Safeguarding Vulnerable Groups Act 2006, “SVGA”). Enhanced checks come in two forms, a simple enhanced check and an enhanced check with a check of the barred lists. A simple enhanced check shows the same information as a standard check, plus any information held by the local police force which is considered relevant to the role. This, for example, could include information about previous investigations which did not lead to conviction if it seems appropriate. An enhanced check with a check on the barred lists will show if someone is on the barred list for adults, children, or both. The underlying material which led to their placing on the list will not be disclosed unless it has led to a conviction. Basic checks are required for many types of employment. Enhanced checks are required for employment in regulated activities (as set out earlier). In certain circumstances public bodies are required to provide information to the DBS so that it can undertake its role in assessing whether an individual should be placed on the DBS list. Under section 39 of the SVGA, a local authority may provide the DBS with information relating to a person if certain conditions are met. These include that the local authority considers that a person has satisfied the harm test set out in s39(3), and/or has engaged in relevant conduct and has, or might in future be engaged in regulated activity. Pursuant to s40 of the Act, a local authority is under an obligation to provide information to the DBS if the latter so requests it. The DBS may request prescribed information which is defined by the SVGA 2006 (Prescribed Information) Regulations 2008 as including: a) b) Whether someone was engaged in a regulated activity; A summary of the conduct undertaken by that individual; THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors c) d) e) f) g) Details of the child/vulnerable adult involved in the incidents; Information about the vulnerability of the child or vulnerable adult that may be relevant to the DBS; Any explanation for the conduct by the person concerned; Information why the person providing information to the DBS considers the person to be at risk of harm; Details of any action taken by the person providing information in respect of that person, which includes details of any proceedings before any court, tribunal or other person taken or to be taken in relation to P’s conduct including proceedings commenced under the Children Act 1989. Family Procedure Rules 2010 14. 15. 16. Pursuant to Rule 12.73(1)(a)(viii) information relating to proceedings held in private may be communicated to a professional acting in furtherance of the protection of children. Practice Direction 12G sets out a table as to who may communicate information to defined individuals and bodies, and for what purpose. In the circumstances of this case, PD12G does not add anything to rule 12.73. Rule 2.3 FPR includes a member or employee of the Disclosure and Barring Service within the definition of someone who is a ‘professional acting in the furtherance of the protection of children’. All the parties are now in agreement that the local authority do not need the court’s permission to disclose the judgment to the DBS although I have the power to order otherwise under the FPR, as is apparent from the wording of rule 12.73(1)(c) that any communication permitted therein or pursuant to PD12G is subject to the direction of the court. If the court has power to make order preventing disclosure then the burden falls upon the first and second respondents to persuade the court to do this.

17. When considering an application to withhold disclosure under the FPR, the list of factors for the court to take into consideration as set out by the Court of Appeal in *Re C (A Minor)(Care Proceedings: Disclosure)* [1997] 2 WLR 322; [1997] Fam 76 remains good guidance for judges, albeit it is important to note that there have been changes to the rules since 1997. There has been a greater move in favour of transparency, and it predated the Human Rights Act 1998. There have been a number of decisions since which have commented on these points including *Re N (A Child) (Disclosure of Documents to the General Medical Council)* [2009] EWHC 1663, *Re X and Y (Children: Disclosure of Judgment to the Police)* [2014] EWHC 278, *Re Z (A Child)(Disclosure to Social Work England: Findings of Domestic Abuse)* [2023] EWHC 447. 18. The factors are:- i) The welfare and interests of the child or children concerned in the care proceedings. If the child is likely to be adversely affected by the order in any serious way, this will be a very important factor; THE HONOURABLE MRS JUSTICE JUDD Approved Judgment *A Local Authority v Mrs. O et ors* ii) iii) iv) v) vi) vii) viii) ix) The welfare and interests of other children generally; The maintenance of confidentiality in children's cases; The importance of encouraging frankness in children's cases; The public interest in the administration of justice; The public interest in the prosecution of serious crime and the punishment of offenders, including the public interest in convicting those who have been guilty of violent or sexual offences against children; The gravity of the alleged offence and the relevance of the evidence to it. If the evidence has little or no bearing on the investigation or the trial, this will militate against a disclosure order; The desirability of cooperation between various agencies concerned with the welfare of children, including the social services departments, the police service, medical practitioners, health visitors, schools etc. This is particularly important in cases concerning children; In a case to which section 98(2) applies, the terms of the section itself, namely that the witness was not excused from answering incriminating questions, and that any statement of admission would not be admissible against him in criminal proceedings. Fairness to the person who has incriminated himself and any others affected by the incriminating statement and any danger of oppression would also be relevant considerations; x) Any other material disclosure which has already taken place. 19. Although the list in *Re EC* is concerned with the risks to, and welfare of, children, the guidance is clearly relevant to a situation involving vulnerable adults. The parties' submissions
20. Mr. Howard, for the first respondent, and Mr. Ward-Prowse, for the second respondent, submit that I should make an order restraining the local authority from disclosing information from the proceedings to the DBS. They submit that I have power to do so under the Human Rights Act section 7 or as part of my general case management powers under Part IV of the Family Procedure Rules. 21. In his open skeleton argument, Mr. Howard submits that the situation in this case, whereby a pool finding was made with respect to the first and second respondents, deserves particular consideration. In order to make a decision as to whether a person may be placed on the Barred List, the DBS must determine whether they have engaged in 'relevant conduct' or in circumstances where such conduct has not occurred, whether it is likely that a person may harm or cause a vulnerable adult or child to

be harmed. Pursuant to the DBS Paper Referral Form Guidance it is said that: “To satisfy the harm test there needs to be credible evidence of a risk of harm to vulnerable groups including children such as statements made by an individual regarding conduct/behaviour THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors etc. For a case to be considered as a risk of harm, relevant conduct would not have occurred but there must be tangible evidence rather than a feeling that a person represented a risk to children and/or vulnerable adults”. 22. 23. 24. In this case, he submits that, by reference to a number of authorities, in particular that of Re J (Children)(Care Proceedings: Threshold Criteria) [2013] UKSC 9, a finding that there is a real possibility that an individual was responsible for an abusive act does not constitute a finding against them, which can be relied upon to found a risk of future harm. Mr. Howard, supported by Mr. Ward-Prowse, submits that this should be taken into account when considering whether the disclosure of such a pool finding will assist the DBS to make a decision about risk. In his confidential skeleton, Mr. Howard goes further and submits that the pool finding in respect of the deceased child is insufficient to found a sustainable finding by the DBS that the first respondent has engaged in relevant conduct. Any decision to the contrary would be, he states, an unreasonable decision that could be challenged on appeal. Whilst I also found that the first respondent lied in order to conceal what really happened, he argues that this is not likely to be a relevant factor within the definition of risk as falls to be assessed by the DBS. He points out that my findings do not amount to a failure to protect. In those circumstances he submits that disclosure of the information is not likely to assist the DBS in carrying out their task and that, accordingly, this is a strong factor to weigh in the balance against disclosure. As to the criteria set out in Re EC, whilst he accepts that there is a general public interest in protecting children and vulnerable adults generally, Mr. Howard asserts that the children in these proceedings are likely to be affected adversely by disclosure of information from these proceedings. The first respondent has suffered very greatly from stress from the proceedings which included intrusive assessments. The stress and drain on her time, and that of the second respondent, is likely to impact upon the children, affecting them emotionally and psychologically in a negative way. Further, privacy and confidentiality are a significant concern for the first (and second) respondent, and she is very concerned that information that she has been placed (for example) on a barring list will become known in the community in which she lives.

25. Mr. Howard accepts that the fact that the rules permit disclosure unless the court orders otherwise affects the weight that the court is likely to give to the importance of encouraging frankness in children’s cases but stresses that disclosure of this sort is still likely to inhibit parents from being frank in cases concerning children. He accepts the findings are grave but not that they are relevant and points out that the judgment has already been disclosed to other bodies such as the police, the LADO and Ofsted. There is a public interest in the administration of justice and of cooperation between various agencies concerned with the welfare of children, but that does not outweigh the other factors pointing against disclosure. He reminds me that disclosure of such significant information strongly engages the second

respondent's Article 8 rights to respect for her private and family life, as well as her job prospects, and submits overall that disclosure would be an interference with this which is unnecessary and disproportionate. 26. On behalf of the second respondent, Mr Ward-Prowse supported and adopted the submissions made by Mr. Howard. He submitted that the second respondent had no THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors 27. 28. intention of applying for a job which would require an enhanced check including a check of the barred lists. Nonetheless, disclosure would infringe his Article 8 rights and have all the effects on him, his wife and children as have been set out above. In response to the application, Mr. Hand for the local authority, Ms. Scolding KC for the DBS, and Mr. Nother for the Guardian, submit that it would be entirely wrong for this court to restrain disclosure of information to the DBS. Ms. Scolding emphasises the importance of the DBS being able to carry out its function as required by statute, which is to act in a protective, forward-looking manner to mitigate the risk of harm by excluding from certain sorts of employment those who pose a risk to the vulnerable. In order to perform that role it is necessary to be provided with relevant information. The SVGA itself provides a process which allows those who are being considered for placement on the barring list to be consulted, and a right of appeal. Further, the material itself which has led to the adult being on a barred list is not itself disclosed. Being on the barred list will only be disclosed in the event that an individual applies for a job which requires an enhanced check including a check of the barred lists.

29. Ms. Scolding particularly exhorts the court not to second guess how the DBS would regard a pool finding. This court is not in the same position as the DBS and should not try and carry out its own assessment of what information or findings can be taken into account.
30. Mr. Hand emphasises the gravity of the findings against the first and second respondents and states that the risks that flow from them are clear, and need to be considered by the DBS. Mr. Nother, on behalf of the Guardian, makes a similar submission. My decision 31. 32. 33. Three important points should be made straight away. First, Parliament has given a clear role for the DBS in determining whether an individual should be placed on a barred list in order to protect children and vulnerable adults. Second, local authorities are given power to disclose information to them, and in some cases required to do so. Third, it is plain that officers of the DBS are categorised as a professional acting in the furtherance of the protection of children pursuant to FPR rule 12.73(1)(a)(viii) and FPR Rule 2.3. This has been very helpfully set out by Arbuthnot J in a case published just as this judgment was being prepared, in *In the Matter of the Disclosure and Barring Service and A Local Authority*

[2025] EWFC 479. All these provisions demonstrate the importance that has been given to the protection of children and vulnerable adults. Even if the court had power to override the provisions of the SVGA (which must be doubtful), there would need to be a good reason for so doing. I acknowledge that disclosing information to the DBS engages the Article 8 rights of both the first and second respondents, as the information I am concerned with comes from family proceedings involving their own children. I entirely accept that those

proceedings, which have been going on for a long time, have been stressful for the adults, and that those stresses are likely to affect the children who have been living at home throughout. There is also a public interest in maintaining confidentiality in THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors children's cases, although it is right that there has been a greater move towards transparency in children's proceedings over the last decade. Perhaps more directly relevant to this case is the fact that my findings were made in the context of a conjoined fact-finding hearing involving three families. There has been disclosure to the LADO and Ofsted.

34. Whilst I acknowledge the importance of encouraging frankness in children's cases, this factor does not carry much weight in this particular case. The first and second respondents, as I found, were not frank with the court and made no admissions. This application does not relate to criminal proceedings, so that factor is not relevant in the decision I have to make.
35. 36. 37. 38. The welfare and interests of other children generally as well as vulnerable adults is a very important factor for me to take into account. Despite the skill of Mr. Howard's submissions I simply cannot accept that the fact that I was not able to make a finding as to which of the two adults was responsible for causing the death of the child being looked after in their home means that there is no factual basis upon which an assessment of risk by the DBS could be properly founded. I agree with the submissions of the DBS and other parties that this is a matter I should properly leave to them. In addition, this is a very different case to that of Re J in that I made a number of very significant and serious specific findings against each of the first and second respondents which do not just pertain to their conduct after the death of the child (which could well be relevant to future risk), but also as to how she was cared for beforehand. In this case, I pay particular regard to the fact that the child who suffered fatal injuries in their care was not their own. There is plainly a strong public interest in the proper administration of justice, which includes allowing a body such as the DBS to carry out its proper function. The same applies to the importance of cooperation between various agencies tasked with the protection of children, and vulnerable adults. I have come to the clear conclusion in this case that it would be quite wrong for me to make any order which prevents the local authority sharing information from these proceedings with the DBS in accordance with Rule 12.73 or any other statutory provision. Provision of information must include the judgment. The public interest in permitting the DBS to see this information in order to carry out an assessment is an overwhelming factor in favour of disclosure, together with the weight to be accorded to the welfare of children and vulnerable adults generally. The DBS process already has safeguards for the first and second respondents in it. They have an opportunity to make representations to the DBS and also to appeal a decision to place them on a barring list if that is what happens. If they are on a barring list this does not entail background information being provided to prospective employers. As it is, the second respondent states that he has no intention of applying for a post which would require disclosure of such. The first respondent has not said that, but if she is on a barred list she would be prohibited from engaging in

regulated activities with vulnerable adults or children anyway, so she should not be applying for such a post at all.

39. My findings in this case are of the utmost gravity, and should properly be considered by the DBS. In those circumstances, they should have such information as they THE HONOURABLE MRS JUSTICE JUDD Approved Judgment A Local Authority v Mrs. O et ors properly seek in accordance with the SVGA and the Family Procedure Rules. The interference with the rights of the first and second respondents that this entails is necessary and proportionate in order to protect the rights and freedoms of others. 40. The issue as to whether or not a court actually has power to override the clear provisions of the SVGA which govern disclosure from local authorities was not the subject of substantive argument before me. On any view it must be questionable, but, given my clear views on the merits, consideration of that can await another day.

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