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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 May 2018
Published: 25 May 2018

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

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In the matter of G (A Child)

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Mr Adam Wolanski (instructed by Penningtons Manches llp) for B (G's half-brother)
Ms Kate Wilson (instructed by Laceys Solicitors llp) for F (G's father)
M (G's mother) appeared in person assisted by a McKenzie friend
BB (G's half-brother) appeared in person

Hearing dates: 19-20 October 2017

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Judgment Approved

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Sir James Munby, President of the Family Division :

1. In the thirty years since Sir Stephen Brown P gave judgment in April 1988 in *Re W and Others (Wards) (Publication of Information)* [1989] 1 FLR 246, to go back no further, there has been a very significant, and still expanding, jurisprudence in relation to what it is fashionable to call transparency in the family courts: what, as a matter of law, can or cannot be published; what, as a matter of judicial discretion, should or should not be published. If much of this jurisprudence is, in the nature of things, little more than judicial exegesis on section 12 of the Administration of Justice Act 1960 and on the decision of the House of Lords in 2004 in *In re S (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, the continuing vitality of this branch of judicial endeavour reflects the ever-changing nature of our world: the enormous changes, still only dimly contemplated in 2004, brought about both by the advance of the internet and, in particular, of social media (as to which see *Re J (Reporting Restriction: Internet: Video)* [2013] EWHC 2694 (Fam), [2014] 1 FLR 523, paras 41-43) and by the significantly changing views, both in the family

justice system itself and in society at large, as to what is required of our family justice system.

2. I make these observations because the present case raises, at least in some of its aspects, novel points and because its focus is on a judgment delivered by Singer J as long ago as October 2002 – a time when approaches to transparency were very different from what they are today. In this connection I draw attention to two striking changes. In 2002, the general assumption was that only judgments perceived as having some *legal* interest to the profession would be published. Nowadays, there is a wider understanding that, because the general public has an interest in knowing what the family courts are doing, day in and day out, publication of judgments is no longer confined to those of only *legal* interest. In 2002, BAILII published only 8 first-instance judgments in family cases; in 2017, the corresponding figure was 336.[1]

3. There is another respect in which the world of 2002 was significantly different from our world. With increasing emphasis since the introduction of the Family Procedure Rules 2010, and even more so since the subsequent implementation of the reforms recommended by the Family Justice Review, the guiding principle of the family courts today – both the Family Division and the Family Court – is the imperative need for robust case management by an allocated judge who provides judicial continuity. This robust case management is underpinned by the "overriding objective" (FPR Part 1), which spells out the court's duty (FPR 1.4) to "further the overriding objective by actively managing cases" and makes clear that this includes deciding which issues are or are not to be resolved and (read in conjunction with FPR 22.1) gives the court extensive powers to control the evidence which is to be adduced. This robust case management is facilitated, first, by the rigorously enforced principle that what is to be done is confined to what is "necessary" to enable the court to decide the case fairly and justly (the test which determines what issues the court will decide, what witnesses, including expert witnesses, will be called and whether or not an adjournment will be permitted) and, secondly, by a deliberately prescriptive Practice Direction (PD27A) which lays down the format, contents and size of the bundle to be used at every hearing. The culture of the family courts in 2002 was very different. It is impossible to know, and it would be both inappropriate and almost certainly fruitless to investigate, to what extent the case that Singer J had to grapple with in 2002 might have benefitted from the tools now available to the family courts.

4. Singer J had been hearing private law proceedings – what he described as a "long drawn out litigation of attrition" – between a mother (M) and a father (F) in relation to their little daughter (G) who was then just two years old. As I write, G is still, in law, a child, though she will shortly reach her eighteenth birthday. The proceedings before Singer J were complicated and protracted: the hearing lasted some three weeks and the extempore judgment, delivered over two days, occupies 110 pages of the Official Transcript. The parties before Singer J were all represented by Leading Counsel: M by the late Mrs Sally Bradley QC; F by Mr Peter Jackson QC, as he then was; and G's guardian by Mr Paul Storey QC. Although the only issue directly before Singer J for decision related to G – should she live with M or F and what contact should the non-residential parent have? – the investigation conducted by Singer J, like his judgment,

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[1] In saying this, I recognise that in 2002 many judgments were reported in law reports without being published on BAILII, whereas nowadays almost every judgment which is reported in a law report is first published on BAILII. But the essential point remains.

necessarily, in the unusual and difficult circumstances of the case, ranged much wider. For reasons which will become apparent in due course, I do not propose to go into detail.

5. The immediate point is that (see further below) the trial bundle before Singer J was, as he put it, "voluminous" – it ran to well over 30 files – and the case, but for an 89-page chronology prepared by the father's team, would, he said, have been "unmanageable." There is another point that needs to be borne in mind. Then, as now, the trial bundle may contain documents, sometimes as in this case many, many documents, which never find their way on to the court file (the court file in this case is of the order of one foot thick and obviously contains only a very small part of the material contained in the trial bundle). Then, as now, the trial bundle is *not* retained by the court, being returned to the parties or destroyed once the proceedings have concluded. The consequence is that the court no longer knows what was or was not included in the trial bundle that Singer J had.[2]

6. Singer J's judgment contains much family history of an extremely personal, intimate, and, in some instances, exceedingly distressing nature – including much that would be distressing to G – and to go into detail in a public judgment would defeat the object of the orders I propose to make.

7. In the case of M, Singer J made a catalogue of what he described as "some extremely unpleasant findings … some seriously grave findings." He went on to refer to M's "crusade, which has until the latter stages of this case been to exonerate herself and to demonstrate how wrong everybody else has been." Of equal significance for present purposes, Singer J also had to consider in some detail (it occupies several pages of the Official Transcript of the judgment) the circumstances of G's older half-brother, B, who was then aged 17 and living with his mother, M. G had another older half-brother, BB, then aged 15 and living with his (BB's) father, to whom Singer J also made significant reference in his judgment. Singer J recorded that by the date of the hearing M had "effectively lost contact" with BB.

8. In the event Singer J decided that G should live with F (to whose "fundamental devotion to the interests of his daughter" he paid unqualified tribute); that she should have no direct contact and only very limited indirect contact with M; and that M should be prohibited from attempting to make, and F, for his part, should be prohibited from permitting, any other contact with G. Shortly after delivering this judgment, Singer J heard a separate application by B for contact with G: he decided that there should be twice-yearly supervised contact. Contact broke down in 2005, since when B, despite various attempts on his part, has not seen G.

9. In relation to the dissemination of his judgment, and so far as material for present purposes, Singer J did four things. First, he accepted undertakings from both M and F not to communicate with the media. Secondly, he made provision for certain limited disclosure of the judgment to B. Thirdly, he reserved to the court (specifically himself) the question of disclosure of the judgment to G. Fourthly, and for reasons which he explained in his judgment but which, for the reasons I have already given, I

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[2] At a very late stage during the final hearing, M revealed that she still had in her possession her copy of the trial bundle. No-one sought to examine it at that stage or to suggest that I should: cf, *A v Ward* [2010] EWHC 16 (Fam), [2010] 1 FLR 1497, para 116.

do not propose to set out in this judgment, Singer J said that "there might be positive disadvantages in re-opening all these issues in [a] public forum."

10. There was no appeal by M against any of this. She says that she was in no fit mental state to mount an appeal "for a good long while after 2002" and that, then as now, she was broke and could not afford legal advice. Be that as it may, she has never sought to appeal. Indeed, she reveals having been told that "I would not get legal aid for an appeal."

11. Two points in relation to all this need to be borne in mind. First, absent an appeal, Singer J's judgment and findings of fact are not disturbed by the passage of time. Secondly, the undertaking was expressed as being "until further order" and therefore has to be complied with unless and until the court discharges or modifies it. Being "until further order" it is *not* in any way affected by G reaching her majority. M asks how she could reasonably be expected to know that, and suggests that she gave the undertaking while "beaten emotionally and mentally." As to that I merely observe that she was, at the time, legally represented and that it is far too late in the day to be raising such matters now.

12. The litigation in relation to G's contact with M carried on for some years. The details do not matter for present purposes. It suffices to record that, as matters have turned out, G continues to live with and be cared for by F and that M has played no part in her (G's) life for several years.

13. The proceedings before me began in 2016 with an application by B seeking disclosure to him of Singer J's judgment and of the expert reports relied upon before Singer J. The respondents to B's application were F, M, G and a local authority which had been involved (though not a party) at the time of the proceedings before Singer J. By an order I made in October 2016 I discharged the local authority as a party to the proceedings before me. Later, in 2017, M made various applications, one formally issued, others informal, seeking to be released from the undertaking she had given Singer J, her objective being to discuss the case in public with a view to displacing the findings made against her by Singer J.

14. I do not need to go through the somewhat protracted history of the proceedings before me, which have been delayed both by difficulties in locating and serving first F and then BB and also by the need for B and M each to consider and clarify exactly what relief they were seeking (something on which their views have shifted since the proceedings were first before me). During the interlocutory phases I made three orders to which I need to refer:

    i) In October 2016 I made an order permitting B to have copies of Singer J's judgment and of the reports of three experts referred to in the judgment. This was on the basis of an undertaking by B not to disclose the documents to anyone, except his legal advisers, without the permission of the court.

    ii) In July 2017 I made an order removing G as a party.

    iii) In the same order I gave directions with a view to BB being notified of the proceedings.

Before proceeding further, I need to explain my reasons for having made these orders.

15. So far as concerns B, he has a right (I put the matter descriptively rather than definitively), recognised in part by the common law and guaranteed by Article 8, to know the truth about his past and about his parents: see *Re X (A Child) (Review of Fact Finding in Care Proceedings)* [2016] EWHC 1342 (Fam), [2017] 2 FLR 61, paras 18-19, and *In re L (A Child) (Human Fertilisation and Embryology: Declaration of Non-parentage)* [2016] EWHC 2266 (Fam), [2016] 4 WLR 147, para 32, referring to *Gaskin v United Kingdom* (1990) 12 EHRR 36, [1990] 1 FLR 167, and *Mikulic v Croatia* (2002) 11 BHRC 689, [2002] 1 FCR 720. Moreover, as *Gaskin v United Kingdom* shows, amongst the aspects of private life respect for which is guaranteed by Article 8 is knowledge about, *and in certain circumstances the right to obtain from public records information about*, one's childhood, development and history: see further *Gunn-Russo v Nugent Care Society and Secretary of State for Health* [2001] EWHC Admin 566, [2002] 1 FLR 1, [2001] UKHRR 1320, and *Roche v United Kingdom* (2005) 42 EHRR 599.

16. As matters then stood, and there being no sustained opposition to the order which, in the event, I made, it seemed to me then – and I remain firmly of this view – that whatever the precise ambit of the doctrine (a matter I return to below), B should be allowed access, on the terms I have mentioned, to at least these four documents.

17. So far as concerns G, F, as her father and, *de facto*, given the events as I have described them, the only person exercising parental responsibility for her, was adamantly opposed to her being made aware of the family's history at that stage. In his opinion, for reasons which he elaborated and which, I had no doubt, were entirely genuine and motivated exclusively by concern for his daughter's welfare, now was not the time and a forensic process was not the appropriate means of determining what she should be told. Those were matters best left for decision by him, either at a time of his choosing or in response to questions raised by G. And were she to remain a party to the proceedings before me, necessarily being represented by a guardian, it would not be possible to shield G from knowledge of both the existence and, at least in outline, the nature of the proceedings.

18. In relation to G, the situation accordingly was, in a sense, the converse of that which I had had to consider in *A v Ward* [2010] EWHC 16 (Fam), [2010] 1 FLR 1497, where parents wished to place information about proceedings in relation to their small child into the public domain. Explaining why they could, and why the decision was in the circumstances a matter for parental rather than judicial decision, I said this (paras 136-137):

> "[136] The starting point, in the particular circumstances of this case, is that the State is no longer involved with Mr and Mrs Ward and their family. The care proceedings came to an end without the making of any order. The local authority does not have parental responsibility for William and he is not a ward of court. The only persons with parental responsibility for him are Mr and Mrs Ward. Insofar as the disclosure of information about a child of William's age involves an exercise of parental responsibility then it is for Mr and Mrs Ward to

> exercise that responsibility, not the court or any other public authority. There are no grounds for any interference by the State – whether the State in the guise of the local authority or the State in the form of the High Court – with the exercise by Mr and Mrs Ward of their parental responsibility. No one has made any application for a specific issue order. Mr and Mrs Ward have not sought the assistance of the court in the exercise of their parental responsibility: compare *Re B; X Council v B (No 2)* [2008] EWHC 270 (Fam), [2008] 1 FLR 1460, at para [17].
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> [137] Accordingly, in my judgment, so far as concerns any decision as to whether or not it is in William's interest for any of this material to be put into the public domain, and if so how and for what purpose, the decision is one for Mr and Mrs Ward. It is a matter for them. And it is for them, not the court, to assess the wisdom or otherwise of what they are proposing to do: *Re B; X Council v B (No 2)*, at para [20(iv)]."

19. I appreciate that *A v Ward* is not on all fours with the present case. But in my judgment, the underlying principle which I there articulated was, despite various factual difference between the two cases, as applicable in this case as in that. Hence the order I made.

20. In relation to BB, the position was very simple. He would potentially be affected if any information about the proceedings was to enter the public domain, so he was entitled to be notified of what was going on.

21. At the final hearing before me, as previously, B was represented by Mr Adam Wolanski and F by Ms Kate Wilson. As before, M appeared in person assisted by a McKenzie friend. BB appeared for the first time and in person.

22. Save to a limited extent (he does not object to B receiving documents or information which are solely about him (B), nor does he object to M speaking to B), F "strongly" opposes both B's application and M's application. M's position at the time of the hearing was that she supported B's application and had no objection to him viewing the entire court file (by which I understood her to mean the entirety of the court bundles). "Indeed I welcome it." She proposed to allow B to view the court bundles which are in her possession, but on the understanding that he could not pass them on to the media or anyone else. She asked me to make an order to that effect. B was neutral in relation to M's application. Since the hearing, M's position has changed. In a letter dated 28 November 2017 she made clear that she did not consent to either B or BB seeing any further documents: "all they need to know is contained within the documents they already have."

23. I shall deal first with the application by B and then with the application by M.

24. B's application as now formulated is for access to *all* the files in the proceedings and also to certain files in the hands of third party agencies. Alternatively, he seeks access to certain specified documents: copies of the minutes of various child protection conferences; the reports of a further two experts; the statements of F, M and four other

people; his own medical records and those of two now deceased family members and, if they consent (M said that she did, but no longer does), the medical records of M, G and BB. He is willing, if need be, to read the documents without being given copies.

25. Essentially, B's position is that he has only a partial understanding of the proceedings and wishes to know more. He says it is evident from the documents he *has* seen that it is likely that the court file contains documents relating to him and which engage his Article 8 rights. These documents, he says, go to the "core" of the "key events" of his childhood, which formed the basis of Singer J's findings against his mother and thus, as Mr Wolanski puts it, "led to an order that resulted in the family being fractured forever." B says that he is on a quest to find out more about these events. He wants to understand his family's history. He believes that he has seen only "fragments" of the proceedings and does not think he has a balanced view of them. He has real doubts about both the cogency and the theoretical underpinning of the evidence which he has read and which, he says, featured prominently in the judgment and formed a centrally important basis for Singer J's conclusions.

26. B no longer seeks permission to disseminate this material to the media, being, as he says, concerned about the impact of publicity on those close to him.

27. Mr Wolanski anchors his submissions in rule 29.12(1) of the Family Procedure Rules 2010, making it clear that what B is seeking are documents *on the court file*. Since B is no longer seeking permission to disseminate the documents to others, his application (in contrast to M's) does not engage section 12 of the Administration of Justice Act 1960. There is no application before me by B seeking disclosure from anyone else, whether a party or (as, for instance, in the case of medical records) a non-party. Ms Wilson correctly points out that the corollary of this is that my powers, and therefore the ambit of any order I might make, are confined to those documents which are on the court file.

28. Rule 29.12(1), as Mr Wolanski points out, is materially the same as rule 53.4 of the Adoption Rules 1984 (now FPR rule 14.24), the governing provision in *Re X (Adopted Child: Access to Court File)* [2014] EWFC 33, [2015] 1 FLR 375. For present purposes, what is important to note is that (i) neither rule 14.24 nor rule 29.12(1) contain any limitation on, or indication of the circumstances in which a judge should exercise, the court's power in any particular case, and (ii) there is no limitation of the power to "exceptional circumstances".

29. In *Re X (Adopted Child: Access to Court File)* [2014] EWFC 33, [2015] 1 FLR 375, I was concerned with an application by the daughter of an adopted person who was now dead for access to the court's file of his adoption proceedings. I adopted, as being, so far as it went, apt and accurate, the following propositions formulated by counsel appearing before me as advocate to the court (see para 29):

> "(i) The court has a discretion whether to disclose information contained in its own file to the applicant.
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> (ii) In considering whether or not to exercise that discretion the court should have regard to all the circumstances of the case and should exercise its discretion justly.

> (iii) The public policy of maintaining public confidence in the confidentiality of adoption files is an important consideration.
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> (iv) The duration of time that has elapsed since the order was made, and the question of whether any or all of the affected parties are deceased, are important considerations.
>
> (v) The nature of the connection between the applicant with the information sought from the court file is an important consideration.
>
> (vi) The potential impact of disclosure on any relevant third parties, and any safeguards that could be put in place to mitigate this, is an important consideration."

30. In relation to this formulation, I make three observations. First, it is, of course, not to be treated as if it were the words of a statute or rule. Secondly, it was, as is apparent, formulated in the context of an application to see an *adoption* file. Thirdly, where, as in the present case (though not in *Re X*), there are living people whose interests will or may be affected by the disclosure which is being sought, the decision as to whether or not to permit disclosure has to be undertaken giving anxious scrutiny, in accordance with well-established principles which there is no need for me to rehearse, not merely to the public interests involved but, critically, to the private (and probably conflicting) Article 8 and other rights of everyone involved.

31. In conclusion, Mr Wolanski submits that B has strong and proper grounds for wishing to see the contents of the court file. Rightly, he acknowledges that the disclosure sought by B engages, in relation to G and BB, both their Article 8 rights and in any event, so far as medical information is in issue, their rights to medical confidentiality. But, he submits, this further disclosure relates solely to historic matters about which B already knows much, and B will not pass the information to third parties; so, he submits, it is difficult to see what the detriment is to either G or BB of the further disclosure being sought.

32. In relation to medical confidentiality (for which see *Re C (A Child) (Application by Dr X and Y)* [2015] EWFC 79, [2017] 1 FLR 82) it is important to remember two important aspects of the Strasbourg jurisprudence as emphasised in, for example, *Z v Finland* (1998) 25 EHRR 371 and *MS v Sweden* (1999) 28 EHRR 313. First, as it was put in *Z v Finland*, para 95, and reiterated in *MS v Sweden*, para 41, that:

> "'the protection of … medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general."

Secondly, that if there is to be disclosure without the consent of the patient there must be what in *Z v Finland*, para 103, the court referred to as "effective and adequate safeguards against abuse."

33. Ms Wilson draws attention to what she says are the two striking features of B's claim: the enormous quantity of documents he seeks access to and the apparent narrowness of the purpose for which he seeks that access.

34. Her core submissions can be summarised as follows:

i) It should not be assumed that B's Article 8 rights are engaged in relation to all the documents to which he seeks access. The mere fact that his mother, M, and half-sibling, G, were parties to the proceedings and that the documents relate to them is not, of itself, sufficient to mean that all their contents relate to *his* life.

ii) B's desire to understand the proceedings, the basis for Singer J's findings, to investigate the methodology, and to understand his family's history, do not meet the requirement that the consequential interference with F's, G's (and others) Article 8 rights must, in the sense in which these expressions are used in the Strasbourg jurisprudence, be necessary and proportionate. (a) B's connection with the proceedings is far more remote than either F's or G's – so that the documents will, by definition, be more concerned with their private and family lives than with his. (b) Given the context – the prevailing culture – at the time Singer J heard the proceedings and gave his judgment, F would have had a reasonable expectation that the privacy of the case file would be maintained. (c) Given the material which has already been made available to him, B does not need to read more documents to understand his family life. (d) *It was the decision of Singer J which led to some impact on B's life* and the *reasons* for that decision are contained in a judgment (already disclosed to B) that is detailed and shows *why* Singer J decided as he did. It is illogical to contend that combing through the documents with a view to seeing whether either the experts or the judge was wrong will help B to understand his family life. (e) In any event it is unlikely that the exercise will in fact enable B to investigate the methodology of the experts. (f) Likewise, documents not relied upon Singer J, and which therefore did not affect his decision, cannot have impacted on B's life.

iii) B cannot pray in aid any specific public interest considerations; his application is not about Article 6, open justice or general public confidence in the family court system. On the contrary, and weighing in the scales against his application, is the public interest in maintaining the confidentiality of the proceedings so that users of the family courts may have confidence that non-parties will not be given access to the files in their cases without compelling justification.

iv) The lack of merit in B's application can be seen by contrasting it with cases where access to documents has been given. In this context Ms Wilson refers to the various authorities cited and discussed in *Re C (A Child) (Application by Dr X and Y)* [2015] EWFC 79, [2017] 1 FLR 82, paras 32-48.

35. In summary, Ms Wilson says, it is not necessary for B to have access to all this additional material in order to understand his life and background. He has sufficient material already. Any additional insight he might obtain – small at most – would be wholly disproportionate both to F's and G's rights and to the importance of giving users of the family courts confidence that protection will be afforded to their filings at court, both at the time of the proceedings and for many years hence.

36. In considering B's application I will put on one side the fact that, as I have already explained, my powers extend only to documents on the court file. To take such a narrow approach at this stage of the analysis would be artificially constricting.

37. The contention that B should see nothing more than he has already been allowed to see, in my judgment attributes too little weight to his undoubted right to know the truth about his past. On the other hand, there is, in my judgment, considerable force in many of Ms Wilson's arguments; arguments which point to the clear conclusion that B should not be afforded access to all the many documents he wishes to read. Of particular significance, as it seems to me, is the fact that, for the reasons articulated by Ms Wilson, B's right to explore his own history cannot give him carte blanche to explore the history of every member of his family who was, directly or indirectly, involved in the proceedings before Singer J. They have important privacy and confidentiality rights, equally protected by Article 8, which have to be taken into account, evaluated and, in the final analysis balanced against B's rights. Indeed, and for the reasons given by Ms Wilson, F and G have interests which, given their much more central role in the proceedings before Singer J, if anything attract a rather greater degree of protection.

38. Likewise of considerable significance, as Ms Wilson rightly points out, is the fact that what had the most obvious and direct impact on B's life was Singer J's *decision* and the consequences that have flowed from it. Now to have a proper understanding of that decision, B plainly needs to have access (as he now has) to Singer J's judgment, which sets out, by reference to the evidence he had read and heard, the judge's reasons for concluding as he did. For the same reason (and as I recognised in my interlocutory order) a proper understanding of Singer J's decision and reasoning may require access to some of the centrally important documents referred to in the judgment. But this does mean that B should be entitled to conduct an archaeological excavation through the entirety of the trial bundles so as to be enabled to come to his own conclusions about the quality of the evidence or the reliability of Singer J's reasoning and conclusions, especially if, as here, much of the material he seeks to mine relates to very personal and private aspects of the lives and histories of other family members, including their medical records.

39. Furthermore, one cannot ignore the fact that the culture of the family justice system was very different in 2002 and that, at that time, someone in F's position would realistically have had an expectation of a rather greater degree of privacy in relation to the court papers than there would be today.

40. In my judgment, the additional advantage to B of affording him access to all the papers he wishes to read is plainly counter-balanced by the adverse impact it would have upon F and G. I agree with Ms Wilson that it would be wholly disproportionate. The 'ultimate balancing exercise' which I have to perform therefore, in my judgment,

comes down clearly against B's more general request. I make clear that this conclusion is in no way dependent upon G being a minor, being equally applicable once she has attained her majority.

41. That does not, however, mean that he should not be allowed access to anything he has not already seen. A proper application of the approach I have sought to articulate in paragraph 38 above, persuades me that, in addition to the documents he has already been shown, B should be permitted to have copies of the reports of the further two experts and of the statements of F and M and the four other people I referred to in paragraph 24 above. This will be on the basis of the same undertaking as applies in relation to the other documents already copied to him.

42. So, in relation to B, I will make an order in those limited terms.

43. I propose to make a similar order in relation to BB, so that he can be, as in my judgment he should, in the same position as B.

44. I turn to M's application.

45. As now formulated, M seeks, first, the removal of what she calls the "gagging order" – the undertaking she gave Singer J – and, secondly, permission to pass on to her children and the media a wide range of information (including the names of the experts) and a mass of documents from the proceedings, though to the media only in anonymised form. She also seeks clarification of the effect on the residence and contact orders made by Singer J of G having attained the age of 16 and very shortly attaining the age of 18. (This last point I can dispose of at once. The orders are perfectly clear. If she needs help in understanding them, M must seek appropriate advice. It is no part of my function to give her that advice.)

46. She explains that she wishes to be free to talk with her children and, subject to anonymity, with the media about the proceedings before Singer J and more particularly about his findings. She says: "My driving force is that my children and any family in the future have the chance to make up their own minds about me by reading the whole story." She also says, however, that she wants to use the documents "to show to a reputable broadcaster … to corroborate my assertions of a miscarriage of justice," adding that, because there is now no chance of having her case heard and tested in a court, she wishes to "take my case to the court of public opinion." She says that the welfare of her children "is paramount to me" and that G's rights and the rights of others can be protected by suitable provisions as to anonymity included in any order I may make. She makes clear that she is not applying for contact with G. She recognises that "There is far too much sensitive information within these documents [the trial bundles] to chance their security."

47. In support of her application. M has put before me a huge mass of what she calls "new evidence … to prove my innocence." The focus of this is what she believes to be serious deficiencies in the expert evidence.

48. M articulated her case on the facts rather than on any close analysis of the authorities. However, Mr Wolanski has helpfully suggested, and in doing so referred to well-known authorities which there is no need for me to cite, that relevant factors in relation to M's applications will be the public interest in the workings of the family

justice system and the views of parents caught up in it; the right, protected by Article 8, to share with others, and, if one chooses, with the world at large, the story of one's life and history; the particular public interest in the matters canvassed in the expert evidence; and, as against that, the high degree of sensitivity relating to G's, and possibly BB's, interests. He suggests that a critical question in this regard is the likely effectiveness of any measures for anonymity.

49. Ms Wilson's core submissions can be summarised as follows:

i) If M's application is granted, F will lose control over when and in what circumstances his daughter G learns the distressing details of their family history – matters which he would wish to be able to disclose to her at a time and in a manner which will have the least detrimental impact on her.

ii) It is important to have regard to Singer J's assessment of what disclosure there should or should not be.

iii) M's proposals in relation to anonymity, which are inadequately thought through, are unlikely to be effective, will not prevent the sense of intrusion which F and G will feel from seeing their lives discussed publicly, and will in effect force F's hand as to what and when he tells G.

iv) The reality is that, in relation to G, M cannot achieve her stated objective of telling her children her side of the story and showing them that Singer J was wrong, without G being told about the proceedings. If, and this is the basis of her application, her account of events is anonymised, M is on the horns of a dilemma. Either G does not become aware of what has happened – in which case M's objective is not achieved – or F's hand is forced. So, unless F's hand is to be forced, the point of M's application in large part falls away.

v) In relation to M's suggestions that there may have been a miscarriage of justice, it is important to bear in mind that M *accepted* that G should live with F – which undermines her claim to have suffered a miscarriage of justice; that Singer J's decision in relation to whether there should be contact was *not* affected by the expert evidence which she now wishes to challenge; and that in significant part Singer J's reasoning was based on his assessment of M as a witness. There is therefore *no connection between the outcome of the proceedings and the arguments M relies upon*. Moreover, M has never sought to challenge any of Singer J's findings by way of appeal.

vi) Although the court, as is well recognised, must be particularly alert not to close off avenues for those who contend there has been a miscarriage of justice, and particularly sensitive not to silence, or to be perceived to be silencing, someone who claims to be the victim of failure in the *court* process, the court must still apply the necessary intense focus on *all* the Convention rights being asserted. Thus in evaluating the impact on M of not permitting publicity and, in comparison, the impact on the other private rights engaged of permitting publicity, the court must scrutinise the basis upon which it is said that there has been a miscarriage of justice and the extent to which failings in the process did or did not affect the outcome – here, as we have seen, Ms Wilson's argument is that they did not – and must have regard to the fact that,

> if publicity is permitted, M's account will inevitably be one-sided, leading to partial reporting. The court would have to give the same freedom to comment to F as to M, not something he seeks – indeed, he is horrified, both for himself and for G, by the prospect of his family life being discussed in public – but which he might feel driven to by the need to 'set the record straight.'

50. I have come to the clear conclusion that M should *not* be released from the undertaking she gave Singer J, nor should she be released from the restrictions on the dissemination of documents imposed by section 12 of the Administration of Justice Act 1960.

51. I can summarise my reasons as follows, in large part following Ms Wilson's analysis which, in substance, I accept:

    i) The starting point is that M is unable to point to any significant change in the circumstances, beyond the mere passage of time, since she gave the undertaking to Singer J and since he expressed himself in the way I have referred to in paragraph 9 above. She did not seek to challenge his findings at the time. What has since happened to justify her doing so now, and, moreover, in public? She points, as we have seen, to what she says is "new evidence," but that material (which dates back many years) is untested and, as she accepts, will now never be tested in court.

    ii) M herself recognises that the welfare of her children is "paramount" and that there is "far too much sensitive information within [the] documents to chance their security," yet the anonymity measures she proposes are unlikely to be effective and, even if effective vis-à-vis the world at large, will not shield F and G (if she makes the link) from the detrimental effects on them – and the same in principle goes for B and BB – of being exposed to public discussion of what, I repeat, is some extremely painful and distressing family history.

    iii) In relation to G, there is the dilemma I referred to in paragraph 49(iv) above. More generally, it must, I am satisfied, be for F and not for M to decide when, in what circumstances, and how G, whether still a minor or not, should be introduced to this part of her family history.

    iv) For all the reasons I summarised in paragraph 49(v), the arguments based on an alleged miscarriage of justice carry much less weight in the particular circumstances of this case than ordinarily they would.

52. At the end of the day, in evaluating the impact on M of not permitting publicity and, in comparison, the impact on F, G, B and BB of permitting publicity, the balance which has to be struck comes down clearly, in my judgment, against permitting M to do what she would wish. Again, as in the case of B's application, I make clear that this conclusion is in no way dependent upon G being a minor, being equally applicable once she has attained her majority. Singer J, as we have seen, foresaw "positive disadvantages" in re-opening the issues in a public forum. I can readily understand why he came to that conclusion, and the passage of years has not, in my judgment, made it any the less valid.

53. There are cases, and this is one, where the proper forum for exploring and debating such issues is within the privacy of the family rather than under the public gaze. I appreciate that the consequence of what happened before Singer J was the long-term fracturing of the family, so that discussions within the family may be more than usually problematic and difficult. But if, as she says, M's objective is that her children and any future family should be able to hear her side of the story and make up their own minds, that is not something likely to be achieved by a public debate unilaterally stirred up by M.

54. Picking up a point I referred to in paragraph 22 above, there can be no objection to M, *if they wish to have such discussions with her*, speaking to either B or BB about the proceedings and giving them her side of the story. My order will make that clear.