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Case No: FD09P00299

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Handed down in Private: 07/05/2009
Handed down in Open Court: 18/05/2009

Before :

MRS JUSTICE ELEANOR KING

- -

Between :

EAST SUSSEX COUNTY COUNCIL
AND
PENELOPE STEDMAN
AND
STEVE STEDMAN
AND
NICOLA PATTEN
AND
DENIS PATTEN
AND
NEWS GROUP NEWSPAPERS LIMITED
AND
CHANNEL FOUR
AND
TYLER BARKER
AND
MAISIE STEDMAN, CHANTELLE STEDMAN AND ALFIE PATTEN
(by their respective guardians)

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- -

Mr. David Lord QC for the **East Sussex County Council**
Ms. Mary Lazarus for the **East Sussex County Council**
Ms. Marina Wheeler for **Penelope Stedman**
Ms. Deirdre Fottrell for **Nicola Patten**
Mr. John Critchley for **Denis Patten**
Mr. Matthew Nicklin for **News Group Newspapers**
Ms. Ruth Kirby for **Chantelle and Maisie Stedman**
Mr. Alan Inglis for **Alfie Patten**

Hearing dates: 27 & 28 April 2009

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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.

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MRS JUSTICE ELEANOR KING

Mrs Justice Eleanor King :

1. The application before the Court is for the continuation and extension of a reporting restriction order. The order relates to four children, Maisie Stedman born 9 February 2009 (2 months), Chantelle Stedman, her mother born 22 December 1993 (15), Alfie Patten born 3 January 1996 (13), who it was alleged was the father of Maisie, but in respect of whom DNA has shown that not to be the case and Tyler Barker born 7 May 1994, (nearly 15) who believes he may be the father of Maisie and is about to be the subject of DNA testing. The court is however primarily concerned with Chantelle, Alfie and Maisie.

2. The birth of Maisie and the fact that Alfie was thought to be the father was brought to the attention of the media by Alfie's father, Mr. Dennis Patten shortly after her birth.

3. As a consequence of Mr Patten's actions Maisie, Chantelle and Alfie became the subject of intense media interest. Photographs and video footage were taken at the hospital on 11 February 2009 and video footage and photographs were taken at the Stedman's family home the following day with the consent of Chantelle's mother.

4. On 13 February 2009, Maisie's birth was the subject of a front page article in *The Sun*. The sensational aspect of the feature was not that her mother was aged 15 years but that Alfie, the alleged putative father, had only just turned 13. The article continues to be available on *The Sun's* website together with photographs, the video of all three of the children and an interview with Alfie and Chantelle.

5. On 13 February 2009, Chantelle, Maisie and, I believe, Alfie, were taken by *The Sun* to a hotel paid for by the newspaper. The following day in light of the intense media focus the Stedmans stayed at a friend's house for a few days before returning home on 22 February 2009.

6. It is hard to comprehend the amount of publicity the birth of this baby generated. There has been extensive publicity throughout the world and the belief that Chantelle had conceived Maisie whilst Alfie was 12 provoked a public debate about teenage pregnancy and sex education for those under 16. The story was carried nationally and internationally in the tabloids and in the broadsheets. Comments were made by the Prime Minister, the leader of the Opposition and the Government's children's secretary.

7. Within a matter of days after the first article there was speculation in the press that Alfie was not in fact the father. On 17 February 2009 'The Mail Online' carried a story naming another two boys as potential fathers with photographs of each of them (an article which is also still available on the newspaper's website). The article described what they referred to as 'farcical scenes' when Mr. Patten arrived at Alfie's home wearing a devil mask and carrying a fluorescent yellow placard saying "No Comment. Call Max." (a reference to a well-known publicist) with a TV crew from Channel 4 in close attendance. Even the time honoured phrase 'media circus' does not adequately describe what went on in the first week or so after Maisie's birth.

8. The East Sussex County Council, the relevant local authority had known of Chantelle's pregnancy and given her very young age, had carried out what is known as a pre-birth assessment. The Local Authority's concerns about the media frenzy

were such that on 17 February 2009 they obtained an order that Maisie, Chantelle and Alfie should be made Wards of Court. The following day, 18 February 2009, the Local Authority made an application for a reporting restrictions order in order to prevent further publicity about Maisie, Chantelle or Alfie. The matter came before Mrs. Justice Baron who made an order which was to last until 10 March 2009.

9. The publishing restrictions provided for by that order were as follows:

> 3.Publishing Restrictions
>
> This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, sound or television broadcast or cable or satellite programme service of:
>
> a. the name and address of:
>
> i. the children whose details are set out in schedule 1 of this order;
>
> ii. the children's parents or siblings, whose details are set out in schedule 2 of this order;
>
> iii. any individual having day to day care of or medical responsibility for the child ('a carer'), whose details are set out in schedule 3 to this order;
>
> iv. any school or residential home or hospital, or other establishment in which the child is residing or being treated ('an establishment') details of which are set out in schedule 3 to this order.
>
> b. Any picture being or including a picture of one of the children or a carer or an establishment;
>
> c. Any other particulars or information relating to any of the children:
>
> IF, BUT ONLY IF, such publication is likely to lead to the identification of the child as related to the baby known as MAISIE STEDMAN (dob 9.2.09) or of the child as being subject of these proceedings.

The order contained at paragraph 6g the usual 'public domain exception' which said that the order did not restrict;

> g. publishing information which before the service on that person of this order was already in the public domain in England and Wales as a result of publication by another person in any newspaper, magazine, sound or television broadcast or cable or satellite programme service or on the

> internet website of a media organisation operating within England and Wales."

10. On 18 February Baron J made a further order in the wardship proceedings. She continued the wardship and made an in personam order against Mr and Mrs Stedman and Mr and Mrs Patten prohibiting them from having any further contact with the media except with a view to them attempting to rescind any contracts they had entered into with any representatives of the media.

11. On 10 March 2009, the matter came before the President of the Family Division who made an order that the reporting restrictions order made on the 18 February 2009 should have effect until the further hearing of the case. The matter was relisted for further hearing on 3 April 2009.

12. On 20 March 2009 the Local Authority made an application to vary the reporting restriction order due to be considered on 3 April 2009 (although it is unclear whether the application was in fact served on the parties). The application sought an order seeking to delete the public domain exception provided for at paragraph 6(g) by the order of 18 March 2009 to the extent that there was to be no further public domain exception in relation to photographs or images of the three children, Maisie, Chantelle and Alfie.

13. Meanwhile DNA testing had been carried out in order to ascertain whether or not Alfie was in fact the father of Maisie. On 24 March 2009 the two families were told that the DNA results showed that Alfie was not the father of Maisie. Alfie was extremely distressed by the news.

14. On 26 March 2009 an article appeared in *The Daily Mirror*. The front page showed a picture of Alfie with Maisie with the headline 'Alfie is not the Dad', inside the paper was an 'exclusive' article about Alfie and Maisie. The Local Authority came again before the Court on 26 March 2009 and made an urgent without notice application for a variation of the order of 18 February seeking a prohibition of the publication of any pictures or images that were not in the public domain and of the results of the DNA tests.

15. Mr. Justice Coleridge granted the application and added to the identification clause set out in paragraph 8 above additional words so that it would thereafter read *'if but only if such publication is likely to lead to the identification of the child being related to (or, for the avoidance of doubt, not related to) the baby known as Maisie Stedman'*.

16. This amendment was felt necessary as the publishers of *The Daily Mirror* contended at the hearing before Coleridge J that they were not in contempt of Court by the publication of their article on 26 March 2009 as their publication did not lead to the identification of Alfie as being related to Maisie given that the DNA had shown that he was not.

17. Coleridge J gave a short judgment. During the course of that judgment he indicated that his view was, in the medium and longer term, the "sooner the information regarding the DNA was public the better". He agreed to enjoin the press from releasing the results of the DNA test even though they were already to some extent

public knowledge but he refused to restrict the use of pictures already in the public domain. he said:

"I am not prepared to restrict because it is going too far and I think they are of very little public interest without the DNA result"

Mr. Justice Coleridge expressed the view that the publication of the *Daily Mirror* article ran contrary to the spirit of the order and that the variation could be justified only for a very limited period of time accordingly the matter was to be relisted on 3 April 2009.

18. Unfortunately, on 3 April 2009, the matter was unable to proceed and was relisted for hearing for 2 days commencing 27 April 2009. On 3 April 2009 Sir Christopher Sumner continued the reporting restriction order and allowed the Local Authority's application, made without notice, that a boy called Tyler Barker, (now said by Chantelle to be the father of her child) be added to the schedule attached to the order. Tyler was joined as an intervener to these reporting restriction proceedings.

19. Tyler was seen by Local Authority social workers, together with his father with whom he lives, on both the 2nd and 6th of April. On both occasions the family were urged to seek independent legal advice. Tyler did not attend and was not represented at the hearing commencing on the 27th although it had been indicated to the Court, through his recently instructed solicitors, that Tyler was eager for there to be DNA testing and that he and his father accepted the existing press restriction order should continue subject to whatever amendments might be considered necessary by the Court.

20. At the commencement of this hearing I expressed my concern that the DNA tests had not been carried out on Tyler. I am grateful to the Local Authority, which, in the light of my observations, has ensured that the testing will be carried out without further delay and the results will be available to the Court within 2 weeks.

The Hearing

21. The Court had before it 7 parties. Mr. David Lord QC together with Ms. Mary Lazarus represented East Sussex County Council and presented substantive submissions in support of their application to amend the reporting restrictions order so as to:

    1) prevent the publication of any photographs or images of any of the children regardless of the fact that they are already in the public domain; and
    2) prohibit the reporting of the results of the DNA test results in respect of Alfie, again regardless of the fact that they are already in the public domain.

22. The Local Authority were supported in their submissions by Mrs. Penelope Stedman, Chantelle's mother who rues the day she ever invited the press into her home, and by Chantelle and Maisie through their guardian, Judith Bennett-Hernandez.

23. Mr. Matthew Nicklin on behalf of News Group Newspapers Ltd (NGN Ltd) advanced substantive submissions in opposition to the restrictions on the public domain exceptions sought by the Local Authority. NGN Ltd was supported by Mr Dennis

Patten and Mrs Nicola Patten (each separately represented) and by Alfie, through his guardian, Janet Sivills.

24. It was agreed between all parties that residual issues; in particular whether Alfie and each of his parents should be permitted to talk to the media 'in order to put the record straight,' should be the subject of a separate hearing and would necessitate obtaining psychological assessment of Alfie in order to determine his cognitive functioning and whether or not he is 'Gillick Competent'.

The Evidence

25. The Court has not heard oral evidence in this matter but has had the benefit of evidence filed on behalf of, or in support of the Local Authority relating to what it regards as the detrimental effect the media coverage has had upon Chantelle and as a consequence on Maisie. Similarly, evidence has been filed as to Alfie's initial distress at the DNA results. Both the Children's Guardians have filed reports to assist the Court. On behalf of NGN Ltd evidence has been filed as to the extent of the coverage of the story to date.

26. Mr. Lord took me to various passages in the evidence but Chantelle's perspective of the effect of the publicity can best be summed up by a passage to which he referred me contained in the evidence of Amanda Glover, the senior social worker who spoke to Chantelle and filed a statement on 20 March 2009;

> "Chantelle was asked how she felt when the story and pictures appeared in the newspaper and on the news. She replied 'everything blew up' adding 'when it hit the papers I realised it was wrong'. Chantelle was asked why she thought this was the case. She replied 'because they wrote bad stuff that wasn't true'. She was asked what she found most difficult to see and read about. Chantelle stated 'people claiming to be Maisie's Dad', she asked about how this had made her feel. She commented 'upset' adding 'I was crying a lot every day'. She said that she also thought it would 'ruin her relationship with Alfie'. She was asked if she was worried about anything else. She commented that she thought 'people had been nasty to me, that they thought I'd slept with so many other boys'. She then added 'people were nasty – they called me a slut'. Chantelle was asked how often this had happened when the story broke. Chantelle said that in the first few days of the coverage she remembered 4 occasions when she had openly been called a slut by people she had never met, by people she had never seen before. She said that she was worried that this would 'go on forever'."

27. The Local Authority expressed concern that the continuation of media exposure would cause distress to Chantelle at a time when she should be caring for and bonding with Maisie. The Local Authority says there is a risk of damage to that relationship and of the ability of Chantelle properly to care for her child. The current evidence is that Chantelle is making good progress in that she now feels able to go out and about with Maisie and is hoping to start to go to school 1 day a week in the near future. The Local Authority is concerned in the short term that progress may be damaged, and

that there may be long term consequences if the media are allowed to print stories about the DNA tests and accompany them with photographs.

28. Mr. Nicklin says that the photographs themselves have caused Chantelle neither harm nor distress; what she refers to is hurt and distress occasioned by the articles. In regard to the suggestion that the photographs would allow strangers to identify Chantelle and subject her to the forms of abuse to which she was subject immediately after the initial *Sun* article he says:

    1) photographs of Chantelle are and, whatever order the court makes, will continue to be readily available for those that wish to look,
    2) the original photographs were published only a matter of weeks ago, and are therefore fresh in people's minds in any event,
    3) given that the balance of the reported restriction order would remain in place, the children would be protected from so-called door-stepping and soliciting by the media which would mean that there is a very narrow category targeted by the injunction, namely people in the locality who might not already be able to identify Chantelle and be abusive to her, that, says Mr. Nicklin would be a disproportionate interference with freedom of the press.

The Law

29. To a large extent there is agreement between the parties as to the applicable law. The main dissenter is Ms. Ruth Kirby on behalf of Chantelle and Maisie. Ms Kirby asserts that the welfare of Alfie, Chantelle and Maisie is in law the Court's paramount consideration when determining the issues before it and that the Court must therefore decide the application against the backdrop of Section 1 of the Children Act 1989 and in that context apply the so-called welfare checklist set out in Section 1-3 of the Act.

30. Following the implementation of the Human Rights Act 1998 the House of Lords in *Re S (A Child) (Identification: Restriction on Publicity)* [2004] UKHL 22; [2005] 1 AC 593 [23] unanimously decided that the extensive early case law concerning the existence and scope of the inherent jurisdiction as a means to restrain publicity in respect of children no longer needs to be considered in applications such as the one presently before the court. The court's jurisdiction is now derived from the parties' Convention rights under the ECHR.

31. The inherent jurisdiction of the High Court will often, as here, provide the procedural route although the earlier case law and will continue to be relevant when the court conducts the ultimate balancing exercise under the ECHR as set out in *Re S (A Child).*

32. In determining whether the welfare of the children is the court's paramount consideration when determining the Local Authority application it is necessary to consider briefly the position prior to the implementation of the Human Rights Act 1998 and the decision in *Re S (A Child).* Ward LJ, in the important case of In Re *Z (A Minor) (Freedom of Publication)* [1997] Fam 1; [1996] 1 FLR 191, reviewed all the authorities and analysed those categories of case when the court could exercise its jurisdiction in relation to the media. Munby J subsequently in *Kelly v BBC* [2001] Fam 59; [2001] 1 FLR 197 enumerated those categories as:

i) Cases where the jurisdiction is not exercisable at all and the child is left to whatever remedies against the media the law would give an adult in comparable circumstances. (Category 1)

ii) Where the jurisdiction is exercisable but in circumstances where, because the court is exercising only its 'protective' jurisdiction the child's interests are not paramount and where a balancing exercise has to be performed. (Category 2)

iii) Where the court is exercising its 'custodial' jurisdiction and therefore the child's interests are paramount. (Category 3)

33. Subsequently in *Re Roddy (A Child) (Identification: Restriction on Publicity)* [2003] EWHC 2927; [2004] 2 FLR 949; [2004] EMLR 127, Munby J reviewed his decision in *Kelly* in the light of what was then the Court of Appeal decision in *Re S (A Child)* He suggested that his analysis of the *In Re Z* categories had to be revisited in the light of the Human Rights Act 1998 concluding that:

> "[16] ….it is no longer a forensically useful exercise to analyse the facts of a particular case with a view to establishing at the outset whether it properly falls into the first or into the second category."

34. Munby J concluded his analysis of the Court of Appeal's decision in *Re S (A Child)* in relation to Category 1 and 2 cases by saying:

> **"**[18] Thus the exercise of the jurisdiction now requires the court first to decide whether the child's rights under Art 8 are engaged and, if so, then to conduct the necessary balancing exercise between the competing rights under Arts 8 and 10, considering the proportionality of the potential interference with each right considered independently."

35. Ms. Kirby on behalf of Chantelle and Maisie submits that this is an *In Re Z* Category 3 case; namely one where the child's interests are paramount. In support of this Ms. Kirby relies on a passage in the judgement of Lord Justice Ward from *In Re Z (p30)*:

> "(5) The exercise of parental responsibility and prohibited steps orders "
>
> The disclosure by a parent of confidential information relating to the child is an exercise of parental responsibility. As already set out, it can be restrained by a prohibited steps order. If the court is considering whether or not steps should be taken by a parent in meeting his parental responsibility for a child, then, beyond question, the court is determining a question with respect to the upbringing of the child. Welfare becomes the paramount consideration. The checklist in s 1(3) is expressly brought into play by s 1(4) because the court is considering whether to make a s 8 order.

36. Ms. Kirby says that the confidential information in this case would be identified as the DNA test results. The fact that the parents wish to support its disclosure is an exercise of parental responsibility rendering the children's interests paramount for the whole of the proceedings. This is the effect she says even though, were it not for the position of the parents, the test vis a vis NGN Ltd would be that appropriate in a Category 2 case, that is to say the Art 8/Art 10 balance as set out in *Re S.*

37. Ms. Kirby says that, even if she is wrong about the welfare of the children being paramount, the court should in any event apply the welfare check list to assist it in carrying out the balancing exercise.

38. Mr Inglis drew my attention to a passage in *Kelly v BBC (at 74 A – G),* in which Mr Justice Munby drew the distinction between the court's jurisdiction to grant "*in personam*" injunctions and its jurisdiction to grant injunctions " *in rem*" or "*injunctions contra mundum*" (against the world). Where a parent might act in such a way as might adversely affect the welfare of a child, the court can restrain that parent by making an injunction "*in personam*" (or alternatively as suggested by Ward LJ in *In Re Z* by way of a Prohibited Steps Order). *In Re Z* is one such example as is *Clayton v Clayton* [2006] EWCA Civ 878; [2007] 1 Fam 83; [2007] 1 FLR 11 in which Wall LJ (at [135]) approved Munby J's analysis in *Kelly* of the different forms of injunction.

39. In the present case an order was made in the wardship proceedings on 18 February 2009. That order included an *in personam* injunction against Mr. and Mrs. Stedman and Mr. and Mrs. Patten prohibiting them "from further contact with the media or any representative of the media, save for any attempts to rescind any contract that may have been entered into".

40. That injunction is not the subject of any application today; it continues to bind the Stedmans and the Pattens. I am therefore concerned only with an application in respect of the injunction *contra mundum* and the principles to be applied are, therefore, those relevant to a Category 2 case as Ward LJ said in *In Re Z (p29F)*

> "If welfare is not paramount because a question of upbringing is not being determined, then welfare must be balanced against the freedom of publication."

41. It follows that I do not accept the argument of Ms. Kirby that this application is a Category 3 application in which the welfare of the children is the court's paramount consideration.

42. The House of Lords in *Re S (A Child)* concluded that the interplay of Art 8 and Article 10 could be illuminated by reference to the following four propositions:

> (i) neither article has *as such* precedence over the other.
>
> (ii) 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.

> (iii) the justifications for interfering with or restricting each right must be taken into account.
>
> (iv) the proportionality test must be applied to each.
>
> For convenience I will call this the ultimate balancing test. This is how I will approach the present case."

43. Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 repeated in Schedule 1 of the Human Rights Act 1998 provide as follows.

Article 8

> (1) Everyone has the right to respect for his private and family life, his home and correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as 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.

Article 10

> (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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> (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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, 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.'

44. Munby J in *Kelly v BBC* said (at 68C) as follows in relation to Article 10:

> "Well-known jurisprudence of the European Court of Human Rights establishes: "
>
> (i) that the exceptions in para 2 must be narrowly interpreted,

(ii) that if a restraint is to be justified under para 2 it must be 'necessary in a democratic society' – that is to say, the necessity for any such restriction must be 'convincingly established' by reference to the existence of a 'pressing social need', and the restriction must be 'proportionate to the legitimate aim pursued' and,

(iii) that the restriction must be 'prescribed by law' – that is, the law must be 'adequately accessible' to the citizen and must be 'formulated with sufficient precision to enable the citizen to regulate his conduct': see Rantzen v Mirror Group Newspapers (1986) Ltd and Others [1994] QB 670 citing The Sunday Times v United Kingdom.

45. In addition **s12 Human Rights Act 1998** provides:

> Freedom of expression
>
> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (…)
>
> (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 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;

Article 8

46. Before embarking on a consideration of the propositions in *Re S (A Child)* and the ultimate balancing exercise it is necessary to establish that the Article 8 rights of the relevant children are engaged. Mr. Nicklin submits that:

i) Regarding the DNA test, only Alfie's Article 8 rights are engaged and not those of Chantelle and Maisie.

ii) Regarding the photos and images, he says that each of the children's Article 8 rights are 'probably' engaged. Mr. Nicklin's hesitation stems from an undeveloped argument on his part that as discussed in *Murray v Express Newspapers* [2008] EWCA Civ 446; [2008] 3 WLR 1360. [para [37], [38]] these children have no reasonable expectation of privacy given the extent of the previous exposure and the fact that their parents had courted publicity by procuring the publication of photographs to promote their own interests.

47. I disagree with Mr Nicklin on the DNA point. All information relating to her paternity must in my view engage Maisie's Article 8 rights. So far as Chantelle is concerned, the disclosure of the identity (or otherwise) of the father of her child is linked inexorably to questions and comment as to her sexual activities and speculation as to who may in fact be the father; such subjects cannot be other than part of both her family and private life. If I needed any authority to reassure me on this point I need go no further than the House of Lords in *Campbell v MGN Ltd* [2004] UKHL 22; [2004] 2 AC 457; [2004] 2 FLR 1232 at para [51] where Lord Hoffman said that private life constituted *'the right to control the dissemination of information about one's private life and the right to esteem and respect of other people'.*

48. I proceed on the basis that Mr. Nicklin has made a concession as to the photographs and images engaging Chantelle's Article 8 rights and make no observations about whether the children, or any of them, have or had any reasonable expectation of privacy in that regard.

49. I approach the *Re S (A Child)* balancing exercise therefore on the basis that each of Maisie, Chantelle and Alfie's Article 8 rights are engaged in relation to both the publication of the results of the DNA test and of photographs and images already in the public domain.

50. I bear in mind that the mere fact that each of the children's rights are engaged does not mean that they have a guarantee of privacy: *Murray v Express Newspapers* [58].

Article 10

51. Alfie's Article 10 rights are engaged in relation to his freedom to convey the information that he is not the father of Maisie.

52. It is accepted that the Article 10 rights of NGN Ltd are engaged.

The Re S (A Child) Balancing Exercise

(i) *Neither article has as such precedence over the other*

53. It is of particular importance to bear this in mind in a Category 2 case where the children's welfare is a relevant but not the paramount consideration.

(ii) *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.*

54. What competing rights does the court, therefore, have to take into account?

i) Chantelle's Article 8 rights: both her family and private rights are engaged and interference with them, it is submitted on her behalf, will cause her to suffer harm. Even though her welfare is not paramount and the information is in the public domain, the harm to Chantelle is such, it is said, that that harm or the risk of it should outweigh the Article 10 rights of the press and Alfie.

ii) Maisie's Article 8 rights: Maisie's rights are engaged and are inextricably linked to the welfare of her mother. If Maisie's mother is caused distress and harm by the publication of the information and photographs it may affect Chantelle's ability properly to care for her. Such a risk of harm should be avoided and this can only be done by preventing the press from publishing details of the DNA test and/or photographs of her, her mother or Alfie.

iii) Alfie has both Article 8 and Article 10 rights: Alfie, his Guardian and his parents all wish the 'record to be put straight'. Not only, it is said, does his right to private life entitle him to put information about himself into the public arena but he has Article 10 rights which mean he should be free to impart the information without hindrance. Alfie's Guardian is of the opinion that Alfie has suffered harm as a consequence of what she describes as the 'media manipulation'. She is of the view that it is likely to be beneficial to Alfie to have the question of Maisie's paternity clarified and closed rather than speculation continuing. To this extent, Alfie's Article 8 and Article 10 rights coincide with NGN Ltd's Article 10 rights. The Local Authority does not agree.

iv) NGN Ltd has Article 10 rights. Their case is that:

a) There is a public interest in the story and the record should be put straight; namely that Alfie is not Maisie's father.

b) The level of harm necessary to be shown by the Local Authority must be exceptional where it is sought to remove material or prevent the reuse of material already in the public domain.

c) It is neither possible nor desirable to put the 'genie back into the bottle.' It is unrealistic and naïve to think that an order in the terms sought by the Local Authority and Mrs Stedman would have the effect of 'closing the story down'. The s12(4) consideration of the extent to which the material is already available is in reality the dominant and decisive factor in the case.

55. The fundamental conflict between the parties is therefore:

a) The desire of Chantelle and Maisie that they should now be able to put behind them the consequences of the gross error of judgment made by Alfie's father and Chantelle's mother. This error of judgment catapulted these very young, very vulnerable, children into the midst of a media frenzy which was anything but benign in its approach to them and they should not have to suffer further at the hands of the media.

b) The desire of NGN Ltd to report on the developments in what has been an extremely newsworthy story and also to contest the proposal by the Local Authority that restrictions should, exceptionally, be placed on the normal 'public domain exception' which is routinely included in reporting restriction orders and was part of the original order made on 18 February 2009.

c) The desire by Alfie who has been at the centre of the media storm on a false basis to have the results of the DNA in the wider public arena and to put an end to speculation about his familial relationship to Maisie.

(iii) The justifications for interfering with or restricting each right must be taken into account.

56. Each side raises a number of issues which they say amount to a justification for interfering with the Human Rights of the other party. I will deal individually with the most significant of those justifications.

Harm

57. I have set out in broad terms earlier in this judgment the harm that it is suggested that the children have suffered as a consequence of the manner in which the media has reported their story.

58. In differing ways Chantelle and Alfie have suffered harm. Alfie enjoyed the attention the media gave him but his Guardian is of the opinion, which I accept, that he has been psychologically damaged by the whole experience. Chantelle in the early stages had a miserable time. No doubt she thought there would be nice photographs of her and Alfie in the papers, instead she not only read hurtful and what she felt to be inaccurate things about her, but for the first few days the family were door-stepped, leading to them leaving home for some days prior to the original order being made. Chantelle was subjected to some verbal abuse in her locality.

59. It is submitted on behalf of the Local Authority that, if further publication is allowed, it will inevitably cause further harm to the children; things have calmed down and reactivation of the publicity will once again expose them to damaging comment. There is, it submits, no public interest in knowing who the father of Maisie is or is not; Mr Lord reminds me that interest of the public is not the same as public interest. Alfie, they say, needs protection from further exploitation and permitting the story to run, far from putting the record straight, potentially exposes him to ridicule.

60. It is submitted by the Local Authority that any media coverage would doubtless involve a rehearsal of prurient and unkind speculation as to Chantelle's sexual activities and as to the identity of alternative candidates for the father. Photographs would enable her to be identified and potentially expose her to renewed verbal abuse. The harm caused may, it is suggested, be long term and may seriously impact on Chantelle's ability adequately to parent Maisie even to the point where she has to be removed from her mother's care.

61. I accept that further publicity will be very distressing and damaging for Chantelle. Judging from the tone and content of some of the earlier reporting, a rehash of public

domain information will be hurtful and is unlikely to pay heed to her youth, naivety or the fact that she bears absolutely no responsibility for the fact that she is in the public eye.

62. This is confirmed to me, if confirmation was needed, by Mr. Nicklin's response to a suggestion made by me that reporting the DNA test results did not require photos of Chantelle and Maisie and that perhaps *The Sun*, (if *The Sun* succeeded in resisting the Local Authority application), could act in Chantelle's interests and refrain from publishing photographs of her and Maisie. Mr. Nicklin told me that such a photograph would be likely to be used, not to mislead so as to suggest they were a family, but to show what had been thought to be the case prior to the DNA test results. In any event he rightly said that he only represented NGN Ltd and he could not speak for the rest of the media. In considering the relevance, if any, of this approach I have to bear in mind the words of Hoffman LJ (as he then was) in *R v Central Television Plc* [1994] 1 Fam 192; [1994] 2 FLR 151:

> "The motives which impel judges to assume a power to balance freedom of speech against other interests are almost always understandable and humane on the facts of the particular case before them. Newspapers are sometimes irresponsible and their motives in a market economy cannot be expected to be unalloyed by considerations of commercial advantage. And publication may cause needless pain, distress and damage to individuals or harm to other aspects of the public interest. But a freedom which is restricted to what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated think should not be published. It means the right to say things which 'right-thinking people' regard as dangerous or irresponsible. This freedom is subject only to clearly defined exceptions laid down by common law or statute. "

63. I bear in mind when weighing up Chantelle's welfare that in large measure the harm is already done. I also bear in mind that:

- the Local Authority's case is based on future harm to the wards. They accept that in order to obtain this further restriction they need to establish their case convincingly;
- the bulk of the reporting restriction order will remain in place and Chantelle will continue to be protected from 'door stepping', soliciting of information etc.;
- Mr. Nicklin reminds me that the public domain material that the Local Authority seeks to restrain (other than the DNA test results), is limited to photographs and images whereas the most distressing part of the earlier reporting was the written word and not the images; and
- there has not been a considerable gap in time. The press are not proposing to rake up a story years after the event. This is a story which, even in the short timescales of the press, is still current.

64. I think Chantelle may well be the subject of the occasional unpleasant remark by members of the public. If there is offensive press coverage it will be harder for her to return to school. That is to be deplored as is that fact that if I refuse the application she will once again in all likelihood find herself to be front page tabloid news. Chantelle has been harmed by the publicity and will be harmed by future publicity.

65. I have however seen no evidence in support of the 'Armageddon outcome' floated by the Local Authority; that the consequences of more publicity may result in Chantelle being so distressed that she will be unable to care for her child and Maisie will, as a consequence, end up in the care of the Local Authority. Such an extreme outcome fails to take into account that, all things considered, Chantelle is doing well with Maisie. They are living with Mrs Stedman who, regardless of whatever errors of judgment she may have made, offers them the guidance and support one would expect from a grandmother in these difficult circumstances. Chantelle's Guardian referred to further publicity as likely to cause a 'serious setback' for Chantelle and that unmanaged reporting would be gravely detrimental to Chantelle's emotional and psychological welfare.

66. No court would choose for Chantelle to go through what she will go through if I refuse the Local Authority application. I by no means underestimate the misery which the media is capable of inflicting on Chantelle by the tone of their reporting. I must however conduct the balancing exercise with care, reminding myself always that, in the context of this application, the welfare of the wards is not the paramount consideration of the court.

67. The Local Authority seeks also to prevent the disclosure of the results of the DNA saying it would harm Alfie (as well as Chantelle and Maisie). Alfie's Guardian does not agree. She thinks that the information should be released and asserts that it is impossible to remove all the photographs and images of Alfie already in the public domain. The Local Authority's fall back position is that, if the results of the DNA test are to be disclosed, it should be done in a controlled way without pictures and in a form that seemed to me to be more in the nature of a press release rather than a news piece, with neither Chantelle nor Maisie's names being mentioned.

Public interest

68. Section 12(4)(a) (ii) of the Human Rights Act 1998 requires the court to take into account public interest for the material to be published.

69. The *Code of Practice* of the Press Complaints Commission requires, in cases involving children under 16, that editors demonstrate an exceptional public interest to override the normally paramount interest of the child. That *Code of Practice* applies only to the print media and is not binding on television, radio or the internet.

70. It is submitted on behalf of NGN Ltd that the public interest is twofold:

    a) that there is a public interest in setting the record straight and,

    b) that the case 'vividly brings alive' the issue of teenage pregnancy.

Mr. Nicklin's primary position, however, is that it is not for the media to be required to demonstrate public interest to be allowed to publish information: per Hoffman LJ in *Central Television* and Munby J in *Kelly*:

> "What it is vital to appreciate, however, is that it is for those seeking to obtain an injunction to establish their case and to do so convincingly; it is not for the media to establish why it should be allowed to publish. Save in relation to matters the publication of which is regulated either by s 12 of the Administration of Justice Act 1960 or by s 97(2) of the Children Act 1989 the media, as I have already said, do not require the leave of the court to publish material about a ward of court." [At 85C]

71. I accept that there is a public interest in 'correcting the record'. In *Campbell v MGN Ltd*, a celebrity, Miss Naomi Campbell, made a false statement about her use of drugs. It was these falsehoods (as was conceded), which made it justifiable for the newspaper to report the fact that she was an addict. The issue in dispute before the court was whether the newspaper went too far in publishing associated facts about her private life. The House of Lords held that details of Miss Campbell's therapy and treatment went beyond that which was necessary to the legitimate story (that she had deceived the press) and went beyond the journalistic margin of appreciation.

72. Mr Lord relies on *Campbell v MGN Ltd* as justification for his 'press release' approach to any disclosure of information. He says that any information in addition to the bare bones of the fact that 'Alfie is not the father' goes beyond the journalistic margin of appreciation. Whilst seeing the attraction in such an approach, I am of the view, with respect to Mr Lord, that he is drawing a 'false parallel.' None of the information about Miss Campbell's therapy and treatment was previously in the public domain whereas, in the present case, all the disputed information (photographs and images) are already in the public domain.

73. I do not believe there remains any real public interest on the issue of teenage pregnancy in relation to these children. It did indeed lead to public debate but, so far as these children are concerned, what more public interest is there in their sad story? I do not feel such a public interest argument adds significantly to NGN Ltd's case.

Public Domain: The Canute Principle

74. Evidence has been produced on behalf of NGN Ltd in the form of a statement by Mr Benjamin Beabey, the solicitor representing NGN Ltd. The statement aims to demonstrate to the court the quite extraordinary amount of press and internet coverage that there has been about these three children. The story has been reported all over the world, it has been the subject of TV programmes and of comment in Parliament.

75. It is accepted by the Local Authority that literally millions of people have seen and read about the story. To quote but a few examples from the statement of Mr Beabey: a Google search of the name Alfie Patten on 28 March 2009 produced *about 359,000* results, a search term of Alfie's name in Google Images produced *25,100 images* (which inevitably include pictures of Chantelle and Maisie as well). During the course of the hearing a Google Image search of Chantelle Stedman produced 5,660 images of her often including Maisie as well. Prior to the order of 26 March 2009 requiring the

removal of the story from the internet, *The Daily Mirror* story, which revealed the results of the DNA tests, had resulted in 84,000 page views.

76. The original articles, many of which are not only pejorative of but deeply hurtful to Alfie and/or Chantelle, are still readily available on the internet. Some articles in print and on line include speculation as to the paternity of Maisie and include the names and photographs of other potential putative fathers.

77. It is accepted that all these articles, photographs and images are in the public domain and may well be unaffected by the proposed Reporting Restrictions Order. Even if the court makes the order sought it is simply unrealistic to imagine that all the website proprietors all over the world will get notice of the injunction and will act upon it.

78. When conducting the balancing exercise between Article 8 and Article 10, where one outcome would affect freedom of expression, the court has to consider s12(4)(a) (i) Human Rights Acts 1998, that is to say the extent to which

> (i) the material has, or is about to, become available to the public;

79. In *Mosley v News Group Newspapers Ltd* [2008] EWHC 687 (QB), Eady J said:

> "The extent to which material is truly "in the public domain" will ultimately depend upon the particular facts before the Court. In *Attorney-General v. Greater Manchester Newspapers Ltd* [2001] All ER (D) 32 (Dec) the test was applied as to whether certain information was "realistically" accessible to members of the public or only "in theory"."

80. Mr Lord referred me to an unreported case *Re C (A Minor)* 15 March 1990 where Sir Stephen Brown P said:

> "…. It would be taking a very strong line indeed if a court were to seek to restrict the media from publishing information which they have lawfully published in the past and which remains on their files and is readily available to members of the public…"

81. Mr Lord submits, whilst that may hold true in confidentiality cases, that may not be so in privacy cases involving vulnerable children who are wards of court. He points to *Re X, Y (Children)* [2004] EMLR 29 and to *A v M* [2000] 1 FLR 569 where, on the particular facts of the case and having carried out the balancing act, the court decided that there would be no 'public domain qualification'. Further publication would it was decided in each case be damaging and the overall public interest required that further publication should be restrained. In my judgment each of those cases was decided on their own particular facts, the requirement under s12(4)(a)(i) of the Human Rights Act to consider the extent to which the material has become available to the public applies equally whether the material is confidential or private and whether it relates to adults or children.

82. Mr Lord further suggests that the *Daily Mirror* article of 26 March 2009 was not 'lawful' as required by Sir Stephen Brown P in *Re C (A Minor)* and was in breach of the injunction of 18 February 2009. There is therefore authority for the proposition

that the court can, contrary to normal practice, order that there be no public domain qualification when making an injunction.

83. Mr Lord also submits that, in considering the weight to be placed on the fact that material is within the public domain, a distinction needs to be made between confidentiality and privacy; once confidentiality is lost it is lost for all time, a photograph on the other hand is capable of being a fresh intrusion on the subject's privacy with every fresh publication; this was considered by Sedley LJ in *Douglas v Hello Ltd (No 3)* [2005] EWCA Civ 595; [2006] QB 125, 162 at [105]:

> "In general, however, once information is in the public domain, it will no longer be confidential or entitled to the protection of the law of confidence, though this may not always be true: see *Gilbert v. Star Newspaper Co Ltd* [1894] 11 TLR 4 and *Creation Records Ltd v. News Group Newspapers Ltd* [1997] EMLR 444, 456. The same may generally be true of private information of a personal nature. Once intimate personal information about a celebrity's private life has been widely published it may serve no useful purpose to prohibit further publication. The same will not necessarily be true of photographs. Insofar as a photograph does more than convey information and intrudes on privacy by enabling the viewer to focus on intimate personal detail, there will be a fresh intrusion of privacy when each additional viewer sees the photograph and even when one who has seen a previous publication of the photograph is confronted by a fresh publication of it. To take an example, if a film star were photographed, with the aid of a telephoto lens, lying naked by her private swimming pool, we question whether widespread publication of the photograph by a popular newspaper would provide a defence to a legal challenge to repeated publication on the ground that the information was in the public domain. There is thus a further important potential distinction between the law relating to private information and that relating to other types of confidential information."

84. Mr Nicklin rightly emphasises that the 'naked film star' example used in the *Hello!* case is an example of a photograph that is intrinsically intrusive namely a covert picture taken of a person whilst naked; the intrusion on her privacy with each repeated publication is obvious. In the present case, he submits, the photographs in question are not intrusive per se; they merely show a young boy or girl or baby whether together or separately. The photographs, Mr. Nicklin says, do not therefore fall into the 'naked film star' category (another example of which are the *Mosley* images), rather, he says, they fall within the category whereby the information, in the form of the photographs, has been widely published and it therefore serves no useful purpose to prohibit further publication.

85. It is right that the photographs are not of themselves offensive but that does not mean they are not capable of causing distress and being an invasion of privacy each and every time they are published showing, as many of them do, Alfie as "father" with Chantelle and his "daughter" Maisie.

86. During the course of his submissions, Mr Lord emphasised that one of the considerations for the court under Article 10(2) is maintenance of the authority of the judiciary. NGN Ltd should not be able to bolster their case by relying on the fact that *The Daily Mirror* has already published the story in relation to the DNA tests to their readership of about 5million. That publication was, he submits, if not a flagrant breach of the order of Baron J of 18 February 2009 at the very least wholly contrary to the spirit of an order which was quite clearly designed to prevent the reporting of 'new' information about the children. To allow NGN Ltd to rely on the publication of the DNA test results in support of their 'public domain' argument would, the Local Authority say, undermine the authority of the judiciary.

87. I have considerable sympathy with the Local Authority's frustration in this respect and most courts would feel stung by the advantage which was taken by *The Daily Mirror* of what was arguably a lacuna in the drafting of the order of the 18 February 2009. Looking forward it seems to me that there is another aspect of the maintenance of judicial authority to be considered and that is that the courts must not be seen to make an order which would appear to the public to be ludicrous or absurd and which is unenforceable. In *Attorney- General v Guardian Newspapers (No 2)* (the "Spycatcher" case) [1990] 1 AC 109 Lord Goff of Chieveley said (p.289D-E):

> "I nevertheless take the view in the present case that to prevent the publication of the book in this country would, in the present circumstances, not be in the public interest. It seems to me to be an absurd state of affairs that copies of the book, all of course originating from Peter Wright - imported perhaps from the United States - should now be widely circulating in this country, and that at the same time other sales of the book should be restrained. To me, this simply does not make sense. I do not see why those who succeed in obtaining a copy of the book in the present circumstances should be able to read it, while others should not be able to do so simply by obtaining a copy from their local bookshop or library. In my opinion, artificially to restrict the readership of a widely accessible book in this way is unacceptable: if the information in the book is in the public domain and many people in this country are already able to read it, I do not see why anybody else in this country who wants to read it should be prevented from doing so."

The *Spycatcher* case was a case about confidentiality, but for the purposes of this point it seems it seems to me that there is little or no difference whether one is considering the dissemination of confidential material or private material.

88. In *Mosley v News Group Newspapers Ltd* Mr Justice Eady, having considered the passage from *Douglas v Hello! (No.3)* I have quoted above, went on to say:

> 33 …. Nevertheless, a point *may* be reached where the information sought to be restricted, by an order of the Court, is so widely and generally accessible "in the public domain" that such an injunction would make no practical difference.
>
> 34. As Mr Millar has pointed out, if someone wishes to search on the Internet for the content of the edited footage, there are various ways

> to access it notwithstanding any order the Court may choose to make imposing limits on the content of the *News of the World* website. The Court should guard against slipping into playing the role of King Canute. Even though an order may be desirable for the protection of privacy, and may be made in accordance with the principles currently being applied by the courts, there may come a point where it would simply serve no useful purpose and would merely be characterised, in the traditional terminology, as a *brutum fulmen*. It is inappropriate for the Court to make vain gestures.
>
> 35. (…)
>
> 36. In the circumstances now prevailing, as disclosed in the evidence before me, I have come to the conclusion that the material is so widely accessible that an order in the terms sought would make very little practical difference. One may express this conclusion either by saying that Mr Mosley no longer has any reasonable expectation of privacy in respect of this now widely familiar material or that, even if he has, it has entered the public domain to the extent that there is, in practical terms, no longer anything which the law can protect. The dam has effectively burst. I have, with some reluctance, come to the conclusion that although this material is intrusive and demeaning, and despite the fact that there is no legitimate public interest in its further publication; the granting of an order against this Respondent at the present juncture would merely be a futile gesture. Anyone who wishes to access the footage can easily do so, and there is no point in barring the *News of the World* from showing what is already available.

89. The court refused the application and the video remained available on the internet.

90. When assessing the words of Eady J, I bear in mind that in *Re X, Y (Children)* [2004] EMLR 29 the public domain material was old and had been published only in local newspapers. In *A v M* [2000] 1 FLR 562 the information in the public domain was information from court proceedings concerning the children which proceedings had been held in private. Although the mother had approached the media, there had been no widespread publicity of the type in either the *Mosley* case or the present case. In both cases the injunction was capable of enforcement.

91. I have to deal with the reality of the situation regardless of whether or not the *Daily Mirror* article was published lawfully. There are not just hundreds of public domain photographs of Chantelle, Maisie and Alfie in existence, there are tens of thousands all over the world and largely on the internet.

92. The Local Authority says that it is the print medium which will be particularly damaging to Chantelle and that the injunction they propose can be enforced so far as the print media is concerned. I feel unable to reach any such conclusion: print may appear to be the most immediate medium but it is a matter of public record that newspaper circulation is suffering as a consequence of the large number of (particularly younger) people reading the news online. If the fear is that it is printed

stories which will render Chantelle vulnerable to abuse it should not be overlooked that young people can be every bit as cruel and thoughtless as every other age group

93. In taking a pragmatic view about the publication of public domain photographs of Alfie, Mr Inglis said that it is 'simply anachronistic to assert that the net is a less accessible medium than the printed press.' I agree. If that were the case why, for example, would "No 10" set up its own "YouTube" channel upon which the Prime Minister has appeared?

(iv) the proportionality or ultimate balancing test.

94. In considering the important issue of proportionality the court must consider the extent to which the interference with the Article 8 rights of the children has already happened and on a consensual basis. Munby J put it this way in *Re X, Y* [2004] EMLR 607 [57]

> "In considering the proportionality of the proposed interference with the right of [the child] to respect for his private and family life, the judge must again consider the magnitude of the interference proposed. He must consider among other things ….. the extent to which this additional intrusion would add to the interference which has already taken place and is bound to take place in the future… "

95. I do not underestimate the magnitude of the interference to the children's Article 8 rights brought about as a result of the manner in which Mr Patten and Mrs Stedman exercised their respective parental responsibility in allowing the press access to Chantelle and Alfie. I make no findings as to that aspect of the history and it is agreed by all the parties that any application that Mr and or Mrs Patten and /or Alfie may make to be permitted hereafter to speak to the media is to be held over for determination on another day.

96. In carrying out the ultimate balancing exercise I unhesitatingly, if reluctantly, conclude that even taking into account the harm to Chantelle, Alfie and Maisie which may well follow, allowing the Local Authority application to amend the Reporting Restriction order by preventing publication of the DNA test and/or of photographs and images already in the public domain would represent a disproportionate interference in the Article 10 rights of the press and of Alfie's Article 8 and Article 10 rights to rectify the erroneous information about him.

97. Not only in my judgment would it be disproportionate but it would be futile. Mr Lord accepted that s12(4)(a)(i) is case specific and that circumstances can arise where, in carrying out the balancing exercise, it may be that the availability of the material in dispute is so extensive and has been in the public domain for such a length of time that it becomes the decisive factor. This is one such case.

Eady J said in *Mosley* [34] "the Court should guard against slipping into playing the role of King Canute". In my judgment the dam, as Eady J described it, has indeed burst and in practical terms there is no longer anything which the law can protect; the granting of the injunction at the present juncture would merely be a futile gesture.

Controlled Release

98. The 'fall back' position of those parties in favour of limiting the public domain proviso is that the court should order the controlled release of the information. The information should be limited to a brief announcement of the DNA test results without names, photographs, background information or comment rather in the manner, I surmise, of the type of correction one regularly sees in newspapers in small print in an obscure part of the paper. The wording, it is suggested, should be approved by the court.

99. I cannot agree that such interference in the manner in which the press use the public domain material is permissible. Mr Lord submits that the court is not interfering with the information but the manner in which it is disseminated. In *Roddy* Munby J, having reviewed the authorities including Lord Justice Neil's judgment in *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100, said [89]:

> "Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. It is not for the court to substitute its own views for those of the press as to what technique of reporting should be adopted by journalists. Article 10 entitles journalists to adopt a particular form of presentation intended to ensure a particularly telling effect on the average reader. As Neill LJ recognised, a tabloid newspaper is entitled to tell the story in a manner which will engage the interest of its readers and the general public. If there is no basis for injuncting a story expressed in the temperate or scholarly language of a legal periodical or the broadsheet press there can be no basis for injuncting the same story simply because it is expressed in the more robust, colourful or intemperate language of the tabloid press.

100. Accordingly I refuse the application of the Local Authority.

101. Whilst I am not prepared to direct the manner in which the DNA test information will be published I indicated at the conclusion of the hearing that I wished to hear submissions as to the timing of the publication of the DNA Test information and of any photographs and images of any of the children. Mr. Nicklin did not oppose the extension of the injunction of Coleridge J of 26 March 2009 and continued by Sir Christopher Sumner on 3 April 2009 until after the results of Tyler's DNA tests being available in about a fortnight. The injunction will therefore remain in place in the same terms until the matter returns to court for the consideration of the timing of the removal of the embargo on the publication of the information subject to this application; namely the DNA test results and photographs and images of the children. Once a date has been agreed or determined the Reporting Restriction order will continue after the relevant date in the terms drafted on 18 February 2009 save for the insertion of the words (or for the avoidance of doubt, not related to) in the identification paragraph at paragraph 3. Tyler Barker will continue to be named as one of the relevant children in Schedule I of the order.