



Neutral Citation Number: [2012] EWHC 3748 (Fam)

Case No: DX11C00207

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/12/2012

**Before :**

**THE HONOURABLE MR JUSTICE BAKER**

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**Between :**

**Bristol City Council**

**Applicant**

**- and -**

**C**

**1<sup>st</sup> Respondent**

**-and-**

**B**

**2<sup>nd</sup> Respondent**

**-and-**

**A**

**3<sup>rd</sup> Respondent**

**-and-**

**NEWS GROUP NEWSPAPERS LTD**

**4<sup>th</sup> Respondent**

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**Robin Tolson QC** (instructed by Legal Department, Bristol City Council) for the **Applicant**  
**Hannah Wiltshire** (instructed by **Bobbetts Mackan**) for the **1<sup>st</sup> Respondent mother**  
**Tim Marks** (instructed by **Kirby Shepherd**) for the **2<sup>nd</sup> Respondent father**  
**Stuart Fuller** (instructed by **Watkins**) for the **Child's Guardian**  
**Adam Wolanski** (instructed by **Simons Muirhead and Burton**) for **News Group Newspapers**  
**Libby Harris** (instructed by **Foster and Partners**) for the **foster mother**

Hearing dates: 12 and 16<sup>th</sup> November and 7<sup>th</sup> December 2012  
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# **Judgment Approved by the court**

**The Judge hereby gives leave for this judgment to be reported on the strict understanding that in any report no person other than the advocates or the solicitors instructing them and any other person named in the judgment may be identified by name or location. In particular the anonymity of the child and the adult members of her family must be strictly preserved.**

**The Honourable Mr. Justice Baker :**

## **Introduction**

1. This is an application for a reporting restriction order arising out of care proceedings conducted before the Bristol Family Proceedings Court. The proceedings themselves were relatively straightforward but, in the course of the hearing, information came to light which gave rise to concerns of an unusual nature. Journalists at the Sun newspaper became aware of these developments and in the light of their interest it became necessary to consider what restrictions, if any, should be imposed upon the publication of information relating to the proceedings over and above the prohibitions imposed by statute. The Family Proceedings Court referred this matter to the Designated Family Judge for Bristol who made a temporary order and referred the matter to me as Family Division Liaison Judge for the Western Circuit. At that point, the local authority filed an application for a reporting restriction order.
2. In the event, it was agreed by all parties represented before me that such an order should be made, and there was substantial agreement as to its terms. Nevertheless, for reasons explained below, it was necessary to hold three hearings on the outstanding issues. I now set out my reasons for making the order in the terms recited at the end of this judgment.

## **Background summary**

3. The care proceedings concerned an application by Bristol City Council for a care order in respect of a five year old girl, hereafter referred to as 'A'. The respondents to the proceedings were the child's mother, ('C'), her father, ('B') and A herself by her child's guardian, hereafter referred to as 'Mr N'. The application was heard by the Bristol Family Proceedings Court between 25<sup>th</sup> – 28<sup>th</sup> September and 9<sup>th</sup> and 10<sup>th</sup> October 2012. Prior to the hearing, A had been placed with foster carers under a succession of interim care orders. Also present in the foster home were another foster child, S, and two other members of the household, R and T.
4. For the purposes of this judgment, it is unnecessary to recite the factual history leading to the care proceedings in any detail. In short, the local authority asserted, and the Family Proceedings Court, found that (1) A's father, B, has a propensity to acts of violence, in particular in a domestic setting; (2) A's mother, C, is isolated and vulnerable, disempowered and prone to manipulation at the hands of B; (3) A has witnessed significant acts of aggression and violence by her father towards her

mother and his former partner, and (4) this caused her significant emotional harm and placed her at risk of physical harm.

5. In the light of these findings, the Family Proceedings Court concluded, pursuant to s.31 of the Children Act 1989, that it was satisfied that A was suffering, or was likely to suffer, significant harm and that the harm, or likelihood of harm, was attributable to the care given to the child, or likely to be given if an order was not made, not being what it would be reasonable to expect a parent to give. Having considered the provisions of s. 1 of the Children Act, the Family Proceedings Court proceeded to make a care order in respect of A. The Justices then considered the application by the local authority for a placement order under the Adoption and Children Act 2002 and, having dispensed with the parents' consent to such an order on the grounds that A's welfare required an order to be made, and having considered the provisions of s.1 of the 2002 Act, duly made a placement order in respect of A.
6. As stated above, however, other new information emerged during the course of the hearing, and it is that information which gives rise to the present application. In summary, the further information which emerged was as follows.
  - (1) On 14<sup>th</sup> May 2012, at a time when A was subject to the interim care order, the local authority received information from the police suggesting that someone living at the address of A's foster carers, had had access to child pornography some two years earlier in March 2010.
  - (2) Coincidentally, at a contact visit that afternoon, A told her parents that R had grabbed her around the throat. A red mark on her neck was observed by her father and the contact supervisor.
  - (3) At the end of the visit, when the female foster carer arrived to collect A, the contact supervisor informed her of what A had said. The foster mother denied the allegation. The contact visit ended and A returned to the foster home with the foster mother.
  - (4) Later that evening, A's father contacted the police and informed them that A had red marks around her neck. The police immediately passed this information to the social services emergency duty team. After discussions between the social services and the police, it was agreed that A would be seen on the morning.
  - (5) Next morning, on 15<sup>th</sup> May, A's social worker, Sherilyn Pritchard, met A. She observed no injuries on the child. A gave her an account of what had allegedly occurred, stating (a) that the alleged assault had occurred at two in the morning; (b) that it occurred upstairs in the foster home while the foster father was at work and the foster mother downstairs; (c) that T had been cuddling S at that time and (d) that the alleged assault had been witnessed by both T and S.
  - (6) No medical examination of the child was arranged.
  - (7) The social workers concluded that there was insufficient information to remove A from the foster home at that stage.
  - (8) A few days later on 21<sup>st</sup> May, a strategy meeting was held to consider what steps to take in respect of the allegations concerning pornography. It was agreed that the police would seize computers from the foster carers for forensic examination. It was decided that A should not be removed from the

foster placement prior to the computers being seized unless there were any further concerns.

(9) On 28<sup>th</sup> May, police and social services visited the foster carers, informed them of the concerns about pornography, removed all computers from the house and moved A to another foster home.

(10) On the following day, 29<sup>th</sup> May, the male foster carer was found dead, having apparently committed suicide.

7. In their written reasons for making a care order, the Justices set out the evidence that had been placed before them about these matters and in their findings of fact added these observations:

“We have heard and read considerable evidence concerning the care provided to A whilst subject to an interim care order. This is extremely concerning and deserves to be examined fully within a different forum. This bench is, however, of the view that these events are not germane to its decision as to whether care and placement orders should be made. All references to these highly regrettable events are made for the sake of completeness.

This bench believes that the local authority did not follow child protection procedures. As soon as A disclosed the assault and the contact worker noted the injuries, she should have informed A’s social worker, Ms Pritchard, or the emergency duty team. No such report was made and it was left to B, A’s father, to make the referral via the police. The bench does not consider that the local authority has been involved in a cover up which has been suggested by B.

The contact worker should not have disclosed the allegation to the foster mother until A had been interviewed. The foster mother denied the allegation on R’s behalf immediately. Having already been aware of the difficulties in the placement and of A’s fear of R, the authorities should not have allowed A to return to the foster home whilst the allegation was unresolved and it is reasonable to suppose that this increased the risk to A. We believe an immediate strategy meeting should have been called and A’s guardian should have been involved. It is a matter of very great concern that Mr N, A’s guardian, was not told by Miss Pritchard of the allegation at an earlier stage.

We strongly believe that A should have been referred to a doctor. A grasp to the throat accompanied by red marks to the front of a young child’s neck could denote internal injuries. In any event, the injuries would have been properly documented and their cause commented upon. It appears to us that the explanation provided for the injury by R was inconsistent with the injury itself.

A’s allegation of being assaulted does not appear to have been taken seriously by the authority....

It concerns us greatly that the alleged assault by R occurred at 2 am when T was cuddling S apparently whilst the foster mother was downstairs and that information did not cause the authority to act immediately.

At the time of the allegation of physical abuse, the local authority were already aware of other allegations relating to child pornography at the address. Despite this, and having parental responsibility through the interim care order, they failed to remove A for a period of 14 days.

With hindsight, Miss Pritchard acknowledged the risk of sexual, physical and emotional harm to A during the authority's care of A between 14<sup>th</sup> May and 28<sup>th</sup> May 2012. It is clear to this court that the local authority knew about these risks on 14<sup>th</sup> May and did not take protective action as it should have done.

These matters concern us greatly and we believe should be thoroughly and forensically investigated and reviewed in an independent forum.”

8. It seems that B notified the Sun of the concerns and a journalist attended the latter part of the hearing in the Family Proceedings Court. The Justices made an order that nothing should be published about the case until further order. On 10<sup>th</sup> October, prior to the making of the care order, the representatives of the parties to the care proceedings attended the Bristol Civil Justice Centre before His Honour Judge Barclay, sitting as a Deputy Judge of the High Court. No notice of this hearing was given to the media, not even to the reporter who was attending the Family Proceedings Court. At the conclusion of the hearing, Judge Barclay made an order in the following terms:

“Upon hearing legal representatives of all parties, the court orders pursuant to the inherent jurisdiction of the High Court (1) no newspaper report or internet report of the proceedings shall reveal the following: the name, address or school or any particulars calculated to lead to the identification of the child; the name, address or include [sic] particulars calculated to lead to the identification of the child's foster carers or their families, past or present; the name, address or include [sic] particulars calculated to lead to the identification of any social work professional involved with the case, or the Local Authority or the children's guardian; any information that could prejudice the upcoming inquest until 23:59 on 17<sup>th</sup> October 2012; (2) liberty to any party to apply to on 48 hours notice to vary or discharge this order; (3) liberty to the press to apply on 48 hours notice to vary or discharge this order; (4) any application to vary, discharge or extend this order to be heard by Mr Justice Baker if at all possible ...”

9. Prior to making this order, Judge Barclay had contacted me and provisionally arranged for a hearing to take place before me on 15<sup>th</sup> October. In the event, the matter did not proceed on that date and I extended the order made by Judge Barclay until the adjourned hearing. Thereafter, there were extensive negotiations between the parties to the care proceedings and the Sun's publishers, News Group Newspapers Ltd (“NGN”). Initially, the local authority advanced a case for a complete prohibition on publishing not only any information likely to lead to the

identification of A, her natural parents and carers, but also anything at all relating to the care proceedings or any information likely to identify the authority itself. An initial skeleton argument on behalf of the authority asserted *inter alia* that there was no public interest in the publication of the allegations about pornography in the foster home, nor the “unsubstantiated allegations of negligent social work practice made by the parents”. NGN responded in correspondence that the proposed order was far too wide and indicating that it wished to publish reports of the Family Proceedings Court hearing and sought a relaxation of the statutory prohibition on such publication to achieve that end, identifying a list of twelve items of information it wished to publish. Subsequently, following the instruction of Mr. Robin Tolson QC on its behalf, and senior managers becoming involved for the first time, the local authority changed its position, agreeing in principle that NGN should be free to publish some information about the case, including the identity of the local authority itself, whilst challenging some of the detailed information in the “twelve items”. Thus a measure of agreement was reached about many aspects of the scope of a reporting restriction order, although a number of issues remained in dispute.

10. The matter came before me on 12<sup>th</sup> November but was again adjourned for want of court time until 16<sup>th</sup> November with Judge Barclay’s order remaining in force until that stage. At the hearing on 16<sup>th</sup> November, I heard submissions from the parties represented at that stage – namely the local authority, mother, father, child’s guardian and NGN – limited to the issues in dispute, and reserved judgment. However, having reflected on the matter, I considered that there were several other issues that had not been addressed at the hearing, in particular the extent to which the human rights of the members of the foster household were engaged and whether there were any procedural steps which should be taken to address, and if necessary, protect those rights. In addition, other issues had been raised by some of the parties via email following the hearing. I therefore directed that the parties file supplemental skeleton arguments by 4<sup>th</sup> December to be followed by a further telephone hearing.
11. Following that direction, leading counsel for the local authority (with the approval of the other parties) invited the court to authorise disclosure of relevant documents from the proceedings to a solicitor appointed (at, I understand, the local authority’s expense) to advise the foster mother. I duly authorised that disclosure, and subsequently counsel representing the foster mother (and the interests of members of the foster household as a whole) was instructed and took part in the telephone hearing at 9 am on 7<sup>th</sup> December, after which I reserved judgment until today.

### **The law**

12. The legal principles are now well established and it is unnecessary to recite them at length – for a longer discussion, see *Re A(Reporting Restriction Order)* [2011] EWHC 1764 (Fam) [2012] 1 FLR 239. The principles can be summarised as follows:
  - (1) Save where the court directs otherwise, care proceedings under Part IV of the Children Act 1989 are held in private: Family Procedure Rules (“FPR”) 2010 rule 27.10(1).
  - (2) FPR Rule 27.11, and Practice Directions 27B and 27C, give duly accredited representatives of newsgathering and broadcasting organisations the right to be present in private care proceedings unless excluded by the court on certain limited grounds set out in the rule. The right to report such proceedings, however, is restricted by s.12 of the Administration of Justice Act 1960 which

has the effect of making it a contempt of court to publish “information relating to proceedings before any court sitting in private ... 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, or (iii) otherwise relate wholly or mainly to the ... upbringing of a minor”. This provision in turn is qualified by FPR 12.73(1) which provides inter alia that, “for the purposes of the law relating to contempt, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated ... where the court gives permission”.

- (3) “[I]t is clear that the High Court has jurisdiction both to relax and to increase these restrictions. A judge can authorise disclosure of what would otherwise be published. And a judge can impose additional restrictions” (*Re B (A Child)(Disclosure)* [2004] EWHC 411 (Fam) per Munby J, as he then was, who characterised the former as the “disclosure jurisdiction” and the latter as the “restraint jurisdiction” (see paragraphs 83-4).
- (4) Since the implementation of the Human Rights Act 1998 passed by Parliament to incorporate the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) into English law, the foundation of the jurisdiction to restrain publicity is now derived from ECHR. Applications for reporting restriction orders are determined by analysing and balancing the competing rights under ECHR: *Campbell v MGM Ltd* [2004] UKHL 22, [2004] 2 AC 457, *Re S (A Child) (Identification: Restrictions of Publication)* [2004] UKHL 47, [2005] AC 593.
- (5) The first step is therefore to identify the ECHR rights engaged, normally, Articles 8 (the right to respect for his private and family life) and 10 (the right to freedom of expression). In some cases, Article 6 (the right to a fair hearing) may be engaged.
- (6) The right to privacy comprises two core components characterised in one academic authority (*Law of Privacy and the Media*, 2nd edition, 2011, Warby, Moreham and Christie) as “unwanted access to private information and unwanted access to [or intrusion into] one’s ...personal space” and labelled more succinctly by Tugendhat J. in *Goodwin v NGN Ltd and VBN* [2011] EWHC 1437 (QB) at paragraph 85 as “confidentiality” and “intrusion”. Manifestly, the intrusive component of the right includes unwanted interference into the life of the household as well as the private life of the individual.
- (7) In addition, “Article 8 ... embraces both the right to maintain one’s privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one’s story to one’s fellow beings is protected not merely by Article 10 but also by Article 8” (per Munby J in *Re Roddy (A Child)(Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam) [2004] 2 FLR 949).
- (8) When considering Article 10, the court must have regard in particular to the provisions of s. 12 of the 1998 Act, headed “Freedom of Expression”, and in particular s.12(4): “The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appear to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become

available to the public, or (ii) it is, or would be, in the public interest for the material to be published, [and] (b) any relevant privacy code.”

- (9) S. 12(4)(a)(ii) reiterates the principle that amongst the matters to be taken into account when determining where the balance lies in each case is the extent to which the information is already in the public domain. “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” (per Lord Goff of Chievely in *A-G v Guardian Newspapers (No 2)* [1990] 1 AC 109 at 282 C – D). On the other hand, as Tugendhat J. explained in *JIH v News Group Newspapers Ltd* [2010] EWHC 2818 (QB) at paragraph 59, where the complaint is one of press intrusion, “even when that information is not secret or unknown .... the repetition of known facts about an individual may amount to unjustified interference with the private lives not only of that person but also of those who are involved with him”. As Tugendhat J further observed in *CTB v News Group Newspapers Ltd and Thomas* [2011] EWHC 1326 (QB) at paragraphs 24, “with each exposure of personal information or allegations, whether by way of visual images or verbally, there is a new intrusion and occasion for distress or embarrassment.” Furthermore, the court today has to grapple with the fact that the concept of the “public domain” has changed as a result of the revolution in information technology. To quote Munby J again, “with the advent of the internet, and in a world where there is an almost infinite quantity of accessible information, it is impossible to see the public domain as something which has clear boundaries ... [A]lthough some information will be manifestly well-known so that re-publication will have comparatively little effect, other information may be obscure so that re-publication could have a very significant effect ... [W]hereas some information, once in the public domain, will stay there permanently, other information may in reality disappear from the public domain after time, in the sense that although it remains in a cuttings file or a database it never or hardly ever sees the light of day”: *F v Newsquest Ltd and others* [2004] EWHC 762 (Fam) [2004] EMLR 29 at paragraph 66.
- (10) When considering, as required by section 12(4)(a)(ii), the extent to which it is in the public interest for the material to be published, the court must bear in mind that “what is of interest to the public is not the same as what it is in the public interest to publish. Newspaper editors have the final decision on what is of interest to the public: judges have the final decision on what it is in the public interest to publish” (per Tugendhat J. in *Goodwin v NGN Ltd and VBN* [2011] EWHC 1437 (QB) at paragraph 2). On the other hand, it is for editors, not judges, to decide *how* a story should be reported. “Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH & Co KG v Austria* (2001) 31 EHRR 8 .... This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information” (per Lord Rodger of Earlsferry in *Re Guardian News and Media Ltd* [2010] UKSC 1 [2010] 2 AC 697, at paragraph 63).
- (11) The Press Complaints Commission Editors’ Code of Practice is a “relevant privacy code” within the meaning of section 12(4)(b). The following clauses of the Code are relevant to this case.



- (a) “The press must take care not to publish inaccurate, misleading or distorted information ....” (clause 1(i)).
  - (b) “In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion, and publication handled sensitively. This should not restrict the right to report legal proceedings such as inquests” (clause 5(i)).
  - (c) “The public interest includes, but is not confined to, (i) detecting or exposing crime or serious impropriety, (ii) protecting public health and safety, (iii) preventing the public from being misled by an action or statement of an individual or organisation” (section headed “The Public Interest”, clause 1).
  - (d) In cases involving children under 16, editors must demonstrate an exceptional public interest to override the normally paramount interests of the child” (section headed “The Public Interest”, clause 5).
- (12) When conducting the balancing exercise between Articles 8 and 10, the court applies the four well-known propositions identified by Lord Steyn in paragraph 17 of his judgment in *Re S* (supra): “First, neither Article has as such precedence over the other. Secondly, where the values under the two Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test.”
- (13) As Sir Mark Potter P observed in *A Local Authority v W, L, W, T and R* [2005] EWHC 1564 (Fam) [2006] 1 FLR 1, “[t]he exercise to be performed is one of parallel analysis in which the starting point is presumptive parity in that neither Article has precedence over or “trumps” the other. The exercise of parallel analysis requires the courts to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each.”

### **The rights engaged**

13. The following human rights are engaged in this case:

- (1) the rights of A and other members of her household under Article 8 to respect for their private and family life;
- (2) the rights of the media under Article 10 to publish the matters which gave rise to concern in the minds of the justices, including the allegations that pornography was downloaded in the foster home; the allegation that A was assaulted in the foster home; and the allegation that the local authority failed to protect A in those circumstances;
- (3) the rights of the local authority under Article 10 to respond to those allegations;
- (4) the rights of A’s parents under Article 8 and 10 to comment on the allegations;

- (5) the rights under Article 8 of the other foster child present in the home, and the members of the foster household, to respect for their private and family life.
14. On behalf of the foster mother, Miss Harris asserted that in addition the Article 6 rights of her client and other members of the foster household were engaged in this case. The foster mother was not a party to the proceedings in the Family Proceedings Court and no member of the household was called to give oral evidence, yet the justices heard allegations about the conduct of members of the household and made some observations about that conduct. As these observations were made without an opportunity to either the foster mother or any other member of her household to comment on or make representations, it was by Miss Harris submitted that their right to a fair hearing under Article 6 has been infringed. In response, Mr. Wolanski on behalf of NGN pointed out that it was very common for individuals to be mentioned in passing in reports of court proceedings without being represented. Such reports did not amount to an infringement of Article 6 rights.
  15. No party put before me any authorities as to whether Article 6 extends to a person who is neither a party nor a witness. In the circumstances of this case, however, I do not consider this strand of Miss Harris's argument advances her client's case which is, in my judgment, fully encompassed within Article 8.

### **The issues**

16. As described above, there were extensive negotiations between the parties, including NGN, and as a result the issues have been narrowed. In particular, it was agreed between the parties that a reporting restriction order should be made to protect the identification of A. The parties agreed that there is no public interest in the identification of A in any published report and indeed there would be a risk of further harm to the child were her name to be published. On behalf of her guardian, Mr Fuller rightly submits that A is vulnerable by reason of her age and in particular by reason of being in care. She is in urgent need of a secure permanent placement. Were her identity to become known through reporting of this case, she, and any persons involved in her care both now and in the future, would be at risk of becoming the object of media interest. Mr Fuller submits that a reporting restriction order that precluded any naming of A would be a proportionate interference in the Article 10 rights of the media since it would not prohibit the telling of the story, but only its telling in a way that revealed the identity of the child. In his submissions on behalf of NGN, Mr Wolanski indicated that his clients have no wish to identify A in the publication of any information relating to the proceedings that may be permitted by this court.
17. The parties having agreed that a reporting restriction order should be made to prevent the publication of information likely to lead to the identification of A, the remaining issues to be determined by the court can be summarised as follows.
  - (1) Should the court authorise the publication of information relating to the proceedings? If so, what information should be publishable?
  - (2) Given the information to be disclosed, what steps, if any, should be taken to prevent the identification of the foster household?
  - (3) Should the reporting restriction order be extended to prevent the identification of the social workers?
  - (4) Should the reporting restriction order contain a 'public domain' proviso?
  - (5) Should the terms of the order be contained in one order (as contained in the draft originally submitted by the parties) or divided into two orders, namely

a restrained order and a disclosure order, following the model proposed by Munby J in *Re B*?

### **Publication of Information relating to the Proceedings**

18. Following the extensive negotiations referred to above, the parties reached a broad measure of agreement that the court should be invited to authorise the publication of information relating to these care proceedings. Specifically, the parties agreed that the following information should be publishable: (1) a redacted version of the Justices' facts and reasons; (2) certain information which NGN indicated that it wished to publish arising out of the proceedings; (3) a response from the local authority to the comments made by the Justices in their facts and reasons and by NGN.
19. Although there was a large measure of agreement as to what should be permitted under these broad headings, some items remain in dispute to be determined by the court. Before turning to those items in dispute, it is appropriate for me to make some observations about the matters over which there is agreement since it is ultimately for the court and not the parties to decide how the statutory restrictions under s. 12 of the Administration of Justice Act 1960 should be relaxed.
20. It was, I believe, the father's legal representative who first proposed that the Justices' facts and reasons should be published. Initially, the local authority firmly opposed this course. Ultimately, however, all parties have come to agree that the redacted version of the facts and reasons should be published. The argument advanced by the father's team is that this case has demonstrated a systemic failure in the local authority's children and young people's services and that it is in the public interest, and indeed in A's interests, for the relevant information to be published. Mr Marks on behalf of the father submitted that the Family Proceedings Court had set out many shortcomings on behalf of the local authority in the facts and reasons amounting to a failure by the local authority to follow its own child protection procedures.
21. It is important to note that the written facts and reasons produced by a Family Proceedings Court are not strictly speaking a judgment as produced by a professional judge: see *Stray v Stray* [1999] 2 FLR 610. Nevertheless, they are an important record of findings made by the justices and an explanation for the reasons for making a care order. The magistrates have a vital role in the family justice system in this country, a role that will inevitably increase in importance under the modernisation reforms to be implemented shortly. Where, as here, a Family Proceedings Court identifies matters of general concern about the way in which the local authority has performed its statutory child protection duties, it is, to my mind, manifestly in the public interest for there to be wider dissemination of the justices' concerns. In reaching this conclusion, I am fortified by the views of the magistrates themselves who indicated to this court that they would welcome the publication of a properly redacted version of the facts and reasons given in this case.
22. Accordingly, the order to be made at the conclusion of this application will incorporate permission to disclose a redacted version of the Justices' facts and reasons. Some of the redactions to be made have been agreed between the parties, including of course, all references to A's name. Other redactions are to be determined during this judgment.
23. All parties are equally agreed that NGN should, in the public interest, be entitled to publish further information relating to the proceedings. The information concerned is set out in a schedule which has been prepared by Mr Wolanski, to be exhibited to

the order. In short, it includes the circumstances in which the journalist from the Sun attended the hearing at the magistrates' court, the making the order by Judge Barclay, the initial position adopted by the local authority in respect of the application for a reporting restriction order, and the subsequent course of the negotiations concerning the terms of the order. In my judgment, it is in the public interest for these matters to be published. It is axiomatic that, save in exceptional circumstances, any application for a reporting restriction order should be made on notice to the media. S. 12 (2) of the 1998 Act provides: 'if the person against whom the application for relief is made ('the respondent') is neither present nor represented, no such relief is to be granted unless the court is satisfied (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be identified.' This statutory provision is reinforced by the President's Direction and CAF/CASS Practice Note of 18<sup>th</sup> March 2005 which provides for a system of service of applications for a reporting restriction order on the national media via the Press Association's CopyDirect service. The President's Direction further states: 'the court will bear in mind that legal advisors to the media...are used to participating in hearings at very short notice where necessary....service of applications via the CopyDirect service should hence forth be the norm. The court retains the power to make without notice orders, but such cases will be exceptional, and an order will always give persons affected the liberty to apply at short notice.'

24. I can see no justification for the failure in this case to give notice to the media prior to the hearing before Judge Barclay. A representative of the Sun newspaper was actually present in the Family Proceedings Court in Bristol at the point when the parties' representatives were appearing before Judge Barclay in the Civil Justice Centre. At the very least, that reporter should have been informed of the proposed application to Judge Barclay so that he could have attended the hearing to make representations. In truth, however, I can see no good reason why proper notice of the hearing was not given in accordance with the President's Direction. I have observed elsewhere that there is a danger that those who practice in the family justice system fail to give proper consideration to the Article 10 rights of the media. It is not the first time that an ex parte order has been made without notice to the media in circumstances which could not be described as exceptional. This must now cease. The media are undoubtedly and rightly aggrieved by this practice. In my judgment it is in the public interest for NGN to be entitled to publish its account of the failure to give proper notice in this case.
25. Furthermore, in my judgment, the initial position adopted by the local authority in seeking a complete prohibition on publication of any information relating to these proceedings, including the identity of the local authority itself, was unjustified. Subsequently, the local authority has sensibly modified its position and adopted a constructive and conciliatory approach. In his initial skeleton argument for the hearings before me, Mr Tolson accepted that there is a legitimate public interest in the reporting of the actions of the local authority in response to the crisis in the foster home. Furthermore, the local authority no longer seeks to conceal its own identity from such publications. Nevertheless, I consider that NGN is entitled in the public interest to publish its account of the local authority's initial position.
26. Equally, I accept Mr. Tolson's argument, which is unopposed by any other party including NGN, that the local authority should be entitled to publish information relating to the proceedings in response to the concerns raised by the justices and NGN. That information will include any investigation into, or other actions taken in respect of, the events that are alleged to have taken place in the foster home, the concern about the local authority actions expressed by the Family Proceedings Court, and the history of this application for a reporting restriction order.

Furthermore, the local authority should, in my judgment, be entitled to inform and advise other children who have previously been fostered in the foster home and/or their parents or carers about information relating to the care proceedings.

27. Thus far, I have set out and endorsed what the parties have agreed to be disclosed from the information relating to the proceedings. There are, however, some matters about which the parties are not agreed and on which the court is therefore required to rule.

### **Identification of members of the foster household**

28. The major issue is the extent to which the members of the foster household should be mentioned or identified in any publication or information relating to these proceedings. This issue emerged gradually over the course of the hearings before me. At first, all parties were agreed that, whilst all individuals in the foster home should be anonymised, their status and relationship to each other should continue to be described as set out in the unredacted facts and reasons of the Justices. After the conclusion of the hearing on 16<sup>th</sup> November, however, I formed the view that insufficient attention had been paid to this issue. Specifically, there had been an inadequate focus on the human rights of members of the foster household and the extent to which those rights were infringed by the proposed publications. I therefore invited the parties to consider whether there were any further procedural steps that should have been taken to address and, if necessary, protect the human rights of all other persons in the foster household in May 2012. I further directed the parties to consider a range of options as to the extent to which the other individuals should be identified, ranging from identifying them by reference to their status and relationships through to omitting any reference to them at all. Subsequently, as described above, solicitor and counsel were instructed on behalf of the foster mother and participated at the telephone hearing on 7<sup>th</sup> December.
29. On behalf of the foster mother, Miss Harris made no application for permission to file any evidence in support of her position but instead simply relied on the arguments set out in her clear and thorough written skeleton supplemented by oral submissions. She identified two particular pieces of information in relation to which publication was sought and which caused concern to her client, namely what she described as 'the alleged assault' and 'the alleged cuddle'. She submitted that the greatest concern in respect of both pieces of information was that they were recorded in the facts and reasons following a hearing in which neither the foster mother nor any other member of the household played any part. They had no knowledge that any other allegation against them was going to be explored and had no opportunity to answer them or put a contrary case. Miss Harris submitted that the justices should not have reached any conclusions, even provisional conclusions, when the evidence was presented in such an unbalanced and such an evidentially unsafe way. She further submitted that there can be no public interest in publishing unproved allegations in respect of individuals in circumstances where the way in which the allegations were considered was flawed. The publication of mere allegations did not present an accurate picture where no balancing information was provided. In addition, Miss Harris asserted on behalf of her client, that A's truthfulness was questionable so that to publish an allegation that comes from an unreliable source would make the intrusion into the private lives of the members of the household even less justifiable. Furthermore, she submitted that, insofar as there is an ongoing investigation conducted by the local authority, that process could be prejudiced by publication of the facts and reasons. Miss Harris asserted that the real public interest lay in the failings of the local authority. The details of the allegations concerning individuals in the household did not significantly add to the public

interest in publication. Miss Harris accordingly submitted that the reporting should be restricted so as to omit all reference to the other individuals in the household.

30. On behalf of the local authority, Mr Tolson endorsed the position adopted by Miss Harris and submitted that, following the inquest into the death of the foster father, it was highly likely that his name would be published and that the identity of the other members of the household would become known. Mr Tolson added that the local authority was satisfied that it had fully considered the position of the other foster child at the property and taken all necessary steps to protect that position so that her identification was not threatened.
31. On behalf of A through the guardian, Mr Fuller did not accept that A was prone to making false allegations or that she was an unreliable and untruthful person. In other respects, however, Mr Fuller endorsed the submissions made on behalf of the foster mother that there was a public interest in concealing the relationship of the other individuals in the house since, given the likely press interest in the inquest, such a publication was likely in due course to lead to the identification of the individuals and a degree of intrusion in their lives which would inevitably add to their distress. Mr Fuller submitted that the reporting of the existence of these other individuals was neither proportionate nor important. He submitted that the real story in this case was not about the way in which the alleged assault was investigated but, rather, the concerns over pornography. As a result there was no need for any other individual in the household to be exposed in connection with such a story.
32. The foster mother's position was opposed by A's parents and by NGN. On behalf of A's father, it was submitted that the issues raised by the justices in their facts and reasons are serious; that the status of the person alleged to have assaulted A within the household was a key aspect of the public interest in the case since it may have influenced the local authority's approach to the investigation; and the allegations made against individuals in a position of trust should be looked at with the same rigour as the allegations against the parents that formed the basis of the care proceedings. The substance of the case against the local authority was that this matter has not been properly investigated, and in order to explain the seriousness of that matter it was necessary to identify the position of the alleged assailant within the household. On behalf of the mother, Mrs Wiltshire submitted that, there was a significant public interest in extending the extent of the information to be published to include details of the status of the relevant individuals within the foster household. She submitted that the danger of identification of the individuals was not significantly increased by publishing details of their status within the household. Not to publish that information would be to conceal relevant and important information from the public when there was no real or increased danger of their being identified as a result. In oral submissions, Mrs Wiltshire emphasised that the magistrates' facts and reasons referred to the allegation of assault as an allegation and did not purport to make any findings as to the truth thereof.
33. On behalf of NGN, Mr Wolanski pointed out that there was no evidence as to the impact of publication on the Article 8 rights of the members of the foster household. He submitted that it was potentially misleading for any report to recount the allegations concerned individuals in the foster home without reference to their status or position in that household. He endorsed the submission made on behalf of the father that the fact the allegations concerned persons with a particular position and status in the household may have affected the manner in which the local authority dealt with the allegation to the detriment of A. In oral submissions, he pointed out that the justices considered all the circumstances were concerning and should be the subject of further investigation. To exclude any of those concerns from published reports of the facts and reasons would be wrong. He did not accept that there was

any potential prejudice to the investigation to be carried out by the local authority. He acknowledged that there is a risk that, if the published reports refer to the status and relationship of members of the foster household, and subsequent reports of the inquest identify the foster father by name, it was possible that the names of the members of the household might be identified by what is sometimes called “jigsaw” identification (that is to say by someone piecing together the different published reports). However, this risk could be dealt with by a subsequent order in respect of reports of the inquest.

34. I accept Miss Harris’s submission that the publication of information identifying the status or relationships of the other individuals present in the foster household would be an infringement of the Article 8 rights of those individuals. That infringement is compounded by the fact that those individuals were given no opportunity to respond to the allegations made against them in the course of the hearing before the Family Proceedings Court. I accept that it is, of course, very common for third parties to be mentioned in the course of court proceedings, but in my experience it is unusual for a court to make findings, even provisional findings, on allegations against persons who were neither present nor represented. The publication of information which identified the status and relationships of those individuals would, in all the circumstances, be an infringement of their rights under Article 8. Furthermore, given the very strong likelihood that the foster father will be identified in published reports of the forthcoming inquest, I consider it probable that, were this court to permit publication of the status and relationship of the other individuals allegedly involved in the ‘alleged assault’ and ‘alleged cuddle’ incidents, albeit on an anonymised basis, the identity of those individuals would become known in due course, as a result of a process of ‘jigsaw’ identification after the publication of reports of the inquest.
35. Of course, the Article 8 rights of those individuals must be balanced against the Article 10 rights to freedom of expression. I accept it is in the public interest for the media to report the concerns expressed by the justices in their facts and reasons at the conclusion of the care proceedings. But applying the necessary intense focus to that right of freedom of expression, and looking carefully at the concerns set out in the Justices’ facts and reasons, it seems to me that the status and relationship of the individuals allegedly involved in the alleged ‘assault’ and alleged ‘cuddle’ are not key aspects of the account. The gravamen of the concerns set out in the facts and reasons can be summarised as follows. (1) A alleged that she had been assaulted by an individual in her foster home. (2) She alleged that the assault took place at 2 am when the foster mother was downstairs and another foster child was being cuddled by another individual in the bedroom upstairs. (3) At that stage, it was already suspected by the authorities that pornography was present on a computer in the foster home. (4) Despite knowing of these concerns, the local authority failed to carry out a proper investigation and failed to remove the foster children from the foster home for over a week. (5) Following the seizure of the computer and the removal of the foster children from the home, the foster father died suddenly, apparently by his own hand. In my judgment, the status and relationship of the individuals involved in the alleged ‘assault’ and alleged ‘cuddle’ incident are of marginal importance.
36. It is in the public interest for published reports of the Justices’ facts and reasons to include and refer to the alleged ‘assault’ and the alleged ‘cuddle’ but in my judgment the public interest is fully served by the persons alleged to have carried out the alleged ‘assault’ and alleged ‘cuddle’ being described as persons present in the foster household, without reference to their name, age, status, or relationship. Accordingly, I direct that the Justices’ facts and reasons be further redacted prior to publication to comply with this ruling.

## Identifying the Social Workers

37. The local authority submits that the names of the social workers – specifically, A’s key worker Ms Pritchard, and her team manager Mr Barnes – should be protected by the reporting restriction order. The grounds advanced for concealing the names are significantly limited. On behalf of the local authority, Mr Tolson simply submits that there is no public interest in the identification of the social workers and that the publication of their names would increase the risk that A’s identity will become known more widely. It is notable that the local authority does not put forward a range of arguments that have been advanced in other cases in support of applications to prevent publication of the names of social workers – see in particular *BBC v Rochdale Metropolitan Borough Council and X and Y* [2005] EWHC 2862 (Fam) [2007] 1 FLR 101, per Ryder J, and *A v Ward* [2010] EWHC 16 (Fam), a decision of Munby J, as he then was. Thus, in this case the local authority does not argue that publication of the names of the social workers would increase the difficulty in recruiting and retaining social work staff, or increase the risk of harassment and vilification of the social workers and their families so that their Article 8 rights would be infringed. Such arguments have generally not found favour with the courts, as the judgments of Ryder J in the *Rochdale* case and Munby J in *A v Ward* demonstrate, and are not advanced in this case. Instead, Mr Tolson rests his argument on the two propositions cited above.
38. Mr Tolson is supported on this issue by Mr Fuller on behalf of A’s guardian, who is concerned that naming social workers may enable some people to identify the child if they lived in the same area. The local authority’s proposal is, however, firmly opposed by A’s parents. They submit that it would be in the public interest for as much information as possible to be known about how, and by whom, the child protection decisions in this case were made. NGN is neutral on this issue, although Mr Wolanski points out that neutrality does not equate to acceptance of the proposition that there is no public interest in publication.
39. Having considered the competing interests as advanced by the parties on this issue, I conclude that the balance comes down clearly in favour of permitting the publication of the name of the key social worker, Ms Pritchard and her team manager Mr Barnes. There is no evidence to support Mr. Tolson’s assertion that there is an increased risk of A being identified if the social worker’s names are published. Mr Fuller’s submission is more precise, but in my judgment the risk of any significant extension of the identification of A as a result of the naming of the social workers is minimal. I accept the importance of maintaining A’s privacy, in particular having regard to her very acute needs, but I do not consider that publication of the social workers’ names would lead to any significant infringement of her rights to private life. On the other hand, I agree with the submission that there is a clear public interest in facilitating an open discussion of the issues relating to child protection and fostering that arise in this case. In all the circumstances, I find no evidence of any pressing social need for a restricting exercise of the right to freedom of expression on that issue.

## The fact or allegation that the foster carer committed suicide

40. Next, the local authority invites the court to extend the reporting restriction order so as to prevent any publication of the fact or allegation that the foster father committed suicide. Instead, it is proposed that the published report should simply refer to his ‘death’. Mr Tolson submits that, if the fact or assertion of his suicide is published now in report of the care proceedings, there is a likelihood or risk that subsequent reports of the inquest will lead to identification of A.



41. Initially during the negotiations, NGN conceded that the fact or assertion of the foster carer's suicide should be included within the ambit of the reporting restriction order. At the hearing before me, however, Mr Wolanski on behalf of NGN submitted that, given the inevitability that an order under s. 39 of the Children and Young Person's Act would be made by the Coroner preventing the identification of A in any press reports of the inquest, there was in practice no risk that she would be identified as a result of the publication of the fact or assertion that the foster carer had committed suicide. He told the court that his clients struggled with the concept that two reports, neither which identified A, would lead to her identification to anyone who did not already know who she was. Mr Wolanski further submitted that there was no suggestion that the inquest would be prejudiced by the publication of the fact, or assertion, that the foster carer had committed suicide. He submitted, relying on the dictum of Lord Bridge in *Pickering v Liverpool Post* [1991] 2 AC 425, that it is only exceptionally that courts will grant injunctions to restrain publication in such circumstances. In conclusion, he submitted that it was an important part of the story, the publication of which was a crucial component of the exercise of the freedom of expression in this case.
42. On this point, I find again that the balance comes down in favour of publication. The local authority has produced no evidence to support the assertion that publication in reports of the care proceedings of the fact or allegation that the foster carer took his own life would increase the risk of identification of A when subsequent reports of the inquest are published. A will not be named in either report. The local authority has not produced any evidence to demonstrate that the two reports taken together would or might lead to her identification.

### **'Strangling'**

43. Although the Justices' reasons set out the allegation that R grasped A's neck, leaving a red mark, the word 'strangling' does not appear in the reasons, although it was apparently used during the course of the hearing. In negotiations, the parents' representatives had indicated that their clients wished to be entitled to use that word in talking about the case. In a letter in the course of negotiations, the local authority asserts: "the local authority is very concerned about the use of the word 'strangled'. There is no credible evidence that anyone tried to strangle the child. We believe it is the child's father and his representatives who have used the term. It was not the local authority". In submissions, Mr Tolson on behalf of the local authority contended that the use of this word will infringe upon the rights of R, who has not been a party to these proceedings but whose rights under Article 8 are also engaged. Miss Harris adopted this submission. In response, Mr Marks, on behalf of the father, demonstrated that the local authority had in fact used the words 'strangled' or 'strangulation' in documents prepared in the course of these proceedings. Mrs Wiltshire submitted that the word 'strangled' was simply a word that was used to describe the actions which R had taken and which the Justices had described in other language.
44. I accept Mrs Wiltshire's submission. Given that the information relating to the proceedings that will be publishable under the reporting restriction order will include the fact that R is alleged to have grabbed A by the throat and left a red mark, I do not consider that use of the words 'strangled' to describe that alleged act infringes the terms of the order.

### **Public domain proviso**

45. The original draft order filed by the parties included a public domain proviso, that is to say an exclusion from the terms of the reporting restriction order of any

information which before the service of the order was already in the public domain in England and Wales as a result of publication by another person in any newspaper, book, magazine, sound or television broadcast or cable or satellite programme service. No evidence has been put before me to suggest that any information concerning this case is as yet in the public domain. As set out above, however, the advent of the internet and explosion in information technology means that it is now impossible to see the concept of the 'public domain' as one which has clear boundaries. Furthermore, a re-publication of information which has, unbeknownst to the parties, been published elsewhere would be a further unwarranted infringement of A's Article 8 rights. As Tugendhat J said in *CTB v News Group Newspapers Ltd and Thomas* (supra), 'with each exposure of personal information and allegations...there is a new intrusion and occasion for distress and embarrassment'.

46. In the event, no party pressed for the inclusion of a public domain proviso in the reporting restriction order to be made in this case. NGN is unaware of anything in the public domain relating to this case and is therefore neutral on this point on this occasion. I would therefore propose to exclude the public domain proviso from the reporting restriction order made in this case. In other words, no one who breaks the order concerning the publication of information prohibited by the reporting restriction order will be able to rely on the fact that the information had previously been published.

#### **Form of order**

47. The original draft order submitted to the court was contained in one document. I was initially concerned that as drafted it was somewhat cumbersome. I therefore proposed adopting the solution propounded by Munby J in the case of *Re B* (see above) of having two orders, styled by the learned judge as a restraint order and a disclosure order. Counsel duly and helpfully prepared two draft orders along the lines proposed by the court, but in the course of the argument during the telephone hearing on 7<sup>th</sup> December, it became clear that no party supported the idea of two orders. Mr Wolanski told the court that the media was accustomed to dealing with complex orders of this sort. Further refinements of the drafting have made the order less cumbersome and I therefore agree to a single order being made in the following terms:

### **REPORTING RESTRICTION ORDER**

#### **IMPORTANT**

**If you disobey this order you may be found guilty of contempt of court and may be sent to prison or fined or your assets may be seized. You should read this order carefully and are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge the order.**

#### **EXPLANATION**

A. On 16 November 2012 and 7<sup>th</sup> December 2012 the Court considered (i) an application for a reporting restriction order; and, (ii) an application for a declaration as to the effect and ambit of section 12 of the Administration of Justice Act 1960 arising as a result of care proceedings concerning a 5 year old girl.

B. This is the reporting restriction order made following that hearing. It (i) specifies what information is prevented by injunction from publication as a result of the care proceedings; and, (ii) specifies the information which the Court has expressly declared is not a contempt of court to publish and which therefore may be published.

C. The following persons and organisations were represented before the court:

- a. Bristol City Council, represented by Mr Robin Tolson QC
- b. The child's mother represented by Mrs Hannah Wiltshire, counsel.
- c. The child's father represented by Mr Timothy Marks, solicitor.
- d. The children's guardian represented by Mr Stuart Fuller, counsel.
- e. News Group Newspapers Limited represented by Mr Adam Wolanski, counsel.
- f. The foster family represented by Miss Libby Harris, counsel

D. The Court read the documents contained in the trial bundle and the facts and reasons of the Family Proceedings Court given in this case on 10 October 2012.

E. The Court directed that a copy of the attached Explanatory Note be made available by Bristol City Council to any person affected by this Order.

F. The Court granted permission to Bristol City Council to apply for the exercise of the Court's inherent jurisdiction.

## **ORDER**

### *(1) Discharge*

All previous orders in this matter relating to publication are discharged.

### *(2) Duration*

This order shall have effect until the 18<sup>th</sup> birthday of the child whose details are set out in Schedule 1 to this order ("the child").

### *(3) Who is bound*

This order binds all persons and all companies (whether acting by their directors, employees or agents or in any other way) who know that this order has been made.

### *(4) Publishing Restrictions*

This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website including any social networking site such as Facebook or similar provision, sound or television broadcast or cable or satellite programme service of

- (a) the name and address of
  - (i) the child
  - (ii) the child's natural parents, whose names are set out in Schedule 2 to this order
  - (iii) any individual who has or has in the past had day-to-day care of the child ("a carer") or any member of any household in which the child has lived
  - (iv) any school attended by the child
  - (v) any individual who is involved in treating or providing support services to the child not including the social workers with, or who have had, case responsibility for the child or the children's guardian.
- (b) any image being or including an image of the child or their parents or carer or any school, hospital, or other establishment or individual within (a) above;
- (c) any other information relating to the child

IF, BUT ONLY IF, such publication is likely to lead

(a) to the identification of the child as being either:

- (i) a child who was or is in care; or,
- (ii) a child who was present in the home of the foster family in respect of which an allegation was made in May 2012 ("the foster home") that a member of the household had downloaded child pornography; or,

(iii) the child who had made an allegation of physical abuse at the hands of a member of that household;

(b) to the identification of any member of the household in which the foster child lived as an individual in respect of whom an allegation of strangling and/or cuddling has been made in these proceedings

(5) No publication of the text or a summary of this order (except for service of the order under paragraph 9 below) shall include any of the matters referred to in paragraph 4 above.

(6) *Restriction on seeking information*

This order prohibits any person from seeking any information relating to the child or her parents from any of the following:

- (a) the child;
- (b) any members of the child's extended family;
- (c) any carer (past or present) of the child;
- (d) any staff or pupils or any school or other establishment attended by the child
- (e) any individual providing treatment or other support services to the child

(7) *What is not restricted by this order*

Nothing in this order shall prevent any person from

- (a) Publishing information relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication
- (b) seeking or publishing information which is not restricted by paragraph (4) above;
- (c) inquiring whether a person or place falls within paragraph (4) above;
- (d) seeking information relating to the child while acting in a manner authorised by statute or by any court of England and Wales or by a public authority in the performance of its duties;
- (e) seeking information from the responsible solicitor acting for any of the parties, whose details are set out in Schedule 3 to this order;
- (f) seeking information from any press officer acting for Bristol City Council or any member of Bristol City Council's children's services management team nominated by the Bristol City Council Press Office
- (g) publishing the facts and matters recorded in Schedules 4, 5 and 6 to this Order.
- (h) seeking or receiving information from anyone who before the making of this order had previously approached that person with the purpose of volunteering information (but this paragraph will not make lawful the provision or receipt of private information which would otherwise be unlawful)

(8) *Relaxation of the Effect of section 12 of the Administration of Justice Act 1960.*

The Court declares that it shall not be a contempt of court to publish the information set out in Schedule 4, 5 and 6 attached to this Order.

(9) *Service*

Copies of this order endorsed with a notice warning of the consequences of disobedience shall be served by the Bristol City Council (and may be served by any other party to the proceedings)

- (a) by service on such newspaper and sound or television broadcasting or cable or satellite programme services as they think fit by fax or first class post addressed to the editor (in the case of a newspaper) or senior news editor (in the case of a broadcast or cable or satellite programme service) or website administrator (in the case of an internet website) and/or to their respective legal departments;  
and/or
- (b) on such other persons as the applicant may think fit by personal service

(10) *Further applications about this order*

The parties and any person affected by any of the restrictions in paragraphs (3) to (5) above may make applications to vary or discharge it to a Judge of the High Court on not less than 48 hours notice to the parties, reserved to the Honourable Mr. Justice Baker if available.

**SCHEDULE 1**

[Child's name]

**SCHEDULE 2**

[Parents' names]

**SCHEDULE 3**

[Solicitors' names]

**SCHEDULE 4:**

(Information relating to the proceedings the publication of which the court has declared shall not of itself be a contempt of court under section 12 of the Administration of Justice Act 1960.)

1. Any part or the whole of the redacted version of the facts and reasons given by the Family Proceedings Court dated 10 October 2012 which is attached to this order ("the facts and reasons").

2. The fact that the Family Proceedings Court was informed the child's allegations of physical abuse included an allegation that she had been "strangled".

3. The fact that the child referred to as 'S' in the redacted facts and reasons was an 8 year old girl.

4. The allegation that counsel for Bristol City Council informed the Family Proceedings Court that events in the foster home and/or Bristol City Council's response to those events were "beyond regrettable".

5. Such redacted version of the transcript of the judgment of the Honourable Mr. Justice Baker on 21<sup>st</sup> December 2012 as may be approved by the judge.

**SCHEDULE 5**

(Summary of matters which News Group Newspapers alleged at the hearing before Mr Justice Baker on 2 November 2012, being further information relating to the proceedings the publication of which the court has declared shall not of itself be a contempt of court under section 12 of the Administration of Justice Act 1960)

1. An order restricting publicity was originally made in the following circumstances. A journalist from *The Sun* attended the hearing of this matter in the Magistrates Court at Bristol on 9 October 2012. On the afternoon of 10 October 2012 Mr Cusack, an agency journalist attending the Magistrates Court hearing in this case on behalf of News Group Newspapers, was told that none of the legal representatives in the case were present at court but were instead at Bristol Civil Justice Centre seeking an injunction against The

Sun. Mr Cusack went to Bristol Civil Justice Centre and attempted to take contact details for the local authority lawyer and to urge her to contact the in house lawyer for NGN. However Mr Cusack was unable to speak to the local authority lawyer until the hearing had finished and the order had been granted.

2. At around 4.30 on that day, 10 October, HHJ Barclay, sitting as a s.9 judge, made an order preventing any reporting of the case, and of the names of the parties including Bristol. During that hearing no one appears to have drawn the judge's attention to the Practice Direction applying to such applications, nor to s.12 of the Human Rights Act 1998, nor to Article 10 of the ECHR. The judge did note, despite this, that the press had not been given notice of this hearing and "*arguably they should have been*". He also noted that it was a '*great pity*' that the press had not been notified.

3. Bristol City Council at the hearing sought an order for Bristol City Council's identity, and the social workers' identities, to be "kept undisclosed pending an investigation". It is unclear what "investigation" was referred to.

4. Bristol City Council subsequently contended that they had been "prevented" from providing notice to News Group by the "urgency of the position", and maintained that Bristol City Council had been correct to take this course. This is not a tenable position, given the presence in court on 9 October and the morning of 10 October of journalists who the parties knew were attending on behalf of The Sun. There was in fact no excuse at all for not putting the Sun, at the very least, on notice of the application.

5. On 12 October Bristol City Council completed the checklist for applications for a reporting restriction, with a view to a video link hearing taking place before Baker J on the afternoon of 15 October. The application included a draft order, which provided for prohibitions upon (amongst other things)

a. Publishing anything at all relating to the care proceedings;

b. Publishing anything which identified the local authority;

c. Seeking information about the case from any employee of the local authority.

6. In the skeleton argument served in support of the application, the LA maintained:

a. That there could be no public interest for the 'unproven' allegations about the use of pornography by the foster carer to be publicised.

b. That there could be no public interest for 'unsubstantiated allegations of negligent social work practice made by the parents' to be publicised.

7. Bristol City Council subsequently changed its position concerning the reporting of the proceedings, conceding that News Group should be free to publish certain matters which News Group identified as being in the public interest, including the identity of Bristol City Council as the applicant in these proceedings. Bristol City Council maintained that certain items of information which News Group wished to disclose from the proceedings were inaccurate and should not be publishable.

8. Bristol continued to maintain however that certain allegations made during proceedings should not be reportable on the basis that complaints were "*properly investigated by the local authority*" and found to be without substance.

9. During the course of these proceedings for an injunction, it became apparent to News Group that there was in existence a document entitled 'Facts and Reasons' dated setting out the findings of the Magistrates on the care application. News Group applied for permission to see this document, and then for permission to publish its contents in anonymised form. News Group maintained that the Facts and Reasons raised issues of considerable and legitimate public interest concerning the manner in which Bristol City Council had sought to discharge its duties.

10. Bristol initially resisted the application by News Group for permission to publish the contents of the Facts and Reasons, then, during a hearing, conceded that the contents of the Facts and Reasons should be publishable in anonymised form.

11. News Group made further submissions in respect of whether particular points of detail within the Facts and Reasons should be publishable. News Group contended that all the information within the Facts and Reasons should all be publishable in anonymised form, together with a limited amount of additional information from the proceedings.

## **SCHEDULE 6**

(This schedule is, for the avoidance of doubt, applicable only to Bristol City Council and contains further information relating to the proceedings the publication of which the court has declared shall not of itself be a contempt of court under section 12 of the Administration of Justice Act 1960)

1. Subject to the proviso below, Bristol City Council may publish any information concerning the following topics:

a. Any investigation into, or other actions taken in respect of, the following matters related in the facts and reasons:

i. Children displaying sexualised behaviour in the foster home in 2010.

ii. The child's allegations of physical abuse.

iii. The allegation that the person identified as T in the facts and reasons cuddled the child identified as S.

iv. The downloading of indecent images of children by the foster carer.

b. Any response by Bristol City Council to the concerns about the actions of Bristol City Council expressed by the Family Proceedings Court in the facts and reasons.

c. The history of this application for a reporting restriction order.

2. Subject to the proviso below, and for the purpose only of informing and advising former foster children who have in the past been placed in the foster home, and/or their parents or carers, Bristol City Council Children's Services Department, its employees or other agents may publish any information relating to the proceedings.

PROVIDED ALWAYS that material published under this Schedule complies with paragraph (4) of this Order ("Publishing Restrictions"),

Date of Order: 21<sup>st</sup> December 2012

## **EXPLANATORY NOTE**

1. A journalist was present during part of care proceedings heard in private in the Bristol Family Proceedings Court. The proceedings involved a 5 year old girl ("the child"). The proceedings have now concluded and the child remains in foster care. The Family Proceedings Court's redacted "facts and reasons" are publishable and a copy is attached to this order.

2. A previous foster placement for the child ended when the police discovered images of child pornography on a computer within the foster home, as more particularly set out in the facts and reasons.

3. There is a public interest in the reporting of events surrounding the discovery of the images and the subsequent removal of the child from the foster home and the actions of public authorities at the material time. However, it is important for the welfare of the child that her identity should be protected during the reporting of these events.

4. Accordingly, this order seeks to balance the competing interests of the child for privacy on the one hand and the media and public interests for publication on the other, by permitting the reporting of certain facts but preventing the identification of the child as more particularly set out in the Order.