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Case No: CB06C00002

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(In Public)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Handed down in private on 21 March 2007
Handed down in public on 30 March 2007

Before :

MR JUSTICE MUNBY

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In the matter of WILLIAM WARD (dob 21.4.2005)

Between :

BRITISH BROADCASTING CORPORATION — **Applicant**

- and -

(1) CAFCASS LEGAL
(2) CAMBRIDGESHIRE COUNTY COUNCIL
(3) VICTORIA WARD
(4) JAKE WARD
(5) WILLIAM WARD (acting by his children's guardian Carol Clements)
(6) CAMBRIDGE UNIVERSITY HOSPITAL NHS FOUNDATION TRUST
(7) CAMBRIDGESHIRE CONSTABULARY
(8) DOCTOR A
(9) DOCTOR B — **Respondents**

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Mr Godwin Busuttil (instructed by David Attfield, BBC Litigation Department) for the applicant
Ms Melanie Carew (of Cafcass Legal) for the first respondent
Ms Barbara Connolly (instructed by Legal Services, Shire Hall) for the second respondent (the local authority)
Mr Anthony Hudson (instructed by Harman & Harman) for the third respondent (the mother)
Ms Melanie Carew (of Cafcass Legal) for the fifth respondent (the child)
Mr David Lock (of Mills & Reeve) for the sixth respondent
Mr Barnabas Branston (instructed by Weightmans) for the seventh respondent

Mr Michael Brompton QC (instructed by Rex Forrester, The Medical Defence Union) for the eighth and ninth respondents
The fourth respondent (the father) was not represented

Hearing date : 6 March 2007

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Approved Judgment

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

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MR JUSTICE MUNBY

Mr Justice Munby :

1. Parents who were ultimately successful in resisting care proceedings begun by a local authority wish to tell their story to the British Broadcasting Corporation with a view to the BBC broadcasting a documentary about the case. The question is whether they should be able to do so and, if so, subject to what if any conditions.

The background

2. William Ward was born on 21 April 2005. On 21 July 2005 he was discovered to have fractures of his right tibia. On 16 December 2005 the local authority, Cambridgeshire County Council ("CCC"), began care proceedings. The case was based entirely upon the fractures, for CCC accepted that there was no other evidence of ill–treatment or poor parenting. A fact–finding hearing, to establish whether the threshold for making a care order had been passed, took place in the County Court before Her Honour Judge Plumstead.

3. The parents were unable to identify any cause for William's injuries from anything they had themselves seen. They hypothesised that his foot may have become trapped between his cot and his parents' bed, which was immediately beside the cot, and that he may have twisted and fractured his leg as he pulled his foot free.

4. In addition to hearing evidence from the parents, Judge Plumstead read contemporaneous notes or later reports prepared by, and in some cases also heard oral evidence from, various professionals: the family's general practitioners and various members of the medical staff at Addenbrooke's Hospital, to which William had been referred (who I shall refer to collectively as "the treating doctors"), two social workers, a police officer from the child protection team, and various medical witnesses who gave expert evidence (who I shall refer to collectively as "the expert witnesses").

5. Judge Plumstead gave judgment on 8 December 2006. She found in favour of the parents and dismissed the case. She made three crucial findings. First (paragraph 81), she found that:

> "The possibility that William caused these fractures himself is in my judgment established. The medical opinion is that it is so, albeit that they agree that they consider it improbable."

Secondly (paragraph 94), she said that:

> "I have formed the conclusion that their [scil, the parents'] evidence has not been shaken. I prefer the evidence of Mrs Ward to that of [the social worker] concerning the interview on 22nd July."

Thirdly (paragraph 96), she found that:

> "There is no cogent evidence that these parents injured their son. I am accordingly not satisfied that the significant harm suffered by him was due to him not having received the care to be expected for a reasonable parent."

That is, of course, a reference to the statutory test in section 31(2) of the Children Act 1989.

The facts

6. In May 2006, at a conference in London organised by the Eaton Foundation, a support group for families accused of harming their children, the parents met Karen Wightman, a producer/director in the BBC's documentaries department. Shortly afterwards the parents began recording a video diary of their experiences, using equipment and tapes supplied by the BBC, with a view to the footage being included in a documentary programme which it was envisaged the BBC might prepare and broadcast on television. There are now 14 tapes representing some 14 hours recording. It is important to note what the mother says in her witness statement. She states "categorically" that "there has been no covert filming of any professionals or anyone at all involved in the case" other than the family. "There has been no filming … of anyone who has had anything to do with the case apart from our family." (The word "of" does not appear in the statement but counsel for the mother confirmed to me on instructions that this was a slip and that the statement was indeed to be read with the word inserted.) Were the documentary to be made it might incorporate some 30–45 minutes of the video footage.

The proceedings

7. The following applications have been made to the court:

   i) On 6 December 2006 the mother applied for an order that Judge Plumstead's judgment be reported. Despite being given permission to do so by an order made by Judge Plumstead on 8 December 2006, the mother has not amended that application.

   ii) On 21 December 2006 the Chief Constable of Cambridgeshire applied for an order that in the event of Judge Plumstead's judgment being released the name of a police officer referred to in the judgment should be replaced by the words "an officer of Cambridgeshire Constabulary."

   iii) On 18 January 2007 the BBC applied for an order (i) that the mother and the father be permitted to disclose the video footage to the BBC (including footage

in which the child is visibly identifiable and footage in which the parents and any other individual discuss the child and/or the proceedings) and (ii) that Judge Plumstead's judgment be made publicly available. The order was sought on the basis of an assurance that the BBC would not disclose into the public domain or to third parties outside the BBC any of the video footage "if and insofar as such disclosure would constitute a breach of section 12 of the Administration of Justice Act 1960."

iv) On 13 February 2007 the Cambridge University Hospital NHS Foundation Trust ("the Trust") applied for an order that the names of the doctors employed by the Trust involved in the case are not made public.

8. On 16 February 2007 Judge Plumstead gave directions, joining the first to seventh respondents (respectively, Cafcass Legal, CCC, the mother, the father, the child, the Trust and the Cambridgeshire Constabulary) as respondents to the BBC's application; directing that each medical professional who gave evidence or whose report was filed in the care proceedings be invited to be joined as a respondent (Doctor A and Doctor B availed themselves of this invitation and in accordance with Judge Plumstead's order were joined as the eighth and ninth respondents); directing that Cafcass Legal was to consider whether it was appropriate for it to instruct an Advocate to the Court; and directing that the application be listed before a Judge of the Division on 6 March 2007. In accordance with Judge Plumstead's order the matter was listed before me *for directions* on 6 March 2007.

9. It is important to note, as Mr Godwin Busuttil on behalf of the BBC pointed out, that Dr A and Dr B have not made any formal application (their position is set out in correspondence and in a preliminary position statement / skeleton argument on their behalf prepared by Mr Michael Brompton QC). More significantly, *none* of the respondents has served the Press Association in accordance with paragraphs 3 and 4 of the *President's Practice Direction (Applications for Reporting Restriction Orders)* [2005] 2 FLR 120 and paragraph 4 of the *Practice Note (Official Solicitor: Deputy Director of Legal Services: CAFCASS: Applications For Reporting Restriction Orders)* [2005] 2 FLR 111.

The BBC's (revised) application

10. As matters developed it emerged that, subject to one very important qualification, no-one was seeking to argue against either the publication of Judge Plumstead's judgment or the disclosure to the BBC of the video footage. The qualification – and it was a major qualification – was that various participants in the process wished to preserve their anonymity. There was no objection to the public identification of the family, the child, the children's guardian, CCC, the hospital or the Cambridgeshire Constabulary. But the social workers, the police officer, and some at least of the treating doctors and the expert witnesses preferred to preserve their anonymity.

11. With a view to meeting these objections, at least for the immediate future, the BBC proposed a more limited form of order. In the first place, the BBC accepted that Judge Plumstead's judgment should be published with the names of the social workers, the police officer, the expert witnesses and those of the treating doctors employed by the Trust removed. Secondly, the BBC offered, in addition to the previously proffered assurance that the BBC would not disclose into the public domain or to third parties outside the BBC any of the video footage "if and insofar as such disclosure would constitute a breach of section 12 of the Administration of Justice Act 1960," the further assurance that it would give 14 days' notice in writing to all of those individuals and to the children's guardian of any intention to "broadcast" anything "from the video footage" which identifies them. When I pointed out that this would not prevent the BBC identifying individuals either by means other than a broadcast (for example, by publishing their names in the *Radio Times*) or, indeed, by broadcasting their names otherwise than by means of the video footage (for example, by a voiceover or in the course of an interview with the parents), Mr Busuttil readily agreed that this was not what had been intended and that, in principle, the BBC was prepared to give notice of any intention to identify, irrespective of the medium or the means.

The legal framework

12. It was – correctly – common ground between counsel that:

    i) The care proceedings in relation to William having come to an end, the restrictions imposed by section 97(2) of the Children Act 1989 no longer operate: *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83.

    ii) The only relevant statutory restrictions are those imposed by section 12 of the Administration of Justice Act 1960.

    iii) Section 12, although it prevents the publication of Judge Plumstead's judgment and imposes restrictions upon discussion of the facts and evidence in the case, does *not* prevent publication of the names of the parties, the child or the witnesses: *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142.

    iv) Accordingly, unless I agree to exercise the "disclosure jurisdiction" (see *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [84]) neither Judge Plumstead's judgment nor the video footage (to the extent that it contains, as Mr Busuttil accepts it may contain, material the disclosure of which would otherwise constitute a breach of section 12 of the 1960 Act) can be published, and unless I decide to exercise the "restraint jurisdiction" there will be nothing to prevent the public identification of the social workers, the police officer, the treating doctors and the expert witnesses.

13. It was also correctly common ground that both the disclosure jurisdiction and the restraint jurisdiction have to be exercised in accordance with the principles explained by Lord Steyn in *In re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, at para [17], and by Sir Mark Potter P in *A Local Authority v W* [2005] EWHC 1564 (Fam), [2006] 1 FLR 1, at para [53], that is, by a 'parallel analysis' of those of the various rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms which are engaged, leading to an 'ultimate balancing test' reflecting the Convention principle of proportionality: see *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, and *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam).

14. In the present case the balancing exercise, the 'parallel analysis' leading to the 'ultimate balancing test', involves consideration of Articles 6, 8 and 10 of the Convention.

15. Article 6 guarantees the right to a fair trial. Article 8 guarantees the right to "respect for … private and family life", subject to any limitation which can be shown to be "in accordance with the law and … necessary in a democratic society" *inter alia* "for the protection of the rights and freedoms of others." Article 10 guarantees the right to "receive and impart information and ideas without interference by public authority", subject to any limitations which can be shown to be "prescribed by law and … necessary in a democratic society" *inter alia* "for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

16. In the nature of things the interests which are here in play are very similar to those which I had to consider in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [93], and in *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam) at para [80]. I need not repeat the analysis.

Disclosure of Judge Plumstead's judgment

17. I can take this very quickly. There is an emerging consensus that, at least in care cases, judgments should be published, albeit in anonymised form, if not as a matter of routine (as I and some other judges believe) then at the very least very much more frequently than in the past: see *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [104], *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam) at paras [106]-[110] and *Re Brandon Webster, Norfolk County Council v Webster (No 2)* [2006] EWHC 2898 (Fam) at paras [57]-[59].

18. Subject only to the question of anonymisation (see below) there is no reason why Judge Plumstead's judgment should not be published and every reason, in my judgment, why it should be published. Quite apart from the general public interest in publishing such judgments, the parents want the judgment to be published and,

subject again to the question of anonymisation, there is no-one expressing a contrary view. As Mr Busuttil fairly observed, it is difficult to see how there could be any sensible objection to the publication of a suitably anonymised version of Judge Plumstead's judgment. I agree.

19. In my judgment, subject only to the issue of anonymisation, a proper application of the 'ultimate balancing test' comes down heavily – indeed, overwhelmingly – in favour of publication of Judge Plumstead's judgment.

Disclosure of the video footage

20. Again, I can take this shortly because, subject only to the question of anonymisation, there is little controversy between the parties.

21. Mr Busuttil, on behalf of the BBC and Mr Anthony Hudson on behalf of the mother, made common cause. They assert, and I agree, that the BBC can pray in aid powerful arguments based both on Article 10 and on Article 6. Mr Busuttil and Mr Hudson refer in this connection to *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at paras [97]-[99], [133]-[134], and to *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam) at paras [17]-[36], [74]-[75], [85], [100], [104] and [122].

22. The BBC's application is supported by the parents, whose right to make such disclosure, if they wish, engages, as Mr Busuttil and Mr Hudson observe, both Article 8 and Article 10: see *Re Roddy (A Child) (Identification: Restriction on Publication)* [2003] EWHC 2927, [2004] 2 FLR 949, at paras [35]-[36], *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at paras [93] and [95], and *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam) at paras [80] and [84]. Moreover, as Mr Busuttil submits, referring for this purpose to *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at page 201, *Greene v Associated Newspapers Ltd* [2004] EWCA Civ 1462, [2005] QB 972, at para [68], and *Galloway v Telegraph Group Ltd* [2006] EWCA Civ 17, [2006] EMLR 221, at paras [78]-[83], the parents have a powerful interest, also protected by Article 8, in seeking to protect and vindicate their reputations publicly, a right which, as he points out, is also supported by a powerful public interest in such vindication. As Lord Nicholls of Birkenhead said in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at page 201:

> "Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of

> reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely."

This point has a particular resonance in the present case where the parents were, at one stage, suspended by their employer – as it happens, CCC.

23. Cafcass Legal, for this purpose separately representing both William and the children's guardian, reports that the guardian "has no concerns about the welfare of the child in relation to this application" and that it has no concerns about the position of the guardian herself. It is accordingly content to consent to the order being sought by the BBC. Subject to issues of anonymisation, the application is not opposed by either CCC or the Cambridgeshire Constabulary. The same goes for the Trust and for Doctor A and Doctor B, though both, through the mouths of, respectively, Mr David Lock and Mr Brompton, made submissions to the effect that the form of order being proposed by the BCC was inadequate to protect their anonymity in the way which, as they would have it, was necessary if their Convention rights were to be properly safeguarded.

24. Mr Busuttil submits that the circumstances of the case strongly favour the grant of the limited disclosure being sought by the BBC. Subject to the important question of anonymisation, I agree. I agree also with Mr Busuttil's and Mr Hudson's further submission that, subject always to the issue of anonymisation, disclosure of the video footage to the BBC would constitute at most a negligible or *de minimis* interference with any countervailing right or legitimate interest that either has been or could be asserted by William or by any other person conceivably affected by that disclosure. Moreover, and in any event, the conditions upon which I propose to grant permission for that disclosure will in my judgment, and as Mr Busuttil submits, provide entirely "effective and adequate safeguards" to protect those rights and interests: see *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [113].

25. I turn therefore to the crucial issue of anonymisation.

Anonymity

26. The BBC founds it claim on its right under Article 10 to "receive," and then in due course to "impart," information and ideas without interference by public authority. The BBC also relies upon Article 6 as recognising and protecting the principle of open justice. There is a public interest, an interest of the community as a whole, in promoting the administration of justice, in maintaining the authority of the judiciary and in maintaining the confidence of the public at large in the courts. An important aspect of this is that justice must be administered in public – or at least in a manner which enables its workings to be properly scrutinised – so that the judges *and other participants in the process* remain visible and amenable to comment and criticism: see

Re Brandon Webster, Norfolk County Council v Webster [2006] EWHC 2733 (Fam) at para [80].

27. But those caught up in the proceedings can also pray in aid their rights under the Convention, rights which may pull in the other direction. Witnesses have rights protected by both Article 6 and Article 8.

28. Under Article 8, with its guarantee of the right to respect for private life, a witness has a personal interest which may, in appropriate circumstances, require the court to preserve the confidentiality of information about him or the confidentiality of information supplied by him in the course of the proceedings, just as it may require the court to protect his anonymity: see *Doorson v The Netherlands* (1996) 22 EHRR 330 and *Z v Finland* (1998) 25 EHRR 371. This is well recognised in the context of family proceedings: see, for example, *A Health Authority v X (Discovery: Medical Conduct)* [2001] 2 FLR 673 (appeal dismissed [2001] EWCA Civ 2014, [2002] 1 FLR 1045), *Re B (Disclosure to Other Parties)* [2001] 2 FLR 1017, *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, and *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam).

29. But in addition to these purely personal interests there are also wider public interests which may point in favour of privacy and anonymity for witnesses: see *Re X (Disclosure of Information)* [2001] 2 FLR 440 at para [24].

    i) First, there is a public interest in encouraging frankness in children's cases. It is in the public interest that potential witnesses in such proceedings are not deterred from giving evidence by the fear that their private affairs or privately expressed views will be exposed to the public gaze.

    ii) Secondly, there is a public interest in encouraging co-operation from independent experts and other professionals.

    iii) Finally, there is a public interest in preserving faith with those who have given evidence to the family court in the belief that their evidence or their identity would remain confidential.

    Be all this as it may, however, it has to be borne in mind that whilst persons who give evidence in child proceedings can perhaps assume that their evidence will remain confidential – an assumption which in the light of more recent developments is probably less justified now than in the early 1990s – they are not entitled to assume that it will remain confidential in all circumstances.

30. It needs to be borne in mind that, although the children's guardian, the social workers, the police officer, the treating doctors and the expert witnesses may have a common desire for anonymity, they stand in what may be significantly different positions.

Treating doctors are only infrequently and incidentally involved as witnesses in care proceedings – and then essentially as witnesses (and, it is to be noted, compellable witnesses) of historical fact. Social workers and police officers in child protection teams, in contrast, are employed in jobs which, in the nature of things, mean that they will not infrequently – social workers more frequently than police officers – have to give evidence in care proceedings, evidence which is often a mixture of historical fact and opinion. A children's guardian is employed to perform a task whose very *raison d'être* is the giving of evidence to the court and whose primary function, in addition to reporting what the child, if old enough, has said, is to offer advice to the court. And an expert witness is someone who, in consideration of the payment of a fee, and in marked contrast, for example, to the treating doctors, has *chosen* to proffer expert opinion evidence for the purpose of the particular proceedings.

31. These differences are reflected in the fact that, whereas Mr Lock on behalf of some of the treating doctors focussed his submissions on Article 8, Mr Brompton on behalf of Doctor A and Doctor B, two of the expert witnesses, extended his submissions to embrace also Article 6: cf, the analysis in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at paras [127]-[130] and in *British Broadcasting Company v Rochdale Metropolitan Borough Council and X and Y* [2005] EWHC 2862 (Fam), [2007] 1 FLR 101, at para [37].

32. The children's guardian, as I have said, does not claim anonymity. And one can see certain obstacles in the way of any claim to anonymity for the social workers and the police officer given the observations of Thorpe LJ in *Re W (Care Proceedings: Witness Anonymity)* [2002] EWCA Civ 1626, [2003] 1 FLR 329, at para [13], and, more generally, the reasoning and the decision of Ryder J in *British Broadcasting Company v Rochdale Metropolitan Borough Council and X and Y* [2005] EWHC 2862 (Fam), [2007] 1 FLR 101. That said, difficult issues may arise in relation to the claims for anonymity by the social workers, the police officer and, even more so perhaps, the treating doctors.

33. However, and be all that as it may, there is, as the analysis in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at paras [87]-[90], [100]-[103], [127]-[131], demonstrates, an especially acute and difficult dilemma when it comes to considering the position of Doctor A and Doctor B and the other expert witnesses.

34. On the one hand there are powerful arguments, founded in the public interest, for denying expert witnesses anonymity. These include the following, though no doubt there are others:

    i) First, there is, it might be thought, a general public interest in knowing the identity of an expert witness. As Watkins LJ memorably observed in *R v Felixstowe Justices ex p Leigh* [1987] QB 582 at page 595, "There is … no such person known to the law as the anonymous JP." Advocates do not have

anonymity. In the same way, it might be thought, the courts should be chary (to put it no higher) of admitting the anonymous expert.

ii) Secondly, there is a particular and powerful public interest in knowing who the experts are whose theories and evidence underpin judicial decisions in relation to children which are increasingly coming under critical and sceptical scrutiny.

iii) Thirdly, there is the equally important public interest, especially pressing in a jurisdiction where scientific error can have such devastating effects on parents and children, not only of exposing what Sedley LJ (in *Re C (Welfare of Child: Immunisation)* [2003] EWCA Civ 1148, [2003] 2 FLR 1095, at para [36]) once called "junk science" but also of exposing other less egregious shortcomings or limitations in medical science.

iv) Fourthly, and leading on from the last two points, there is a powerful public interest in knowing whether or not someone putting himself forward as an expert has been criticised by another judge or other judges in the past. Thus the sorry saga of Dr Paterson can be traced through the successively reported judgments of Cazalet J in *Re J (Child Abuse: Expert Evidence)* [1991] FCR 193, of Wall J in *Re AB (Child Abuse: Expert Witnesses)* [1995] 1 FLR 181 and of Singer J in *Re X (Non-Accidental Injury: Expert Evidence)* [2001] 2 FLR 90. In each of those cases, it may be noted, Dr Paterson and the other expert witnesses were named in otherwise anonymised judgments. But in contrast the identity of the so-called 'independent social worker' and 'counsellor' Jay Carter criticised in damning terms in *Re JS (Private International Adoption)* [2000] 2 FLR 638 and again in *Flintshire County Council v K* [2001] 2 FLR 476 (the 'internet twins' case), was not known to the public until she was publicly exposed and named in the judgment in *Re M (Adoption: International Adoption Trade)* [2003] 1 FLR 1111. As a commentator has observed (Camilla Cavendish, *The Times*, 29 March 2007), "In the dark, we cannot see whether patterns of injustice exist."

35. On the other hand, there is an important public interest which, it might be said, justifies preserving the anonymity of expert witnesses involved in care proceedings. This work, though very important, is voluntary. The concern is that if expert witnesses in care cases are publicly identified this will be likely to lead to a further drain on the already diminishing pool of doctors and other experts willing to do child protection work. Doctors and experts in other disciplines may be yet further disinclined to do such work if they see that the evidence they give to the court on the understanding that it (and their own identities) will remain confidential may become public knowledge and be the subject of public criticism. The already inadequate number of experts willing to assist the courts in vitally important child protection cases may, it is feared, be even further reduced.

36. In this context I note that the Family Justice Council in its response in November 2006 to the Government's Consultation Paper on Transparency in the Family Courts recognised at para 34 that:

> "There is likely to be an increasing reluctance on the part of professional and expert witnesses to participate in court proceedings if they are to be subjected to the scrutiny of the media. This could lead to increasing delay in dealing with some family cases."

37. Thus there are important public interests involved here, just as there are the important personal interests of the social workers, the police officer, the treating doctors and the expert witnesses to be borne in mind. And these interests require to be carefully considered and, where appropriate, properly protected. But these are not issues which I can resolve today within the confines of what is only a comparatively short directions hearing. They are, moreover, as I have sought to demonstrate, issues of some complexity on which the court will require more detailed arguments than those which, understandably in the circumstances, have been prepared for the purposes of this hearing and, furthermore, issues in relation to which the parties may wish to adduce further evidence (for example, evidence of the kind referred to in *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at paras [87]-[89]).

A further problem

38. I suspect that the treating doctors and the expert witnesses are not so concerned, or so greatly concerned, at the publication of the bare fact that they have been involved in the events giving to rise the care proceedings or that they have given evidence in the course of the proceedings. Nor, as I have indicated, have they any real concern about the publication of an *anonymised* judgment. (And there are, after all, difficulties in asserting confidentiality in relation to anonymised information: see *R v Department of Health ex p Source Informatics Ltd* [2001] QB 424.) Their real concern arises out of the *combination* of (i) public knowledge of their involvement *linked with* (ii) the public knowledge about the facts and details of the case which will arise from, or at the very least be significantly enhanced by, the publication, even if anonymised, of Judge Plumstead's judgment.

39. There is, as it seems to me, a real problem here – both a problem of principle and a practical problem. It is a problem which arises because, absent any injunction, there is, for reasons I have already explained, nothing to prevent anyone who is 'in the know' making a public link between the anonymised reference in a judgment to Dr X and the fact (the publication of which is *not* prevented by section 12 of the 1960 Act) that Dr X is actually the well-known expert Professor Smith-Brown-Jones.

40. There is, as I have said, an emerging consensus that, at least in care cases, judgments should be published, albeit in anonymised form, if not as a matter of routine then at the very least very much more frequently than in the past. But this, paradoxically it

might be thought, is in fact the very reverse of the statutory scheme which is, to repeat, that while section 12 of the 1960 Act in principle prevents the publication of judgments unless they have been delivered in public, it does not protect anyone's anonymity even while the proceedings are current, let alone after they have come to an end. And section 97 of the 1989 Act ceases to protect the child's anonymity once the proceedings have come to an end. So once that stage is reached – as it has been in the present case – no-one's anonymity is protected.

41. It follows that what is, at least on one view, the desired outcome in such a case – that is, permitting the release of an anonymised version of a judgment in such a way that it remains anonymised – can as a matter of principle be achieved only if the court simultaneously exercises both the disclosure jurisdiction, in order to permit the release of the judgment, and the restraint jurisdiction, in order to protect the anonymity of those whose identities ought, for some proper reason, to be protected. As Ryder J said in *Oldham MBC v GW, PW and KPW (A Child)* [2007] EWHC 136 (Fam) at para [102] – a judgment delivered since the hearing before me on 6 March 2007:

> "The proceedings are now at an end and accordingly if this judgment is handed down in public neither section 12 of the Administration of Justice Act 1960 nor section 97(2) of the Children Act 1989 will protect the identity of anyone including the child: *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83. Having exercised the 'disclosure jurisdiction' to release the judgment into the public domain it is necessary to simultaneously exercise the 'restraint jurisdiction if the identity and whereabouts of K and his family are to be protected."

I entirely agree. But at this point, as it seems to me, one comes up against both a procedural point and a point of substance.

42. In relation to any exercise of the restraint jurisdiction there is, as a matter of procedure, the need to comply both with section 12(2) of the Human Rights Act 1998 and with the *President's Practice Direction* and the *Practice Note*.

43. In such a case there is also, as a matter of substance, the need to go through the 'balancing exercise,' and that, as Lord Steyn emphasised in *In re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, at para [17], necessitates "an intense focus on the comparative importance of the specific rights being claimed in the individual case." As Sir Mark Potter P put it in *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83, at para [64], "such applications fall to be decided not on the basis of rival generalities but by focussing on the specifics of the rights and interests to be balanced in the individual case." The same principled concern animates Thorpe LJ's questioning in *Pelling v Bruce-Williams (Secretary of State for Constitutional Affairs Intervening)* [2004] EWCA Civ 845, [2004] Fam 155, [2004] 2 FLR 823, at para [54], whether "either the inherent or the statutory jurisdiction justifies the imposition of an automatic restriction [scil, protecting anonymity] without the exercise of a specific discretion in the individual case" and his

recognition at para [49] that "the time has come for the court to consider in each case whether a proper balance of competing rights requires the anonymisation of any report of the proceedings and judgment following a hearing that was conducted in public and, therefore, open to all who cared to attend." As I commented in *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam) at para [72], although Thorpe LJ's observations may have been directed specifically to practice in family cases in the Court of Appeal – hence his reference to hearings conducted in public – they have a much wider resonance.

44. Now on one view, if the question arises (whether of the court's own motion or on application made) as to whether a judgment delivered in chambers is to be released (either in anonymised or, indeed, in non-anonymised form), the only principled approach is that:

i) the court must first give everyone referred to in the judgment an opportunity of considering, before the judgment is released even in anonymised form, whether or not to apply for an order protecting their anonymity – that was, in substance, done in the present case;

ii) if anyone wishes to make such an application it must be made in compliance with the requirements of section 12 of the 1998 Act and the *President's Practice Direction* and the *Practice Note* – that, as I have already observed, was not done in this case; and

iii) the court should not release the judgment (even in anonymised form) until *after* it has adjudicated on any application for anonymity.

45. I say the only principled approach, because it can be said with some force that no other approach properly gives effect to the court's twin obligations: first, its obligation properly to consider the Convention rights of those seeking to protect their anonymity and, at the same time, second, its obligation properly to consider the Convention rights of those who would be adversely affected by an anonymity order and, in particular, its obligation to comply with section 12(2) of the 1998 Act.

46. As against that, it can be said with some force that a rigorous compliance with this principled approach may have the disadvantages (i) of condemning those involved to an unnecessarily complex procedure in every case, when (it may be said) in many (or even, perhaps, in most) cases where an anonymised judgment is published there will either be no-one seeking in fact to 'name names' or no-one with an interest in preventing the 'naming of names' and (ii) of reducing the number of judgments which are in fact released for publication.

47. I have rehearsed these points in some detail because the present case, in light of the way it has come before the court and has been argued (see below), has focussed attention on problems which have hitherto not been subjected to as much scrutiny as

the complexity of the issues – both the issues of principle and the issues of practicality – might be thought to warrant. (I might add that the point which Mr Busuttil has very properly and helpfully raised in this case was not raised before me in the *Webster* litigation, where it was accepted that if an injunction to protect anonymity was even arguably appropriate – as I held it was – it was appropriate for me to 'hold the ring' by granting an interim injunction until after final judgment in the care proceedings, leaving it to the media, and indeed anyone else who objected, to apply to discharge it: see *Re Brandon Webster, Norfolk County Council v Webster* [2006] EWHC 2733 (Fam) at paras [116]-[119], *Re Brandon Webster, Norfolk County Council v Webster (No 2)* [2006] EWHC 2898 (Fam) at paras [59], [62]-[64], and para 4 of the order set out in para [71] of the latter judgment.)

48. But these, again, are not issues which I can resolve today within the confines of this directions hearing. And they are, moreover, as can be seen, issues of some complexity on which the parties may wish to adduce more detailed arguments than those which have been prepared for the purposes of this hearing. (They are also, I might add, issues that may need to be addressed by those considering the way forward in the light of the Government's Consultation Paper on Transparency.)

49. Since the hearing, and indeed since I prepared this judgment, Ryder J has given judgment in *Oldham MBC v GW, PW and KPW (A Child)* [2007] EWHC 136 (Fam). He dealt with this point at para [103], when he observed that:

> "In the 'ordinary' circumstance I would have been constrained not to release this judgment until after there had been an adjudication on anonymity, involving service of a restraint application upon the media in accordance with the *President's Practice Direction* … and the *Practice Note* … and so as to comply with section 12(2) of the Human Rights Act 1998. However, fortuitously, in this case and at an earlier stage of the proceedings those steps were take and a *contra mundum* order was made".

I am inclined to agree; indeed, I have some difficulty in seeing any answer to Ryder J's analysis.

The way forward

50. On one view of the matter the most appropriate course would simply have been for the court, having identified these problems, to adjourn all the applications, giving appropriate directions, for example, in relation to service of the proceedings in accordance with the *President's Practice Direction* and the *Practice Note*, the lodging of further skeleton arguments, and the fixing of a substantive hearing at which all these issues could be explored at appropriate length.

51. On the other hand, both the BBC and the mother were anxious that I should make the orders, which (subject to questions of anonymity) no-one opposed, authorising publication of Judge Plumstead's judgment and the disclosure to the BBC of the video footage.

52. I was prepared to sanction this course (at a time when I did not have the benefit of Ryder J's judgment in *Oldham MBC v GW, PW and KPW (A Child)* [2007] EWHC 136 (Fam)) but only if the interests of those seeking anonymity were fully protected in the meantime. And the view I took was that the safeguards being proposed by the BBC did not go far enough in this respect. After all, the only protection afforded to the treating doctors and the expert witnesses by the BBC's proposed assurance (see paragraph [11] above) was that the BBC would give them prior notice of any intention *by the BBC* to publish their identities. Absent a *contra mundum* injunction, there would be nothing to prevent some other organ of the media, perhaps alerted to the 'story' by the kind of publicity which the hearing before me might itself generate, and perhaps with a very different 'agenda' from that of the BBC, going ahead and revealing individuals' identities in circumstances where, once the 'cat was out of the bag,' there might be little or nothing to be done to protect the anonymity of those who had been 'outed.'

53. In principle, therefore, it seemed to me that I should then and there make the orders sought by the BBC and the mother only if, at the same time, I imposed a *contra mundum* injunction prohibiting the identification of the social workers, the police officer, the treating doctors and the expert witnesses. Only in that way, as it seemed to me, could I be assured that their identities would be protected pending full argument on the outstanding issues.

54. It was at this point that the problem, as I have described it, first surfaced in clearly visible form, for there was dispute between Mr Busuttil on the one side and Mr Lock and Mr Brompton on the other side as to the period for which I should grant that injunction. All three, albeit for very different reasons, favoured the view that any injunction should be granted for a defined period of time, rather than being granted indefinitely.

55. Mr Lock and Mr Brompton argued for a very long period, Mr Lock contending for a period of twenty years on the basis that by then the relevant clinicians would have ceased to work. Mr Lock elaborated that contention by submitting that once the court had reached the view that it was right to impose an order *contra mundum*, it could not be right that his clients should need to make a further application merely because the BBC gave notice. He submits that the right period is that during which it could reasonably be judged that, if the identities of the treating doctors were publicised, there is a danger that they will be subject to harassment. He points to *Re B (A Child) (Disclosure)* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, as showing the extent of the problem faced by medical staff. He says that as long as the relevant doctors and other medical staff are continuing to treat children and possibly refer them to social services for suspected child abuse, there is a danger that the events surrounding this case could be publicised. He therefore suggests that a period of up to 20 years (being

the approximate period the individual clinicians will continue to work) is potentially needed before the matters could be considered so stale that they would not attract this type of danger if referred to in a broadcast. Recognising the reach of this submission he points, however, to the fact that at all times any media outlet wishing to broadcast or publish would of course have the right to apply to vary the terms of the order.

56. Mr Busuttil countered that any such period, whether five years, ten years or twenty years, was purely arbitrary and, moreover, unjustifiable as a matter of principle, for in effect such an order would mean that those protected by the injunction would have obtained relief in breach of section 12(2) of the 1998 Act, without complying with the *President's Practice Direction* and the *Practice Note*, and in circumstances where the onus would be put on those injuncted to apply to discharge an injunction when those seeking injunctive relief had never been put to the test of justifying their claim at a contested substantive hearing.

57. Mr Busuttil proposed that the injunction should be expressed to remain in effect:

> "until 28 days after written notification is given by the [BBC] to the respondents (a) of the first broadcast of a television programme made by the [BBC] based on the video footage … (such notification to be given by the [BBC] no later than 7 days after the first broadcast of such a programme) or (b) that it does not intend to proceed with the production of a television programme based on the said video footage, whichever is the sooner, or until further order in the meantime."

It will be noted that the effect of this is that the *contra mundum* injunction I propose to grant will prohibit the BBC identifying the social workers, the police officer, the treating doctors and the expert witnesses in any broadcast unless it has first successfully applied to vary or discharge the injunction.

58. I can do no better than to set out, largely word for word, Mr Busuttil's submission in support of this approach. He asserts that the guiding principle is that the order should last for no longer than is necessary to achieve the purpose for which it is made: see paragraph 6 of the *Practice Note*. The relevant concern here, he says, is the possibility of a television programme broadcast by the BBC which identifies the individuals. Once that concern has gone, if any of them consider that they need further protection against the world at large, they should at that stage, he says, make an application for an injunction in accordance with paragraphs 3 and 4 of the *Practice Note*. Furthermore, he says, 28 days after notification by the BBC that the 'television programme of concern' has gone, pending which they will continue to have the benefit of the protection provided by an order in such terms, should be sufficient time for any of them to prepare an application for further injunctive relief.

59. Mr Busuttil adds that his suggested form of order represents what he calls "a fair and principled solution" according with the *Practice Note*, whilst to pick an arbitrary date

some time in the future does not, he says, not least because the injunctive relief has not been granted with the prior notice to the media required by section 12(2) of the 1998 Act and by the *President's Practice Direction* and the *Practice Note*. (The fact that the BBC has had notice is, of course, neither here nor there for this purpose, because other organs of the media may, as I have already observed, have very different 'agenda' from the BBC.)

60. Mr Brompton's response was to suggest that Mr Busuttil's proposal was wholly inadequate. As it stands, he submits, the BBC or the family could – after the broadcast has taken place or the decision taken not to broadcast – convey the doctors' identities to any other organ of the media, who could themselves publish the information with impunity. The right of the individuals affected to make an application if they consider they need further protection against the world at large at that stage, he says, is hollow, for they will know nothing of the intentions of others, whose interest in the matter may have been stirred by a BBC broadcast. He submits that if a *contra mundum* order is necessary now, it will be even more necessary then. Mr Busuttil's answer was to point out that the order would continue in force in any event until 28 days after BBC has given written notification; in other words, the individuals affected would have 28 days thereafter in which, if so advised, to apply to the court for further injunctive relief *contra mundum* or against any specific person in accordance with section 12 of the 1998 Act and the *President's Practice Direction* and the *Practice Note.*

61. Mr Brompton's riposte was that it is inevitable that Doctor A and Doctor B (and no doubt others) will wish the injunctive relief to continue after the 28 day period has elapsed. He submitted that, in the context of this case and, in particular, having regard to the fact that the BBC has been a party to these proceedings, there is no material distinction between (a) re-applying on notice via the Press Association and (b) serving notice of the existing order (with liberty to the *mundum* to apply to discharge), adding that the former will certainly involve the incurring of another set of costs whilst the latter may not.

62. I agree with Mr Busuttil, and essentially for the reasons he gives, that this part of the order should be in the terms he proposes. It is, in my judgment, the more principled solution. It gives those who are arguably entitled to anonymity protection until just after the event (the broadcast by the BBC) when their anonymity might otherwise be imperilled by the disclosure of the video footage to the BBC which I have authorised. And it gives them adequate time, once the BBC has given them notice, to mount any further application which they may wish to bring in order to continue their anonymity. In the meantime, as I have pointed out, the effect of the *contra mundum* injunction will not merely be to prohibit the world at large identifying the social workers, the police officer, the treating doctors and the expert witnesses; it will also prohibit the BBC identifying them in any broadcast unless the BBC has first successfully applied to vary or discharge the injunction.

63. That takes me on to the other matter which divides Mr Busuttil on the one hand and Ms Connolly on behalf of CCC and Mr Lock and Mr Brompton on the other hand: the

period of notice to be given by anyone (the BBC included) who wishes to apply to vary or discharge the *contra mundum* injunction.

64. Mr Busuttil submits that this should be the period of 48 hours which is usual with such injunctions. He proposes the following wording:

> "The parties and any other person affected by any of the restrictions in paragraphs (3) to (5) [of the order] are at liberty to apply to vary or discharge this order on no less than 48 hours' notice to the parties."

Ms Connolly and Mr Brompton submit that the BBC should be required to give 28 days' notice. They propose the addition of the following words:

> "and, in the case of the [BBC], no less than 28 days before the date scheduled for the broadcast of any television programme in which it proposes to publish any matter referred to in paragraph (3) [of the order]."

Mr Lock would go further. He submits that the appropriate wording is:

> "and, in the case of the [BBC] or any other media organisation which wishes to broadcast any material that is prohibited by the terms of this order, upon such an application being made and served the matter shall be listed for directions with a final hearing on the application being listed not less than 28 days after the date when the application is served on all the parties."

65. I reject Mr Lock's approach. Given the importance of the rights protected by article 10, it seems to me as a matter of principle that anyone affected by a *contra mundum* order of this type must be permitted to apply to the court on short notice. And it is not for the judge who grants such an injunction to stipulate in advance how such an application, when made, is to be dealt with by the court – perhaps many years in the future (as in *British Broadcasting Company v Rochdale Metropolitan Borough Council and X and Y* [2005] EWHC 2862 (Fam), [2007] 1 FLR 101) and in circumstances that may be unforeseen or even unforeseeable. That must be a matter for the judge hearing the application, who can, I am sure, be relied upon to give whatever directions for the filing of evidence and timetabling of the substantive hearing are fair, just and appropriate in the circumstances then presented.

66. On the other hand, it seems to me that the BBC stands in a rather different position. *It* has come to court seeking discretionary relief – in particular, the disclosure of the video footage – in circumstances where, for reasons I have already explained, it seems to me that such disclosure should be made here and now only if, at the same time, I impose a *contra mundum* injunction. It seems to me not unreasonable to require the BBC in these circumstances to give rather more notice than would otherwise be required. And after all, albeit the actual terms of the assurance proffered by the BBC

were not altogether satisfactory, the fact is that the BBC has acknowledged (see paragraph [11] above) that it should give some degree of prior notice of its intentions to those affected by the relief it has (in the event successfully) sought.

67. I have already drawn attention to some of the deficiencies, as I see them, in what the BBC has proffered. Moreover, and despite everything pressed on me by Mr Busuttil, I do not think that 14 days' notice is necessarily adequate to enable those potentially affected by the BBC's broadcast to mobilise their arguments and, more particularly, their evidence. As against that, and looking to the realities of a situation where the BBC will know, much sooner than 14 days' before, precisely when such a documentary will be broadcast, I am wholly unpersuaded that I will be inflicting any disproportionate burden on the BBC by requiring it to give 28 days' notice.

68. I propose, therefore, to invite the BBC to give an assurance to the respondents in the following terms:

> "that the [BBC] has confirmed to the respondents that it will provide not less than 28 days' notice in writing of any intended publication or broadcast by it of … any matter referred to in paragraph (3) [of the order]."

This will in substance, as it seems to me, meet Ms Connolly's and Mr Brompton's requirements. If the BBC is not prepared to offer an assurance in these terms then I will make an order in corresponding form.

69. In the event the BBC was prepared to give the assurance and to extend it to cover the children's guardian, notwithstanding that she has not sought anonymity.

The order

70. Accordingly, I made an order in the following terms:

> "UPON IT BEING NOTED that the Applicant has confirmed to the Respondents that it will provide not less than 28 days' notice in writing of any intended publication or broadcast by it of (a) any matter calculated or likely to lead to the identification of the Fifth Respondent's Children's Guardian as having been involved in these proceedings as the Fifth Respondent's Children's Guardian or (b) of any matter referred to in paragraph (3) below, such notice to be given by …
>
> IT IS ORDERED:
>
> Duration of Order

(1) This Order is to have effect until 28 days after written notification is given by the Applicant to the Respondents (a) of the first broadcast of a television programme made by the Applicant based on the video footage referred to in paragraph (11) below (such notification to be given by the Applicant no later than 7 days after the first broadcast of such a programme) or (b) that it does not intend to proceed with the production of a television programme based on the said video footage, whichever is the sooner, or until further Order in the meantime, such notification to be given by ….

Who is bound by this Order

(2) This Order binds all persons, including the Applicant (whether acting by its officers, servants or agents or otherwise howsoever) and the Third and Fourth Respondents (whether acting by themselves or by their servants or agents or otherwise howsoever) and all companies (whether acting by their directors or officers, servants or agents or otherwise howsoever), who know that this Order has been made.

Restrictions

(3) Subject to paragraph (4), this Order prohibits the publishing in any book, magazine or newspaper or broadcasting in any sound or television broadcast or by means of any cable or satellite programme service or public computer network ('publishing') of any matter calculated or likely to lead to the identification of:

(i) any social work professional (social worker or social work manager) presently or formerly employed by the Second Respondent who was involved in proceedings before the Court in which powers under the Children Act 1989 were exercised by the Court with respect to the Fifth Respondent ("the Proceedings");

(ii) any medical professional (doctor or nurse) presently or formerly employed by the Sixth Respondent and any other medical professional (doctor or nurse) who had any connection with the treatment of the Fifth Respondent in 2005 or thereafter or the decision to refer his case to the Second Respondent in 2005;

(iii) a police officer of the Seventh Respondent involved in the Proceedings, whose name and work address is detailed in Schedule 1 to this Order;

(iv) the Eighth or Ninth Respondent, whose names and work addresses are detailed in Schedule 1 to this Order; or

(v) any other medical professional who gave evidence, written or oral, whose evidence was filed in the Proceedings and whose names and work addresses are detailed in Schedule 1 to this Order.

(4) Paragraph (3) of this Order only prohibits publication in a manner calculated or likely to lead to the identification:

(i) of any individual referred to in paragraph (3)(i), as a social work professional presently or formerly employed by the Second Respondent who was involved in the Proceedings;

(ii) of any individual referred to in paragraph (3)(ii), as a medical professional who had any connection with the treatment of the Fifth Respondent in 2005 or thereafter or the decision to refer his case to the Second Respondent in 2005;

(iii) of the individual referred to in paragraph (3)(iii), as a police officer involved in the Proceedings; or

(iv) of any individual referred to in paragraph (3)(iv) or (v), as having given evidence in the Proceedings.

(5) Save for service of this Order in accordance with paragraph (6) below, no publication of the text or a summary of any part of this Order (or any other Order made in the Proceedings) may include any of the matters referred to in paragraph (3) above.

Service

(6) Copies of this Order endorsed with a penal notice be served:

(a) on such newspaper and sound or television broadcasting or cable or satellite programme service as the Second, Sixth, Seventh, Eighth or Ninth Respondent may think fit in each case by fax or first-class post addressed to the editor in the case of a newspaper or senior news editor in the case of a broadcasting or cable or satellite programme service; and

(b) on any other person as any of the parties may think fit, in each case by personal service.

(7) Any person affected by this Order may enquire whether a particular individual is protected by paragraph (3) above, such enquiry to be made:

(i) in the case of an individual thought to be protected by paragraph (3)(i) above, to … ; or

(ii) in the case of any individual thought to be protected by paragraph (3)(ii) above, to …

(8) In the event that this Order ceases to have effect in accordance with paragraph (1) above, any party which in the meantime has served a copy of this Order on any person shall notify that person in writing that this Order is no longer effective, such notification to be served by fax or first-class post no later than 7 days after this Order has ceased to have effect.

Further applications about this Order

(9) The parties and any other person affected by any of the restrictions in paragraphs (3) to (5) above are at liberty to apply to vary or discharge this Order on no less than 48 hours' notice to the parties.

Judgment of HHJ Plumstead dated 8 December 2006

(10) The judgment handed down by HHJ Plumstead in the Proceedings in the Cambridge County Court on 8 December 2006, in the anonymised form approved by the Court, be made publicly available.

Disclosure

(11) The Third and Fourth Respondents be permitted to disclose to the Applicant all video footage they have in their possession of and concerning the Fifth Respondent, including (for the avoidance of doubt) video footage in which the Fifth Respondent is visibly identifiable and video footage in which the Third and Fourth Respondents, and any other individual, discusses the Fifth Respondent and/or discusses the Proceedings.

(12) The Applicant may disclose any of the matters referred to in paragraphs (3) and (11) to any person engaged or instructed by the Applicant for the purpose of producing a television programme based on the video footage referred to in paragraph (11) above PROVIDED that prior to disclosing the relevant matter to that person the Applicant provides to him a copy of this Order endorsed with a penal notice."

A warning for the future

71. The fact that in this particular case I was prepared to proceed in the way described in paragraphs [51]-[53] above should not be taken as any indication that a similar course will be acceptable in future.

72. Both the arguments rehearsed in paragraph [45] above and the powerful observations of Ryder J in *Oldham MBC v GW, PW and KPW (A Child)* [2007] EWHC 136 (Fam) which I have quoted in paragraph [49], point to the conclusion that the only principled approach is the one I have described in paragraph [44]: the court should not release a judgment, even in anonymised form, until *after* it has given those affected an opportunity to apply for an order protecting their anonymity and *after* it has adjudicated on all such applications, and the court should not adjudicate on any such application unless and until there has been strict compliance with section 12(2) of the 1998 Act and with the *President's Practice Direction* and the *Practice Note.*

73. Next time a judge is faced with the situation which was presented to me on 6 March 2007 the parties (see paragraph [50]) may well find that the court is willing to do nothing beyond adjourning the application and giving appropriate directions, including, where these steps have not yet been taken, directions in relation to service of the proceedings in accordance with the *President's Practice Direction* and the *Practice Note.*