Case No: 99HCT5246
FD03P02594

Neutral Citation Number: [2003] EWHC 2927 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
PRINCIPAL REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 December 2003
(Postscript dated 4 December 2003)

Before :

THE HONOURABLE MR JUSTICE MUNBY

- -

In the Matter of Angela RODDY (A Minor)
In the Matter of X (A Minor)
In the Matter of Y (A Minor)
And in the Matter of an application by
ASSOCIATED NEWSPAPERS LIMITED

Between :

TORBAY BOROUGH COUNCIL	**Claimant**
- and -	
NEWS GROUP NEWSPAPERS	**Defendant**

- -
- -

Mr Mark Warby QC (instructed by Reynolds Porter Chamberlain) for the Applicant Associated Newspapers Limited
Mr Lee Arnot (instructed by Legal Services) for the Claimant local authority
The Defendant was neither present nor represented

Hearing date : 28 November 2003

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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.

.....
The Honourable Mr Justice Munby

This judgment was handed down in private but the judgment in the form in which it here appears may be reported either in full or in part. There is no restriction on identifying any person or organisation named in the judgment (including Torbay Borough Council) but attention is drawn to:

(a) the terms of the injunctions set out in paragraph [90];

(b) the fact that those injunctions prohibit the identification of the children referred to in the judgment as X and Y;

(c) the fact that the injunction set out in paragraph 6(i) of the order has now expired and has not been extended: see paragraph [92].

Mr Justice Munby :

1. Angela Roddy was born on 4 December 1986. In 1999, when only 12 years old, she became pregnant. The putative father was a boy of about the same age who I will refer to as X. The local authority – it is in south–west England – began care proceedings on the basis that Angela was beyond the control of her parents. Her pregnancy came to public attention amidst some controversy when it became known that the Roman Catholic church had, as the press reported it, paid her not to abort her baby. The local authority obtained from Bracewell J on 21 September 1999 an order which, amongst other things, protected the identities of both Angela and X. That did not, of course, prevent the Scottish media from publishing stories, albeit that neither Angela nor X nor the local authority were named. (I have been shown the articles published in *The Scottish Express* on 11 October 1999, in the *Scottish Daily Mail*, on 11, 12 and 13 October 1999 and in the *Daily Record* on 12 October 1999. The tenor of the debate at that time is encapsulated in the following headlines: "Church to pay girl aged 12 to keep her baby;" "Was Church right to offer her money?" "Prosecute the boy who made my girl of 12 pregnant;" "Cardinal's cash will buy us pram – Dad of girl, 12, welcomes church aid.") The order made by Bracewell J was replaced by an order made by Johnson J on 26 October 1999 which continued to protect the identities of all those involved.

2. On 27 January 2000 Angela gave birth to a daughter who I will refer to as Y. The same local authority thereupon began care proceedings in respect of Y. Angela was separately represented in the care proceedings because she did not agree with the guardian's views. She was represented by an experienced children's solicitor who I will refer to as B. On 25 May 2000 Bracewell J made care orders in relation to both Angela and Y. The care plan for Y was for her adoption; Angela was to remain in foster care. Angela opposed the plan for Y's adoption, but on 28 September 2001 a Circuit Judge made an order under the Adoption Act 1976 dispensing with her consent. Y was adopted. I know nothing of Y's adoptive placement save that she and her adoptive parents live somewhere in England. There is continuing indirect contact between Y and Angela: as recently as 25 November 2003 Angela was sent an update and a photograph of Y.

3. The orders made by Bracewell J on 25 May 2000 did not long remain secret. On 7 June 2000 a local newspaper published a front–page story under the headline "School girl to have child put up for adoption." The article identified the local authority. On 2 July 2000 the *Mail on Sunday* published a story under the headline "Distraught girl of 13 must give up her baby." The opening paragraph reported that "A devastated 13–year–old mother went on the run last week in protest after social services took away her baby", this being, according to the newspaper, "her desperate cry for help after she was forced to say goodbye to her five–month–old daughter for the last time." The article continued:

> "The tragic story of this family, torn apart by social services and the legal process, cannot be told in full: an injunction prevents the parents, who believe an injustice has been done,

> from speaking out. The future of three generations has been decided by the authorities behind a wall of silence. Social services, who took the girl into care last year, rightly insisted the young mother and teenage father should not be identified. But they have gone further, persuading a High Court judge to issue a draconian gagging order on everyone, including the girl's parents."

4. On 7 July 2000 Associated Newspapers Limited ("ANL"), the publishers of, inter alia, the *Scottish Daily Mail*, the *Mail on Sunday* and the *Daily Mail*, applied to me to vary the terms of the order made by Johnson J. I discharged my brother's order and made an order contra mundum in standard form. That order, operative until 4 December 2004 (Angela's 18th birthday), was intended to protect the identities of both Angela and X but not – at least not explicitly – the identity of Y. But since it restrained the solicitation from a wide range of people of "any information relating to Angela … (other than information already in the public domain)" it had the indirect, if unintended, effect of also protecting Y from media curiosity. My order provided that anyone affected by the injunction was at liberty to apply to the court on 48 hours notice to vary or discharge the order.

5. The injunction I had granted nonetheless made it possible for the *Mail on Sunday* to publish on 9 July 2000 a front–page story (continued over three inside pages) under the headline "Did family lose child over anti abortion beliefs?" The tenor of the story appears from the opening paragraphs of the article:

> "It appears to be a shocking example of official arrogance. A case in which parents claim their daughter and granddaughter were taken from them because of their mainstream Christian beliefs.
>
> But, equally disturbingly, the facts could never be aired publicly before today.
>
> On Friday, The Mail on Sunday successfully contested a draconian gagging order, obtained by a council in the West of England, barring all public debate of this extraordinary story. The court victory has finally restored to the parents the basic right to express their anguish about the removal of their 13–year–old daughter and the baby she gave birth to in January.
>
> The girl's father believes his family was broken up for ideological reasons: that social workers removed his pregnant daughter because, as a Catholic, he believes abortion is wrong.
>
> But he has been unable to bring his plight to the attention of the public. Under the gagging order the media was banned from publishing anything he had to say. It meant the social workers' actions remained shrouded in secrecy.

> The case of the family – who cannot be identified – is a complex one which cries out for public scrutiny. It raises crucial questions, including the role of Social Services, tolerance of religious beliefs and questions of choice.
>
> But it is also a personal tragedy."

There was also a strongly worded editorial Comment under the headline "Law that hides a cruel intolerance."

6. Angela, as I have indicated, was originally in foster care. She returned home to live with her parents in August 2002. On 20 January 2003 she applied for the discharge of the care order and on 19 September 2003 it was discharged, with the agreement of the local authority. Again, she was represented by B. Shortly after that Angela's father made an approach to the *Mail on Sunday*. In November 2003 Angela made her own approach to the newspaper. In a witness statement dated 26 November 2003 she says that she wanted to talk about her experience of the care system and is doing this "because I want people to know what it is like to go through the care system and the consequences of having unprotected sex." She says, "I am happy to be named and photographed for the purposes of the newspaper article, and … I have considered the consequences of this."

7. On Tuesday 25 November 2003 solicitors acting for ANL wrote to the local authority giving notice of their client's intention to apply for a variation of the order I had made on 7 July 2000. The letter indicated that what was proposed was a variation to permit the publication of information with Angela's consent, but without any change to the injunction insofar as it protected X's identity. The letter said that:

> "our client has not sought to modify the substance of any of the injunctions in so far as they affect [X]. It is not our client's intention to publish anything which would infringe any of the existing orders in so far as they relate to him."

In a second letter the same day ANL's solicitors wrote:

> "we considered whether notice should be given to anyone other than yourselves. We have concluded that as no other party is affected by the proposed variation that this is not necessary. If you disagree, we trust that you will inform us of this as soon as possible and explain your reasoning."

In a further letter sent later the same day ANL's solicitor wrote:

> "to confirm that my client will not name [Y] or [X] and has no intention of including anything in its article which might lead to either individual being identified. The intention is for Angela to be permitted to tell her own story without identifying either of these two individuals."

That was confirmed in a witness statement dated 27 November 2003 of John Wellington, the Managing Editor of the *Mail on Sunday*. He said:

> "The story we propose to run is about Ms Roddy, and not about her child. We have no intention of giving any description of the child or any indication of where the child lives or has lived."

8. The day before, on 26 November 2003, there had been a telephone conversation between the solicitors acting for ANL and for the local authority. By then ANL's application had been listed for hearing at risk on Friday 28 November 2003. The conversation is important as indicating the local authority's stance in relation not merely to Angela but also to Y:

   i) So far as Angela was concerned the local authority's position was stated to be that, as she was no longer the subject of a care order, the local authority felt that it could consent to the proposed variation. This was subject to the suggestion that the article should not be published until after Angela's 17th birthday, that is, until after 4 December 2003.

   ii) So far as Y was concerned, the local authority wished there to be a further injunction to protect her identity.

9. On 27 November 2003 ANL's solicitors wrote to the local authority, indicating that there did not seem to be any difference between the article being published a week before Angela's 17th birthday and it being published shortly after her 17th birthday and asserting that, in the light of the assurances already given by ANL, there was no need or justification for any separate injunction in relation to Y.

10. On reflection the local authority obviously decided not to pursue the point in relation to the timing of the article. For when it replied later the same day (27 November 2003) it stated that "the only issue that remains between us in this matter is that leading to the identification of [Y]. For the avoidance of doubt we include in this the identification of … the Local Authority." ANL was invited to reconsider its position and to agree to such an order.

11. Later still the same day the local authority sent ANL's solicitors a copy of the local authority's application for an order in relation to Y. The draft attached to the application was of a contra mundum order in fairly standard form prohibiting any identification of Y and also the solicitation of information about Y from, inter alios, Angela or her parents. The local authority's evidence was in the form of a witness statement from the local authority solicitor who had earlier had the conduct of the proceedings for the discharge of Angela's care order. Her statement dealt with both Angela and Y:

   i) In relation to Angela the local authority's position was said to be that, having considered ANL's application, it was "satisfied that Angela is of an age and

understanding where she is able to make decisions regarding herself." The local authority was therefore not opposed to my order being varied in that respect.

ii) In relation to Y, the local authority's position was said to be that it has a responsibility to Y to protect her identity and is very concerned that no steps are taken that lead to her identification. The statement indicated that the local authority was accordingly seeking what was described as an order preventing the publication of information identifying Y or any information which might lead to her identification.

The letter in which those various documents were enclosed indicated that the local authority would be applying for an adjournment of the hearing.

12. The applications came on for hearing before me on Friday 28 November 2003. ANL was represented by Mr Mark Warby QC, the local authority by Mr Lee Arnot. Both were of great assistance to me. In addition to the various witness statements to which I have already referred I also had a witness statement from the solicitor, B, who had represented Angela both in the care proceedings in 2000 and in the subsequent adoption proceedings and again in 2003 in the application for the discharge of the care order. It is apparent from B's statement that she has discussed the present situation very carefully with Angela. She says:

> "Angela has emphasised to me that she wishes to tell her own story about her experiences of being a teenage mother in care and that this is her primary motivation for approaching the newspaper. Angela is a mature and articulate young person who states that she has given very careful consideration to this course of action and has decided that it is something she definitely wishes to take forward. In these circumstances the application for discharge of the existing Order and the substitution of a variation order in the proposed terms of the draft Order would seem to be appropriate."

The legal framework

13. So much for the facts. I turn to the law.

14. As is notorious this is a branch of the law where there has been much judicial activity over the last 25 years. This is certainly not the place for yet another general survey: that task was comprehensively performed by Ward LJ in *In re Z (A Minor) (Identification: Restrictions on Publication)* [1997] Fam 1.

15. Shortly before the Human Rights Act 1998 came into force in October 2000 I summarised the matter in *Kelly v British Broadcasting Corpn* [2001] Fam 59 at p 74:

> "in relation to the media the exercise of the court's inherent parens patriae or wardship jurisdiction is divided into three parts: the first part, in which 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; a second part in which 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 so-called balancing exercise has to be performed; and the third part, in which, because the court is exercising its "custodial" jurisdiction, the child's interests *are* paramount. Well known examples of cases falling into the first category, where no injunction can be granted, are *In re X (A Minor) (Wardship: Jurisdiction)* [1975] Fam 47; *R v Central Television plc* [1994] Fam 192 and *M v British Broadcasting Corpn* [1997] 1 FLR 51."

I went on to suggest that a case would fall into the second rather than the first category:

> "only where the proposed publication is directly about a child whose care and upbringing are already being supervised by the court *and* is such as might threaten the effective working of the court's jurisdiction or the ability of the child's carers to carry out their obligations to the court for the care of the child."

16. This analysis has had to be revisited in the light of the Human Rights Act 1998. And all the earlier learning has now to be reviewed in the light of the recent decision of the Court of Appeal in *Re S (A Child)* [2003] EWCA Civ 963. Even if the effect of *Re S* is not simply to collapse the first and second categories into one, it establishes that there is no longer any bright–line boundary between them and that 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.

17. The proper approach now is that encapsulated in a passage in Latham LJ's judgment at para [75]:

> "Whatever the theoretical limit of the jurisdiction may be, the authorities suggest that the court should not even consider exercising that jurisdiction in cases where publicity is not directed at the child or the child's carers unless it could have an adverse affect on the court's ability to deal properly with the care proceedings in question. I prefer the view that the jurisdiction is, as Ward LJ said in *re Z* and Millett LJ said in *R v Central Television plc*, theoretically unlimited, but that as Waite LJ said in the latter case at page 207, "The courts have nevertheless found it necessary to set self-imposed limits upon its exercise." It seems, to me, however, that the limitations so

> far imposed on its exercise have to be reconsidered in the light of the Human Rights Act 1998. As there is a proper foundation for the court to exercise jurisdiction, the child's rights under Article 8 must be taken into account by the court if it is to comply with its obligations under Section 6 of the Act. It follows that the court is at least entitled to consider the grant of an injunction in cases such as this even if publicity is not directed at the child or his carers and could not be shown to have an adverse effect on the care proceedings, although that will undoubtedly be a significant factor in deciding whether or not an injunction should ultimately be granted."

As Hale LJ said at para [40]:

> "If the existence of the jurisdiction is accepted, it may now be unnecessary to resolve the tension between the various statements made in the earlier decisions of this court. These cases all preceded the implementation of the Human Rights Act 1998. Now that the Human Rights Act is in force, the relevance of the jurisdiction may simply be to provide the vehicle which enables the court to conduct the necessary balancing exercise between the competing rights of the child under Article 8 and the media under Article 10."

Lord Phillips of Worth Matravers MR said much the same thing at para [108]:

> "The cases to which I have referred predate the Human Rights Act. At the same time they reflect, to a large degree, an attempt to balance the rights conferred by Article 8 of the Human Rights Convention with the Article 10 right to freedom of expression. I consider, however, that the principles to be derived from the pre Human Rights Act authorities cannot be rigidly applied. It is necessary in the individual case to balance Article 8 rights which are engaged against Article 10 rights."

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

19. The whole of Hale LJ's judgment in *Re S* repays careful study but the central core of her analysis is to be found in paras [52]–[60], and particularly in the following passages:

> "[52] … the court, in deciding whether to exercise its jurisdiction to restrain publication, whether under the inherent jurisdiction or under section 39 or any other statutory

provision, has to consider both Article 8 and Article 10 as independent elements … As Sedley LJ said in *Douglas v Hello! Ltd* [2001] QB 967, at p 1005,

> "Neither element is a trump card. They will be articulated by the principles of legality and proportionality which, as always, constitute the mechanism by which the court reaches its conclusion on countervailing or qualified rights. It will be remembered that in the jurisprudence of the Convention proportionality is tested by, among other things, the standard of what is necessary in a democratic society."

[53] In *A v B plc* [2003] QB 195, Lord Woolf CJ observed at para 6:

> "There is a tension between the two articles which requires the court to hold the balance between the conflicting interests they are designed to protect. This is not an easy task but it can be achieved by the courts if, when holding the balance, they attach proper weight to the important rights which both articles are designed to protect. Each article is qualified expressly in a way which allows the interests under the other article to be taken into account."

[54] This is the approach which should have been followed in this case. The concept of proportionality means that the proposed interference or restriction must be supported by 'relevant and sufficient grounds'; it must respond to a 'pressing social need'; and it must be no greater than necessary to meet the legitimate aim pursued.

[55] In considering the proportionality of the proposed interference with freedom of expression, a court must not only consider the importance of press freedom in principle: as Lord Woolf CJ also said in *A v B plc*, at para 11(iv), 'The existence of a free press is in itself desirable and so any interference with it has to be justified'. It must also consider those features which enhance its importance in the particular case.

[60] It would be so much easier if there were a trump card or governing principle, whether it be press freedom or the rights of the child. But there is in my judgment no escape from the difficult balancing exercise which the Convention requires. … the judge did not consider each Article independently, and thus did not conduct that exercise … "

Lord Phillips MR and Latham LJ agreed. At para [64] Latham LJ described the exercise now required under the Human Rights Act as being:

> "identifying the extent to which refusing to grant the relevant terms of the injunction asked for would be a proportionate interference with the private life of the child on the one hand and their grant would be a proportionate interference with the rights of the press under Article 10 on the other hand."

20. It is, no doubt, ultimately a somewhat fruitless exercise to reconsider in the light of the decision in *Re S* all the many cases that were decided before the Human Rights Act 1998. But it is, perhaps, worth noting that there is, so far as I can see, nothing whatever in any of the judgments in *Re S* to suggest that the outcome in either *In re X (A Minor) (Wardship: Jurisdiction)* [1975] Fam 47 or *R v Central Television plc* [1994] Fam 192 would have been any different had the new approach been adopted. If anything quite the contrary, for at para [37] Hale LJ made this observation:

> "The information in this case lies somewhere in between that in *Re X* and *R v Central Television* and that in *Re M and N* or *Re W*. The proposed publication will not relate directly to how CS is currently being brought up … On the other hand, this is not the sort of remote and unconnected information about a deceased or long-absent parent with which the cases of *Re X* and *R v Central Independent Television plc* were concerned. The publication will relate to events within his recent family life in which he has been directly involved. These have already had and will continue to have a serious impact upon the way in which he is brought up."

In re X, it will be recalled, was the case in which, as I said in *Kelly v British Broadcasting Corpn* [2001] Fam 59 at p 73,

> "an ultimately unsuccessful attempt was made to invoke the wardship jurisdiction to suppress a book describing the aberrant private activities of a 14-year-old girl's dead father, publication of which would be "psychologically grossly damaging" to the child and where the injury to her emotional psychological health would be "very grave indeed"."

21. In *Re S* the balancing exercise was not particularly complicated. Although Article 6 was also implicated the essential contest was between the rights of the child under Article 8 and the rights of the media under Article 10. In the present case, as we shall see, the exercise is more complicated. On one side there are ranged ANL's rights under Article 10 and, as she would have it, Angela's rights under both Article 10 and Article 8. On the other side there are ranged Article 8 rights asserted on behalf of both X and Y and also, on one view, Angela's rights under Article 8. But although the exercise may be more complicated (though no more complicated than the somewhat similar exercise I had to undertake in *Clibbery v Allan* [2001] 2 FLR 819, affirmed on appeal, *Clibbery v Allan* [2002] EWCA Civ 45, [2002] Fam 261) the essential task remains that identified by Hale LJ in *Re S*.

22. Mr Warby was thus, in my judgment, right to accept in the light of *Re S* that the present case has to be viewed as one where I can *consider* the exercise of the protective jurisdiction, even though neither Angela nor Y is any longer the subject of a care order (and X, so far as I am aware, was never the subject of a care order) and even though the proposed article is not directed at the way in which any of them is being brought up now. Likewise, in my judgment, Mr Warby was right to accept that I can in principle *exercise* the jurisdiction if I conclude that Article 8 is engaged.

23. Before I turn to the Convention there is one other matter I must refer to. Mr Warby relies on section 12(3) of the Human Rights Act 1998. Section 12 of the Act provides in material part as follows:

> "(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.
>
> (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed."

24. In *Cream Holdings Ltd v Banerjee* [2003] EWCA Civ 103, [2003] 3 WLR 999, the Court of Appeal had to consider the meaning of the word "likely" in section 12(3). The Court held that, as it was put by Simon Brown LJ at para [12]:

> "the test is not that of the balance of probabilities but rather that of a real prospect of success, convincingly established."

The Convention

25. I turn therefore to consider the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Mr Warby and Mr Arnot are rightly agreed that the Articles which here either are or may be in play are Articles 8 and 10.

26. Article 10 affirms "the right to freedom of expression", including "freedom to hold opinions and to receive and impart information and ideas without interference by public authority." That, of course, is subject to the well–known exceptions in Article 10(2). Article 8 guarantees, subject to the exceptions in Article 8(2), the "right to respect for … private and family life".

27. The Article 10 jurisprudence is familiar and needs little exposition here. So too is the jurisprudence relating to the right to respect for "family life" guaranteed by Article 8. But central to the arguments in the present case is the perhaps somewhat less familiar jurisprudence relating to the right to respect for "private life" also guaranteed by Article 8. To that I therefore turn.

28. First, however, there is one aspect of Article 10 that requires emphasis. Article 10 protects both the right to "receive" and the right to "impart" information and ideas. As I said in *Kelly v British Broadcasting Corpn* [2001] Fam 59 at p 79:

> "Press conferences held by those who wish to attract attention to their views, and interviews conducted by the media, are both essential mechanisms for facilitating the exercise of the rights guaranteed by article 10. Both the press conference and the interview are means by which those wishing to disseminate their views exercise their Convention right to "impart" information and ideas and by which the media exercise their Convention rights both to "receive" and in turn to "impart" information and ideas."

So, in a case such as this, one is concerned with the Article 10 rights not merely of the press and of those who read newspapers but also of those who wish to tell – or sell – their stories to the press. And just as I stressed in *Kelly* at p 79 that I was concerned with the Article 10 rights not merely of the BBC but also of Bobby Kelly, so here I stress that I am concerned not merely with the Article 10 rights of ANL and the *Mail on Sunday* but also – and every bit as important – with Angela's Article 10 rights.

29. I turn to Article 8. The starting point is *Niemietz v Germany* (1993) 16 EHRR 97 at para [29], where the Court indicated that "private life" includes at least two elements. The first is the notion of "an "inner circle" in which the individual may live his own personal life as he chooses"; the second is "the right to establish and develop relationships with other human beings". Applying *Niemietz v Germany*, the Court in *Botta v Italy* (1998) 26 EHRR 241 at para [32] said:

> "Private life, in the court's view, includes a person's physical and psychological integrity; the guarantee afforded by Art 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings."

30. This was elaborated by the Court in *Bensaid v United Kingdom* (2001) 33 EHRR 205 at paras [46–[47]:

> "[46] Not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8. However, the Court's case-law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private life aspect where there are sufficiently adverse effects on physical and moral integrity.
>
> [47] Private life is a broad term not susceptible to exhaustive definition. The Court has already held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by

> Article 8. Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life."

31. In *Pretty v United Kingdom* (2002) 35 EHRR 1, [2002] 2 FLR 45, at para [61] the Court drew the inevitable conclusion:

> "As the Court has had previous occasion to remark, the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world. Though no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees."

32. In addition to its emphasis on the importance of personal autonomy as one of the principles underlying Article 8 (as to which see also what the Court said at para [66]) the Court stressed at para [65] that:

> "The very essence of the Convention is respect for human dignity and human freedom."

33. This Strasbourg jurisprudence has of course been recognised and applied in our domestic case–law. A striking example is the decision of the President in *X and Y v News Group Newspapers and MGN Limited* [2003] EWHC 1101 (QB) – the Mary Bell case – but there are many others. In *R (A, B, X and Y) v East Sussex County Council* [2003] EWHC 167 (Admin) at para [86] I said:

> "True it is that the phrase [human dignity] is not used in the Convention but it is surely immanent in article 8, indeed in almost every one of the Convention's provisions. The recognition and protection of human dignity is one of the core values – in truth *the* core value – of our society and, indeed, of all the societies which are part of the European family of nations and which have embraced the principles of the Convention. It is a core value of the common law, long pre-dating the Convention".

34. There is one final aspect of private life that needs to be remembered in this context. As *Gaskin v United Kingdom* (1990) 12 EHRR 36 shows, amongst the aspects of private life respect for which is guaranteed by Article 8 is knowledge about, and the right to obtain from public records information about, one's childhood, development and history.

35. Article 8 thus protects two very different kinds of private life: both the private life lived privately and kept hidden from the outside world and also the private life lived in company with other human beings and shared with the outside world. For, as the Strasbourg jurisprudence recognises, the ability to lead one's own personal life as one chooses, the ability to develop one's personality, indeed one's very psychological and moral integrity, are dependent upon being able to interact and develop relationships with other human beings and with the world at large. And central to one's psychological and moral integrity, to one's feelings of self–worth, is the knowledge of one's childhood, development and history. So amongst the rights protected by Article 8, as it seems to me, is the right, as a human being, to share with others – and, if one so chooses, with the world at large – one's own story, the story of one's childhood, development and history. Man is a sociable being. Long ago Aristotle said that "He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god." More recently, Blackstone observed that, "Man was formed for society". And, somewhat earlier, John Donne had memorably written that, "No man is an Island … any man's death diminishes me, because I am involved in Mankind." That is what distinguishes mankind from the brute creation. We are able to think and to communicate with each other. We have self–awareness. It is natural for us to want to talk to others about ourselves and about our lives. It is fundamental to our human condition, to our dignity as human beings, that we should be able to do so. This, after all, is why totalitarian regimes seek to silence those who will not conform not merely by taking away their right to speak in public but also by depriving them of human companionship.

36. The personal autonomy protected by Article 8 embraces the right to decide who is to be within the "inner circle", the right to decide whether that which is private should remain private or whether it should be shared with others. Article 8 thus embraces both the right to maintain one's privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one's story to one's fellow beings is protected not merely by Article 10 but also by Article 8.

37. A child is, of course, as much entitled to the protection of the Convention – and specifically of Articles 8 and 10 – as anyone else. But, as Mr Arnot correctly pointed out, the personal autonomy guaranteed by Article 8 (and, I would add, by Article 10) is necessarily somewhat qualified in the case of a child. For, depending on the circumstances, decision–making power may rest not with the child but with the child's parents or even with the court. I must return to this topic in due course. For the moment I observe only that there may well be cases where a child wishes to go to the media – wishes, in other words, to avail himself of what he asserts are his Article 10 and Article 8 rights to make public that which would otherwise be private – whilst his

parents, or the court, may think that his interests are better served by asserting his right under Article 8 to keep such matters private.

The Convention in the present case

38. I approach the present case on the footing that neither X nor Y (nor their parents on their behalf) wish to waive their privacy. And both have a family life which, I imagine, they and their parents are anxious to preserve and protect. Angela, on the other hand, not merely wishes to waive her privacy: she is anxious to communicate her story to the whole world. She is, however, still a child. It can therefore be seen that the following Convention rights are or may be engaged:

i) X's rights under Article 8 (a) to keep his private life private and (b) to preserve and protect the family life he enjoys with his parents and other members of his family.

ii) Y's rights under Article 8 (a) to keep her private life private and (b) to preserve and protect the family life she is now enjoying with her adoptive parents.

iii) Angela's rights under Articles 8 and 10, as she wishes to assert them, to tell her story to the world through the medium of the *Mail on Sunday*.

iv) Angela's rights under Article 8, as Angela's parents or the court might wish to assert them on her behalf, (a) to keep her private life private and (b) to preserve and protect the family life she enjoys with her parents and other members of her family.

v) ANL's rights under Article 10 (a) to obtain the story that Angela wishes to tell and (b) to publish Angela's story in the *Mail on Sunday*.

The case of X

39. I deal first with X. I can do so quite shortly. He has important rights protected by Article 8. Hitherto they have been protected by the injunctions successively granted by Bracewell J, by Johnson J and by me. No–one has ever suggested that the order I made on 7 July 2000 is not adequate to protect X's rights. No–one is suggesting that it should be varied insofar as it relates to him. Neither ANL nor Angela seeks its discharge or variation. The balancing exercise thus comes down in favour of maintaining the injunction. It suffices to meet X's Article 8 rights; it does not impinge disproportionately on Angela's rights under Articles 8 and 10, nor on ANL's rights under Article 10. To preserve X's anonymity, and to restrain the solicitation of information about him either from X or from his family, does not prevent Angela telling her story to the world in the way she wishes to.

40. I recognise that there is nothing in the injunction to prevent Angela telling, and ANL publishing, not merely her story but also (albeit anonymously) X's story. To that significant extent the injunction does not prevent there being some interference with X's private life. Private matters that he might wish to keep private can enter the public domain, albeit without X being identified as the subject of what is published. There is also, of course, the reality which has to be faced that those who are within X's "inner circle" will recognise that the story is about him, even if he is not named or otherwise directly identified. As Butler–Sloss LJ (as she was then) said in *In re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 211 at pp 225, 226:

> "unless there is a total ban … someone somewhere may put the story to the person. That seems to me to be inevitable … to those who know the facts any description, for instance from this judgment, will lead to identification."

But as Neill LJ said *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100 at p 103:

> "It is to be anticipated that in almost every case the public interest in favour of publication can be satisfied without any identification of the ward to persons other than those who already know the facts. It seems to me, however, that the risk of *some* wider identification may have to be accepted on occasions if the story is to be told in a manner which will engage the interest of the general public."

41. In fact in both those cases the Court of Appeal discharged injunctions which prevented the story being published, whilst maintaining injunctions in narrower form prohibiting identification. It is, as I said in *Kelly v British Broadcasting Corpn* [2001] Fam 59 at p 86:

> "[a] striking fact … that in *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100, 102, the Court of Appeal refused to prevent publication of a story which it was likely would be read by the ward himself in circumstances where there was cogent evidence that his placement might be jeopardised and that the article would have a "devastating effect" on the ward, who was likely to be seriously affected both by the article itself and by his fear of the reaction of others to it."

Moreover, in that case the court refused to prohibit publication of the name of the local authority. As Balcombe LJ said at p 105:

> "the identification of Southwark London Borough Council as the local authority responsible for the placement in question may well increase the risk of identification of the ward and his foster parents. Nevertheless it is the action of this particular council which gives rise to the matter of public interest on

> which the newspaper wishes to comment, and for these reasons it seems to me that it would be imposing a greater degree of restraint than is essential to protect the interests of the ward to prohibit the newspaper from identifying the council."

42. The balancing exercise has of course to be carried out in each case, weighing the particular facts of the individual case. That said, the approach which in the particular circumstances of those two cases commended itself to the Court of Appeal in both *In re M and N (Minors) (Wardship: Publication of Information)* [1990] Fam 211 and *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100 is still, as it seems to me, entirely legitimate: there is nothing in *Re S* to cast any doubt on it. And it is an approach which, I suspect, will still very typically emerge after carrying out the balancing exercise now required by *Re S*.

43. In the present case I am satisfied that a proper holding of the balance between X, on the one hand, and Angela and ANL, on the other hand, requires that there should be an injunction preserving X's anonymity and restraining the solicitation of information about him either from X or from his family, but that there should not be an injunction to prevent his story being told anonymously. This, as I recognise, means that there will be some interference with X's private life: private matters that he might wish to keep private can enter the public domain, albeit without him being identified. But an injunction wide enough to prevent that happening would, in my judgment, interfere disproportionately with Angela's rights under Articles 8 and 10 and with ANL's rights under Article 10: it would prevent them telling, if they wish, a story which is, in important part, also Angela's story and a story in relation to which there is a clear and important public interest. On the other hand, the refusal to grant an injunction in any wider terms, although it involves an interference with X's private life, is, in my judgment, an interference with his rights which is in all the circumstances proportionate.

44. The injunction so far as it relates to X will therefore remain in force. It will in any event expire on 4 December 2004.

Angela's case

45. In a sense there might be thought to be no issue. As we have seen, Angela wishes to tell her story. ANL obviously wants her to. Her parents do not object. Subject only to safeguarding Y's position, the local authority does not oppose what is being proposed. Angela's solicitor, B, has expressed the view that the proposed variation of my order is appropriate. But the fact is that – in law – Angela is a child and that as recently as July 2000 I thought it necessary to protect her by the very injunction which she now seeks to have discharged.

46. There is in fact a very important point of principle lurking behind all this. Are children of Angela's age to be allowed to exercise for themselves the rights they have under the Convention – here the vitally important rights under Articles 8 and 10? Are

we to recognise that Angela should in relation to her Convention rights enjoy the same autonomy, the same decision–making power, as she will undoubtedly have when she reaches the age of 18 in just one year's time? Are we to trust Angela to decide for herself whether that which is private (and not merely private – what we are talking about here is something extremely personal and intimate) should remain private or whether it should be shared with the whole world? Are we, in other words, to take children's rights seriously and as our children see them? Or are we to treat children as little more than the largely passive objects of more or less paternalistic parental or judicial decision–making?

47. I repeat, because the point is so important, that Angela is seeking to enforce what she says are her *rights* under the Convention. What underlies ANL's claim to be entitled to publish Angela's story is not only its own rights under Article 10, nor merely the fact (important though it is) that, by giving her consent, Angela may be said to have waived her privacy. What underlies the whole case is Angela's right, as she would have it, to tell her story to the world – a right, and it is nothing less, securely founded in Articles 8 and 10.

48. What we are actually talking about here is the extent to which we are prepared to recognise the autonomy of the 16–year old; in particular, the extent to which we are prepared to recognise that 16–year olds have rights to freedom of expression secured to them by Articles 8 and 10. Some academic commentators complain that these are matters to which the courts have not hitherto given serious consideration. That may or may not be so. But I entirely agree that these are very important issues.

49. They are in fact issues which the courts have considered, albeit often in factually very different contexts.

50. The general principles are clear. I start with what Lord Fraser of Tullybelton said in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 at p 171:

> "It is, in my view, contrary to the ordinary experience of mankind, at least in Western Europe in the present century, to say that a child or a young person remains in fact under the complete control of his parents until he attains the definite age of majority, now 18 in the United Kingdom, and that on attaining that age he suddenly acquires independence. In practice most wise parents relax their control gradually as the child develops and encourage him or her to become increasingly independent. Moreover, the degree of parental control actually exercised over a particular child does in practice vary considerably according to his understanding and intelligence and it would, in my opinion, be unrealistic for the courts not to recognise these facts. Social customs change, and the law ought to, and does in fact, have regard to such changes when they are of major importance."

51. The same principle was captured by Lord Scarman at p 186:

> "The law relating to parent and child is concerned with the problems of the growth and maturity of the human personality. If the law should impose upon the process of "growing up" fixed limits where nature knows only a continuous process, the price would be artificiality and a lack of realism in an area where the law must be sensitive to human development and social change. … The underlying principle of the law … is that parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision."

52. Now precisely the same principles must articulate the court's decision–making when a judge, acting as what Lord Upjohn in *J v C* [1970] AC 668 at p 723 called "the judicial reasonable parent", is deciding some question relating to a child. For as he observed:

> "the law and practice in relation to infants … have developed, are developing and must, and no doubt will, continue to develop by reflecting and adopting the changing views, as the years go by, of reasonable men and women, the parents of children, on the proper treatment and methods of bringing up children; for after all that is the model which the judge must emulate."

53. This approach has certainly been adopted in the context of medical treatment. In *In re W (A Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam 64 at p 88 Balcombe LJ said:

> "Accordingly the older the child concerned the greater the weight the court should give to its wishes, certainly in the field of medical treatment. In a sense this is merely one aspect of the application of the test that the welfare of the child is the paramount consideration. It will normally be in the best interests of a child of sufficient age and understanding to make an informed decision that the court should respect its integrity as a human being and not lightly override its decision on such a personal matter as medical treatment, all the more so if that treatment is invasive. In my judgment, therefore, the court exercising the inherent jurisdiction in relation to a 16- or 17-year-old child who is not mentally incompetent will, as a matter of course, ascertain the wishes of the child and will approach its decision with a strong predilection to give effect to the child's wishes."

54. Nolan LJ (as he then was) said much the same thing at p 93:

> "In considering the welfare of the child, the court must not only recognise but if necessary defend the right of the child, having sufficient understanding to take an informed decision, to make his or her own choice. In most areas of life it would be not only wrong in principle but also futile and counter-productive for the court to adopt any different approach."

55. In my judgment exactly the same principles apply in the present context. In *Re W (Wardship: Discharge: Publicity)* [1995] 2 FLR 466 at p 474 Balcombe LJ said:

> "I … accept that a boy of 15 may be sufficiently mature to be able to speak directly to, and be interviewed by, representatives of the press or broadcasting media."

In *Kelly v British Broadcasting Corpn* [2001] Fam 59 I held that the BBC should not be prevented from broadcasting the interview it had obtained after being approached by 16–year old Bobby Kelly.

56. The courts must face reality. We must, as Lord Scarman said, be sensitive to human development and social change. Angela may not yet be quite 17 years old but she is a young woman with a mind of her own and, as her solicitor B has said, a mature and articulate young person. We no longer treat our 17-year old daughters as our Victorian ancestors did, and if we try to do so it is at our – and their – peril. Angela, in my judgment, is of an age, and has sufficient understanding and maturity, to decide for herself whether that which is private, personal and intimate should remain private or whether it should be shared with the whole world. She is what Ward LJ described in *In re Z (A Minor) (Identification: Restrictions on Publication)* [1997] Fam 1 at p 30 as a "competent teenager taking [her] story to the press." She is, to use the language of Woolf J (as he then was) in *Gillick v West Norfolk and Wisbech Area Health Authority* [1984] QB 581 at p 596, "capable of making a reasonable assessment of the advantages and disadvantages" of what is proposed.

57. In my judgment (and I wish to emphasise this) it is the responsibility – it is the duty – of the court not merely to recognise but, as Nolan LJ said, to *defend* what, if I may respectfully say so, he correctly described as the *right* of the child who has sufficient understanding to make an informed decision, to make his or her own choice. This is not mere pragmatism, though as Nolan LJ pointed out, any other approach is likely to be both futile and counter-productive. It is also, as he said, a matter of principle. For, as Balcombe LJ recognised, the court must recognise the child's integrity as a human being. And we do not recognise Angela's dignity and integrity as a human being – we do not respect her rights under Articles 8 and 10 – unless we acknowledge that it is for her to make her own choice, and not for her parents or a judge or any other public authority to seek to make the choice on her behalf.

58. After all, one of the reasons why in *Kelly v British Broadcasting Corpn* [2001] Fam 59 I came to the conclusion that it is not of itself a contempt of court to interview a ward of court, or to publish or broadcast such an interview, was that such a rule could

not pass muster under Article 10, not least having regards to the interests of the ward himself. As I said at p 79:

> "In my judgment any rule which made it a contempt of court, of itself and without more ado, for the media to interview a ward of court without first obtaining the leave of the court … involves far too serious an invasion of the article 10 rights both of the media and, I stress, of the ward himself to pass muster under paragraph 2."

59. In fact Angela's decision is supported by her parents and not opposed by the local authority. But neither of those facts can be determinative. I wish to make it clear that, giving proper weight to Angela's evidence and the evidence of her solicitor, B, I should unhesitatingly have come to precisely the same conclusion even if Angela's wish to tell her story to the world had been opposed both by the local authority and by her parents. The decision, I repeat, is for Angela: it is not for her parents, the local authority or the court.

60. But for one matter, therefore, I would have not the slightest hesitation in granting Angela and ANL the relief they seek. Angela a week before her 17th birthday should be freed from the fetters of the injunction that was necessary to protect her at a time when, at the age of only 13½, she was not able to decide for herself where her best interests lay. And, for the reasons I have already given, X's rights, important though they undoubtedly are, should not in the final balance be allowed to stand in Angela's way. But there is a separate, and different, point in relation to Y.

The case of Y

61. I turn therefore to consider Y.

62. The local authority contends that there should be an injunction to preserve Y's anonymity and to restrain the solicitation of information about her. I agree.

63. Y's case is, of course, quite distinct from X's case and must be considered separately and on its own merits. But that said, mutatis mutandis and for all the reasons I have already set out in relation to X, I agree with the local authority that there should be an injunction in relation to Y which mirrors the injunction in relation to X. ANL says that no such injunction is necessary, because Angela does not wish to tell it anything, and it does not wish to publish anything, that would reveal Y's identity. I accept, of course, that that is so, but it does not meet the point. Other newspapers may not be so reticent, particularly if media interest in Angela and her story is reignited as a result of the orders I make.

64. Just like X, Y has important rights protected by Article 8. In just the same way as in relation to X, and for much the same reasons, although I have of course considered their cases separately, a proper holding of the balance between Y on the one hand, and

Angela, ANL and the media generally, on the other hand, requires that there should be an injunction preserving Y's anonymity and restraining the solicitation of information about her.

65. To that extent I agree with the local authority that Y is entitled to be protected.

66. But the local authority seeks to go further than that. Although it has not yet formulated the precise relief it seeks, it contends, as I understand its case, that the proper safeguarding of Y's interests requires that the media be restrained not merely from soliciting information about Y from Angela and her parents, and for that matter also from X, but moreover that the media be restrained from publishing Angela's story.

67. The local authority's case as formulated by Mr Arnot – there is not a word of this either in the correspondence or in the local authority's evidence – is that the identity and location of Y's adoptive parents have remained confidential; that Y's adoptive parents know nothing about the applications before the court; that the article(s) proposed to be published in the *Mail on Sunday* may be very disruptive; that there may be sensitive issues raised in the proposed article(s) which Y's adoptive parents would find particularly unsettling or do not know about (Mr Arnot suggests that the adoptive parents and their friends may know some of the background but not certain sensitive matters which may be disclosed); that there has not been sufficient time to undertake the sensitive enquiries that, says the local authority, are necessary to assess the potential impact of publicity on Y and her adoptive family; and that the court does not currently have before it the material necessary to carry out the balancing exercise between Y's Article 8 rights, Angela's Article 8 and Article 10 rights, and ANL's Article 10 rights.

68. In short, the local authority's concern is that Y's adoptive placement may be destabilised if Angela is able to tell her story to the world.

69. Additionally, though rather more faintly, Mr Arnot suggests that there may be some duty of confidentiality owed by Angela to Y which, since she no longer has parental responsibility for Y, she is not in a position to waive. He also suggests that the court's "custodial" jurisdiction as well as its "protective" jurisdiction may here be in play, given that Angela, as I have said, is being provided with ongoing indirect contact. So, he says, the decision whether or not to publish the proposed article(s) may have implications for that indirect contact and in other – unspecified – ways that, as he would have it, relate directly to Y's upbringing.

70. Mr Arnot submits that there should be what he calls "a modest adjournment" to allow appropriate enquiries to be undertaken either by the local authority or (as he suggests might be preferable) by CAFCASS Legal. He asserts that the public interest – as opposed to the commercial interests of ANL – will not be prejudiced by such an adjournment and that what he calls the status quo should be preserved in the meantime.

71. Mr Warby says that the local authority's case on this point is wholly speculative, all speculation and supposition. He says there is no real basis for the local authority's concerns. The local authority is merely hoping, Micawber like, that something of concern will turn up, though as yet nothing has. He points out that the local authority – which on its own admission remains in contact with Y's adoptive parents – has not even sought to canvass their views about what Angela and ANL are proposing. Y, of course, is too young at this stage to be directly affected by anything in the media. What basis is there for believing that Y may be affected in such a way as to justify, let alone necessitate, any more stringent protective regime? Looking to what *is* known about Y and her adoptive placement, he asks rhetorically what reason there is to be fear that her adoptive parents will be at all troubled by reading Angela's story, let alone so troubled as to put the placement under any real stress or in some other, as yet wholly unarticulated, way, as to be even the unwitting cause of any harm or damage to Y. In the nature of things it is reasonable to imagine that they will, as part of the adoption process, already know most of what there is to know. Moreover, it is equally reasonable to suppose that they are familiar with the previous English media publicity.

72. Not merely is there no evidence to support this part of the local authority's case. Mr Warby comments, as it seems to me with some force, that what is now being said sits most uncomfortably with the local authority's evidence, with its seeming acceptance that a significantly lesser degree of protection would suffice to meet Y's needs.

73. Mr Arnot in effect concedes that at this stage the local authority's concerns are speculation. Very frankly he concedes that "it is not known what view, if any, [Y's] adoptive parents will form of the application and the proposed publication", and equally frankly he accepts that "the adopters may be perfectly happy with the propose articles and agree with the application." But he says that it is not the fault of the local authority that evidence is lacking: it has simply not had time to investigate.

74. Now that may be so, but it is at this point that Mr Warby understandably and appropriately prays in aid section 12(3) of the Human Rights Act 1998. The substance and reality he says, and I agree, is that it is the local authority which is seeking interlocutory injunctive relief to protect Y, not merely the relief set out in its notice of application but also the further relief adumbrated by Mr Arnot. Therefore, says Mr Warby, section 12(3) applies. I agree.

75. The effect of section 12(3) is, as we have seen, that I should not grant relief impinging on anyone's Article 10 rights unless it is "convincingly established" that there is a "real prospect" of the application succeeding at trial. There is, Mr Warby submits, simply no evidence, in reality no material of any kind, that even begins to suggest, let alone convincingly establishes, that there is any, let alone any real, prospect of anyone ever demonstrating that Y is entitled to the further protection for which the local authority contends.

76. I agree with Mr Warby.

77. The starting point is, as I have already said, that Y has important – vitally important – rights protected by Article 8. I have already recognised that fact by accepting, contrary to Mr Warby's submissions, that there should be an injunction preserving Y's anonymity and restraining the solicitation of information about her. The question therefore is whether there is a case for giving Y further protection.

78. From Y's point of view the argument, as put by Mr Arnot, is that there will be (or, to be more precise, that there is a case, sufficiently compelling at this stage to overcome the section 12(3) objection, that there will be) a disproportionate interference with Y's private life, and potentially also with her family life, unless she is afforded this enhanced degree of protection. The contrary argument is that the grant of such an injunction would constitute a disproportionate interference not merely with ANL's rights under Article 10 but also with Angela's rights under Articles 8 and 10.

79. For reasons which I have already explained, Angela has a compelling claim to be allowed to tell her story, and, to the extent that her story is also Y's story, to tell Y's story as well. Indeed, on the face of it she has a compelling case for saying that Articles 8 and 10 give her the right to do so. Given what, as it seems to me, is the compelling nature of that claim, a compelling case would have to be put forward on Y's behalf were it to be said that, properly holding the balance, Y's rights should in this respect be preferred to Angela's. After all, it is not as if Y or her adoptive parents are going to be identified. I have already accepted that they should not be. So in the final analysis, what is being balanced is, on the one hand, Angela's right to tell her own story (and, albeit anonymously, that part of Y's story which, so far as Angela is concerned, came to an end with her farewell visit in 2000) and, on the other hand, not Y's right to privacy and anonymity – for that is protected by the injunction I intend to grant – but rather Y's right to be protected from reading in future (and her adoptive parents' right to be protected from reading now) matters which, it is said, will cause them distress and put the adoptive placement under strain.

80. Now let it be assumed that this case was actually to be established at trial as a matter of fact. Even then, as it seems to me, the local authority would in all probability have a very uphill task making good the argument that the balancing exercise should be resolved in favour of Y. To grant Y the enhanced degree of protection suggested by the local authority would, as it seems to me, involve an interference with Angela's rights significantly greater than – disproportionate to – the interference with Y's rights that would be the consequence of a refusal to grant such relief.

81. Be that as it may, we are not even in that position, or anything remotely like it. There is at present simply no evidential foundation for the case at all. Looking not merely to the evidence but to all the material before the court there is, in my judgment, no basis, and certainly no convincing basis, for finding that there is any real prospect of such a case ever being made good. Lest it be thought that I have overlooked the points, I make clear that this applies as much to the points referred to in paragraph [69] above as to the other aspects of this part of the local authority's case.

82. Thus far I have focussed on Angela's rights. But ANL's rights are also important. And there is a further important factor to be put into the balance. There is, in my judgment, a clear public interest in Angela's story, whatever the 'angle' from which it may turn out to be written. In his witness statement Mr Wellington says:

> "I … believe it is in the public interest for Ms Roddy to be permitted to tell her story. Ms Roddy has a compelling story to tell about the experience of getting pregnant at a young age, and the consequences which resulted, which included her being put into care, and losing her child to adoption. Her story raises crucial questions of real public interest about young people's attitudes to under–age sex and pregnancy, and how society and the authorities should deal with situations of this kind when they arise."

I emphatically agree.

83. In my judgment, the workings of the family court system and, perhaps most importantly of all, the views about the system of the children caught up in it, are, as Balcombe LJ put it in *Re W (Wardship: Discharge: Publicity)* [1995] 2 FLR 466 at p 474, "matters of public interest which can and should be discussed publicly": see further *Kelly v British Broadcasting Corp* [2001] Fam 59 at pp 77, 87, and *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895 at para [363]. So too, quite manifestly, are the wider social issues referred to by Mr Wellington. Too many young lives in our society are tragically blighted by pre–teenage pregnancies. I have just returned from Circuit where I had to deal with a mother who was even younger than Angela when she became pregnant. These are matters to be addressed with honesty and candour. They are not problems to be swept under the carpet in shame or embarrassment. These are issues that require open and public debate in the media. And what more important voice can there be in such a debate than that of a teenager who has gone through all that Angela has experienced?

84. This, as it seems to me, is yet another and compelling reason why, even if the local authority was eventually to be able to establish those facts for which there is at present absolutely no evidential foundation at all, the balance would nonetheless in all probability came down in favour of Angela and ANL and against Y.

85. For all these reasons I reject the local authority's assertion that the proper safeguarding of Y's interests requires that the media be restrained not merely from soliciting information about Y from Angela and her parents, and for that matter also from X, but moreover that the media be restrained from publishing Angela's story. That is a contention that falls at the first hurdle, for the local authority cannot get past section 12(3). But it is a contention that in my judgment would in all probability fail at trial. For even if the local authority was able to make good the factual assertion for which it contends – the risk to the stability of the adoptive placement – the balance in all probability would still come down in favour of Angela and ANL.

86. The last part of the local authority's case is the assertion that the injunction which I accept requires to be granted if Y's rights are to be adequately protected should be extended so as to prohibit the identification of the local authority. Correctly it disavows any desire to protect its own anonymity. But it says that identification of it as being the local authority involved may increase the risk of Y and her adoptive parents being identified, if not by the world at large then by those who if not part of Y's "inner circle" are within what might be described as her "outer circle," and may thus increase the risk of the adoptive placement being destabilised.

87. I was certainly not persuaded that this was so. But, somewhat against my better judgment I was persuaded that, notwithstanding section 12(3), there was just enough in the point to justify the grant of an injunction for a strictly limited period so as to enable the local authority to explore this aspect of the case further. I have to say that the opportunity for further reflection on the point over the intervening weekend has made me doubt whether I should have adopted this course, not least bearing in mind the fact that, as I have already mentioned, the local authority has already been identified in a local newspaper. As at present advised I incline to the view that I should not in fact have granted the local authority even this limited relief. But since the matter may yet come back in front of me I propose to say no more about it.

Concluding observations

88. There is one final matter I must deal with. Mr Arnot invited me to make an order requiring ANL to file with the court and serve on the local authority a copy of each article that it proposes to publish. I would in any event have declined to do so. I am not aware of any case in which such an order has been made and I can think of no case other than *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100 in which a newspaper has volunteered an article in draft. In my experience both the print and the broadcast media usually decline to share their story with the court in advance of publication or broadcast.

89. Now quite apart from any editorial reasons the media may have for adopting this stance there is, as it seems to me, very good reason why the court should not go down the road suggested by Mr Arnot. A judge can assess what is lawful or unlawful. A Judge in the Family Division may be called on to assess whether some publication is sufficiently harmful to a child as to warrant preventing it. But judges are not arbiters of taste or decency. As Neill LJ said in *In re W (A Minor) (Wardship: Restrictions on Publication)* [1992] 1 WLR 100 at p 104:

> "The court has seen a copy of the article to be published by the newspaper. It is not for me to comment on the style of the article. … But I have no doubt whatever that the newspaper should be free to publish this story and to publish it in a manner which will engage the interest of their readers."

It is not the function of the judges to legitimise "responsible" reporting whilst censoring what some are pleased to call "irresponsible" reporting. The days are past

when the business of the judges was the enforcement of morals. A judge, although it may be that on occasions he can legitimately exercise the functions of an aedile, is no censor. And as the Strasbourg jurisprudence establishes (see *Harris v Harris, Attorney–General v Harris* [2001] 2 FLR 895 at para [373]), the freedom of expression secured by Article 10 is applicable not only to information or ideas that are favourably received, or regarded as inoffensive, but also to those that offend, shock or disturb the State or any section of the community. 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 broad–sheet 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.

90. At the end of the hearing on Friday 28 November 2003 I made an order in the following terms, saying that I would give my reasons in due course: this I have now done:

> "IT IS ORDERED that:
>
> 1 The Order of Mr Justice Munby made herein on 7th July 2000 be discharged.
>
> 2 Until 4 December 2004 or further order in the meantime no person including the Defendant (whether by himself, his servants or agents or otherwise howsoever or in the case of a company, whether by its directors, servants or agents or otherwise howsoever) shall do any of the following things except to the extent permitted by paragraphs 3 and 7 of this Order:
>
> (i) publish in any book, magazine or newspaper or broadcast in any sound or television broadcast or by means of any cable or satellite programme services:
>
> (a) the name and/or address of:
>
> (1) Angela Roddy;
>
> (2) any school or any other educational institution attended by Angela Roddy;
>
> (b) any picture being or including a picture of Angela Roddy;
>
> (c) any other matter calculated to lead to the identification of Angela Roddy as being the girl who became pregnant at the age of 12;

(ii) solicit any information relating to Angela Roddy (other than information already in the public domain):

(a) from Angela Roddy;

(b) from any natural person believed to have or have had day-to-day care of Angela Roddy;

(c) from her parents;

(d) from any other person who is believed to be a relative of Angela Roddy;

(e) from the staff and/or pupils of any school or educational institution that Angela Roddy is believed to attend or to have attended;

(iii) (notwithstanding the provisions of section 12(2) of the Administration of Justice Act 1960 as amended …) include, in any publication of the text or a summary of the whole or any part of this Order, any of the matters referred to in paragraph 2(i) above;

(iv) give or seek information or conduct any negotiation for publication from the home in which Angela Roddy resides or in the presence of Angela Roddy;

(v) publish any information (other than information already in the public domain) relating to Angela Roddy that has been obtained directly or indirectly from Angela Roddy's father, Anthony Roddy.

3 The injunctions in paragraph 2 above shall not of themselves prohibit any person from publishing information falling within paragraphs 2(i), (iii) or (v) above if the publication is made:

(i) with the prior consent of Angela Roddy; or

(ii) at a time when the information is already in the public domain.

4 Until 4th December 2004 or further order in the meantime no person including the Defendant (whether by himself, his servants or agents or otherwise howsoever or in the case of a company, whether by its directors, servants or agents or otherwise howsoever) shall do any of the following things except to the extent permitted by paragraph 7 of this Order:

(i) publish in any book, magazine or newspaper or broadcast in any sound or television broadcast or by means of any cable or satellite programme services, any matter calculated to lead to the identification of [X] as the putative father of Angela Roddy's child;

(ii) solicit any information relating to [X] (other than information already in the public domain):

(a) from [X];

(b) from any natural person believed to have had day to day care of [X];

(c) from his parents;

(d) from any other person who is believed to be a relative of [X];

(e) from the staff and/or pupils of any school or educational institution that [X] is believed to attend or to have attended;

(iii) (notwithstanding the provisions of section 12(2) of the Administration of Justice Act 1960 as amended …) include in any publication of the text or a summary of the whole or in any part of this Order, any of the matters referred to in paragraph 4(i) above;

(iv) publish any intimate medical or educational information or other confidential information (other than information already in the public domain) relating to [X] that has been obtained directly or indirectly from Angela Roddy's father, Anthony Roddy.

5 Until 27 January 2018 or further order in the meantime (but without prejudice to paragraph 3 (i) above in so far as it relates to the information in paragraph 2) no person including the Defendant (whether by himself, his servants or agents or otherwise howsoever or in the case of a company whether by its directors, servants or agents otherwise howsoever) shall:

(i) publish in any book, magazine or newspaper or broadcast in any sound or television broadcast or by means of any cable or satellite programme service:

(a) the name and/or address of [Y];

(b) any picture being or including a picture of [Y];

(c) any other matter calculated to lead to the identification of [Y] as being the child of Angela Roddy, or [X] (as the putative father of [Y]);

(ii) solicit any information relating to [Y] (other than information already in the public domain) from any natural person other than Angela Roddy believed to have or have had day to day care of [Y];

(iii) solicit any information within paragraph 5(i) above at any time from any person.

6 (i) Until 4.00 p.m. on Thursday 4 December 2003 or further order in the meantime no person including the Defendant (whether by himself, his servants or agents or otherwise howsoever or in the case of a company whether by its directors, servants or agents otherwise howsoever) shall publish in any book, magazine or newspaper or broadcast in any sound or television broadcast or by means of any cable or satellite programme service any information

which identifies [the local authority] as the Authority which has had responsibility for and has made decisions in respect of the care of Angela Roddy or [Y].

(ii) If the claimant wishes to apply for an extension of this injunction notice must be given to Associated Newspapers Limited by 12.00 noon on Wednesday 3rd December 2003 together with, if possible, and if need be in draft, the evidence in support.

7. Nothing in this Order shall of itself prevent any person:

(a) inquiring of another person:

(i) as to whether that person is a person referred to in paragraph 2(ii) or 4(ii) or 5(ii) above;

(ii) whether any particular information is information within paragraph 5;

(b) publishing any particulars of or information relating to any part of the proceedings before any Court other than a court sitting in private;

(c) soliciting information relating to Angela Roddy or [X] or [Y] in the course of or for the purpose of the exercise by the person soliciting such information of any duty or function authorised by statute or by any Court of competent jurisdiction."

91. There remains the question of costs. Each side sought at least a partial order for costs against the other. Neither side has been completely successful. And the fact is that ANL would have been put to the cost of appearing before the court even if the matter had been wholly unopposed. Subject to any further submissions that either party may wish to make I propose to direct that there should be no order as to costs.

Postscript (4 December 2003)

92. On 3 December 2003 the local authority informed ANL and the court that it was not seeking any further order. Accordingly the injunction contained in paragraph 6(i) of the order I had made on 28 November 2003 expired by effluxion of time at 4pm on 4 December 2003. It follows that there is no longer any reason why the local authority should not be named. It is in fact Torbay Borough Council.

93. I have been told that the parties wish to make further submissions in relation to costs. I shall deal with that matter in due course.