

ENGLAND AND WALES / JUDGMENT

Blackpool Borough Council v RR & Ors

[2026] EWHC 1100 (Fam) (14 May 2026)

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Neutral Citation Number: [2026] EWHC 1100 (Fam) Case No: PR22C50254 / PR25C50004 IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Royal Courts of Justice Strand, London, WC2A 2LL
14 May 2026 B e f o r e : MR JUSTICE MACDONALD

Between: Blackpool Borough Council Applicant

- and - RR (A Minor by her Children's Guardian) First Respondent -and- Laura Langley Second Respondent -and- MR Third Respondent

Miss Susan Grocott KC (instructed by Blackpool Borough Council) for the Applicant Mr Peter Rothery (instructed by Bendles Solicitors) for the First Respondent Mr Nicholas Stonor KC and Mr Richard Hunt (instructed by Inghams Solicitors) for the Second Respondent Miss Julia Cheetham KC and Miss Molly Giles (instructed by Clarkson Hirsts Solicitors) for the Third Respondent Hearing dates: 17 April 2026

HTML VERSION OF JUDGMENT APPROVED

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INTRODUCTION

I am concerned with the question of the extent to which the judgments I have handed down in this matter following a fact finding hearing, a hearing re-opening those findings (

[2026] EWFC 69) and hearing to determine the issues with which this judgment deals, should be anonymised and whether the Transparency Order currently in force in respect of these proceedings should be varied accordingly. The respondent mother, Laura Langley (hereafter "the mother"), does not resist publication of the judgments per se but contends

that there should be anonymisation of her name, her HIV positive status, the name of the subject child, RR, the name of the local authority and the name of the hospital that treated RR's deceased sibling, Edith. Each of the other parties, including the Children's Guardian on behalf of RR, contend that the judgments should be published subject only to the anonymisation of RR and her father, MR (hereafter "the father"). The issue of anonymisation falls to be determined in the context of there having been extensive publicity in the national press in relation to this case arising out of criminal proceedings against the mother that ultimately concluded in the court directing her acquittal of Edith's murder. RR is the subject of a care order in favour of Blackpool Borough Council. RR is represented in these proceedings by Mr Peter Rothery of counsel through her Children's Guardian, Peter Morey. The mother is represented in these proceedings by Mr Nicholas Stonor of King's Counsel and Mr Richard Hunt of counsel. The father is represented by Miss Julia Cheetham of King's Counsel and Miss Molly Giles of counsel. The local authority is represented by Miss Susan Grocott of King's Counsel. During the course of the hearing re-opening the original findings, a reporter from The Times attended for some of the oral evidence. The press were placed on notice of this hearing, although no representative of the media attended to make representations. In determining this application, I have had the considerable benefit of Skeleton Arguments on behalf of the parties, an agreed bundle of authorities and a court bundle. I reserved judgment and now set out my decision and my reasons for it. I acknowledge that paragraph 8.5 of the President's Guidance concerning publication of judgments contemplates brief reasons. However, in circumstances where I have determined to take a course that will result in the publication of judgments in care proceedings which name a parent and refer to her HIV positive status, I set out my reasons in detail.

BACKGROUND

The background to this matter is set out in detail in the two fact-finding judgments in this case. I do not need to repeat that background here, save to summarise the following salient points. RR was born on in 2014. The parents had another child, Edith, born on 30 September 2020. Sadly, Edith died on 20 November 2020. Following a fact finding hearing in 2023, this court found that Edith's death was caused as a result of compressive chest trauma inflicted on her by the mother on 20 November 2020 and that the mother was responsible for the death of Edith. During the course of that fact finding hearing, the court had the benefit of expert medical evidence from Professor Charles Mangham, Consultant Histopathologist and Osteoarticular Pathologist, Dr Alison Armour, Consultant Home Office Forensic Pathologist, Dr Andreas Marnierides, Consultant Histopathologist, and Dr Stephen Leadbeatter, Consultant Pathologist. As a result of criticisms levelled at his evidence by Keehan J in the later case of *London Borough of Hammersmith and Fulham v The Mother and Father*

[2024] EWHC 2200 (Fam) , [2025] 1 FLR 762, Professor Mangham referred himself to the GMC. There has been significant press coverage of the criticisms levelled at Professor Mangham's evidence. The mother's name has been linked to that press coverage due to the

criminal trial that followed the finding of fact hearing in this case, in which Professor Mangham also gave evidence. The criminal proceedings against the mother for the murder of Edith came on for trial in October 2023. In the criminal proceedings, Professor Edward McCarthy, Consultant Bone Pathologist, and Professor Marta Cohen, Consultant Paediatric Histopathologist, were instructed by the defence and provided reports. The criminal trial commenced but was adjourned following the prosecution evidence of Professor Mangham and Dr Armour, the Home Office pathologist. On 24 September 2024, an experts meeting was arranged by the police between Professor McCarthy, Professor Mangham and Professor Anand Saggar, Consultant in Clinical Genetics. This court has a copy of the transcript of that meeting. A witness statement was then obtained by the prosecution from Professor Anthony Freemont, Osteoarticular Pathologist, dated 7 November 2024. On 13 November 2024, the Senior Crown Prosecutor wrote to the Court Manager at Preston Crown Court indicating that, in light of conflicting expert opinions, the Crown had decided not to proceed with the counts on the indictment. At Preston Crown Court on 18 November 2024, the Crown offered no evidence and the mother's acquittal of Edith's murder was directed. The criminal trial resulted in extensive press coverage with respect to the mother and the death of Edith. Within this context, Mr Stonor and Mr Hunt do not seek to dispute that an Internet search using terms extracted from the judgments in the family proceedings without reference to any identifying features of the family (for example, the phrase "multiple infant rib fractures CPR") leads immediately to that press coverage, including The Times, the Daily Mail, the Blackpool Gazette and the BBC. In that coverage, the mother and Edith are named, the name of the hospital that treated Edith is given and each of the experts giving evidence in the criminal proceedings are identified, together with the results of Edith's post mortem. Photos of the mother and Edith are shown in much of the coverage, as well as photographs of the mother's property. Against this, none of the press coverage identifies RR or the father, or the mother's HIV positive status. Internet searches seeking information linked to the criticism of the evidence of Professor Mangham made by Keehan J in *London Borough of Hammersmith and Fulham v The Mother and Father* also lead to press coverage naming the mother and Edith and describing the circumstances of Edith's death. On 14 February 2025, I decided that the "stage one" test for re-opening the findings of fact made by this court in 2023 was met. A meeting took place on 21 May 2025 between the experts from the family proceedings and the criminal proceedings, save for Professors Cohen and Saggar, and a joint viewing of the histological slides took place on 3 July 2025, at which Professors Mangham, McCarthy, Cohen and Freemont and Drs Armour, Marnerides and Leadbeatter were in attendance. On 10 October 2025, I decided that the "stage two" test for re-opening the findings of fact was met and gave directions towards this hearing. A key factor in this court's decision to permit its findings to be re-opened was the expert opinions provided for the criminal proceedings by Professor McCarthy and Professor Cohen for the defence and Professor Freemont for the Crown. In short, those opinions favoured CPR as the cause of Edith's multiple rib fractures. Professor McCarthy and Professor Cohen opined that Edith's bones were abnormal in a manner that predisposed her to fractures. Professor

McCarthy posited a number of possible causes for this abnormality, including the fact that Edith had been exposed in utero to the mother's antiretroviral medication for HIV. At the second fact finding hearing I heard expert evidence from Professors Mangham, McCarthy, Cohen and Freemont and Drs Armour and Leadbeatter. Dr Marnerides was not available to give evidence and the evidence of Professor Saggat was not challenged. The mother relied on the evidence she had given at the first fact finding hearing and the court had the benefit of a transcript of that evidence. I handed down judgment on 1 April 2026. Having heard and considered the evidence, I again found that Edith's death was caused as a result of compressive chest trauma inflicted on her by the mother on 20 November 2020 and that the mother was responsible for the death of Edith, for the detailed reasons set out in that judgment. A number of serious criticisms of their expert evidence having been put to Professor McCarthy, Professor Freemont and Professor Cohen during the course of cross-examination, in my judgment I drew a number of adverse conclusions with respect to the approach of Professor McCarthy, Professor Freemont and Professor Cohen to giving evidence. I accepted the expert evidence of Professor Mangham, Dr Armour and Dr Leadbeatter. The matter now comes before the court to determine whether my judgments in this matter should be anonymised prior to publication and, if so, to what extent. The court has the benefit of a statement from the allocated social worker, detailing the support that will be put in place to assist RR to mitigate the impact of any renewed press interest in this case as a result of a publication of the judgments. The social worker makes clear, in evidence that was not challenged, that despite RR's experience of childhood trauma whilst in the care of her mother, there are no identified welfare concerns in respect of RR's emotional or behavioural development at this time. RR continues to be closely monitored by her school, a psychologist and her social worker, in addition to her current carer, her paternal grandmother. RR has a number of key family relationships which are of significant importance to her. RR has excellent school attendance, lots of positive friendships, and she is a very well liked and respected pupil amongst the teaching staff. It is clear that RR feels safe and supported at school. RR has a Personal Education Plan (PEP) from which she receives additional funding for support. Family time supervision for RR's contact with the maternal family continues. The social worker's evidence relates that RR is aware that court hearings have taken place to understand the circumstances surrounding the death of her sister. Following the judgment being handed down, RR was told that the hearing had finished and the judge had decided that her mother did not keep Edith safe. A meeting is due to take place on 17 April 2026 with RR's psychologist to agree a more detailed, age-appropriate narrative to share with RR, namely that the judge has decided that her mother was responsible for Edith's death. The impact of this information on RR will be closely monitored. There is no evidence before the court that RR was impacted adversely by the extensive national press coverage that accompanied her mother's criminal trial. Likewise, there is no evidence before the court to suggest that, during the course of that press coverage, it was not possible to protect RR from adverse publicity. Finally, there is currently a Transparency Order in force in respect of these proceedings. The current Transparency Order prohibits the publication or communication information

relating to the proceedings except as permitted by the order, under FPR 12.73, 12.75 or Practice Directions 12G (para 2.1) and 12E, or by discussion between a party to the proceedings (or their legal representative) and a reporter as permitted under the terms of the order. The Transparency Order specifically prohibits the publication of information which includes:

- i) The name or date of birth of any subject child in the case; ii) The name of the father; iii) The address of any child or the father; iv) The name and address of any foster carer or carer;
- v) The school/placement name or address, or any identifying features of a school of the subject child; vi) Photographs or images of the subject child, the father, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings; vii) For the purposes of s.97(2) Children Act 1989, any other information likely to identify the child as a subject child or former subject child; viii) The name of the mother or photograph or image of the mother in connection with permitted reporting of these Children Act proceedings, or in conjunction with any other information in relation to these proceedings; ix) No body, agency or professionals may be identified save for the following:
 - a) The local authority/authorities involved in the proceedings;
 - b) The director and assistant director of Children's Services within the local authority (but not the social workers working directly with the family, including the Team Manager);
 - c) Cafcass (but not the Guardian appointed for the subject child);
 - d) Any NHS Trust;
 - e) Court appointed experts;
 - f) Legal representatives and judges;
 - g) Anyone else named in a published judgment. RELEVANT LAW Publication of information from proceedings held in private Section 12 of the Administration of Justice Act 1960 (hereafter "the 1960 Act") provides as follows regarding the publication of information relating to proceedings heard in private: " 12 Publication of information relating to proceedings in private (1)The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say— (a)where the proceedings—
 - (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
 - (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
 - (b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;

- (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
 - (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
 - (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.
- (2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.
- (3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
- (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court)." In *Re B (A Child) (Disclosure)*

[2004] 2 FLR 142, Munby J (as he then was) undertook a magisterial review of the case law in respect of s.12 of the 1960 Act and made clear that s.12 does not of itself restrain the publication of the following information:

- i) The fact that the subject child is the subject of proceedings under the Children Act 1989 or of proceedings related wholly or mainly to her maintenance or upbringing. ii) The name, address or photograph of the subject child. iii) The name, address or photograph of the other parties to the proceedings. iv) The date, time or place of a past or future hearing of such proceedings.
- v) The nature of the dispute in such proceedings. vi) Anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place. vii) The name, address or photograph of the witnesses who have given evidence in such proceedings. viii) The party on whose behalf the witness has given evidence. ix) The text or summary of the whole or part of any order made in the proceedings. Section 12 of the 1960 Act does prohibit the publication of the following information, whether or not the information has been anonymised:
- i) Accounts of what has gone on in front of the judge sitting in private. ii) Documents such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of evidence or submissions, and

transcripts or notes of the judgment. iii) Extracts or quotations from such documents. iv) Summaries of such documents. Whilst proceedings in respect to a child continue, s.97 of the Children Act 1989 provides the following prohibition on publication: " 97 Privacy for children involved in certain proceedings

- (1) [Repealed]
- (2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify—
 - (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or
 - (b) an address or school as being that of a child involved in any such proceedings.
- (3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.
- (4) The court or the Lord Chancellor may, if satisfied that the welfare of the child requires it and, in the case of the Lord Chancellor, if the Lord Chief Justice agrees, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.
- (5) For the purposes of this section— "publish" includes—
 - (a) include in a programme service (within the meaning of the Broadcasting Act 1990);
 - (b) cause to be published; and "material" includes any picture or representation.
- (6) Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale. (6A) It is not a contravention of this section to—
 - (a) enter material in the Adoption and Children Act Register (established under section 125 of the Adoption and Children Act 2002), or
 - (b) permit persons to search and inspect that register pursuant to regulations made under section 128A of that Act.
- (7) [Repealed]
- (8) [Repealed]
- (9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (4)." Part 12, Chapter 7 of the Family Procedure Rules 2010 further governs the communication of information from child proceedings. Rule 12.73 provides as follows: " 12.73 Communication of information: general —(1) For the purposes of the law relating to contempt of court,

information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated—

- (a) where the communication is to—
 - (i) a party; (ii) the legal representative of a party; (iii) a professional legal adviser; (iv) an officer of the service or a Welsh family proceedings officer;
 - (v) the welfare officer; (vi) the Director of Legal Aid Casework (within the meaning of section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012); (vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings; (viii) a professional acting in furtherance of the protection of children; (ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;
 - (b) where the court gives permission, including as provided for under rule 12.73A; or
 - (c) subject to any direction of the court, in accordance with rule 12.75 and Practice Direction 12G.
- (2) Except as provided for under rule 12.73A, nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.
- (3) Nothing in rule 12.75 and Practice Direction 12G permits the disclosure of an unapproved draft judgment handed down by any court." It is important to note that, pursuant to FPR r.12.73(2), nothing in r.12.73 of the FPR permits the communication to the public at large, or any section of the public, of any information relating to the proceedings. This suggests that, subject to FPR r.12.73A, r.12.73 does not itself provide a general jurisdiction to communicate information to the public that is otherwise prohibited from publication by the terms of s.12 of the 1960 Act (see the reasoning of Harris J in *M v F & Anor*

[2025] EWHC 801 (Fam) at [26] to [34]). Anonymisation and Publication of Judgments The family courts have long expressed the view that the outcome of hearings held in private should be made public (see *Re G (Celebrities: Publicity)* [1999] 1 FLR 409, *Pelling v Bruce-Williams* (Secretary of State for Constitutional Affairs Intervening)

[2004] 2 FLR 823 and *Re H (Freeing Orders: Publicity)*

[2006] 1 FLR 815). In *Re X, London Borough of Barnet v Y and X*

[2006] 2 FLR 998 at [166]–[167] Sir James Munby P observed that: "[166] ... In my view 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. Moreover, if leave is confined in practice to those cases which are, for some reason, thought to be worthy of reporting in a law report, the sample of cases which will ever come to public attention is not merely very small but also very

unrepresentative.

- [167] My own view, and I make no bones about this, is that, subject of course to appropriate anonymisation, the presumption ought to be that leave should be given to publish any judgment in any care case, irrespective of whether the judgment has any particular interest for law reporters, lawyers or other professionals. It should not be necessary to show that there is some particular reason to justify why leave should be given in the particular case, let alone any need to justify leave on the basis that the judgment deals with some supposedly interesting point of law, practice or principle. For my own part, I should have thought that the proper approach ought to be the other way round. It is not so much for those who seek leave to publish an anonymised judgment to justify their request; surely it is for those who resist such leave to demonstrate some good reason why the judgment should not be published even in a suitably anonymised form." In *C (A Child)*
- [2016] EWCA Civ 798 ,
- [2017] 2 FLR 105 , which concerned an application for permission to publish a fact finding judgment, having referred to the decision of Munby J as he then was in *Re B*
- [2004] 2 FLR 142 , Lord Dyson MR was clear that the court has power under its inherent jurisdiction to order disclosure of all or part of what takes place in private proceedings, including any judgment: "I am in no doubt that the Court does have the power to order the disclosure of part or all of what takes place in private proceedings (including any judgment made by the Court during the course of or at end of the proceedings). In my view the Court has that power under its inherent jurisdiction. It had that power before the incorporation of the Convention by the Human Rights Act 1998: see *Kent County Council v The Mother, The Father, B*
- [2004] EWHC 411 (Fam) at paras 83 to 86 where Munby J summarised the relevant jurisprudence. The Court continues to have that jurisdiction following the incorporation of the Convention." The President's Practice Guidance - Publication of Judgments was issued on 19 June 2024. The introduction to that Guidance articulates its aim as follows: "This guidance is issued as part of the concerted move towards greater transparency which has been taking place in the Family Court over the past three years. Its aim is to provide practical advice to judges, legal advisors and magistrates so that all may be supported in publishing judgments on a more regular basis. Being transparent includes allowing the public to understand the range of cases in the Family Court and how they are dealt with. The publication of judgments is an essential part of that process." The President's Guidance makes clear at paragraph 1.4 that the guidance does not affect the exercise by the judge in any particular case of any powers otherwise available to regulate the publication of material relating to the proceedings. Paragraph 1.4 further makes plain that, in every case, the terms on which publication is permitted are a matter for the judge. The Guidance states that in each case the court will need to consider whether an adjustment to the general approach / process set out in the guidance is required and that

the judge will usually set out the approach decided in a rubric at the start of the judgment. The President's Guidance provides direction with respect to what should be anonymised prior to the publication of the judgment. However, and noting at paragraph 4.1 that there is "little point in publishing a judgment if it is so heavily redacted that it is unintelligible or its integrity is lost or distorted", the Guidance further makes clear that (emphasis in the original): "5.1. The general process set out below (Table 1) is intended to represent a reasonable starting point for the approach to the anonymisation of children judgments for the purposes of publication. It is not intended to be a fixed or rigid default position, but in many cases this general approach or something close to it will represent good practice. It is the responsibility of the court to consider in each case whether the general approach set out is appropriate or if some adjustment is required." The Guidance sets out the following key principles governing the anonymisation of judgments prior to publication: "5.5.1. The law in the Family Court is the same as in any other jurisdiction, including the application of the open justice principle. 5.5.2. Anonymisation is only permissible where specifically justified on the facts of the case. 5.5.3. Anonymise / redact where necessary to protect the identity of the subject child and family members (as a function of the child's Article 8 rights encompassing welfare) 5.5.4. Anonymisation of professionals is only usually justified where its purpose is to ensure the anonymisation of the child/family. A speculative concern about harassment or criticism is insufficient. 5.5.5. Anonymisation is not a zero sum game: removal of one fact or item may obviate the need to redact a more important fact or piece of information, thus facilitating publication of a more informative / useful version of a judgment. 5.5.6. Avoid prejudicing criminal investigation / proceedings. 5.5.7. Take particular care in cases involving complaints or descriptions of sexual assault or abuse." Finally, with respect to the question of anonymisation of the judgment prior to publication, the President's Guidance states the following principle at paragraph 3.11 with respect to the privacy rights and the right to freedom of speech in the context of anonymising judgments: "3.11. The question of whether a judgment should be published will inevitably be influenced by the options for anonymisation and redaction: see Sections 4 – 6 below. The court will need to consider both questions before reaching a conclusion on each. This is an essential part of evaluating the proportionality of interference with Article 10 rights, or with Article 8 rights." Proper Approach The mother contends that her Art 8 right to respect for private life, and RR's, require protection through the anonymisation of the judgments of the court, namely the removal from the judgments of the mother's name, the mother's HIV status, RR's name, the name of the local authority and the name of the hospital that treated Edith. The other parties make competing claims for the Art 10 right to freedom of expression. The President's Guidance on publication of judgments refers at paragraph 3.14 to the "balancing exercise" as between Arts 6, 8 and 10 of the ECHR that is required when deciding whether to publish a judgment and cites *Re J (A Child)*

[2013] EWHC 2694 (Fam) , [2014] 1 FLR 52, which in turn relies on the decision of the House of Lords in *Re S (A Child)*(Identification: Restrictions on Publication)

- [2005] 1 AC 593 . In *Re S (A Child)(Identification: Restrictions on Publication)* at [23], and having regard to its decision in *Campbell v MGN Ltd*
- [2004] 2 AC 457 , the House of Lords held that the foundation of the jurisdiction to restrain publication to protect private and family life or to permit publication to protect freedom of expression rested on Convention rights under the ECHR having regard to s.6(1) of the Human Rights Act 1998 (hereafter "the 1998 Act"). In *Re S (A Child)(Identification: Restrictions on Publication)* at [17], Lord Steyn accordingly held that the court exercises the jurisdiction by balancing the competing rights engaged in accordance with the following principles:
- i) None of the rights engaged has, as such, precedence over the others. ii) Where the rights are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. iii) The justifications for interfering with or restricting each right must be taken into account. iv) Finally, the proportionality test must be applied to each, known as 'the ultimate balancing test' (i.e. whether the order that is being sought is proportionate having regard to the end that the order seeks to achieve). However, the law concerning the proper approach to determining the question of publication in family proceedings has recently undergone further and relevant development in *Abassi and another v Newcastle upon Tyne NHS Foundation Trust*, *Haastrup v King's College Hospital NHS Foundation Trust*
- [2025] UKSC 15 ,
- [2026] AC 63 (hereafter " *Abbasi* "). In *Abassi* , the Supreme Court examined again the court's duty not to act in manner that is inconsistent with Convention rights pursuant to section 6(1) of the 1998 Act. Having considered the proper scope of s.6(1) and its relationship with domestic causes of action, including the inherent *parens patriae* jurisdiction, the Supreme Court concluded that the duty under s.6(1) of the 1998 Act does not itself provide a cause of action and that, accordingly, the analysis by Lord Steyn in *In re S (A Child)(Identification: Restrictions on Publication)* was both unusual and specific to the legal context that existed at the time the analysis was undertaken. In the circumstances, in *Abbasi* the Supreme Court made clear that orders regulating the publication of information should be based on the relevant cause of action under domestic law, rather than simply on section 6(1) of the 1998 Act and section 37(1) of the Senior Courts Act 1981. The Supreme Court proceeded to identify in *Abbasi* the causes of action available to protect rights relating to privacy, and to ensure compliance with Art 8 of the ECHR consistent with the court's duty under s.6(1) of the 1998 Act. The Supreme Court recognised that the *parens patriae* jurisdiction of the court, identified by Lord Denning in *Re L (An Infant)*
- [1968] 1 All ER 20 as deriving from the "right and duty of the Crown as *parens patriae* to take care of those who are not able to take care of themselves", can provide a cause of action on which to base orders protecting rights to privacy. The Supreme Court confirmed that

where the child continues to live after proceedings have ended, the court retains its inherent jurisdiction as *parens patriae* to protect that child from adverse consequences of publication. Whilst I did not hear argument on the point, the court also has an inherent jurisdiction to regulate the publication of information arising from the court's jurisdiction to control its own proceedings in the context of the principle of open justice (see *Cape Intermediate Holdings Ltd v Dring* (for and on behalf of Asbestos Victims Support Groups Forum UK))

[2019] UKSC 38 ,

[2020] AC 629). As I have noted above, in *C (A Child)*

[2016] EWCA Civ 798 ,

[2017] 2 FLR 105 , Lord Dyson MR was clear that the court has power under its inherent jurisdiction to order disclosure of all or part of what takes place in private proceedings, including the judgment. This jurisdiction may be more apt as a cause of action when the court is considering publishing information rather than withholding information to protect the welfare of the subject child. A consequence of this is that an application for permission to publish information about proceedings heard in private is a matter invoking the inherent jurisdiction, to be heard in the High Court (*M v F & Anor*

[2025] EWHC 801 (Fam)). Prior to the decision of the House of Lords in *In re S (A Child)* (Identification: Restrictions on Publication) , it was well established that the court's *parens patriae* powers provided a source of jurisdiction to grant an injunction *contra mundum* restraining the publication of information, if that was necessary in order to protect the interests of the child. There was an extensive body of case law concerning the inherent jurisdiction of the High Court to control publicity with respect to children as *parens patriae* . In *In re C (A Minor)* (Wardship: Medical Treatment) (No 2)

[1990] Fam 39, Lord Donaldson MR observed as follows with respect to the circumstances in which the court could restrain publication under the *parens patriae* jurisdiction: "I consider that the information disclosed in the judgment of Ward J and of this court on the main appeal provides all necessary material for discussion and comment on the sole issue of genuine public interest, namely, the vitally important question of how a child should be cared for and treated in the tragic situation of baby C. However, this conclusion does not of itself justify the injunction which the judge imposed or that which we substituted. Unless the public interest or a private right enforceable by the courts requires an injunction, the courts cannot intervene. On the facts of this case such intervention can only be justified upon one or other or a combination of two bases. These are (1) that the injunction is necessary for the welfare of C or for safeguarding her rights and (2) that the injunction is necessary for the administration of justice." As also reiterated in *Abbasi* , publication of information regarding the subject child's carers can also be restrained under the court's inherent jurisdiction as *parens patriae* . However, at [61] the Supreme Court emphasised that this power rests on the fact that the information concerns the

subject child and that its disclosure would be harmful to him or her: "In re S (A Child) (Identification: Restrictions on Publication)

[2003] EWCA Civ 963 ;

[2004] Fam 43 Hale LJ concluded, after reviewing the authorities, that such orders can be justified either on the basis that they are necessary to protect the interests of the child or on the basis that they are necessary to protect the administration of justice in proceedings in which the court has intervened to protect the interests of the child. She said (para 36): 'If the court has intervened, through wardship or other proceedings, in order to safeguard and promote the welfare of the child, and that objective will be jeopardised by the proposed publicity, then this might be said to threaten the effective working of the court's jurisdiction. The alternative approach, taken in In re Z

[1997] Fam 1 with the approval of Sir Thomas Bingham MR, was to accept that safeguarding the welfare of a child whose future is already before the court is an alternative basis for making such an order. In either event, it is clear that the information must relate to the child or his carers and that its disclosure would be harmful to him.' The last sentence in that passage is important. The court's power to prohibit the publication of information about the child's carers, as derived from its *parens patriae* jurisdiction or alternatively from its jurisdiction to ensure the effectiveness of its orders in respect of the child's treatment, is based on the need to prevent interferences with the ability of the carers to care for the child. It is not based on concern for the carers' rights or interests for their own sake." The case law regarding the court's *parens patriae* powers to grant an injunction *contra mundum* restraining the publication of information included consideration of the role of the child's best interests. In *Kelly v BBC*

[2001] Fam 59 , Munby J (as he then was) enumerated the categories of case discussed by Ward LJ in *Re Z (A Minor) (Freedom of Publication)*

[1997] Fam 1 in which the court can exercise its inherent jurisdiction in relation to publication as follows:

i) Cases where the inherent jurisdiction is not exercisable at all and the child is left to whatever remedies against the media the law would give an adult in comparable circumstances. ii) Where the jurisdiction is exercisable but in circumstances where, because the court is exercising only its 'protective' jurisdiction, the child's interests are not paramount and where a balancing exercise has to be performed. In *Re J (Reporting Restriction)*

[2014] 1 FLR 523 Sir James Munby held that the child's best interests are, rather, a "primary consideration". In applications of this nature, therefore, the child's best interests will be of the first importance, although they may be outweighed by the cumulative effect of other considerations (see *Re J (Reporting Restriction)* at [22]). iii) Where the court is exercising its 'custodial' jurisdiction and therefore the child's interests are paramount. As the question of restraining publicity engages the welfare of the child, the impact of

publication on the child must be weighed by the court (see *Re S (A Child) (Identification: Restrictions on Publication)* at [25]). Although in many cases the evidence will show that publicity will have an adverse impact on the child, that will not be the position inevitably. Whilst the courts have recognised that some of the evidence on which the requisite balancing exercise is undertaken will necessarily involve a degree of speculation (see *Re W (Children)(Identification: Restrictions on Publication)*

[2006] 1 FLR 1), in each case the impact on the child of publication must be assessed by reference to the evidence before the court rather than by reference to a general presumption that publicity will be inevitably harmful to the child (see *Clayton v Clayton*

[2006] Fam 83 at [51]). When the court is considering whether to depart from the principle of open justice it will require clear and cogent evidence on which to base its decision. In *Birmingham City Council v Riaz and others*

[2014] EWHC 4247 (Fam) Keehan J observed that: "There comes a point, however, where evidence is not merely speculative but is pure speculation, even from experienced professionals, with no sound or cogent underlying evidential basis. Given the Draconian and wide ranging nature of RROs, I am of the view that evidence of this nature will not be sufficient or adequate to provide an evidential basis to justify the making of an order." The question of whether a judgment should be anonymised also engages the principle of open justice beyond just the question of jurisdiction. In *R v Legal Aid Board ex parte Kaim Todner (A Firm)*

[1999] QB 966 at 977 the purpose of open justice was described by Lord Woolf MR as being (a) to deter inappropriate behaviour on the part of the court; (b) to maintain the public's confidence in the administration of justice; (c) to enable the public to know that justice is being administered impartially; (d) to result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with the parties' or witnesses' identities concealed; and (e) to make uninformed and inaccurate comment about the proceedings less likely. There are many erudite statements of the importance of open justice in the authorities. In *In re C (A Minor) (Wardship: Medical Treatment)* (No 2)

[1990] Fam 26 at p.53 Lord Justice Nicholls observed as follows in a case involving the treatment of a terminally ill child: "It is, of course, a fundamental principle in this country that justice should be administered in public. The public are entitled to know, and should know, what matters are being brought before the judges, what decisions and orders are being made by judges, and the reasons for those decisions and orders. In reporting on such matters the press have an indispensable function as the eyes and ears of the public. Moreover, and as part of the freedom of the press in this country, responsible investigative journalism has a role of great importance." In *Tickle and Summers v BBC and Ors*

- [2025] EWCA Civ 42 , the Master of the Rolls re-iterated the open justice principle and held at [45]: "This principle is applicable as much in family proceedings as in any other proceedings. The statutory limitations contained in section 12 of the AJA 1960 and section 97 do not displace the open justice principle or create any separate "shielded justice" environment. They provide a degree of privacy for certain proceedings relating to children according to their terms. Munby J explained at [83]-[86] in *Re B (A Child) (Disclosure)*
- [2004] EWHC 411 (Fam) ,
- [2004] 2 FLR 142 (Re B) the Court's jurisdiction to relax and increase the statutory restrictions on reporting, and the reasons for those restrictions." With respect to the impact of the principle of open justice on the question of whether the names of the parties should be anonymised, in *JXMX v Dartford and Gravesham NHS Trust*
- [2015] EWCA Civ 96 Moore-Bick LJ said: "[17] The identities of the parties are an integral part of civil proceedings and the principle of open justice requires that they be available to anyone who may wish to attend the proceedings or who wishes to provide or receive a report of them. Inevitably, therefore, any order which prevents or restricts publication of a party's name or other information which may enable him to be identified involves a derogation from the principle of open justice and the right to freedom of expression. Whenever the court is asked to make an order of that kind, therefore, it is necessary to consider carefully whether a derogation of any kind is strictly necessary, and if so what is the minimum required for that purpose. The approach is the same whether the question be viewed through the lens of the common law or that of the European Convention on Human Rights, in particular articles 6, 8 and 10." As I will come to, granting the anonymisation sought by the mother would, I am satisfied, have the effect of restricting further reporting of the criminal proceedings in circumstances where the mother is named in all past media coverage of those proceedings. In *Re B (A Minor)(Wardship: Restrictions on Publication)*
- [1994] 2 FLR 637 Sir Thomas Bingham MR (as he then was) made clear that, in the absence of statutory restriction, reports of proceedings in a public court of law should only be restrained where and to the extent that restraint is shown to be necessary for the purposes of protecting the proper administration of justice. In *Re B (A Minor)(Wardship: Restrictions on Publication)* the Court of Appeal doubted in the strongest terms that a judge sitting in the Family Court has power to restrain reporting of a criminal trial. In any event, even if having the power to restrict publicity relating to criminal proceedings, the Court of Appeal was firmly of the view that a family judge should not exercise it; any decision as to restraining the publicity relating to the identity of persons concerned in criminal proceedings is a matter for the discretion of the criminal trial judge. In *Re Trinity Mirror Plc*

(2008) 2 Cr App R 1 the then Lord Chief Justice, Lord Judge said at [32] and [33]: "[32] This appeal succeeds on the jurisdiction argument; we must however add that we respectfully disagree with the judge's further conclusion that the proper balance between the rights of these children under Article 8 and the freedom of the media and public under Article 10 should be resolved in favour of the interests of the child. In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offences should not be concealed. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime. Moreover the principle protects his interests too, by helping to secure the fair trial which, in Lord Bingham of Cornhill's memorable epithet, is the defendant's "birthright". From time to time occasions will arise where restrictions on this principle are considered appropriate, but they depend on express legislation, where restrictions on this principle are considered appropriate, and, where the Court is vested with a discretion to exercise such powers, on the absolute necessity for doing so in the individual case.

[33] It is sad, but true, that the criminal activities of a parent can bring misery, shame, and disadvantage to their innocent children. Innocent parents suffer from the criminal activities of their sons and daughters. Husbands and wives and partners suffer all suffer in the same way. All this represents the further consequences of crime, adding to the list of its victims. Everyone appreciates the risk that innocent children may suffer prejudice and damage when a parent is convicted of a serious offence. Among the consequences the parent will disappear from home when he or she is sentenced to imprisonment, and indeed depending on the crime but as happened in this case, there is always a possibility of the breakdown of the relationship between their parents. However we accept the validity of the simple but telling proposition put by the court reporter to Judge McKinnon on 2 April 2007, that there is nothing in this case to distinguish the plight of the defendant's children from that of a massive group of children of persons convicted of offences relating to child pornography. If the court were to uphold this ruling so as to protect the rights of the defendant's children under Article 8, it would be countenancing a substantial erosion of the principle of open justice, to the overwhelming disadvantage of public confidence in the convicted and sentenced in them. Such an order cannot begin to be contemplated unless the circumstances are indeed properly to be described as exceptional." All that is not to say that the principle of open justice means that publication of information can never be restricted. In *In re C (A Minor) (Wardship: Medical Treatment) (No 2)* at p.53 Lord Justice Nicholls recognised that there are cases in which the principle of open justice must give way if it is not to result in the purpose of the proceedings being defeated: "Nevertheless, there are occasions when the administration of justice in public would be self-defeating: the public identification of the parties, or even the hearing of the matter in public at all, may be attended by a real risk that such publicity would defeat the purpose which the court

proceedings are properly intended to achieve. In such cases the court has an inherent power to conduct its process in such a way as will prevent that result. Proceedings relating to the welfare of minors are an example of this. The court is concerned to see that the welfare of the child which the court is seeking to promote is not jeopardised by publicity." In Abbasi , the Supreme Court reiterated at [115] that exceptions to the open justice principle are capable of being justified if, among other things, they are necessary to protect the interests of a child (as demonstrated in B and P v United Kingdom

(2002) 34 EHRR 19). In Re X Children

[2008] 1 FLR 589 at [73], Sir James Munby held, having reiterated the principle that whilst it was a strong thing to omit or qualify the public domain proviso, that where there is a pressing need the court can construct a reporting restriction order so as to prevent the further reporting of aspects of the criminal proceedings which have already been reported. Whilst not itself providing a cause of action for restraining publicity to protect private and family life or permitting publication to protect freedom of expression, in addressing any cause of action that does subsist, including that under the *parens patriae* jurisdiction of the court, s.6(1) of the 1998 Act mandates that the court not act in a manner that is incompatible with Convention rights, including those under Art 8 and Art 10. In these circumstances, in determining applications concerning publication of information in the context of family proceedings, consideration will still need to be given to the Art 8 and Art 10 rights engaged. In doing so, in Abbasi the Supreme Court made clear that the discipline for balancing the rights engaged set out in *In re S (A Child) (Identification: Restrictions on Publication)* will require a more structured approach: "128. The proper application of the Convention requires a more structured approach than the concept of "balancing" rights might suggest. In assessing whether there has been a breach of article 10 (or, *mutatis mutandis*, a breach of article 8), the court begins by asking whether there was an interference prescribed by the law. The next question is whether it pursued a legitimate aim, ie an aim which can be justified with reference to one or more of the matters mentioned in article 10(2) (or article 8(2), as the case may be). The remaining question is whether the interference was necessary in a democratic society. It is at that stage that the court may be required to strike a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other: *Axel Springer AG v Germany*

(2012) 55 EHRR 6 , para 84." The Art 8 right to respect for private and family life is a wide one, encompassing not only the narrow concept of personal freedom from intrusion but also psychological and physical integrity, personal development and the development of social relationships, and physical and social identity (see *Botta v Italy*

(1998) 26 EHRR 241 at [32] and *Bensaid v United Kingdom*

- (2001) 33 EHRR 205 at [46] and [47]). It is self-evidently important that, in the context of proceedings of this nature, the stability of the children's circumstances should be preserved to the greatest extent possible. This will extend to ensuring that the child is not adversely affected by publicity surrounding the breakdown and re-constitution of her family life. With respect to the Art 10 right to freedom of expression, in *R v Secretary of State for the Home Department ex parte Simms and Another*
- [2000] 2 AC 115 Lord Steyn said at 126: "Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market": *Abrams v United States*
- (1919) 250 US 616, at 630, per Holmes J (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country." Given the importance of the open justice principle, the need for any restriction of freedom of expression must be established convincingly. It must be justified by a pressing social need, and must be proportionate to the legitimate aim pursued. In *R v Robert Jolleys, Ex Parte Press Association*
- [2013] EWCA Crim 1135 Leveson LJ said at paragraph 16: "It was for anyone seeking to derogate from open justice to justify that derogation by clear and cogent evidence: see *R v Central Criminal Court ex parte W, B and C*
- [2001] 1 Cr App R 2 and in civil cases, the Practice Guidance (Interim Non-disclosure Orders) [2012] 1 WLR 1033 and *Derispaska v Cherney*
- [2012] EWCA Civ 1235 per Lewison LJ (at paragraph 14). The order was made when defence counsel asserted the likelihood of the defendant's son suffering 'the most extraordinary stigma through no fault of his own' which caused the Recorder to ask the reporter what the need for identifying the son was, rather than whether it was necessary to restrict his identification." Section 12(4) of the 1998 Act provides that the court must have particular regard to the importance of the Art 10 right to freedom of expression. Where the proceedings relate to material which is or appears to be journalistic, literary or artistic material, the court must have regard to the extent to which the material has, or is about to, become available to the public (the public domain proviso), or it is, or would be, in the public interest for the material to be published (the public interest proviso). The court must also have regard to any relevant privacy code. With respect to information already in the public domain, taking domestic law as the starting point, in *A-G v Guardian Newspapers (No 2)*

- [1990] AC 109 Lord Goff of Chievely observed that: "once [information] has entered what is usually called the public domain (which means no more than the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it." The fact that the material has, or is about to, become available to the public will not be determinative by itself. In cases where the complaint of infringement of privacy rights is one of intrusion, rather than simply breach of confidentiality per se, the repetition of that information online may, in an appropriate case, be restrained as amounting to unjustified interference with privacy rights even if the relevant material is in the public domain (see *F v Newsquest and Others*)
- [2004] EMLR 607, *JIH v News Group Newspapers*
- [2010] EWHC 2818 (QB), [2011] EMLR 177, *CTB v News Group Newspapers Ltd and Thomas*
- [2011] EWHC 1326 (QB), *MBX v East Sussex Hospitals NHS Trust*
- [2012] EWHC 3279 (QB) and *Re A (Reporting Restriction Order)*
- [2012] 1 FLR 239). In *PJS (Appellant) v News Group Newspapers Ltd (Respondent)*
- [2016] UKSC 26 a majority of the Supreme Court held that the fact there has already been significant online and social media coverage will not be decisive in determining whether an injunction restricting reporting will be made. In an appropriate case, the court may grant a reporting restriction order to restrain further interference with a person's right to respect for private life despite a significant loss of confidentiality by reason of coverage on the Internet (*PJS (Appellant) v News Group Newspapers Ltd (Respondent)* at [60]). Where it would be in the public interest for the material described in s.12(4) of the 1998 Act to be published, which will include information on the administration of justice (see *Morice v France*
- (2016) 62 EHRR 1 at [44]) and the operation of the family justice system (see *N.Š. v Croatia*
- (2020) Application No. 36908/13 at [103]), freedom of expression will attract high levels of protection. In this connection, and as reiterated in *Abbasi*, the European case law has consistently held that there is little scope under Art 10(2) of the Convention for restrictions on debate of questions of public interest (see *Wingrove v United Kingdom*
- (1997) 24 EHRR 1 at [58]). 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 (see *Harris v Harris; Attorney General v Harris*
- [2001] 2 FLR 895 at [373]). Pursuant to r.12.73A (and r.14.4A) of the FPR, Practice Direction 12R makes provision in relation to the court regulating the communication of information from proceedings. FPR PD12R only applies where, as in this case, a reporter attends court in accordance with r.27.11 FPR and Practice Direction 27B and where, as in this case, the

proceedings are public law proceedings. As noted by Harris J in *M v F & Anor* at [40] a Transparency Order is the vehicle by which the objectives of those rules are achieved. Paragraph 3.1 of PD12R states that the aim of the Practice Direction is to support reporters being able to report on what they see and hear in court in accordance with the terms of a Transparency Order. This is referred to as "the transparency principle". Paragraph 3.2 of PD12R articulates the effect of a Transparency Order as follows: "3.2 Through the means of a Transparency Order, the restrictions on publication contained within section 12 of the Administration of Justice Act 1960 are varied. No contempt of court will be committed so long as the terms of the Transparency Order are complied with." Drawing all these threads together, in light of the decision of the Supreme Court in *Abbasi*, it is clear that s.6(1) of the Human Rights Act 1998 does not, by itself, provide a cause of action for enlarging or restricting publication of information governed by the s.12 of the 1960 Act (although consideration of the rights engaged will plainly be necessary when exercising such cause of action that does exist). As further confirmed in *Abbasi*, the High Court's *parens patriae* jurisdiction provides a cause of action on which to base orders restraining publication of information in whole or in part in order to protect the welfare and rights of a child, and of the rights to privacy of adults where necessary to secure the rights or interests of the child, and the administration of justice. In the foregoing circumstances, I am satisfied that the following principles fall to be applied when determining the questions of whether the judgments should be anonymised prior to publication and the terms of the Transparency Order:

- i) Section 12 of the 1960 Act operates to prohibit publication of information relating to proceedings before any court sitting in private. This prohibition continues after the conclusion of proceedings (s.97 of the Children Act 1989 provides a parallel prohibition whilst the proceedings in respect of the child are ongoing). ii) Subject to the contents of the judgment, a decision to anonymise the judgment prior to publication, is likely to involve a decision whether to relax or enlarge the prohibition contained in s.12 of the 1960 Act. iii) Pursuant to FPR PD12R, the court may make a Transparency Order, and may vary the terms of that order beyond the terms set out in FPR PD12R, the effect of which is to vary the restrictions in s.12 of the 1960 Act. iv) The decision to restrict or enlarge the restrictions set out in s.12 of the 1960 Act is an exercise of the court's inherent jurisdiction, be it the inherent *parens patriae* jurisdiction of the court or the court's inherent jurisdiction to control the publication of information from its own proceedings.
- v) When deciding under the inherent jurisdiction whether to anonymise the judgment prior to publication, and when deciding whether to make or vary a Transparency Order, the court should begin its assessment by considering the relevant domestic law. Namely, is the exercise of the inherent jurisdiction necessary to safeguard the welfare of the subject child or for safeguarding her rights and / or to ensure the administration of justice. vi) Where the inherent jurisdiction is exercised on basis of the court's 'protective' jurisdiction in respect of the child, the child's best interests are not paramount. Where the court is exercising its inherent jurisdiction on the basis of the court's 'custodial' jurisdiction in respect of the child,

the child's interests are paramount. vii) The question of whether a judgment should be anonymised and published engages the principle of open justice. viii) It is doubtful that a judge sitting in the Family Court has power to restrain reporting of a criminal trial and even if having that power, should not exercise it. ix) When deciding under the inherent jurisdiction whether to anonymise the judgment prior to publication, and when deciding whether to make or vary a Transparency Order, pursuant to s.6(1) of the 1998 Act the court must act in a manner compatible with the rights engaged under the Convention. The court must consider (a) whether there is an interference with the relevant right which is prescribed by the law, (b) whether it pursues a legitimate aim, i.e. an aim which can be justified with reference to one or more of the matters mentioned in the relevant article and (c) whether the interference is necessary in a democratic society.

- x) When deciding under the inherent jurisdiction whether to direct the publication of a judgment and whether to anonymise the judgment prior to publication, and when deciding whether to make or vary a Transparency Order, pursuant to s.6(1) of the 1998 Act, the need for any restriction of freedom of expression must be established convincingly. Where the information in question is of a journalistic nature, the court will have regard to the extent to which that information is already in the public domain or the extent to which it is, or would be, in the public interest for the material to be published. xi) As noted above, paragraph 8.5 of the President's Guidance concerning publication of judgments contemplates brief

reasons.

DISCUSSION I am satisfied that the judgments of the court in these proceedings should be published subject only to the anonymisation of RR's name and the name of the father and that the Transparency Order should be varied so as to be consistent with that decision. My reasons for so deciding are as follows. In so far as it is contended by the mother that publication of the information she seeks to be anonymised will harm RR's welfare, the court is exercising its inherent *parens patriae* jurisdiction in respect of RR. The same is true in so far as it is said that publication of the mother's identity will harm RR's welfare. The position is less clear cut in relation to the publication of the mother's HIV positive status. The cause of action on which the mother relies to prevent publication of that information was not the subject of submissions. In so far as she seeks protection for herself, however, it likely comprises breach of confidence in circumstances where her HIV status is said not to be public knowledge and was shared in circumstances that imposed an obligation of confidence (see *Douglas v Hello! Ltd* (No 3)

[2006] EWCA Civ 595,

[2006] QB 125). In so far as she seeks that outcome to protect RR's welfare, on the basis that the disclosure of her status would be harmful to RR, the court is once again exercising its inherent *parens patriae* jurisdiction in respect of RR. Section 12 of the 1960 Act does not prohibit publication of the name of RR, the fact that RR is the subject of proceedings under the Children Act 1989 or the name and address of the mother. Accordingly, in considering whether to anonymise the judgment in the way the mother seeks, I am

satisfied that the court is being asked, broadly, to enlarge the statutory protection afforded by s.12 of the 1960 Act. The mother accepted through Mr Stonor and Mr Hunt that there is a strong public interest in the publication of the judgments in this case. During his oral submissions, Mr Stonor properly conceded that there are a number of very clear matters of public interest that support the judgments being published. This court has concluded that the evidence of experts on whom the mother relied for her defence in the criminal proceedings, and one of the experts from whom the prosecution sought a report, was not reliable and, whilst the mother was acquitted on the basis of that evidence, has now twice found the mother to be responsible for the death of Edith. Whilst the evidence of Professor Mangham was criticised in *London Borough of Hammersmith and Fulham v The Mother and Father*, in reaching its findings this court has found his evidence to be reliable. In the circumstances, in addition to there being a public interest in the operation of the family courts being transparent to the public at large, to enable the public to understand how the courts go about making the difficult decisions that they do, there is a public interest in the public knowing how the court treated the expert evidence in this case, particularly in circumstances where that view differs from that taken in the criminal proceedings and, in respect of Professor Mangham, in other family proceedings. The fact that the family court and the Crown Court reached different conclusions as to the perpetrator of fatal injuries sustained by the child is also plainly a matter of public interest. In this regard, it is in the public interest to permit the media to report the court's conclusions where they are related to, and further illuminate and inform, prior media coverage of this and other cases. Overarching these matters is the public interest in accurate information being made available in a case resulting in the death of a child, rather than information that is partial or incomplete. Particular importance attaches to publication of information which serves the public interest and contributes to a debate of general interest. Whilst accepting that these matters mean the judgments should be published, on behalf of the mother Mr Stonor and Mr Hunt submit that the public interest does not go so far as justifying the interference in both RR's and her mother's privacy rights constituted by the publication of her name, her HIV positive status, RR's name, the name of the local authority and the name of the hospital that treated Edith and that the balance of the Art 8 and Art 10 rights engaged in this case returns the same answer. The following matters bear on the question of whether that submission can be accepted by the court. In circumstances where the court is exercising its inherent *parens patriae* jurisdiction, whilst RR's best interests are not paramount they are a primary consideration of the court. As I have noted, although in many cases the evidence will show that publicity will have an adverse impact on the welfare of the subject child, that will not inevitably be the position in each case. Whilst necessarily involving a degree of speculation, in circumstances where any departure from the principle of open justice requires clear and cogent evidence, the impact of publication on RR's welfare must be assessed by reference to the evidence before the court of the impact of publication on her, rather than by reference to a general presumption that publicity will be inevitably harmful to her. With respect to the impact on RR of the publication of the mother's identity, on her behalf Mr

Rothery acknowledges that, ordinarily, there would be strong welfare grounds against naming the mother. Mr Rothery submitted that any adverse impact on RR from further publicity will not come "from someone reading a paper in the Home Counties" but rather from her family, neighbours and community and that it is those who are closest to RR who are most likely to know she is linked to this case regardless of anonymisation. It is conceded by all parties that over the course of the criminal trial, during which the identity, geographic location and allegations against the mother were the subject of extensive national media coverage, RR was not subjected to bullying or other adverse attention or comment from her family, her peers or in her community. In these circumstances, and where the mother's name is already widely in the public domain, I am satisfied that the risk of harm to RR of the mother's name being included in the published judgment is low and that anonymising the mother's name would not result in substantial further protection for RR. I am reinforced in this conclusion by the statement of evidence from the allocated social worker, setting out the work that is to be done with, and the support that is to be given to RR over and after the period in which there may be renewed media interest in the case. I remain, however, satisfied that RR's own name should be anonymised in the judgment. In the context of the extensive publicity that has already occurred in respect of the criminal trial, the anonymisation of RR's name will not prevent those who know the family from linking the judgment to RR. I accept Mr Rothery's submission that a degree of realism is required in circumstances where the extensive information already in the public domain from the criminal proceedings means that 'jigsaw identification' derived from the judgment in this case is unavoidable no matter how much information is redacted from the judgment. However, I also accept his submission that anonymising RR's name prior to publication and prohibiting the publication of her name by way of a Transparency Order will provide a limited but important degree of protection by preventing RR's name being linked in the future with reports of her sister's death that will undoubtedly subsist online. With respect to the publication of the mother's HIV positive status, the court was not provided with detailed submissions on the domestic law governing this issue. However, in circumstances where a reasonable person of ordinary sensibilities, if placed in the same position as the mother as the subject of disclosure of her HIV status, would find the disclosure offensive, the mother's HIV positive status is plainly private (see *Campbell v MGN Ltd*

[2004] UKHL 22 ,

[2004] 2 AC 457). The mother would have had a reasonable expectation that the information would remain private in circumstances where the information is by its nature confidential and the proceedings in which it was considered are private. In such circumstances, the question becomes whether there is a sufficient public interest in publication of the mother's HIV status in the judgments to justify curtailing the privacy of personal information (*Campbell v MGN Ltd* at [56]). Ordinarily, the HIV positive status of an individual could not justify publication of confidential personal information. However, in this case, the mother used her HIV positive status, through the deployment of the

evidence of Professor McCarthy, to seek to explain the cause of, and to support her denial of culpability for, Edith's death. The court considered but rejected that case for the reasons set out in the judgment. In order to explain its reasoning for doing so, it is necessary to refer to the mother's HIV status and the consequential administration during pregnancy of antiretroviral medication. Further, that information is equally necessary to meet the public interest in accurate information being made available in a case resulting in the death of a child and which contributes to a debate of general interest. With respect to the impact on RR of her discovering her mother's HIV status, that is to be the subject of careful work with RR to explain the position and its consequences. The question of whether a judgment should be anonymised also engages squarely the principle of open justice. I repeat the words of Lord Justice Nicholls in *re C (A Minor) (Wardship: Medical Treatment)* (No 2) : "It is, of course, a fundamental principle in this country that justice should be administered in public. The public are entitled to know, and should know, what matters are being brought before the judges, what decisions and orders are being made by judges, and the reasons for those decisions and orders. In reporting on such matters the press have an indispensable function as the eyes and ears of the public. Moreover, and as part of the freedom of the press in this country, responsible investigative journalism has a role of great importance." The issues of public interest in this case engage both the family proceedings and criminal proceedings. Understanding the significance of the outcome of the family proceedings requires reference to the outcome of the criminal proceedings. In these circumstances, anonymising the mother's name in the judgments of the family court and making a Transparency Order prohibiting publication of her name would have the effect of cutting across the open justice principle. A particular feature of the reporting of the criminal trial of the mother was the legitimate concentration by the press on a question of public interest, namely the competency and credibility of experts who give evidence before the courts in this jurisdiction. In this context, the tenor of reporting of the criminal proceedings involving the mother was that the evidence of one expert, Professor Mangham, was unreliable and had led, potentially, to miscarriages of justice and that the evidence of three other experts, Professors McCarthy, Cohen and Freemont had prevented a miscarriage of justice. This court found that the position was reversed, preferring the evidence of Professor Mangham and making significant criticism of the evidence of Professors McCarthy, Cohen and Freemont. Whilst in the criminal proceedings the court directed the jury to acquit the mother of murder, following the prosecution offering no evidence based on conflicting expert evidence, the family court again found the mother responsible for the death of Edith, having evaluated that conflicting expert evidence. Anonymising the mother's name in the judgments of the family court and making a Transparency Order prohibiting publication of her name would mean that, in any coverage of the family proceedings, the press would not be able to make reference to the criminal proceedings in any way without the risk of breaching the Transparency Order. This would have the effect of preventing a central matter of public interest in this case, namely the competency and credibility of experts who give evidence before the courts in this jurisdiction, being reported. On this central matter of

public interest, the family proceedings are inextricably linked with the criminal proceedings in circumstances where the re-opening of the court's findings arose from the decision of the CPS to offer no evidence on the basis of expert evidence that is now the subject of significant criticism in the judgment of this court. Miss Grocott correctly summed up the position in submitting that given the information already in the public domain "it is the mother's name that allows the public to understand the tragically convoluted story of this litigation and the role of the experts in it." It is also necessary to be able to make the link between the criminal proceedings and the family proceedings in order to meet the public interest in accurate information being made available in a case resulting in the death of a child, rather than information that is partial, inaccurate or incomplete. Again, Miss Grocott encapsulated the position in submitting that, for example, in circumstances where the family court heavily criticised the evidence of Professor McCarthy, there is "a real need to correct the misconception in the reporting that Professor McCarthy is a 'Quincy' like figure who rescued the criminal proceedings from infamy". Finally, not only would anonymising the mother's name and making a Transparency Order prohibiting publication of her name cut across the principle of open justice in the way I have described, but it would also create a situation that would be entirely artificial. Whilst anonymising the mother's name and making a Transparency Order would constrain any press reporting that linked the family proceedings to the criminal proceedings, any member of the public would be able to conduct an Internet search using generic terms derived from the subject matter of the anonymised judgment, without needing the names of those involved or any geographic information, to access reports of the criminal proceedings that identify the mother and the circumstances of Edith's death. When deciding whether to anonymise the judgment prior to publication, and when deciding whether to make or vary a Transparency Order, pursuant to s.6(1) of the 1998 Act this court must not act in a manner that is incompatible with the rights engaged under the ECHR. I am satisfied that the rights engaged in this case are the rights of the mother and of RR to respect for private and family life and the Art 10 right of freedom of expression of the press. As made clear by the Supreme Court in *Abbassi*, the court must consider in respect of each of the rights engaged whether there is an interference with the relevant right which is prescribed by the law, whether that interference pursues a legitimate aim in that it can be justified by reference to the terms of the relevant right and whether the interference is necessary in a democratic society, that being the stage at which the court may be required to strike a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other. I am satisfied that the publication of a judgment containing the mother's name would amount to an interference in her right to respect for private life, as would the publication of her HIV positive status (see *Z v Finland*

- (1998) 25 EHRR 371 at [71]). In addition to the domestic law that deals with the question of medical confidentiality, I am conscious of the long line of case law from the ECtHR that emphasises the confidentiality of medical information. Information about the person's health is an important element of private life (see *S and Marper v UK*
- (2009) 48 EHRR 50 at [66]-[67]). I am further satisfied that the publication of a judgment containing the mother's name would constitute an interference in RR's right to respect for private life under Art 8, insofar as the publication of the mother's name will allow those who know RR is her daughter to link RR to her mother's actions. In circumstances where the court is entitled under its inherent jurisdiction to publish its judgments, the interference is in accordance with the law. The publication of the judgment including the mother's name pursues a legitimate aim having regard to the terms of Art 8(2) in the protecting the right to freedom of speech enjoyed by others. This is particularly so in circumstances where any order which prevents or restricts publication of a party's name or other information which may enable her to be identified involves a derogation from the principle of open justice and the right to freedom of expression. With respect to the mother's HIV positive status, I acknowledge that the more intimate the aspect of private life that is being interfered with, the more serious must be the reasons for interference before that interference can be legitimate (see *Douglas v Hello! Ltd (No3)*). Once again, in this case the mother relied on her HIV positive status, through the deployment of the evidence of Professor McCarthy, to seek to explain the cause of, and to support her denial of culpability for, Edith's death. The court considered but rejected that case for the reasons set out in the judgment. In order to explain its reasoning for doing so, the court cannot avoid reference to the mother's HIV status and the consequential administration during pregnancy of antiretroviral medication. I am further satisfied that the interference in the mother's and RR's right to respect for private life is necessary in a democratic society in order to ensure the right to freedom of expression on matters of justice, in this case to meet the public interest in allowing and promoting debate about the functioning of the family justice system and the use of expert evidence within that system. Against these matters, to anonymise the judgment prior to publication and prohibit the publication of the mother's name by way of a Transparency Order amounts to an interference in the Art 10 right to freedom of expression enjoyed by the press. As I have set out above when considering the relevance of the principle of open justice, those steps would prevent reporting by the press on central issues of public interest as no link could be drawn between the family proceedings and the criminal proceedings because to do so would identify the mother. The anonymisation of the mother's name prior to the publication of the judgment and the prohibition against the publication of the name of the mother in a Transparency Order is a restriction prescribed by law for the purposes of Art 10(2), having regard to the case law concerning the scope of the *parens patriae* inherent jurisdiction of the court and the terms of FPR PD12R. Those steps also pursue a legitimate aim, in seeking to protect the Art 8 right of the mother and of RR to respect for their private life and to insulate them from any adverse effects of publicity concerning matters

private to them. Under Art 10(2) the court must also determine whether it is necessary in a democratic society for the right to freedom of expression to be subject to a restriction prescribed by law, in order to protect the rights of others or, in respect of the mother's HIV status, to prevent the disclosure of information received in confidence. I remind myself in this context that in considering the question of necessity, the need for any restrictions of freedom of expression must be established convincingly. Expressions of opinion in the course of a debate will be afforded a special degree of protection by the Convention (see *Bergens Tidende v Norway* and *Annen v Germany* (Application No 3690/10) (unreported) 26 November 2015). The press cannot in principle be required to defer publishing information on a subject of general interest without a compelling need relating to the public interest or protection of the rights of others (see *Stoll v Switzerland*

(2008) 47 EHRR 59 at 131 and *Abbasi* at [159]). The existence or otherwise of compelling reasons must be considered in the context of there being little scope under Art 10(2) for restrictions to be placed on debate of matters of public interest (see *Morice v France*

(2016) 62 EHRR 1 at 125). For the reasons set out above, given the extensive information already in the public domain, the mother's name is necessary to allow the different outcomes in the criminal proceedings and in the family proceedings to be reported and the reporting of a central matter of public interest in this case, namely the competence of experts who give evidence before the courts in this jurisdiction. With respect to the mother's HIV status, that information is necessary to make sense of key elements of the court's decision that the mother caused the death of Edith. It is not possible to excise reference to the mother's HIV status without rendering those parts of the judgment incomprehensible, including the court's reasoning for rejecting the contention that Edith had a condition that predisposed her to fractures due to the administration to her mother of antiretroviral medication during pregnancy. On the very particular circumstances of this case, the mother's HIV positive status is a necessary component in a debate of public interest. It is also relevant that the need to explain the role of the mother's HIV positive status in the decision of the court arises from the conduct of the mother herself in causing the death of Edith, as the court has found. There is a tension in this case between the Art 8 the right to respect for private life engaged in this case for the mother and RR, and the Art 10 right to freedom of expression engaged for the press. Having regard to my analysis of the competing Art 8 and Art 10 rights set out above, their respective importance and the various reasons advanced for interfering with them in this case, I am satisfied that the Art 8 rights of the mother and RR in this case must yield to the right to freedom of expression under Art 10 as regards the identity of the mother and her HIV positive status. This is particularly so where, once again, the evidence of the allocated social worker confirms the work that is to be done with, and the support that is to be given to RR over and after the period in which there may be renewed media interest in the case.

CONCLUSION

Balancing the matters set out above, I am satisfied that my judgments in this case should be published, subject only to the anonymisation of RR's name and the name of the father. Given the information already in the public domain, I am satisfied that it is not necessary to anonymise the name of the local authority and the name of the hospital that treated Edith. In the circumstances, my judgment arising from the hearing re-opening the findings, my original fact finding judgment and this judgment will be published with those redactions. The court will invite submissions from the parties as to the timing of those publications to ensure that the mother, and all those concerned in the care of RR, are aware that further publicity in respect of the case may follow. I will ask counsel to draft orders accordingly. [BAILII: Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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