



Neutral Citation Number: [2005] EWHC 2862 (Fam)

Case Nos: WG 18, 19, 21, 24 and 28 of 1990

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday, 24<sup>th</sup> November, 2005

Before :

**MR JUSTICE RYDER**

Between :

|    |  |                           |
|----|--|---------------------------|
|    | <b>The British Broadcasting Company</b>      | <b><u>Applicant</u></b>   |
|    | - and -                                      |                           |
| 1. | <b>Rochdale Metropolitan Borough Council</b> | <b><u>Respondents</u></b> |
|    | -and-  |                           |
| 2. | <b>'X'</b>                                   |                           |
|    | -and-  |                           |
| 3. | <b>'Y'</b>                                   |                           |

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**Mr Adam Wolanski** (instructed by the BBC Litigation Department) for the **BBC**  
**Mr Anthony Hayden QC and Ms Yvonne Coppel** (instructed by the Borough Solicitor) for  
**Rochdale MBC and X**  
**Ms Jane Walker** (instructed by Thompsons Solicitors, Manchester) for **Y**

Hearing dates: 12<sup>th</sup> and 13<sup>th</sup> September 2005

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MR JUSTICE RYDER

This judgment was being handed down on the 8<sup>th</sup> December 2005. It consists of 17 pages including this page and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

**Mr Justice Ryder :**

1. On the 7<sup>th</sup> March 1991 Mr Justice Douglas Brown gave judgment in open court in wardship proceedings concerning 20 children from 6 families, known as ‘the Rochdale satanic abuse case’. The judgment is reported as *Rochdale Metropolitan Borough Council v. A* [1991] 2 FLR 192. All but 4 of the children were returned to or remained in the care of their families and the allegations of satanic and ritual abuse were found not to have been made out. Injunctions were made to protect the identities of the children concerned.
2. It is the protection afforded by those injunctions that forms the background to these renewed proceedings. The key issue before this court is whether continuing protection should be afforded to two social workers, X and Y, whose identities were not revealed in the open court judgment that concluded the original proceedings.
3. The terms of the injunctions that continue in force (as distinct from the protections this court has put in place with the agreement of the parties pending decisions being made in these proceedings) are as follows:

“Any person whether by himself or by his servants or agents or otherwise howsoever or in the case of a company by its directors, officers, servants or agents or otherwise howsoever (is restrained) from

  - 1) publishing in any newspaper or broadcasting in any sound or television broadcast or by means of any cable programme service or by satellite any picture being or including a picture of the several minors whose names are set out in the schedule hereto or any particulars or pictures calculated to lead to the identification of the minors as being or as having been wards of this court or
  - 2) causing or procuring any publication or broadcast of the type defined in paragraph (1) above or
  - 3) soliciting any information relating to the said minors (other than information in the public domain) from –
    - a. the said minors or any of them
    - b. any natural person who has had the care of the minors since the minors became wards of court
    - c. the staff or pupils of any school which the said minors attend or have attended
    - d. the staff or inmates of any institution or children’s home at which the said minors reside or have resided...”
4. In respect of one of the families the non solicitation clause was drawn wider to include relatives, carers and parents.
5. On the 22<sup>nd</sup> May 2005 the BBC applied for an order that would have the effect of permitting the disclosure of evidence given in the original proceedings to the BBC, the solicitation of information relating to those proceedings and disclosure to the general public of the identities of X and Y, the social workers who were granted anonymity by Douglas Brown J.

6. The purpose of the BBC's application is to facilitate the production of a documentary that the court has been told the BBC intended to broadcast later this year.
7. The local authority and the two social workers concerned have agreed with the BBC and the representatives of the former wards the disclosure of materials to the former wards, its use by the BBC and the relaxation of the prohibition against solicitation of information from the former wards among others. That involved a detailed consideration by the local authority of the materials that existed against the requirements of the Data Protection Act 1998. The court was able to assist the parties to reach agreement by the appointment of a clinical assessor whose instruction was to consider whether harm was likely to be caused to the data protection subjects by the disclosure requested.
8. At the end of the process there remain only two issues a) whether the two social workers can be named in the documentary and b) whether video footage which includes the images of the social workers as well as the children can be broadcast. The extent of the disclosure that has been agreed, evidenced by detailed orders that have been agreed by the parties and approved by the court, is such that the former wards and the BBC have been able to see and read almost all of the materials that were used in the proceedings. That which has been excluded can fairly be characterised by the description that it is intimate family business that may not have been known between generations and which is not relevant to the applications now before the court.
9. On the 16<sup>th</sup> August 2005 Rochdale Metropolitan Borough Council issued an application on their own behalf and on behalf of one of the two social workers for an injunction restraining the BBC from publication of the names of both social workers or any material that might lead to their identification on the grounds that the social workers and their families would be harmed personally and professionally and it would not be in the public interest. On the 1<sup>st</sup> September 2005 an application was made on behalf of the other social worker in identical terms. Although one social worker had the advantage of representation through solicitors appointed by her union, the other was afforded the same protection through the local authority's legal department.
10. I have had the benefit of hearing detailed submissions on behalf of the BBC, the local authority and both social workers. I am very grateful to leading and junior counsel for the benefit of their skill and industry. I have also taken steps to hear representations from the former wards. They are separately represented by solicitors who protect their interests in particular as to their discussions and agreements with the BBC and the separate civil compensation proceedings that have been instituted against the local authority.
11. I record the fact that each of the relevant adults concerned have come to binding agreements with the BBC about the use of their confidential information and I am satisfied that these protections need not be further investigated by this court in these proceedings. There are former wards and other adults who were concerned in the proceedings whose confidential information is not to be revealed and I am satisfied that their interests have likewise been protected.

12. I have considered detailed written evidence filed on behalf of the BBC, the local authority, both social workers and their respective employers. Opportunities were provided to call and examine that evidence but by a proper and proportionate use of the court's permission to file evidence in reply, no examination proved to be necessary. I have not been asked to hear oral evidence and credibility is not in issue.
13. There is a relevant part of the judgment of the 7<sup>th</sup> March 1991 that is not to be found in the case report but which can be read in the transcript of the original proceedings. There the learned judge gave the following reason for the two social workers being granted anonymity:

“I do not give their names, because to do so could well lead to the identification of these children”
14. All of the professionals directly involved with the children with the exception of X and Y were named in public. The anonymity ruling was coincident with the purpose and detailed terms of the injunctions made at the end of the proceedings although it should be noted that an anonymity direction was not included in any order and hence was neither brought to the attention of any person who was not present in court nor, in particular, any media organisation.
15. In fact neither social worker played any further part in the lives of any of the children or their families and both left the employment of the local authority for other social care bodies. They remain in employments that are unconnected with the former wards and the court has been told, and it is not in issue, that both have had successful careers in the social care professions where their activities have positively benefited their professional colleagues and the vulnerable adults and children they have assisted.
16. By the time the BBC made its application to this court, the purpose of the original injunctions had been achieved in that the former wards were no longer children and save as to the specific agreements that have been come to, they are adults who wish to be identified. It is not suggested that any of the former wards are incapacitated in law and accordingly this court's role in respect of the maintenance and/or enforcement of their anonymity must of necessity be limited. Indeed, where there is no evidence that the adults concerned lack the capacity to give consent, absent other arguments, the court must permit them to be identified. A failure to do so would be an unjustified interference with their Article 8 and 10 rights: *Re Roddy (A Child) (Identification: Restrictions on Publication)* [2003] EWHC 2927 (Fam), [2004] 2 FLR 949 per Munby J. at paragraphs [37], [56] and [59] and *E v. Channel Four, News International Ltd and St Helens Borough Council* [2005] EWHC 1144 per Munby J. at paragraphs [48] to [52].
17. If the former wards can be identified, then it is certainly arguable that the ancillary protection afforded to the social workers falls away. Although the injunctions were expressed to continue in force until further order, the former wards have made clear and informed decisions upon advice to waive their privacy. Accordingly, no-one has sought in these proceedings to argue from first principles whether the wardship orders should continue to survive the majority i.e. the adulthood of those they protected, although undoubtedly the wardship court did extend its protection beyond the age of majority where a public interest was identified that required it: see *Re Manda*

(*Wardship: Disclosure of Evidence*) [1993] 1 FLR 205 CA per Sir John Megaw at 219.

18. It is in this context that cross applications were made on behalf of the social workers and the local authority for an injunction granting the two social workers privacy in any circumstances. As the BBC pointed out, the terms of the protection asked for would grant X and Y total privacy i.e. anonymity in all circumstances: a protection so far only afforded by the courts in exceptional circumstances to, for example, Mary Bell, Robert Thompson and Jon Venables and Maxine Carr.
19. It is not in issue that there is a legitimate public interest in the subject matter of the case. In the opening paragraph of the 1991 judgment Douglas Brown J. said:

“I am giving this part of the judgment in open court because I am of the view that this case gives rise to areas of genuine public concern and that it has implications not only for wardship proceedings but for proceedings taken under the Children Act 1989...”
20. Whether the outcomes are positive for the children concerned and for society generally of our child care procedures, law and practice is a matter for genuine public debate and interest, now as it was in 1991. I respectfully agree with Munby J. in *Re B (A Child) (Disclosure)* [2004] 2 FLR 142 at 181 paragraphs [99] and [103] where he says:

“The workings of the family justice system and, very importantly, the views about the system of...(those)...caught up in it are ... matters of public interest which can and should be discussed publicly”

“We cannot afford to proceed on the blinkered assumption that there have been no miscarriages of justice in the family justice system. This is something that has to be addressed with honesty and candour if the family justice system is not to suffer further loss of public confidence. Open and public debate in the media is essential.”

#### The Facts Relied Upon:

21. What are the other facts upon which these applications rest?
22. The criticisms made by Douglas Brown J. that relate to the social workers and other professionals were serious and went to the heart of good child protection procedures and practices at the time. They are set out in full in his judgment and need not be repeated here.
23. What should be remembered, however, is that the learned Judge also found that:

“... the local authority employees I have been concerned with are decent people. They are not heartless or ruthless. They acted throughout with the best interests of these children in mind as they saw them. Nevertheless mistakes were made and it is greatly to their credit that most of them have been acknowledged.”
24. The BBC wish to illustrate the criticisms made in judgment by use of the video footage that exists, where that is practicable and appropriate. That would involve revealing clips of the social workers, albeit from 15 years ago and the use of the transcripts of their interviews. It should be noted that provided their identity is not revealed neither the local authority nor the social workers oppose the use of the videos or the transcribed material.

25. For the BBC it is said that:
1. There remains a strong public interest in examining the criticisms made by Douglas Brown J. in the context of a) contemporaneous national influences and child care practice, b) the lessons learned i.e. the changes that have occurred in child care law and practice and c) the effect upon the families and children concerned;
  2. The former wards are now adults, they wish to talk about their experiences and that provides a unique opportunity to listen to their recollection of events, their experiences then and to date and their comments on the decisions made on their behalf by adults: parents and professionals alike;
  3. The documentary would be a rare opportunity to discuss the then prevalent child care practices and best practice in the context of the circumstances that were their origin i.e. the recommendations of the Cleveland Inquiry, and subsequent case law;
  4. The producers would also wish to discuss current child care concerns, for example cot death cases and allegations of fabricated illness and child protection examples that can be identified from the reports of recent legal proceedings, for example unfounded allegations of 'black magic' in the Western Isles and convictions concerning so called witchcraft practices in a discrete community in London;
  5. The obscuring of the identities of the social workers is a slow technical process and unless permission is given to name them at a relatively early stage of the production schedule, two versions of the programme would have to be produced, one naming them and one preserving their anonymity: that is expensive and the latter course is in any event more difficult to sustain for interviewers and families alike;
  6. An account which anonymises and obscures the identities of the social workers would be disembodied i.e. it would tend to lessen the cogency of the public interest questions that are being discussed and detract from the news value of the broadcast. It is to be noted that this is not the same as the argument accepted by Munby J. in *F v. Newsquest and Others* [2004] EWHC 762 (Fam) at paragraph [98] that 'one should be able to put a face to a name': a judgment that was in fact based upon the compelling public interest in being able to identify a convicted paedophile so as to be able to protect one's children;
  7. The BBC has no intention of identifying the families, addresses, occupations or employers of X and Y and to that extent, if their Article 8 rights are engaged, the interference will be minimal and only in accordance with the ordinary principle that there is no confidentiality in the identity of a witness.
26. X and Y say that:
1. Social workers as public servants working in a confidential environment should be protected by a cloak of anonymity save where there has been dishonesty or bad faith;

2. They support open public debate and do not oppose the making of the documentary;
3. They left the local authority's employment as a matter of personal choice not in consequence of the judgment and have both in their different ways gone on to considerable professional success elsewhere;
4. Their professional competence has not been called into question since the judgment;
5. Their Article 8 rights are engaged and having regard to the nature and extent of the agreed disclosure the maintenance of their anonymity is a proportionate restraint whereas the publication of their identities would add so little of value that it would be a disproportionate interference;
6. They both fear:
  - a) A negative impact on their professional standing with colleagues and families with whom they now work;
  - b) A negative impact on future career prospects (I deliberately do not enlarge on this issue because it would tend to identify the social workers present professional activities and the BBC has undertaken not to reveal their present employments but I stress that I have considered the detail of that which is set out in the affidavits that have been sworn);
  - c) The possibility of an unfair or inaccurate portrayal of them including by any failure to consider the actions of others with whom it is asserted they acted at the time (e.g. management representatives);
  - d) Intrusive media interest;
  - e) Harassment and/or behaviour from others towards themselves or their families that they would regard as threatening;
  - f) A seriously detrimental emotional impact (described as enormous) upon their closest relatives, including children who do not know of their past involvement with this case and parents who are elderly.

27. What are the legal principles that I should apply?

The Identification of Witnesses:

28. As a matter of general principle there is nothing in the absence of an order to the contrary to prevent the identification of a witness who has given evidence in a case, including a witness in proceedings concerning the welfare of children. Section 12 of the Administration of Justice Act 1960 does not prevent the identification of witnesses: *X v Dempster* [1999] 1 FLR 894 per Wilson J. at 901 and per Munby J. in *Re B* supra at paragraphs [76] and [82].

29. The breadth of what may be revealed is often misunderstood and, if I may say so, reference to the summary in *Re B* at paragraph [82] is a useful starting point as a description of the ‘automatic restrictions’. Historically, the court has authorised disclosure beyond these restrictions and/or imposed additional restrictions in the exercise of its inherent jurisdiction. Although the principles to be applied to this application have been re-cast in the language of the Human Rights Act 1998, the principles upon which the inherent jurisdiction was exercised are still a helpful description of factors and interests: see, for example, the summary set out in *Re B* at paragraphs [83] to [86].
30. This is not the place to examine or re-examine the nature and extent of the privacy that does attach to family proceedings and the distinctions that can be ascertained in the language of the case law relating to private law and public law proceedings. It is sufficient to record for this application that in general, the legitimacy of our rules of court and the practice of holding family proceedings in private is rationalised in the context of human rights jurisprudence as follows:
- “in order to protect the privacy of the child and parties and to avoid prejudicing the interests of justice. To enable the deciding judge to gain as full and accurate a picture as possible of the advantages and disadvantages of the various residence and contact options open to the child, it is essential that the parents and other witnesses feel able to express themselves candidly on highly personal issues without fear of public curiosity or comment ... ”
- see *B v. United Kingdom, P v. United Kingdom* (2002) 34 EHRR 529, [2001] 2 FLR 261 at paragraphs [38] and [46].
31. That in itself is but an example of the balance of interests and rights that are in play and is merely a re-statement of the classic exposition of the reasons for privacy in wardship proceedings: *Scott v. Scott* [1913] AC 417 per Lord Shaw of Dunfermline at 482:
- “The three exceptions which are acknowledged to the application of the rule prescribing the publicity of courts of justice are first in suits affecting wards; secondly in lunacy proceedings; and thirdly where secrecy ... is of the essence of the cause. The first two of these cases, my Lords, depend upon the familiar principle that the jurisdiction over wards and lunatics is exercised by the judges representing His Majesty as *parens patriae*. The affairs are truly private affairs; the transactions are transactions truly *intra familiam*; and it has long been recognised that an appeal for the protection of the court in the case of such persons does not involve the consequence of placing in the light of publicity their truly domestic affairs ... But I desire to add this further observation with regard to all these cases, my Lords, that, when respect has thus been paid to the object of the suit, the rule of publicity may be resumed. I know of no principle which would entitle a court to compel a ward to remain silent for life in regard to judicial proceedings which occurred during his tutelage...”
32. The fact that witnesses may be named illustrates the fact that the general practice of affording privacy in children cases does not extend to preserving the privacy of expert witnesses involved in the proceedings. The privacy of the expert participants is not always and may not generally be necessary to achieve the object of the proceedings.
33. Section 12 of the AJA 1960 does prevent publication of the evidence of witnesses, including expert witnesses, in such proceedings. However, in relation to such evidence it is well established that there cannot be an expectation that it will remain confidential in all circumstances: *In Re Manda* supra per Balcombe LJ at 215 and *Re X (Disclosure of Information)* [2001] 2 FLR 440 per Munby J. at paragraph [24].



34. In these proceedings, the court's judgment on the evidence was published as were all but two of the names of the professional witnesses. The continuing public interest in open debate about the issues in the case has been reflected both by the voluntary disclosure of the materials used in the proceedings that has been agreed between the parties and the court's approval of the same in response to the BBC's application. All that remains is the question whether the identities of X and Y should remain unknown and barred from publication.
35. It is acknowledged that there may be cases where the identity of experts needs to be withheld because there are concerns, supported by evidence, that identification will have a negative impact upon the administration of justice, see for example *Re B* supra where an issue arose about the identification of doctors who had given evidence. The doctors, in support of their attempt to retain anonymity, provided evidence of a "continuing and massive backlash in the United Kingdom against child protection, which uses as a strategy the promulgation of disinformation and vilification of certain doctors through sensational and convincing media campaigns" which had contributed to a "drain on the pool of doctors willing to do child protection work": see paragraph [88].
36. Munby J. considered that there was on the particular facts of *Re B* "an especially acute and difficult dilemma" given the public interest in further publicity of Family Division proceedings. He acknowledged that there may be "a powerful public interest in a discredited expert being identified; in the other case, there might be a powerful public interest in the public vindication of an expert who had been unjustifiably and unjustly attacked."
37. He concluded that despite the general principle to the contrary, the doctors should retain their anonymity. Importantly, however, he emphasised that his concern was not primarily for the interests of the individual doctors in the case and the impact upon them of identification, but the public interest in ensuring that everything possible is done to address the problem of "the already inadequate number of experts willing to assist the courts in vitally important child protection cases": see paragraph [130]. The doctors did not assert their Article 8 rights and accordingly there was no balance that involved Article 8 of the Convention.
38. Likewise, there is a public interest in encouraging frankness which is essential in cases involving the welfare of children. That includes promoting rather than deterring witnesses including professional witnesses from giving evidence. It should be noted that this interest is usually characterised as a need to preserve confidential sources and information rather than as an incident of any right to personal confidentiality or anonymity in the professional witness who relays that material to the court, though the various aspects of confidentiality will have greater or lesser weight on the facts of each case: see Munby J. in *Re X* supra at paragraph [24]. Such witnesses are not entitled to assume that their evidence will remain confidential in all circumstances nor that their identity will normally be protected for this purpose: see the analysis of Balcombe LJ in *Re Manda* supra at 211 to 215. The submission that social workers among others can expect that the 'confidentiality of their identities' will be respected unless there has been dishonesty or bad faith is not a correct statement of the law and has not been for some time, if it ever was.

39. This court has not received any direct evidence touching on the arguments of frankness, deterrence or the availability of child protection professionals, although strong submissions have been made to that effect. Despite this, I take notice of the fact that there is a continuing shortage of social care professionals, particularly in child protection and that there have been and are campaigns against them which can have a serious effect upon an individual's private life. Further, there is a public interest in encouraging social workers and others to engage in this difficult work. Great weight is placed on this by the local authority and by X and Y, and although I should take these factors into account and I do, no-one suggests that they are the determinant or predominant factual issues in this case.

The Application to Restrain:

40. Since the enactment of the Human Rights Act 1998 the proper approach to applications concerning media reports in relation to children is for the court to identify the various rights that are engaged and then to conduct the necessary balancing exercise between the competing rights, considering the proportionality of the potential interference with each right independently.
41. In *Re S (FC) (A Child)* [2004] UKHL 47, [2005] 1 FLR 591 HL Lord Steyn set out four propositions relying upon the opinions of the House of Lords in *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457:
1. Neither Article (8 nor 10) as such has precedence over the other
  2. Where 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
  3. The justifications for interfering with or restricting each right must be taken into account
  4. The proportionality test must be applied to each".
42. The interaction between Articles 8 and 10 of the Convention is at the heart of the key issue in these proceedings. In essence the BBC asserts the right of the community as a whole to freedom of expression as do the former wards and both the social workers and the former wards assert their right to respect for their private and family life. Different constructions of the public interest are relied upon but all adopt the principle set out in *Campbell v MGN Ltd* supra as described and analysed in the context of family proceedings by the President in *A Local Authority v. W, L, W, T and R* [2005] EWHC 1564 (Fam), in particular at paragraph [53], namely the presumptive parity of Articles 8 and 10.
43. The public interest in open justice is important to the analysis and to the ultimate balance the court must conduct but it is not determinative of the outcome i.e. there is no presumptive priority to be afforded to Article 10. In any event, the balance to be conducted will necessarily be different (because of the different issues and factors involved) where the proceedings are a species of family justice rather than criminal justice: see the analysis of the President in *A Local Authority v. W & Ors* supra.

The Rights Engaged:

44. Article 8 of the Convention 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 any 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”
45. The former wards seek to assert their rights under Articles 8 and 10 to publish information about the proceedings to the BBC and others by telling their story. X and Y seek to assert their rights under Article 8 to keep their private life confidential by retaining their anonymity.
46. That the former wards’ Article 8 rights are engaged was recognised by Munby J. in *Re Roddy (A Child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 1 FCR 481 where he said at paragraph [36]:
- “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 Art 10 but also by Art 8”
47. In the context of this case, Article 8 protects the right to establish, maintain and develop relationships with other human beings, see *Botta v. Italy* (1998) 26 EHRR 241 at paragraph [32] and *Bensaid v. United Kingdom* (2001) 33 EHRR 208 at paragraph [47]. The Article 8 protection also extends, among other factors, to a person’s name, identity and business or professional relationships, see *Niemietz v. Germany* (1992) 16 EHRR 97 at paragraph [29] and *Peck v. United Kingdom* (2003) 36 EHRR 41 at paragraph [57]:
- “...private life is a broad term not susceptible of exhaustive definition. The court has already held that elements such as gender identification, name, sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. The Article also protects a right to identity and personal development and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of ‘private life’...”
48. Family life is a question of fact but the existence of a close personal relationship between adults and their children or as between adults and their own parents will of necessity be capable of being construed as family life: see, for example, *K v. United Kingdom* (1986) 50 DR 199, 207 E Comm HR.
49. So far as X and Y are concerned, they each rely upon the fact that there is privacy in their identities as an aspect of their private (including professional) and family life quite apart from their identification as witnesses in a particular case. Once their identities are recognised as private (sometimes referred to as the ‘reasonable expectation of privacy’ threshold) the court must balance their interest in keeping their identities private against the countervailing interest of the recipient in publishing the same. Private individuals are not normally identified without their agreement but there are circumstances where the media are justified in revealing private information without consent: *Campbell v. MGN Ltd* supra per Baroness Hale of Richmond at 495G paragraphs [134] to [140].

50. Article 10 of the Convention provides that:
- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
  2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society...for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary"
51. The exceptions to the Article 10 right of freedom of expression must be "narrowly interpreted and the necessity for any restrictions must be convincingly established". What is necessary "implies the existence of a pressing social need". There must be proper evidence to justify any interference with the Article 10 right. The dangers inherent in restraint call for "the most careful scrutiny by the court": *The Observer and The Guardian v. UK* (1991) 14 EHRR 153 at paragraphs [59] to [60] and *Kelly v BBC* [2001] 1 FLR 197 per Munby J. at 212 B and 229.
52. It is not, as was suggested by one of the social workers, for the BBC to satisfy the court that there is a public interest in publication.
53. That the court needs to be convinced of a pressing social need for restrictions upon freedom of expression is given statutory effect by sections 12(3) and 12(4) of the 1998 Act.
54. Section 12(3) HRA 1998 applies to these proceedings because the court is considering "whether to grant any relief which, if granted, might affect the exercise of the convention right to freedom of expression". It provides that the court should not grant interim relief:
- "so as to restrain publication before trial unless...satisfied that the applicant is likely to establish that publication should not be allowed"
55. In *Cream Holdings v Banerjee* [2004] UKHL 44, [2005] 1 AC 253 the House of Lords made clear that "the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably (i.e. "more likely than not") succeed at the trial.
56. Section 12(4) provides that:
- "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 appears 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"
57. In this case, the Article 10 rights of the former wards and the BBC are engaged and the statutory imperatives apply.

58. Article 6 (1) provides that:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by an independent tribunal established by law.”

“Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”

59. In addition to the public interest in the former wards and the BBC in the publication of details of the events of 1990/1991, there is a strong public interest in maintaining the confidence of the public at large in the courts. Article 6 is intended, among other things, to promote confidence in the judicial process. This is a point that has repeatedly been stressed by the Strasbourg court. In *Prager and Oberschlick v Austria* (1996) 21 EHRR 1 at paragraph [34] the court said:

“Regard must ... be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties.”

60. An important means by which such confidence is achieved and maintained is through permitting proper scrutiny of court proceedings. In *Axen v Germany* (1984) 6 EHRR 195 at paragraph [25] the court said:

“The public character of proceedings before the judicial bodies referred to in Article 6(1) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 (1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention.”

61. I recognise that there are clear distinctions to be drawn between the administration of criminal justice and family justice, but just as there are differences, so there are certain minimum protections and expectations that ought to be common both.

62. Reflecting this, particularly against the background of frequently expressed concerns about secrecy in the Family Division, there is increasing recognition of the need to permit greater openness in family cases. See, for example, the comments of Munby J. in *Re B* at [98] and Wall LJ. in *Re H (Children)* [2005] EWCA Civ 1325 at paragraphs [26] and [29] to [32].

63. Set alongside the general principles, what comparative examples are there of the discretionary exercise I am asked to perform? It is said by the BBC, and I agree, that this is not a case, by comparison with *Thompson and Venables v News Group Newspapers Ltd and Ors* [2001] 1 FLR 791 CA (the Jamie Bulger murderers), in which a privacy injunction is sought on the grounds of unique notoriety, widespread public interest or evidence of a serious threat to life such that Articles 2 and 3 of the Convention are engaged, involving rights which, if they were engaged, would not be capable of derogation.

64. In fact there is an element of fear expressed in the evidence of the social workers but in my judgement that falls within the description given by Thorpe LJ in *Re W (Care Proceedings: Witness Anonymity)* [2002] EWCA Civ 1626, [2003] 1 FLR 329 at paragraph [13] where he commented in the different but comparable context of a plea for anonymity within proceedings that:
- “social workers up and down the country, day in day out, are on the receiving end of threats of violence and sometimes actual violence from adults who are engaged in bitterly contested public law cases...social workers must regard this as a professional hazard”
- “cases in which the court will afford anonymity to a professional social work witness will be highly exceptional”.
65. Neither is this a case like *Campbell v MGN Ltd* supra (where Naomi Campbell sought an injunction restraining publication of information about her attendance at Narcotics Anonymous meetings) in which an injunction is sought on the basis of the confidential nature of the information intended to be published. There is nothing confidential to the social workers about the fact that they were the subject of criticism in an open court judgment in 1991. Their only confidentiality then identified by the court was that attaching to the proceedings so as to protect the children concerned. Their only confidentiality now is their privacy i.e. the integrity of their professional and family lives as distinct from their identities as witnesses.
66. The injunction is sought on the basis of a feared detrimental impact upon X and Y, and their family members, as a result of the publication. The BBC submits that, in accordance with the principles set out above and the examples in the case law to which I have been directed, an injunction should only be granted to protect identification in an exceptional case. This is a short hand for the careful balancing exercise that is to be performed and I prefer to conduct that exercise without any pre-conception as to the result.

The Balance:

67. What are the rights and interests that I accept on the facts and that are accordingly engaged?
1. Having regard to Articles 6 and 8, the interests of a child will always be the major or at least a very important factor sufficient to justify a curtain of privacy or anonymity to protect the child thereby ensuring that the court's primary object is satisfied, which is to secure that justice is done;
  2. When the protected child achieves adulthood and is not incompetent he or she is entitled to decide what is in his or her own interest;
  3. As adults, the former wards seek to assert their rights under Articles 8 and 10 to tell their story;
  4. The BBC assert the rights of the media and others to receive from the former wards the information about the proceedings and to broadcast that story unless there is a pressing social need convincingly established for a restraint upon their Article 10 rights;

5. X and Y seek to assert their Article 8 rights to preserve the confidentiality of their identity and thereby protect their professional and family relationships;
  6. There is a public interest in the confidentiality and privacy of family proceedings so as to encourage witnesses to participate and be frank and thereby to assist the court to achieve its primary object but there can be no expectation that that confidentiality will remain in all circumstances or for all time;
  7. There is no necessary confidentiality in the identities of X and Y as witnesses. Where anonymity is granted in order to protect a child, that anonymity will not be necessary when the purpose of the proceedings is achieved unless there is a separate legitimate aim and lawful reason for its imposition;
  8. There is a public interest in promoting the administration of justice in maintaining the authority of the judiciary and the confidence of the public in the family courts by open and public debate in the media;
  9. The subject matter of the proceedings was of high public interest and remains so;
  10. That high interest will not be reflected by a requirement that a published analysis be presented in a disembodied form so that it is less cogent or newsworthy;
68. In fairness to X and Y, it is necessary to examine in a little more detail the effect that they assert will be the consequence of the interference with their Article 8 rights by any publication of their identities. It should be noted that the arguments are and necessarily have to be presented as risks rather than facts to be found i.e. they are assertions which I have had to assess against a factual background that is not disputed by cross examination. It is said that:
1. Their career prospects including any academic studies will be prejudiced: there is a slight possibility of this but they have not been to date despite the fact that their employers have been aware of their involvement in this case as the anonymous social workers criticized in judgment by Douglas Brown J.;
  2. There will be prejudice to their professional standing within the agencies for whom they now work, among colleagues, clients and with other agencies: this is a possibility with implications for the proper workings of child protection processes, but the court must be hesitant to protect someone's identity so as to prevent justified public comment in the media of criticisms made in an open court judgment. Further, there is little or nothing to support the assertion that the activities of the agencies for whom X and Y now work will be damaged and even less that the interests of any vulnerable client would be prejudiced;
  3. There will be harassment and intrusion from the activities of the media and worse from persons whose activities may be threatening: again this is possible in that it happened in 1991. Pressure groups can utilise information of this kind to great personal and professional detriment and their activities can be pursued almost unchecked. The actual impact on individuals can be much

greater than the theoretical balance might suggest. The contrary argument is that with the passage of time there will be less intrusive interest and that in any event improper or illegal activity can be remedied or protected against without recourse to Article 10 restrictions;

4. There will be a prejudicial effect upon X and Y's family: again that is a possible but certainly not a necessary consequence of publication. In any event the BBC offers and guarantees to protect from disclosure the names of family members, their whereabouts and employments. If and in so far as it is asserted that other media organizations will be less responsible in their reporting that can be protected against by a much narrower and proportionate restraint than that asked for;
  5. There will be an unfair or inaccurate portrayal of X and Y and their respective roles: there is no evidence that this will happen and it is a matter for X and Y whether they take part in the public debate that they support, but any restraint that tends to make the documentary one sided will only hinder fair and accurate reporting by depriving the programme makers of part of the context.
69. There is no longer any interest of a particular child or children generally in retaining the anonymity of X and Y. The justification for the original anonymity ruling no longer exists.
70. The evidence served in support of the applications of the local authority and X and Y does not in my judgment convincingly establish a pressing social need for the restraint asked for. That restraint would in my judgement be a disproportionate interference with the Article 10 right. In the short hand, it does not establish an exceptional case for an interference with Article 10. Publication of the identities of X and Y will be an interference with X and Y's Article 8 rights but one that is in pursuit of a legitimate aim, namely informed and open discussion in the media of the public interest issues relating to the proceedings and family proceedings generally. In my judgment that interference would be proportionate.
71. The Article 10 rights of the BBC and the former wards, and the public interest, reinforced by Article 6, in enabling public scrutiny of court proceedings and family justice, should on the facts of this case prevail over the Article 8 rights of the applicants.
72. Accordingly, I dismiss the applications of the local authority and X and Y for an injunction to restrain the BBC from publication of the identities of X and Y. I will hear further submissions upon whether there should be any relief to protect X and Y in the limited manner suggested above, namely to reflect the guarantees offered by the BBC.

#### The Effect of Delay on X and Y:

73. An issue of principle was raised on behalf of X and Y that their reasonable expectation of privacy cannot now be overturned without significant prejudice to them to the extent that so long after the original balance was conducted by Douglas Brown J. they cannot now get a fair hearing. It is said that this court cannot do justice



to the balance because of the delay since the original hearing so that these proceedings are unfair: see *H v. France* (1989) 12 EHRR 74 at paragraph [58].

74. It is true that in 1991 X and Y were confronted with a difficult case in a markedly different professional environment to today. In 1991 the court's judgment was that the interests of the children demanded that X and Y's identity be withheld, and X and Y now say that that deprived them of the protection of explaining themselves in public. Whether they would have chosen to be named then had they been given a choice is impossible to know but it is true that the passage of time has allowed them to build careers and to pursue their professional and personal lives.
75. A balance was struck in 1991 and this court has been vigilant not to try and re-cast that balance in order to make its decision on these applications, it has simply relied upon the words used by the learned judge. Further, and as I have observed, that balance does not on the facts of this case persist in perpetuity. There is a separate balance to be conducted today.
76. There is in my judgement no delay in the determination of the civil rights and obligations of X and Y. There were separate balances to be performed then and now and the passage of time is not accurately characterised as delay. There is no procedural unfairness in the hearing of the applications before this court and there has been no difficulty, asserted or actual, in receiving evidence and argument and conducting the balance. If anything, the preliminary point goes to the existence and strength of the evidence that X and Y have relied upon in support of their argument that a) they have Article 8 rights to respect for their privacy and b) those rights have been breached in ways that are disproportionate. I have taken account of that evidence and the arguments in the balance I have undertaken.

Judgment Ends.