

ENGLAND AND WALES / JUDGMENT

X and Y (Children)

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Neutral Citation Number: [2018] EWHC 451 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Before : MRS JUSTICE KNOWLES

- ----- Between : A LOCAL AUTHORITY

- and - F and M And X and Y (by their children's guardian)

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- ----- Case No: SD 17 C 01045 Royal Courts of Justice Strand, London, WC2A 2LL th Date: 8 8 th March 2018 Applicant Respondents Mr George Butler for the Applicant Local Authority Miss Gemma Taylor for the children, X and Y F appeared in person M did not appear and was not represented Hearing date: 22 January 2018

- ----- Judgment Approved 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. Mrs Justice Knowles: 1. These applications concern two teenage girls, X and Y. X was born in 2002 and is thus 15 years old and Y was born in 2003 and is thus 14 years old. Both girls were made the subjects of care orders on 11 March 2010 and placement orders on 21 April

2010. This judgment concerns itself with what role, if any, the girls' father, F, should play in both legal proceedings concerning the girls and, more generally, in local authority decision-making about their welfare. 2. The applications made by the local authority were as follows: a) b) c) d) e) Whether the father should remain a party to the proceedings to revoke the placement orders with respect to both girls; Whether the father should remain a party to proceedings pursuant to s.34(4) of the Children Act 1989, the purpose of those proceedings being to deny him any form of contact to the girls; An application under the inherent jurisdiction whereby the local authority sought a declaration that it be absolved from any statutory obligation set out in the Children Act 1989 to consult, refer to and/or inform the father about any aspect of the girls' progress, development and/or well-being; An application for permission to invoke the inherent jurisdiction in relation to the girls; An application for an order or declaration that (i) the local authority be absolved of its duty to provide notice to the father of any future legal proceedings involving the children and (ii)

the court officer should not serve the father with notice of any proceedings or any documents relating to any future proceedings or join him as a party to any future legal proceedings without the permission of this court. 3. 4. 5. The extent of the orders sought by the local authority was unusual and, on any analysis, represented a serious interference with the father's Article 8 rights as a parent and also with the children's Article 8 rights to family life. I held a hearing on 22 January 2018 and reserved my judgment. This judgment also contains my reasons for limiting disclosure of the papers in the proceedings to the father. I made that decision at a hearing in November 2017 at which the father was neither present nor represented. The local authority was represented by Mr George Butler and the girls by Miss Gemma Taylor on behalf of their Children's Guardian. I am grateful to both counsel for their written and oral submissions. The father appeared in person via video-link from the prison in which he is presently incarcerated. He had sent me a handwritten letter in response to my case management directions and he conducted himself thoughtfully and with commendable restraint throughout the hearing. The mother did not appear and was not represented. She had been given notice of the proceedings but had chosen not to take part or to receive any documents pertinent to the applications which I was asked to determine.

BACKGROUND

6. 7. The mother and father have between them five children. X and Y have a brother, Z, who is now 17 years old and two half-sisters, A and B, who are both adults. There were longstanding concerns about the care given to A and B by the mother and father and A and B were cared for by their extended family for lengthy periods of time. Z was the subject of care proceedings as an infant but was later returned to his parents' care. X and Y were born after Z had returned home. All three children, X, Y and Z became looked after children on 16 June 2009 and both girls were placed together on 22 June 2009. Care proceedings were issued on the grounds that the children were suffering significant emotional harm in consequence of the father's alcohol abuse, domestic abuse between the parents and the mother's inability to protect the children. X and Y were made the subjects of care orders on 11 8. 9. 10. 11. 12. March 2010 and placement orders on 21 April 2010. The plan at that time was for X and Y to be placed for adoption together. X was then 7 years old and Y was 6 years old. Family finding for an adoptive placement for both girls together was not successful as it was evident that the girls' foster carers were struggling to meet their competing needs. In February 2011 the local authority decided to place X and Y in separate foster homes, initially for assessment. By then it had become apparent that placement of the girls together was re-traumatising for each child given what each had experienced in the family home. Each girl triggered anxious and challenging behaviours in the other and so, in March 2011, both girls were placed separately with fortnightly contact. At some point during 2011 the local authority decided to change the plan for each girl from adoption to permanence via separate long-term foster care with continued contact to each other. That decision was ratified by the local authority's Adoption and Permanence Panel on 18 January 2012. The last time that both girls saw their

father was in December 2010. In February 2011 the local authority took a decision to suspend the girls' contact with both the mother and the father. Both girls were reported to be in a heightened emotional state before and after contact and both girls expressed fear and anxiety about their father. Both parents were informed of this decision on 3 March 2011. Indirect contact by way of cards and small presents from the parents to the girls continued till December 2011 and it was stopped at about the time X began to speak of abuse by her father. X told her social worker in summer 2012 that she was anxious about information about her being given to her parents. In January 2012 X disclosed historic sexual abuse by her father and on 7 October 2013 Y also disclosed historic sexual abuse by her father. Both disclosures were investigated by the local authority and the police, resulting in the mother and the father being charged with a variety of offences. On 19 March 2014 following a trial at which X and Y gave evidence, both parents were convicted of offences against X, Y and also Z. The mother was convicted of neglect and on 30 April 2014 she received a two-year suspended sentence with supervision and participation in specified programmes. The father's criminal conduct in respect of his children was much more serious and extensive. It is important that I set this out in some detail. The father was convicted of three counts of causing a child under 13 to engage in sexual activity; seven counts of cruelty to a person aged under 16; a count of sexual assault on a child under the age of 13; and assault of a child aged under 13 by penetration. These offences were committed between January 2006 and June 2009. X and Y were the victims of the sexual offences and they were also the victims of the offences of cruelty as was Z. The cruelty offences involved the father assaulting the children by slapping, punching, and kicking and pulling the girls' hair. The children were subjected to a regime whereby all would be made to get up very early in the morning and would be sent to bed as soon as they returned from school. The father also sexually abused his daughters by getting them to masturbate him and he touched the vagina of one girl. The offences came to light after X told her foster carers about her fears of being returned to the father and of being once more abused by him. 13. The father denied the offences and pleaded not guilty. Following his conviction, he maintained his innocence and denied any sexual interest in children. The Pre-Sentence Report detailed an extensive history of alcohol abuse and police call-outs to the family home at the time the children were living there. The author of that report considered that: "...F is considered to pose a risk of physical, sexual and emotional harm to children. The offences appear an extension of the control he was exerting over his own children. They are now in the care of others, but it would be understandable if they were concerned about [F] attempting to make any further contact with them and any further contact would result in re-victimisation. He will be subject to numerous external controls on release and does not know of his children's whereabouts but will need careful monitoring when he is released from prison." He also concluded that the sexual offences appeared almost sadistic given the degree of control exerted by the father over the girls. On 30 April 2014 the father was sentenced to 22 years' imprisonment. The earliest date for the father's release is thus Spring 2025. In sentencing, the Crown Court judge described the father as a drunken bully who had imposed a brutal, strict and unbending regime on his children. The father was also made the subject of Sexual Offences

Prevention Order and a copy of this order was provided in my bundle. Amongst a variety of other provisions, the father was prohibited from contacting either X or Y directly or indirectly until further order. The judge observed that, with a lengthy custodial sentence and measures put in place to protect children post-sentence, he would not sentence the father to an extended indeterminate sentence by reason of his danger to children. It is notable that the judge indicated that the psychological harm to Y, in particular, was severe given the evidence during the criminal trial about her state of mind towards the end of the time she was living with her parents. The girls' social worker has been in reasonably regular contact with the Probation Officer responsible for the father during his imprisonment. In September 2017 the Probation Officer confirmed that the father was due to be placed on a programme for sex offenders who were in denial about their convictions. Unfortunately, the father appears to have breached the Sexual Offences Prevention Order on two occasions by attempting to contact X and Y via their social worker. On 10 July 2016 he wrote to the social worker on official prison paper and asked her to wish Y a happy birthday from him. In that letter he spoke of his children wanting to see him one day and asked if he could be allowed to write to the girls in future and, if all were going well, to have a supervised visit from them at the prison. On 8 August 2016 the father sent a birthday card to X containing £20 and wishing her a "wonderful birthday sweetheart lots of love always Dad xxxxxxxx". The social worker discussed these communications with the father's Probation Officer. The unchallenged evidence before the court was that both girls experienced significant physical, sexual and emotional harm in the care of their parents. Both girls reported their father being prone to sudden acts of violence and they witnessed domestic violence (both physical and sexual) perpetrated by their father against their mother. Both girls have recounted frightening, sadistic and violent experiences and both developed a variety of behaviours to manage their experiences. They were hypervigilant and remain so to date. X was described as an elective mute as a child and Y developed a fixed smile which persisted for several years. Both girls developed an enmeshed relationship as they attempted to survive abuse together. Both also suffered from enuresis. 14. 15. 16. 17. In foster care, both girls competed for their carers' attention and became a powerful force when emotionally aroused or distressed. They struggled to live together and to be together calmly in contact even after they were moved to separate placements. As they have grown older, both girls' memories of their early history together trigger very difficult feelings and behaviours which have impacted on the contact they were able to have with each other. 18. Both girls have expressed great fear/terror of their father and both have required much reassurance that he remains in prison, does not know where they are, and would not come out of prison until they were adults. Their social worker was clear that providing information about the girls to their father would have caused them great anxiety and would have hindered any recovery they might make from their childhood experiences. X was particularly vulnerable and providing her with a sense of protection was fundamental to her developing sense of security. THE PROCEEDINGS Preliminary Matters 19. 20. 21. In October 2017 the local authority issued applications to revoke the placement orders relating to both girls and sought relief pursuant to the inherent jurisdiction in relation to its statutory responsibilities

to consult the father. It subsequently issued an application for a s.34(4) Children Act 1989 [“the Act”] order in respect of parental contact since revocation of the placement orders would resurrect the care orders and, with them, the local authority’s duty pursuant to s.34(1) to permit the girls to have reasonable contact with their parents. The proceedings were transferred to a Judge of the Family Division given the nature of the relief sought by the local authority. This matter came before me on a number of occasions when the father was not given notice either of the hearing or of the various sets of proceedings. It was the local authority’s position at the very outset – shared at that stage by the Children’s Guardian – that I should grant the declaratory relief sought and make orders removing the father as a party to the various proceedings without giving him any notice whatsoever of what was being done or giving him any opportunity to be involved in the proceedings. The local authority’s stance was shaped by its real fear that disclosure of information about the girls contained within the court papers would be misused by the father in an attempt to contact them either now or at a later date. Those fears were shared by the Children’s Guardian who was of the view that the evidence indicated that anything associated with their father triggered very adverse and strong responses in the children and led to a significant deterioration in their fragile mental health. The Children’s Guardian accepted the advice of professionals working with and caring for the children that asking the children questions about their father or even mentioning him would lead to significant emotional harm. He had thus taken the unusual decision of not discussing the father’s role in the proceedings with either of the girls. Given the background I have outlined, the anxieties on the part of the local authority and the Children’s Guardian were wholly understandable. The position of the local authority and the Children’s Guardian was revised in the light of comments that I made about the unusual nature of the relief sought and the potential unfairness of proceeding in circumstances where the father had not been involved at all in the court’s decision-making. By order dated 6 November 2017 I directed that the local authority was to serve on the mother and the father redacted applications and a covering letter inviting the parents to indicate by a set date whether they wished to participate in the proceedings and be legally represented. The mother did not respond to that invitation but the father did. I also invited the local authority to consider which of the documents in the bundle might be disclosed to the father and whether redaction of any of this material was necessary. 22. On 24 November 2017 I held a hearing which the father attended by telephone from prison. He was not legally represented and told me that he wanted to consult a solicitor. He made it clear to me that he wanted to be further involved in the proceedings and in the lives of the girls. After hearing submissions, I listed a hearing to determine the applications made by the local authority which the father could attend via video-link from prison and gave him an opportunity to file a statement addressing the applications made by the local authority and how he said he could contribute to the wellbeing of the girls whilst they remained in local authority care. I made provision for the matter to be listed before me for urgent directions should the father instruct solicitors and obtain public funding for them to act on his behalf. The father was served with a copy of my order. That order made plain that the father was to receive a core bundle of edited documents and listed the contents of that bundle. The Hearing; 22 January 2018 23.

24. 25. Prior to the hearing, the father had written a letter in which he told me that he wished to be involved in the girls' lives to whatever extent was considered to be suitable. He told me that he had now recognised the harm he had caused to his children and accepted he was guilty as convicted. At the hearing itself, he told me that he understood the reasons behind the local authority's application but nevertheless, he wanted to send cards and letters to the girls because "he wanted to see how they were" [my note of his evidence]. He told me that he no longer had any contact with his older children. In response to questions asked by Miss Taylor, the father said he had been in contact with the mother twice during the last year and confirmed that one letter was sent to her with the specific intention of finding out more about the proceedings. The mother had written back to him but had given him no information about the proceedings. The local authority's position was stark. The father's behaviour towards the girls was such that he should play no further role in their lives. He was prevented by the Sexual Offences Prevention Order from having any further contact with them and the damage caused to them by his abuse militated against him receiving information about their circumstances. Both girls would be bound, either now or in the future, to find out that the father was involved in proceedings about them and had access to intensely personal information about them. This would be extremely harmful to their recovery from his abuse. The exceptional circumstances of this case justified the relief sought. Those submissions were echoed by the Children's Guardian who relied on the profound consequences of the father's abuse for both girls, both of whom, on the Children's Guardian's observations, struggled daily with what had happened to them and lived in fear of the father. The father's desire to see and have information about the girls was clear given what he had said to the court and the steps he had taken to find out more from the mother.

DISCLOSURE: DISCUSSION 26. Given the concerns expressed by the local authority and the children's guardian about the father's access to material about the girls, it was necessary for me to consider whether I should restrict the father's access to the bundle of documents filed within the proceedings. I decided that, in the exceptional circumstances of this case, the father should be provided with a redacted bundle of material sufficient to allow him to understand the case made against him and to make representations to me about that. He would not have access to material about the girls which described their current placements and placement history or which set out the details of their various medical, educational, emotional and other problems. As will be apparent from my background 27. summary, some information about the girls' emotional and other difficulties was made available to him so that he might understand the stance taken by the local authority, supported by the children's guardian. Rule 4.1 of the Family Procedure Rules 2010 ["the Rules"] sets out the court's general powers of case management amongst which is provision for the making of orders for disclosure as it thinks fit [Rule 4.1(3)(b)]. When exercising its case management powers, the court must take into account the overriding objective to deal with cases justly, having regard to any welfare issues involved [Rule 1.1(1)]. Dealing with a case justly includes, amongst other matters, ensuring that the parties are on an equal footing [Rule 1.1(2)(c)]. The general case management powers in Rule 4.1 are supplemented by those applicable to children proceedings set out in Rule 12.12 which permit the court at any stage to give

directions about the conduct of the proceedings, including the service of documents [Rule 12.12(2)(g)] and the filing of evidence [Rule 12.12(2)(h)]. Thus, the Rules permit the court to restrict a party's access to material filed within the proceedings, for example, by directing that a document not be served on a party or that a document or part of a document not be disclosed to a party. 28. In coming to my decision to restrict the father's access to the documents filed in the proceedings, I bore in mind the words of Munby J as he then was in *Re B (Disclosure to Other Parties)* [2001] 2 FLR 1017. He outlined in paragraph 89 of that decision the approach the court should take to non-disclosure in litigation concerning children and their families, namely: "Although, as I have acknowledged, the class of cases in which it may be appropriate to restrict a litigant's access to documents is somewhat wider than has hitherto been recognised, it remains the fact, in my judgment, that such cases will remain very much the exception and not the rule. It remains the fact that all such cases require the most anxious, rigorous and vigilant scrutiny. It is for those who seek to restrain the disclosure of papers to a litigant to make good their claim and to demonstrate with precision exactly which documents or classes of documents require to be withheld. The burden on them is a heavy one. Only if the case for non-disclosure is convincingly and compellingly demonstrated will an order be made. No such order should be made unless the situation imperatively demands it. No such order should extend any further than is necessary. The test, at the end of the day, is one of strict necessity. In most cases the need for a fair trial will demand that there be no restrictions on disclosure. Even if a case for restrictions is made out, the restrictions must go no further than is strictly necessary." Within that context and given the court's wide discretion under the Rules to restrict a party's access to evidence filed in the proceedings, it is clear that disputes about the ambit of disclosure in children proceedings should be framed in terms of the need to identify, evaluate and weigh the various Convention rights that are in play in a particular case, typically Article 6 [fair hearing] and Article 8 [respect for private and family life]. 29. In this case, it was self-evident that the rights of X and Y and of their father were engaged under both Articles 6 and 8 of the Convention. Those rights all pointed towards disclosure of the documents in the proceedings to the father. In the opposite direction in relation to Article 8, the rights of X and Y were engaged since they were entitled to respect for their private lives, subject to the potential for the court to interfere with that right where that was both proportionate and necessary. 30. Additionally, I also considered whether the Article 3 rights of both girls not to be subjected to inhuman or degrading treatment were engaged. It might be said that both these vulnerable, abused girls required protection from further emotional and psychological harm which, on the views of those caring for the children, would certainly occur if the girls became aware that their father had been given detailed information in the proceedings about their past and current difficulties. Article 3 might also be engaged in the sense that both girls required protection from the further harm which might be occasioned by the court's disclosure to their father of information about their circumstances, given the use to which he might put that knowledge in future. The threshold at which Article 3 is engaged is a high one as the right not to be subjected to inhuman or degrading treatment is absolute. I have carefully considered the words of Baroness Hale in

paragraph 32 of *Re A (Sexual Abuse: Disclosure)* [2012] UKSC 60, namely: “However, when considering what treatment is sufficiently severe to reach the high threshold required for a violation of Article 3, the European Court of Human Rights has consistently said that this “depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim”: see, for example, *Kudla v Poland* (2000) 35 EHRR 198, para.

91. The court has also stressed that it must go beyond “that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment”: para. 92. Thus the legitimate objective of the state in subjecting a person to a particular form of treatment is relevant. A well-known example is medical treatment which may be experienced as degrading by a patient subjected to it against his will. However, “A measure which is therapeutically necessary from the point of view of established principles of medicine cannot in principle be regarded as inhuman or degrading”: *Juhnke v Turkey* (2000) 49 EHRR 534, para. 71, citing *Herczegfalvy v Austria* (1992) 15 EHRR 437, para. 82. Obviously, the ends do not justify the means. But the context in which treatment takes place affects the severity of its impact. The context here is that not only is the state acting in support of some important public interests; it is also that X is currently under the specialist care of a consultant physician and consultant psychiatrist who will no doubt do their utmost to mitigate any further suffering which disclosure may cause her...” In this case, the court would be acting in support of the important public interest of a fair trial and the girls did have available to them specialist support from professionals which might mitigate any further trauma which disclosure might cause. Given these factors, I reluctantly came to the conclusion that Article 3 was not engaged in this case. 31. 32. That was not the end of the matter however. It seemed to me that what the local authority and the Children’s Guardian were both arguing was that the invasion of the girls’ private life resulting from disclosure of the material in proceedings was so grave that it would be disproportionate to disclose it to the father. Balancing the various rights in play, I came to the conclusion that the girls’ privacy rights were a sufficient justification for the compromise of the fair trial and family life rights of the father which non-disclosure/limited disclosure would entail. My reasoning was as follows. This case could be readily distinguished from *Re A* [see above]. In that case, allegations of sexual abuse were made against a father by a third party. Investigation and testing of those rights was crucial to the court’s evaluation of (a) the risk the father might pose to the child and (b) the importance of the child’s relationship with her father. That evaluation could not take place without disclosure of the identity and history of the third party’s allegations. Absent those allegations, there was no other basis for the child concerned not to have contact with her father. The court ordered 33. 34. 35. 36. full disclosure of the allegations and their history. The circumstances in this case were very different. First, it was known by reason of his conviction, that the father had subjected X and Y to profoundly damaging physical, sexual and emotional abuse. There were no allegations of abuse which required testing by the court. Second, the information about the girls made

clear that both had been traumatised by that abuse - they survive with its effects an ever-present reality. Third, the evidence was that the girls were fearful of their father having knowledge and information about them. Fourth, the father tried to contact the girls despite the Sexual Offences Prevention Order, such order having been made to protect the girls for the rest of their childhood and adulthood. Having come to my conclusion that the balance fell in favour of limited disclosure of the papers to the father, I observe that the material which was withheld added depth and detail to the trauma suffered by these girls in consequence of their father's behaviour to them. He did not need to see this additional material which was intensely private to both girls. I was satisfied that he had sufficient material to know the case made against him. I also considered whether I should remit this case to another judge having dealt with the issue of disclosure in the way I have described. I decided not to do so for these reasons. First, the undisclosed material added detail to the case against the father but he was well aware, from what had been disclosed to him, of the extent of the damage he had inflicted on both girls and thus of the case he had to meet. Second, the non-disclosed material did not contain untried and untested allegations against the father on which the local authority sought findings – the father's actual behaviour was crystal clear. In those circumstances, remittal to another judge was unnecessary for the father to have a fair hearing and for justice to be seen to be done. I make it clear that, in coming to my decision on the local authority's applications, I have only taken into account the material in the separate edited bundle together with the father's letter and a letter from the local authority detailing the relief it sought pursuant to the inherent jurisdiction of the High Court. I have not read or considered the undisclosed material in the main bundle since I determined what should be disclosed to the father in November 2017. PARTY STATUS - CONTACT AND PLACEMENT: DISCUSSION 37. 38. The parents would be automatic respondents to the local authority's applications to revoke the placement orders as they were parties to the proceedings leading to the placement order which the local authority sought to revoke [see Rule 14.3]. Rule 14.3 is headed "Who the Parties Are" and thus both the mother and father would be parties to the proceedings as well as respondents. Rule 14.3(3) provides that the court may, at any time, direct that a person be made a respondent to proceedings or that a party to proceedings be removed. It is important to note that respondents to an application to revoke a placement order are entitled to a copy of the application form [see Practice Direction 14A in the Rules] and to notice of any directions hearing set by the court [Rule 14.6(1)(b)(i)]. The mother and father would also be automatic respondents to proceedings pursuant to section 34(4) of the Act [Rule 12.3] as both have parental responsibility for the girls. Rule 12(3) is headed "Who the Parties Are" and thus both parents are also parties to the proceedings. Rule 12.3(2) provides that the court will direct that a person with parental responsibility be made a party to proceedings where that person 39. 40. requests to be one. Rule 12.3(3) makes provision that a party to the proceedings can be removed or that a person can be made party to the proceedings. Neither the Rules nor the Act itself provide guidance as to the factors which the court should take into account in making decisions about parties. Rule 1.1 requires the court to deal with cases justly having regard to any welfare issues involved and in ways that are expeditious, fair and

proportionate. Hogg J in *Re W (Discharge of a Party)* [1997] 1 FLR 128 held that, in considering an application by a mother that the father should cease to be a party to her proceedings for the discharge of the care order, the welfare of the children was important but not paramount. That authority must now be read in the light of the Convention rights enshrined in domestic law by the Human Rights Act 1998. I approach the question of the father's involvement in both sets of proceedings by acknowledging that he has been accorded by the Rules a status within the proceedings commensurate not only with fatherhood but also with the fact that he has parental responsibility for both girls. Thus, any application to end his involvement in the proceedings would require particular justification. The father would be entitled to respect for his family life under Article 8 and therefore, also the right to have a fair trial under Article 6. It would be rare that his Article 6 right to participate in the proceedings would be displaced by another person's Article 8 rights. Conversely, both girls also have Article 6 and Article 8 rights which diverge from those of the father, and those circumstances necessitate the type of balancing exercise which takes account of and respects all the rights engaged. 41. Article 8 of the European Convention on Human Rights and Fundamental Freedoms ["the Convention"] is headed, 'Right to respect for family and private life'. It provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 42. 43. I begin by considering whether family life presently exists between the father and both girls. The Strasbourg case law recognises that in some instances family life arises by operation of law. That is so in the case of a lawful and genuine marriage, both in respect of the relationship between husband and wife and also in respect of the relationship between the parents and their children. In this case father was lawfully and genuinely married to the girls' mother. X and Y are children of that marriage [see paragraph 73 of *Singh v Entry Clearance Officer New Delhi* [2005] 1 FLR 308, CA per Munby LJ]. Even though the girls have not seen their father since December 2010 and have had no indirect contact with him since December 2011, family life within the meaning of the Convention continues to subsist between both girls and their father. 44. Article 6 of the Convention is headed 'Right to a fair trial' and states, so far as is relevant, that: 45. 46. 47. 48. 49. 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law... As the father has Article 8 rights, then Article 6 is engaged by these proceedings. Where a parent is entitled to respect for his family life under Article 8 and, therefore, also to the right to a fair trial under Article 6, it will only be in exceptional circumstances that the Article 6 right will be displaced by another person's Article 8 rights. In this case, both girls are the victims of

serious physical, sexual and emotional harm perpetrated on them by their father. The father has been convicted by a criminal court of causing that harm to his daughters and is serving a very lengthy prison sentence. He is also the subject of a Sexual Offences Prevention Order which prevents him having any contact whatsoever with X and Y throughout the remainder of their childhood and during their adult lives. There has been no direct contact between the girls and their father since December 2010. Notwithstanding the Sexual Offences Prevention Order, the father has attempted to contact both girls indirectly and, when notified of these proceedings, the father on his own admission has attempted to find out more information about the proceedings from the children's mother. There is, in my view, little that he could usefully contribute to the court's decision on this particular issue. The evidence before me strongly indicates that anything associated with their father triggers very adverse and strong responses in both girls and leads to a significant deterioration in their fragile mental health. Both girls are battling daily with the effects of their father's abusive behaviour. Were they to learn of their father's involvement in these proceedings either now or in the future or learn that he had access to private information about them such as where they were placed or what therapeutic treatment they might be having, it is beyond doubt that this would cause them significant emotional harm. Their already significant fear of their father would only intensify. Balancing those considerations, I find that the harm that would occur to the girls arising from the father's participation in these proceedings is so grave that their right to privacy should prevail over any Convention right held by their father. The circumstances of this case are exceptional. I therefore discharge the father as a party to the placement order proceedings and to the contact proceedings. That is a just and proportionate decision within the context of the Convention rights in play and pays proper regard to the welfare issues in this case. I note that the outcome of the contact proceedings relating to the father is likely to be an order for no direct or indirect contact. That will not come as a surprise to the father since he has not had contact for many years. The Sexual Offences Prevention Order prohibits any resumption of contact with the girls either now or on his release. Resolution of the placement order proceedings is necessary before this court can consider contact issues pursuant to s.34(4) of the Act. Had that not been the case, I would have made final orders with respect to the father's contact. RELIEF UNDER THE INHERENT JURISDICTION: CONSULTATION WITH A PARENT 50. Section 100 of the Act places restrictions on the use of the inherent jurisdiction by local authorities. Section 3 reads as follows:

- (3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.
- (4) The court may only grant leave if it is satisfied that –
 - (a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and
 - (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

(5) This subsection applies to any order –

(a) made otherwise than in the exercise of the court’s inherent jurisdiction; and

(b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted). The local authority sought a declaration under the inherent jurisdiction that the girls’ welfare was inconsistent with any obligation set out in the Act to consult with, refer to, and/or inform their father in relation to any aspect of their progress, development and/or well-being whilst the girls remained in the care of the local authority. Additionally, the local authority also sought a declaration that, in the exceptional circumstances of this case, the failure of the local authority to consult with, refer to, and/or inform their father about any aspect of the girls’ progress, development and/or well-being would amount to a reasonable excuse pursuant to Section 84 of the Act. 51. Section 22 of the Act is headed ‘General duty of local authority in relation to children looked after by them’. Section 22(4) provides that: “Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of (a) the child; (b) his parents ...” There is thus a statutory duty upon the local authority to ascertain the wishes and feelings of the father regarding any matter to be decided about the girls. Section 26 of the Act permits the Secretary of State to make regulations requiring the case of each child who is being looked after by a local authority to be reviewed in accordance with the provisions of the regulations. The regulations require the local authority, before conducting any review of a child in care’s well-being, to seek the views of the child and his parents. It follows obviously that the local authority would need to keep the child’s parents fully informed otherwise the views of the parents would be of little value. 52. The breadth of section 26 of the Act was described by Hayden J in these terms [Re O (A Child) [2015] EWCA Civ 1169]: “[27] ... The objective of the process here is to ensure not only that there is proper planning but that the plan for the child continues to be the correct one, developing and evolving as the child’s needs change. It is to fortify the rigour of review that the section imposes a wide-ranging duty to consult, not least with the parents. Even a parent who has behaved egregiously may nonetheless have some important contribution to make in the future. The requirement to solicit the views of a parent is not contingent upon a moral judgement of parental behaviour; it is there to promote the paramount objective of the statute as a whole, i.e. the welfare of the child. These duties are a statutory recognition of the need appropriately to fetter the corporate parent...” I accept that analysis and note that Hayden J agreed that a local authority could only be absolved from its duty to consult and to provide information to a parent in “exceptional circumstances”, approving the judgment of Coleridge J in Re C (Care: Consultation With Parents Not In Child’s Best Interests) [2005] EWHC 3390 (Fam),

[2006] 1 FLR 787 [see paragraphs 28 and 29 of Re O]. 53. Section 84 of the Act provides, by way of enforcement, that: “If the Secretary of State is satisfied that any local authority has failed without reasonable excuse to comply with any of the duties imposed on them by, or under,

[the Children Act 1989] he may make an order declaring that authority to be in default with respect to that duty.” Subparagraphs (2), (3) and (4) set out the consequent provisions if such a failure by the local authority is established. 54. The declaratory relief sought by the local authority was considered by Coleridge J in *Re C (Care: Consultation With Parents Not In Child’s Best Interests)* [2005] EWHC 3390 (Fam), [2006] 1 FLR 787. Coleridge J granted the relief sought in a case where the father had raped and indecently assaulted the child aged nearly 13 years and where the father was serving a sentence of 11 years’ imprisonment for those offences. The child concerned did not want the father to be informed or consulted at all in relation to her future and had obtained an order discharging the father’s parental responsibility. Nevertheless, the local authority was obliged to consult and inform parents about their plans for a child in care even after parental responsibility had been discharged. Coleridge J held as follows: “[30] The conclusions that I have come to are really these: the considerations which govern the dismissal of this father from further involvement in the proceedings, and the granting of the declarations seemed to me to be the same. Indeed, there is little point in him remaining a party if he is not going to be given any information; indeed, it would be impractical for him to remain a party if he was not going to be given information.

- [31] The second pivotal point, of course, is that this application is decided, first and foremost, on the basis of s.1 of the Children Act 1989 - that is to say, what is in S’s best interests. Of course, hers are not the only interests, but they are the ones which are of paramount concern to the court.
- [32] The third factor, self evidently, is that it is a very exceptional case only which would attract this kind of relief. Self evidently - and it hardly needs the human rights legislation to remind one - a parent is entitled to be fully involved, normally, in the decision-making process relating to his, or her, child, and if not to be involved, then at least informed about it. However, insofar as that engages the father’s rights to family life, then by the same token it engages S’s rights to privacy and a family life stop
- [33] In my judgement, in this situation, her rights come very much further up the queue than the father’s. I have to balance the rights as between the two of them. I am afraid to say that S’s must overwhelm all others. It seems to me that if S was an adult now, who had been subjected to the behaviour which led to this father’s imprisonment, and that as an adult she was to say, in circumstances where she needed, for instance, treatment that she did not want the perpetrator of those actions to be consulted, even if it was a parent, no one, for one moment, would suggest that such a person should be consulted. It so happens that this individual is not an adult, but should different considerations apply to this child when I am told she is intelligent and articulate; when her decisions and views seem to me to be entirely understandable and rational and objectively sensible? Thirdly, she has a mother who is fully involved in her life, albeit that she is not in this country, and a guardian, so long as these proceedings are underway, who is more than able to protect her interests, and indeed has been doing so.

- [34] The next matter which I have to place in the balance is that there is no question, as there is in the adoption cases, of any very significant decision being made by the local authority. This is not a case where it is being suggested the child should be adopted, or moved out of the country, for instance. It is merely a question of the details of this child's life being worked out by the local authority under the umbrella of a care order.
- [35] At the end of the day, standing back, I have come to the conclusion in similar circumstances and for similar reasons, as I did in relation to the application to discharge the father's parental responsibility, that this father has, as matters stand, forfeited consideration of his rights in relation to making decisions about this child's future. I cannot think that he can usefully participate in discussions about what is in S's best interests in circumstances where he has in the past wholly disregarded them, and in circumstances where the child desperately wants him not to be involved..." I have decided that I should grant permission to the local authority to apply for the declarations it seeks with respect to its duties pursuant to sections 22 and 26 of the Act. I am satisfied that the grounds set out in s.100(4) are made out in that (a) such declarations are only available by exercise of the court's inherent jurisdiction and (b) there is reasonable cause to believe that if the court's inherent jurisdiction was not exercised with respect to the girls, they are likely to suffer significant harm. That harm would be the emotional and psychological harm consequent upon them knowing, either at the time or at some later date, that their father had been given information about their circumstances and that his views about their welfare had been solicited. I also cannot exclude the harm which might arise if the father were to use the information given to him by the local authority in an attempt to contact the girls either directly or indirectly. The circumstances of this case are, in my view, directly comparable to those considered by Coleridge J in *Re C*. As in that case, the father here has been convicted of serious sexual offences against both girls and is currently serving a lengthy sentence of imprisonment. What differentiates that case from the circumstances here is that both girls have not been able to express a view about whether their father should be involved in local authority decision-making about their welfare. It seems to me from the evidence that, if both girls were to be asked that question, both would be vehemently opposed to their father's involvement in their future. In the past, both have expressed great fear about their father knowing either of their whereabouts or information about them. Sadly, both girls' mother is not involved in their lives but they have a Children's Guardian in these proceedings who is more than capable of protecting their interests and has done so. As is clear by reason of the application to revoke the placement orders, the local authority's plan for the girls does not involve adoption. It also does not involve a move to another country. 55. 56. 57. I have come to the conclusion that I should grant the relief sought by the local authority with respect to the father's involvement in the girls' lives. Nevertheless, as Coleridge J did in *Re C*, I have decided that the father should be given information about any life-threatening medical emergency experienced by either of the girls whilst they remain the subjects of care orders to the local authority. I leave to the discretion of the local authority the precise information which the father should be given if such an emergency were to arise. Such a course is not

now opposed by the local authority or by the Children's Guardian. RESTRICTING THE DUTY TO NOTIFY THE FATHER OF ANY FURTHER LEGAL PROCEEDINGS 58. 59. 60. The local authority sought an order or declaration that (a) it be absolved of its duty to provide notice to the father of any further legal proceedings involving the children and (b) the court officer should not serve the father with notice of any proceedings concerning the children or any documents about future legal proceedings concerning the children or join him as a party to any legal proceedings without the permission of the court. Mr Butler on behalf of the local authority accepted that it might be open to the local authority to undertake in any future proceedings concerning the girls to seek a determination as to the notice to be given to and the party status of the mother and father as an initial issue but nevertheless submitted that this did not allow for sufficient protection of the girls. The Children's Guardian supported the local authority's application. The requirement to obtain the Court's leave is necessary for this application since what is sought is a prospective order or a declaration rather than the exercise of the court's powers under the Rules when proceedings are already afoot. I am satisfied that I should give leave as there is no provision in the Act for an order of this type and there are reasonable grounds for believing that the girls are likely to suffer significant harm if the court's inherent jurisdiction is not exercised [see paragraph 54 above for my reasoning on this issue]. The exceptional circumstances of this case have persuaded me that I should make an order which has the effect of limiting the disclosure of documents and information about any local authority application concerning the girls' welfare pending a directions hearing to consider the father's involvement in any proceedings. In coming to that decision, I have carefully considered the Convention rights in play and balanced those so as to give priority to the girls' Article 8 right to privacy at the time when proceedings are issued. That represents some restriction of the father's Article 6 rights but that restriction is proportionate given the harm which might flow from the father having notice of and information about proceedings concerning the girls.

61. Whilst I can understand the motive behind the local authority's application, I am not persuaded that the breadth of the order sought is necessary to protect the girls. Both girls will cease to be the subjects of care orders within four years' time and these proceedings – for example, revocation of the placement orders – will be determined in the relatively near future. Whilst there may be future Children Act applications concerning the girls, the local authority is likely to be either the applicant or one of the respondents to any application. If it is the applicant for orders other than those made in section 8 private law proceedings, Rule 12.8(4) requires the local authority to serve upon the father a copy of the application and the notice of hearing set by the court. The court is not required to do so. 62. If the local authority is the respondent to any application, it can seek the direction of the court at the earliest stage as to whether the application form and notice of any hearing should be given to the father. The applicants are likely to be either one or other of the girls themselves in which case their legal representatives are likely to be fully cognisant of the need to seek the court's direction as to the father's status and access to court documents. Otherwise the applicants will be one or other of the parents or possibly an older sibling of the girls. In the latter case,

the local authority can seek the court's direction at an early stage about the parents' access to court documents and status in the proceedings as well as the overall merits of the application. Invoking the inherent jurisdiction in the manner contended for by the local authority, for example, by making orders binding officers of the family court is, in my judgment, both disproportionate and unnecessary to protect the girls given what is set out in the Rules. It seems to me that if the local authority has to make an application concerning one or other of the girls in future, it should be permitted not to serve notice of the proceedings or any hearing or any other documents on the father pending an application to the court for directions without notice to the father as to the father's role in the contemplated proceedings. That course protects the inadvertent disclosure of information about the girls and is a proportionate restriction on the father's Article 6 rights as the court will consider his position at the proposed directions hearing. I therefore make an order under the inherent jurisdiction permitting the local authority not to serve the father with notice of any application made by it about one or other or both of the girls or any documents pertaining thereto pending an application by the local authority to the relevant court for a directions hearing without notice to the father as to the father's role in the proceedings and his access to any documents. The local authority shall be permitted to show a copy of this order to the relevant court. 63. 64.

CONCLUSION

65. 66. Having determined the father's role in the proceedings and in local authority decision making about the girls, I will consider the future progress of this case in the hope that outstanding matters can be resolved quickly. I hope that what the father said to me about accepting he was guilty as convicted is indeed true. He should avail himself of every opportunity in prison to address his appalling behaviour to his children so that, on his release, he is a risk to no other child in the future. He has no part to play in the lives of the girls going forward and must abide by the terms of the Sexual Offences Prevention Order. 67. That is my decision

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